



City of Tacoma
Hearing Examiner

November 21, 2014

Mr. Ralph Rodriguez, L.I.D. Administrator
City of Tacoma, Dept. of Public Works
747 Market Street, Room 520
Tacoma WA 98402
(Inter-office Mail Delivery)

Re: File No. HEX2014-034 - Proposed Local Improvement District No. 8661 Formation

Mr. Rodriguez,

In regard to the above referenced matter, please find enclosed the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council issued on November 21, 2014.

Sincerely,

Louisa Legg
Legal Assistant

Enclosure (1) – Findings, Conclusions, and Recommendation

cc: Tacoma City Clerk's Office
Liz Wheeler, Customer Svc. Rep. Tech, Tacoma City Treasurer's Office
Leslie Patton, 3804 North Proctor Street, Tacoma, WA 98407-5732

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED November 21, 2014, at Tacoma, WA.

Louisa Legg

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**OFFICE OF THE HEARING EXAMINER
CITY OF TACOMA**

In the Matter of:

**FORMATION OF
LOCAL IMPROVEMENT DISTRICT
NO. 8661.**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

A **PUBLIC HEARING** on the above-captioned matter was held on November 17, 2014, before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma. The Hearing Examiner having considered the evidence presented, having reviewed the file, and being otherwise fully advised, makes the following:

FINDINGS OF FACT:

1. On October 28, 2014, the Tacoma City Council adopted Resolution No. 39036, expressing the Council’s intent to order the local improvements described below and to pay the cost of such improvements by imposing and collecting special assessments upon the real property that would receive special benefit from those improvements. The improvements consist of grinding the existing asphalt surface and placing new asphalt over the existing structural section between the existing concrete curbs and brick gutter, modifying the existing storm drain lines, and storm water catch basins, where needed, on Proctor Street from North 38th Street to the dead end. Such improvements may include driveway entrances; sanitary

**FINDINGS OF FACT,
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City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768

- 1 -
ORIGINAL

1 sewer connections from the sewer main to the property line; the removal and planting of trees;
2 and such improvements shall include all other work necessary to complete the same in
3 accordance with the plans and specifications to be prepared by the Tacoma City Engineer.

4 Resolution No. 39036 (proposed Local Improvement District No. 8661) is incorporated herein
5 by reference as though fully set forth. *Ex. 5; Rodriguez Testimony.*

6 2. Notice of Public Hearing for the proposed Local Improvement District (L.I.D.)
7 No. 8661 was published in the Tacoma Daily Index on October 30, and 31, 2014. Notice of
8 Public Hearing letters were mailed to property owners of record on October 31, 2014. An
9 Affidavit of Publication has been filed with the City Clerk, as well as plans and estimates
10 required by said resolution. *Exs. 6 and 7; Rodriguez Testimony.*

11 3. Pursuant to applicable law and the direction of the Tacoma City Council, the
12 Hearing Examiner conducted a public hearing on November 17, 2014, to consider the
13 formation of L.I.D. No. 8661.

14 4. On July 16, 2014, the City sponsored an informational meeting concerning its
15 planned wastewater, stormwater, and water main replacement project in the area of North 37th
16 Street and North 39th Street from Tyler Street to Adams Street. *Ex. 2.* Certain segments of the
17 water main project involve the City replacing paving on only one-half of the street. Some
18 owners at the meeting were interested in extending the new paving to cover the entire street
19 width. Neighborhood Advisory Survey forms regarding the creation of L.I.D. projects to
20 cover such additional paving costs were distributed to interested homeowners. Not all of the
21 surveys were returned, however, property owners in the subject area representing 68.16

**FINDINGS OF FACT,
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1 percent of the preliminary assessments signed Neighborhood Advisory Survey No. 8467 in
2 support of forming proposed L.I.D No. 8661. *Ex. 3; Rodriguez Testimony.*

3 5. A staff report regarding the project has been prepared by the Department of
4 Public Works (DPW), L.I.D. Section, and is entered into the record as Exhibit 1. The
5 estimated total project cost of proposed L.I.D. No. 8661 is \$27,851.65 with an estimated rate
6 per Assessable Unit of Frontage of \$40.00. *Exs. 1 and 3.* The proposed L.I.D. is a 10-year
7 Assessment Roll. *Ex. 1; Rodriguez Testimony.*

8 6. The DPW has used a modified zone and termini formula to calculate the
9 preliminary assessments. The preliminary assessments reflect the benefits that will accrue to
10 the properties included within the district. *Rodriguez Testimony.*

11 7. No owners of property within proposed L.I.D. No. 8661 appeared at the hearing
12 to contest formation of the proposed L.I.D. and no written objections were filed.

13 8. The verbatim digital transcript of the hearing is in the custody of the Examiner's
14 Office, the file is in the custody of the City Clerk, and both are available for review by the
15 Council and any party in interest.

16 9. Any Conclusion of Law hereinafter stated which may be deemed to be properly
17 considered a Finding of Fact herein is hereby adopted as such.

18 From these Findings of Fact the Hearing Examiner makes the following:

19 **CONCLUSIONS OF LAW:**

20 1. The Hearing Examiner has jurisdiction in the matter. *Tacoma Municipal Code*
21 *(TMC) 1.23.050.A.2.*

**FINDINGS OF FACT,
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1 2. The purposes of the initial hearing regarding formation of an L.I.D. are to
2 determine if the formation of the district should proceed and if the limits of the district are
3 proper. *Chandler v. City of Puyallup*, 70 Wash. 632, 633 (1912). Accordingly, the only
4 issues properly presented during the formation stage of the L.I.D. process are:

5 (a) The jurisdiction or authority of the city to proceed with creating
6 the district.

7 (b) The proper boundaries of the district.

8 *Underground Equality v. Seattle*, 6 Wn. App. 338, 342, 492 P.2d 1071 (1972).

9 3. No challenge to the City's authority to create L.I.D. No. 8661 has been presented
10 in these proceedings.¹

11 4. The only constraint on the City's authority to create an L.I.D. initiated by
12 resolution of a local legislative body, as is the case here, is contained in the following
13 provision:

14
15 ¹ RCW 35.43.040 addresses the City's authority to conduct improvements, providing in pertinent part:
16 Whenever the public interest or convenience may require, the legislative authority of any city or town may order
17 the whole or any part of any local improvement including but not restricted to those, or any combination thereof,
18 listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to
19 the planting, setting out, cultivating, maintaining and renewing of shade or ornamental trees and shrubbery
20 thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect
21 special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof,
viz:

1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares,
public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing,
remacadamizing, graveling, regraveling, piling, repiling, capping, recapping, or other improvement; if the
management and control of park drives, parkways, and boulevards is vested in a board of park commissioners,
the plans and specifications for their improvement must be approved by the board of park commissioners
before their adoption;

....
(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the
territory which can be drained through the trunk sewer and subsewers connected thereto;
....

1 **35.43.180 Restraint by protest.** The jurisdiction of the
2 legislative authority of a city or town to proceed with any local
3 improvement initiated by resolution shall be divested by a protest
4 filed with the city or town council within thirty days from the date
5 of passage of the ordinance ordering the improvement, signed by the
6 owners of the property within the proposed local improvement
7 district or utility local improvement district subject to sixty percent
8 or more of the total cost of the improvement including federally-
9 owned or other non-assessable property as shown and determined
10 by the preliminary estimates and assessment roll of the proposed
11 improvement district or, if all or part of the local improvement
12 district or utility local improvement district lies outside of the city
13 or town, such jurisdiction shall be divested by a protest filed in the
14 same manner and signed by the owners of property which is within
15 the proposed local improvement district or utility local
16 improvement district but outside the boundaries of the city or town,
17 and which is subject to sixty percent or more of that part of the total
18 cost of the improvement allocable to property within the proposed
19 local improvement district or utility local improvement district but
20 outside the boundaries of the city or town, including federally-
21 owned or other non-assessable property: . . . (Emphasis supplied.)

12 *RCW 35.43.180.*

13 5. The City, by adoption of Resolution No. 37956, concerning L.I.D. policies,
14 determined that it will not form an L.I.D. when owners property representing 50 percent or
15 more of the total assessments file remonstrances to formation, except in instances where the
16 City Council has previously determined the L.I.D. to be in the best interest of the City. In the
17 latter case, the bar to forming the L.I.D. is that set forth at RCW 35.43.180 and Resolution No.
18 37956, paragraph E., L.I.D. formation.

19 6. There is no remonstrance to the formation of L.I.D. No. 8661, and the City has the
20 authority by statute and its own L.I.D. policies to proceed with formation of the district.
21

**FINDINGS OF FACT,
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1 **NOTICE**

2 **RECONSIDERATION/APEAL OF EXAMINER'S RECOMMENDATION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or as
5 otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting
6 reconsideration of a decision or recommendation entered by the Hearing Examiner. A motion for
7 reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and
8 must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the
9 Hearing Examiner's decision/recommendation, not counting the day of issuance of the
10 decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend
11 day or a holiday, the last day for filing shall be the next working day. The requirements set forth
12 herein regarding the time limits for filing of motions for reconsideration and contents of such motions
13 are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office
14 of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Hearing
15 Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity
16 shall be given to other parties for response to a motion for reconsideration. The Hearing Examiner,
17 after a review of the matter, shall take such further action as he/she deems appropriate, which may
18 include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

19 **APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:**

20 Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved
21 person or entity having standing under the ordinance governing such application and feeling that the
22 recommendation of the Hearing Examiner is based on errors of procedure, fact or law shall have the
23 right to appeal the recommendation of the Hearing Examiner by filing written notice of appeal and
24 filing fee with the City Clerk, stating the reasons the Hearing Examiner's recommendation was in
25 error.

26 **APPEALS SHALL BE REVIEWED AND ACTED UPON BY THE CITY COUNCIL IN
27 ACCORDANCE WITH TMC 1.70.**

28 **GENERAL PROCEDURES FOR APPEAL:**

29 The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing
30 all of these procedures here, you should be aware of the following items which are essential to your
31 appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code
32 sections heretofore cited:

- 33 1. The written request for review shall also state where the Examiner's findings or
34 conclusions were in error.
- 35 2. Any person who desires a copy of the electronic recording must pay the cost of
36 reproducing the tapes. If a person desires a written transcript, he or she shall
37 arrange for transcription and pay the cost thereof.

38 **FINDINGS OF FACT,
39 CONCLUSIONS OF LAW,
40 AND RECOMMENDATION**