

Meyers, Aundrea

From: Legg, Louisa on behalf of Hearing Examiner
Sent: Wednesday, December 9, 2020 12:03 PM
To: Rodriguez, Ralph
Cc: Garrison, Michael; Meyers, Aundrea
Subject: RE: LID 3971 - Dorsey Property
Attachments: SIGNED_MemoReplyToPWsDorseyResponse_12.09.20.pdf; LID 3971 - Dorsey Property response.pdf

Importance: High

Mr. Rodriguez,

Please find attached the Hearing Examiner's response to your November 30, 2020 emailed memo (also attached). The Examiner's office will send a hard copy of the same since we have no email address for her and she confirmed by phone she does not have one.

Sincerely,

Louisa Legg

Office Administrator

Tacoma Hearing Examiner Office

Ph: 253-591-5195 | Fax: 253.591.2003

Hearing.examiner@cityoftacoma.org

From: Rodriguez, Ralph <RRODRIG1@cityoftacoma.org>
Sent: Monday, November 30, 2020 2:25 PM
To: Legg, Louisa <llegg@cityoftacoma.org>; Meyers, Aundrea <AMeyers@cityoftacoma.org>
Cc: Garrison, Michael <mgarrison@cityoftacoma.org>
Subject: LID 3971 - Dorsey Property

Louisa,

Please see the departments comments to the Examiner's report regarding the Dorsey property.

Ralph K. Rodriguez

LID Administrator

City of Tacoma

Public Works, Engineering Division

P: 253-591-5522

F: 253-591-5533

C: 253-606-6853

E: rodrig1@cityoftacoma.org



City of Tacoma
Hearing Examiner

December 11, 2020

Evelyn L. Dorsey
302 East 48th Street
Tacoma, WA 98404-1360
(First Class Mail Delivery)

Re: Proposed Formation - Local Improvement District (LID) No. 3971

Dear Ms. Dorsey,

In regard to the above referenced matter, please find enclosed a hard copy of the Hearing Examiner's Memo Reply to Public Works, dated December 9, 2020.

Sincerely,

A handwritten signature in blue ink that reads "Aundrea Meyers".

Aundrea Meyers
Office Assistant

Enclosure (1): Memo Reply to Public Works

Cc: (Electronic Mail Delivery)

Ralph Rodriguez, MA III, LID Administrator, City of Tacoma, Public Works
Michael Garrison, LID Representative, City of Tacoma Public Works



TO: Ralph K. Rodriguez, LID Administrator/Public Works Department
FROM: Jeff H. Capell, Hearing Examiner
SUBJECT: Memo Dated Nov. 25, 2020 re. LID 3971 (Dorsey property clarification)
DATE: Dec. 9, 2020

This Memo is written to acknowledge receipt of your Memo dated November 25, 2020, which was received in the Office of the Hearing Examiner (“OHEX”) on November 30, 2020 (“Your Memo”). Your Memo bills itself as a “clarification” regarding the Dorsey real property located at 302 East 48th Street in the city of Tacoma. It was not filed as a Motion for Reconsideration, although it was received in the OHEX on the final day for filing such requests. It is unclear from Your Memo what effect it was intended to have on the Findings of Fact, Conclusions of Law and Recommendation for LID 3971 issued by the OHEX on November 16, 2020 (the “Recommendation”). Since it was presented in Memo form, the OHEX is responding to Your Memo in the same format.

Although presented as a clarification, the Examiner did not find any new information in Your Memo that was not already made apparent from the hearing and its accompanying record. Given that, the Recommendation stands unchanged.

The Examiner would point out, however, that use of the real property law term of art “cloud on title” is inappropriate as used in Your Memo because, although the possibility would remain of having to pay an additional connection fee if the Dorsey property were to be subdivided, this is not something that casts ownership of that property into doubt or otherwise affects title to the property—it is simply an inchoate, outstanding, and only potential obligation. Two on point and helpful definitions of cloud on title are as follows:

The existence of a cloud on title casts doubt upon the ability of an owner of real property to convey marketable title to his or her land, thereby lessening its value.¹

A cloud on title is a claim or encumbrance that affects the ownership of a property. These claims or encumbrances can arise from easements or mortgages on the land. They can also arise from a defect in a deed or a lien that may yield title to a third party such as mechanic’s liens.²

If the Dorsey property is never subdivided, the potential obligation to pay an additional connection fee never arises. Its potentiality certainly does not make the property

¹ [Cloud on title Definition | Bankrate.com](#)

² [Cloud on Title | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

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HEX Memo re. LID 3971

unmarketable, and the payment of a connection fee, in the absence of subdivision, would not be required in order to convey title to the property.

In any event, Ms. Dorsey has not elected to join LID 3971, even in the aftermath of the Recommendation and receiving Your Memo. As stated above, Your Memo does not change anything already stated in the Recommendation. The decision is now in the hands of the City Council.

Best,



Jeff H. Capell
Hearing Examiner



City of Tacoma
Public Works Department

December 2, 2020

Ms. Evelyn Dorsey
302 East 48th Street
Tacoma, WA 98404

Subject: Local Improvement District 3971 – Information provided to the Hearing Examiner

Dear Ms. Dorsey:

Our office provided a memorandum to the Hearing Examiner that will hopefully assist you in your decision to request that you either remain in or be removed from proposed Local Improvement District (LID) 3971. The department's decision to include the East 65 feet your property within the LID was to provide you the opportunity for public financing made available through the LID program instead of paying the same amount as a lump sum Connection Charge-in-lieu-of-Assessment, due upon either the sale of the property or upon issuance of a permit for the property to connect into the sanitary sewer main.

Properties within the City of Tacoma are responsible for a fair and proportionate share of the cost of constructing abutting and adjacent sanitary sewers mains. The authority is outlined in the Tacoma Municipal Code (TMC), Chapter 12.08.350.B.5 which states "*It is the intent of the City that all premises shall pay their fair share of the cost of construction of abutting and adjacent sanitary sewers.*"

The west 100 feet of your property paid a Connection Charge-in-lieu-of-Assessment on May 2003, that portion of your property may connect to the new main without additional charges per TMC Chapter 12.08.350.C specifically "*The Connection Charge-in-lieu-of-Assessment hereinabove provided for shall be credited to and considered as a benefit to the specific premises serve by said connection. Said premises so benefitted shall be designated by legal description and posted by the City and recorded as a part of the City's permanent records pertaining thereto. No further sanitary sewer connection charge shall be collected against said premises.*"

The East 65 feet your property was not included when the west 100 feet of your property paid the Connection Charge-in-lieu-of-Assessment and is subject to the requirement of TMC Chapter 12.08.350.D specifically "*Future sanitary sewer connections to premises abutting the sanitary sewer main on which a sanitary sewer connection charge has not*

Local Improvement District No. 3971
December 2, 2020
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been paid, but which adjoins specific premises for which such charges have been charged or paid, shall be subject to the charges as hereinabove set forth.” And TMC Chapter 12.08.350.1 “In no case shall the Connection Charge-in-lieu-of-Assessment be less than the rate per “Assessable Unit of Frontage” charged to the original LID participants ...” LID 3971 has a rate per assessable units of frontage of \$305.00, the resulting assessment for your additional 65 feet is \$20,154.40, as stated in the formation hearing notice.

In addition to the memorandum to the Hearing Examiner I have attached copies of the Tacoma Municipal Code 12.08.350 for your review and records.

Should you have additional questions please contact me at 591-5522.

Sincerely,



Ralph K. Rodriguez
L.I.D. Administrator

cc: Karen Bartlett, P.E. – Environmental Services
Dan Seabrands, P.E. – Public Works Engineering

file: LID 3971

Attachments



City of Tacoma

Memorandum

TO: Jeff H. Capell, Hearing Examiner

FROM: Ralph K. Rodriguez, LID Administrator / Public Works Department

SUBJECT: Local Improvement District 3971 – Dorsey property clarification

DATE: November 25, 2020

A handwritten signature in blue ink, appearing to read "RKR", with a horizontal line underneath.

The Dorsey property is located south of East 48th Street and west of East 'D' Street with 165 feet of property frontage abutting East 48th Street. The west 100 feet paid a Connection Charge-in-lieu-of-Assessment on May 22, 2003. Should the east 65 feet of the Dorsey property be excluded from the LID, that portion of the property would be subject to a future Connection Charge-in-lieu-of-Assessment as outlined in TMC 12.08.350 in the amount equal to the amount being assessed by proposed LID 3971. Section 1 of the code states "*In no case shall the Connection Charge-in-lieu-of-Assessment be less than the rate per Assessable unit of Frontage charged to the original LID participants*". The intent of the code is that all property within the City of Tacoma shall pay their fair and proportionate share of the cost of constructing the abutting and adjacent sanitary sewers.

While Ms. Dorsey has expressed no interest to subdivide her property or add additional sanitary sewer connections at this time there are potential benefits to having the east 65 feet of her property assessed now under the LID rather than later under the Connection Charge-in-lieu-of-Assessment. The proposed LID will allow the property owner to finance the assessment over a 20 year period while the Connection Charge-in-lieu-of-Assessment would be due as a lump sum expense prior to any future sanitary sewer connection permit being issued. Should the property sell, the new owners, as a condition of the sale, may require the existing cloud on title be removed from the east 65 feet of the subject parcel. The existing cloud would only be removed with the payment of a Connection Charge-in-lieu-of-Assessment. Should Ms. Dorsey maintain ownership and qualify for the LID Assistance Program at the time the LID assessments are finalized by the City Council, the program would be responsible for her base assessment value. Under the LID Assistance Program the property owner would still be responsible for any requested supplemental work.

connection has been properly made and whether or not the use of such sanitary sewers is in accordance with the ordinances, rules, and regulations of the City pertaining thereto.

J. In the event of a change in ownership, or if the premises are rented, the owner or renter shall be invoiced and pay per subsection C of this section. The failure or refusal to make any such payment when due may result in the disconnecting of the sewer by the City.

(Ord. 28093 Ex. E; passed Oct. 16, 2012: Ord. 27538 § 18; passed Oct. 24, 2006: Ord. 26888 § 3; passed Dec. 4, 2001: Ord. 26729 § 4; passed Nov. 7, 2000: Ord. 25587 § 27; passed Sept. 20, 1994: Ord. 24962 § 1; passed Aug. 13, 1991: Ord. 24879 § 16; passed May 21, 1991: Ord. 24132 § 1; passed Jul. 12, 1988: Ord. 23309 § 2; passed Dec. 18, 1984: Ord. 23240 § 1; passed Aug. 28, 1984)

12.08.350 Connection Charge-in-lieu-of-Assessment.

Owners of premises within the City adjacent to and abutting upon the sanitary sewer system and which premises have not been previously assessed under a Local Improvement District (“LID”) under this chapter, or under former TMC 12.08 for a sanitary sewer improvement, may connect those premises to and discharge sewage into the sanitary sewers upon receipt of a permit issued by the Director.

Such permit shall be issued only upon written application to the Director by the owner of the premises to be served and subject to the following terms and conditions:

A. The owner shall obtain all permits and pay all fees necessary and required by the City and shall construct said connecting sewers in compliance with all requirements and specifications of the City governing the same.

B. Except as provided in paragraph E of this section, the owner, prior to the issuance of any permit herein authorized, shall pay in cash to the City a Connection Charge-in-lieu-of-Assessment. This charge shall be computed at the guaranteed rate per “Assessable Unit of Frontage” in effect at the time of construction of the sanitary sewer line to be used to serve the premises of such owners, unless as otherwise provided below. The rate for computation of such Connection Charge-in-lieu-of-Assessment shall be determined as of the date of completion of construction of the particular sanitary sewer line to be so used, as reflected by the rates shown below in Table I.

Construction Date	Rate Per A.U.F.	
	Two Side Service	One Side Service
Prior to September 30, 1957	\$3.25	\$3.25
October 1, 1957 to September 20, 1960	\$3.25	\$4.75
September 21, 1960 to January 15, 1963	\$3.75	\$4.75
January 16, 1963 to November 19, 1968	\$4.50	\$5.50
November 20, 1968 to July 17, 1973	\$5.75	\$9.00
July 18, 1973 to April 8, 1975	\$7.50	\$11.00
April 9, 1975 to December 5, 1978	\$15.50	\$23.00
December 6, 1978 to December 31, 1982	\$20.00	\$38.00
January 1, 1983 to June 2, 1991	\$24.50	\$46.50
June 3, 1991 to June 30, 1994	\$30.00	\$60.00
July 1, 1994 to December 31, 1998	\$40.00	\$80.00
January 1, 1999 to May 31, 2011	\$50.00	\$100.00
June 1, 2011 and thereafter	\$75.00	\$150.00

1. In no case shall the Connection Charge-in-lieu-of-Assessment be less than the rate per “Assessable Unit of Frontage” charged to the original LID participants; therefore, in the event that the rate per “Assessable Unit of Frontage” charged to the original LID participants was higher than the rate set forth in this table, the Connection Charge-in-lieu-of-Assessment shall be equal to the higher rate. In addition to the “Assessable Unit of Frontage” charge calculated according to Table I above, for each connection to the sanitary sewers there shall be charged by the City a flat-rate charge of \$1,250. However, in no case shall the total charge for the connection exceed the charge that would result from using the prevailing guaranteed maximum rate in effect at the time of the connection, unless as otherwise provided below.

2. For connections to any sanitary sewer line built with City funds instead of by LID, and constructed after January 1, 1999, the Connection Charge-in-lieu-of-Assessment for each abutting premises shall be the proportionate share of the actual cost to construct the sanitary sewer line. The proportionate share shall be the ratio of each premises' "Assessable Units of Frontage" to the total units of frontage, multiplied by the actual cost to construct the sanitary sewer line, plus any costs for side sewers. Actual cost to construct the sanitary sewer line shall be defined as the final applicable construction cost plus a 15 percent allowance for engineering, survey, inspection, and administration. In no case shall the connection charge exceed the benefit accruing to each premise. If the charge that would result from using the prevailing guaranteed maximum rate exceeds the proportionate share, the flat-rate charge of \$1,250 shall be added to the proportionate share.

a. The calculation shall use the actual rate charged to the LID participants or the prevailing guaranteed maximum rate in effect at the time of construction, whichever is highest, unless the sewer was built with City funds after January 1, 1999. If the sewer was built with City funds after January 1, 1999, the calculation shall use the prevailing guaranteed maximum rate in effect at the time of connection or the final applicable construction cost plus 15 percent, whichever is highest.

3. Connecting of premises to an existing sanitary sewer which is not adjacent to or abutting the subject premises shall be subject to a Connection Charge-in-lieu-of-Assessment calculated using the higher of the prevailing guaranteed maximum rate in effect at the time of connection.

4. If a sanitary sewer main is extended to be adjacent to or abutting the subject premises, the adjacent or abutting premises, which are identified on the City's Request for Release as having contributed to the costs of the design and construction of the sanitary sewer main, shall be connected to such sanitary sewer main at no additional connection charge, as set forth in subsection C below; provided the owner/developer has submitted "As-Built" drawings to the City depicting the connection and has also executed the City's Certificate of Release.

5. It is the intent of the City that all premises shall pay their fair share of the cost of construction of abutting and adjacent sanitary sewers. The owner of any premises which connects to an existing sanitary sewer without payment of the applicable charges, hereinabove described, owes and shall be required to pay such charges.

6. The "Assessable Units of Frontage" and the amount to be paid thereon at the rate hereinabove specified shall be computed in the same manner as the procedure set forth for LIDs under chapter 35.44 RCW. In addition to the connection charge hereinabove provided for, the total cost of the construction of all sewers so connected shall be borne by the owner of the premises.

C. The Connection Charge-in-lieu-of-Assessment hereinabove provided for shall be credited to and considered as a benefit to the specific premises served by said connection. Said premises so benefited shall be designated by legal description and posted by the City and recorded as a part of the City's permanent records pertaining thereto. No further sanitary sewer connection charge shall be collected against said premises.

D. Future sanitary sewer connections to premises abutting the sanitary sewer main on which a sanitary sewer connection charge has not been paid, but which adjoins specific premises for which such charges have been charged or paid, shall be subject to the charges as hereinabove set forth.

E. The Sanitary Sewer Connection Charges shall be calculated to include a processing fee equivalent to the current fees charged by the County Auditor for recording the Certificate of Payment And Release served under RCW 65.08.180.

F. Septic System Amnesty Program.

1. For residential premises where wastewater service is available, and where the residence is not connected to the sanitary sewer main, a financial incentive, as set forth below, will be offered to encourage the owner to connect to the sanitary sewer main. Effective January 1, 2010, the financial incentive will be offered to owners of commercial premises under the same terms and conditions applicable to residential premises.

a. Where the Connection Charge-in-lieu-of Assessment is applicable, a financial incentive, consisting of a 50 percent reduction in the charge (incentive program) for the subject premises will be available, subject to the availability of funds, as described below, and in accordance with policies set forth by the Director. The remaining 50 percent of that charge may be eligible for financial assistance under the Conservation Loan Program, as set forth in TMC 12.08.640. The City will allocate up to \$500,000 per fiscal year to fund the incentive program. Owners of premises who qualify for the incentive program will be eligible for a 50 percent reduction in their connection charge on a "first-come, first-served" basis until the moneys allocated by the City for the incentive program in a given fiscal year are exhausted.

b. Where an LID was/is formed, the financial incentive will consist of a 50 percent reduction to that assessment for the subject premises in accordance with policies set forth by the Director, subject to the availability of funds, as stated in subsection E.a. above. In the case where all or a part of the assessment has been paid, the appropriate reduction or rebate will be made so that the final cost for the subject premises will be 50 percent of the full assessment amount.

2. The financial incentive program is not available to new premises that are constructed after wastewater service is available to that property. Owners not electing to take advantage of this limited program will be subject to the regular charges such as those specified in subsection B above.

G. All Connection Charges-in-lieu-of-Assessment received pursuant to the provisions of this section are nonrefundable and shall be considered capital contributions to the Municipal Sewer System and deposited into the Wastewater Management Fund.

H. All ordinances, rules, regulations, and procedures relating to the use, maintenance, and connection to sanitary sewers, as the same are now or may hereafter be adopted by the City, shall apply with equal force to each such sanitary sewer connection and any violation of any such ordinance, rule, regulation, or procedure by the owner of any premises connected to a sanitary sewer may result in the disconnecting of said sewer by the City.

(Ord. 28261 Ex. A; passed Dec. 9, 2014; Ord. 28128 Ex. A; passed Feb. 12, 2012; Ord. 27978 Ex. A; passed Apr. 26, 2011; Ord. 27881 Ex. A; passed Mar. 30, 2010; Ord. 27538 § 19; passed Oct. 24, 2006; Ord. 27503 § 1; passed Jun. 27, 2006; Ord. 27285 § 8; passed Nov. 2, 2004; Ord. 26729 § 5; passed Nov. 7, 2000; Ord. 26338 § 2; passed Dec. 8, 1998; Ord. 25521 § 2; passed Jun. 7, 1994; Ord. 24879 § 17; passed May 21, 1991; Ord. 23968 § 1; passed Nov. 3, 1987; Ord. 23309 § 3; passed Dec. 18, 1984; Ord. 23240 § 1; passed Aug. 28, 1984)

12.08.360 Charges and rates for wastewater service inside the City limits.

As permitted by Chapter 35.67 RCW, charges shall be made for the discharge and for the availability for discharge of all sanitary sewage into sanitary sewers. If the Director requires construction of an extension to the sanitary sewer system prior to issuance of a side sewer permit, the charge for availability for discharge shall not be made until such time as the sanitary sewer extension is completed. Unless otherwise determined by the Director, no allowances will be made for vacancies, remodeling, or other such activities unless the water service for the entire facility, building, or mobile home court (two or more units) is turned off by the Water Utility of the City. Charges shall be as follows:

A. Each single-family residence (including those instances where more than one family residence is served through one water meter, as hereinbefore mentioned in TMC 12.08.010) shall be charged a monthly charge computed as follows:

Effective Date: January 1, 2019:

- (1) A fixed charge of \$25.87 plus
- (2) A flow charge calculated at \$4.87 per hundred cubic feet (ccf) of water consumption.

Effective Date: January 1, 2020:

- (1) A fixed charge of \$26.91 plus
- (2) A flow charge calculated at \$5.07 per hundred cubic feet (ccf) of water consumption.

The water consumption for the flow charge shall be the average monthly use as measured during the most recent months of December, January, February, and March. If the average consumption results in a fractional part of a ccf, the number used for calculating the flow charge shall be rounded to the nearest one-hundredth of a ccf.

B. Multiple-family residences, accessory dwelling units and mobile home courts (two or more units) served through one water meter shall pay a monthly charge per living unit as above, except that the water consumed during the winter months shall be divided by the total number of living units served by the account to determine the per living unit flow volume. If the average consumption per unit results in a fraction, the number used for calculating the flow charge shall be billed to the nearest one-hundredth of a ccf.

It shall be the duty of every person in possession, charge, or control of the entire premises consisting of two or more units, served by the sanitary sewer system, or to which such service is available, to be accountable for payment of each unit.

Where units in multiple-unit residences are separately metered; each unit shall be charged the appropriate single-family residence rate as set forth in subsection A of this section.

C. In all cases other than residential charges hereinabove set forth, the sewer charge shall be computed and paid as follows:

1. **Metered Water Supply.** When charges and fees are based upon the water usage, such charges and fees shall be applied against the total amount of water used from all sources unless, in the opinion of the Director, significant portions of water received are not discharged to a sanitary sewer. The total amount of water used from public and private sources will be determined by means of public meters or private meters, installed and maintained at the expense of the user in accordance with Environmental Services Policies and Guidelines. Such public or private meters shall measure flow in cubic feet (cf).

December 2, 2020

Ms. Evelyn Dorsey
302 East 48th Street
Tacoma, WA 98404

Subject: Local Improvement District 3971 – Information provided to the Hearing Examiner

Dear Ms. Dorsey:

Our office provided a memorandum to the Hearing Examiner that will hopefully assist you in your decision to request that you either remain in or be removed from proposed Local Improvement District (LID) 3971. The department's decision to include the East 65 feet your property within the LID was to provide you the opportunity for public financing made available through the LID program instead of paying the same amount as a lump sum Connection Charge-in-lieu-of-Assessment, due upon either the sale of the property or upon issuance of a permit for the property to connect into the sanitary sewer main.

Properties within the City of Tacoma are responsible for a fair and proportionate share of the cost of constructing abutting and adjacent sanitary sewers mains. The authority is outlined in the Tacoma Municipal Code (TMC), Chapter 12.08.350.B.5 which states "*It is the intent of the City that all premises shall pay their fair share of the cost of construction of abutting and adjacent sanitary sewers.*"

The west 100 feet of your property paid a Connection Charge-in-lieu-of-Assessment on May 2003, that portion of your property may connect to the new main without additional charges per TMC Chapter 12.08.350.C specifically "*The Connection Charge-in-lieu-of-Assessment hereinabove provided for shall be credited to and considered as a benefit to the specific premises serve by said connection. Said premises so benefitted shall be designated by legal description and posted by the City and recorded as a part of the City's permanent records pertaining thereto. No further sanitary sewer connection charge shall be collected against said premises.*"

The East 65 feet your property was not included when the west 100 feet of your property paid the Connection Charge-in-lieu-of-Assessment and is subject to the requirement of TMC Chapter 12.08.350.D specifically "*Future sanitary sewer connections to premises abutting the sanitary sewer main on which a sanitary sewer connection charge has not*

Local Improvement District No. 3971
December 2, 2020
Page 2

been paid, but which adjoins specific premises for which such charges have been charged or paid, shall be subject to the charges as hereinabove set forth.” And TMC Chapter 12.08.350.1 “In no case shall the Connection Charge-in-lieu-of-Assessment be less than the rate per “Assessable Unit of Frontage” charged to the original LID participants ... ” LID 3971 has a rate per assessable units of frontage of \$305.00, the resulting assessment for your additional 65 feet is \$20,154.40, as stated in the formation hearing notice.

In addition to the memorandum to the Hearing Examiner I have attached copies of the Tacoma Municipal Code 12.08.350 for your review and records.

Should you have additional questions please contact me at 591-5522.

Sincerely,

Ralph K. Rodriguez
L.I.D. Administrator

cc: Karen Bartlett, P.E. – Environmental Services
Dan Seabrands, P.E. – Public Works Engineering

file: LID 3971

Attachments