

**ATTACHMENT 1
Supplemental Recommendation
After Remand; L.I.D. 8645
(Assessment Roll)**

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of:

**LOCAL IMPROVEMENT DISTRICT
NO. 8645 (FINAL ASSESSMENT
ROLL).**

HEX2017-004

**FINDINGS AND INITIAL ORDER
ON REMAND FROM THE CITY
COUNCIL**

IN FURTHERANCE OF the Tacoma City Council's motion passed in open session on August 29, 2017, regarding the above-captioned matter—the final assessment roll for the Broadway Local Improvement District (the "LID")—the City of Tacoma's Hearing Examiner makes the following **Findings**:

1. At its regularly convened meeting on August 29, 2017, the following motion was made, seconded and passed by the City Council in regard to the Hearing Examiner's "Findings of Fact, Conclusions of Law, and Recommendation," dated May 26, 2017, as amended by that certain "Order Granting City's Request for Clarification and Denying City of Tacoma and Grigsby Motions for Reconsideration," dated June 20, 2017 (collectively the "Original Recommendation"):

The City Council "concur[red] in the findings, conclusions and recommendations of the Hearing Examiner, and den[ied] the appeals [of William and Ann Riley and the YWCA Pierce County] with the following exceptions:

A. Council rejects the use of a four percent (4%) benefit for Office/Retail/Commercial properties, and remands to the Hearing Examiner to review the record or allow the record [to] be supplemented to determine support for the use of a one percent (1%) benefit to be used for all

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(ASSESSMENT ROLL) - 1 -**

ORIGINAL

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1 Office/Retail/Commercial properties and allow property owners an
2 opportunity to object to any new assessment roll created.

3 B. Council remands to the Hearing Examiner the general assessments
4 recommended for all non-profit entities including the YWCA Pierce
5 County and directs the Public Works Department to prepare and submit a
6 new assessment based on a special benefits analysis that takes into
7 consideration the not-for-profit nature of these entities.

8 C. Council accepts the recommendation of the Hearing Examiner to
9 reduce the interest payment to \$331,500 and directs the City to not assess
10 the property owner's [sic] additional interest that may accrue while the
11 final assessment role is prepared.

12 2. In conformance with the authority set forth at Conclusion 2 below, the City Council
13 is intending to "correct, revise, raise, lower, change, or modify the [proposed] roll or any part
14 thereof"¹ based on additional analysis and information, in the case of A. and B, above, and cap
15 the interest being assessed on the benefitted property owners under C.

16 **BASED ON THE FOREGOING**, the Hearing Examiner sets forth the following
17 **Conclusions:**

18 1. The Hearing Examiner is the City Council's designated officer, under Revised Code
19 of Washington ("RCW") Section 35.44.070, for conducting local improvement district
20 hearings and making recommendations to the City Council.

21 2. RCW 35.44.100 gives the Tacoma City Council authority in local improvement
22 district proceedings as follows:

At the time fixed for hearing objections to the confirmation of the assessment roll,
and at the times to which the hearing may be adjourned, the council may correct,
revise, raise, lower, change, or modify the roll or any part thereof, or set aside the
roll and order the assessment to be made de novo and at the conclusion thereof
confirm the roll by ordinance.

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1 3. As stated above, under RCW 35.44.100, the City Council has authority to “correct,
2 revise, raise, lower, change, or modify the roll or any part thereof, and the City Council is
3 endeavoring to correct the assessment roll as much as possible before finalization based on
4 additional review, analysis and information. The City Council is within its authority to remand
5 for additional review, analysis and information.

6 4. The City Council is within its authority to cap the interest assessed on the benefitted
7 property owners in accordance with section C of the recounted motion at Finding 1 above.
8 Nothing in applicable laws requires that the entire cost of a local improvement district be
9 assessed upon the property owners in the district.² In fact, regardless of the cost of the
10 improvements, a municipality is limited to charging the property owner only the amount that
11 the property was specially benefitted.³

12 5. The present Examiner agrees with Examiner Macleod’s determination in the
13 Original Recommendation⁴ that “the proposed increase of 1 percent suggested by Mr. Riley
14 (and not by his Review Appraiser) is wholly without support in the record,” as the record
15 presently exists, even after a separate review of Mr. Riley’s submissions included as Exhibit
16 59. As a result, the present Examiner cannot recommend reducing the assessment for Office/
17 Retail/ Commercial properties to one percent (1%) in the absence of additional support.

18 6. Mr. Riley’s arguments against a four percent (4%) special benefit (and assessment)
19 are based on the various, alleged errors of the Valbridge Study⁵ as set forth in the Montro
20

21 ¹ RCW 35.44.100.

² See *MRSC Local and Road Improvement Districts Manual for Washington State*, 6th Ed., 2009.

³ *Hasit, LLC v. City of Edgewood*, 179 Wn. App. 917, 932-933, 320 P.3d 163 (2014).

⁴ At page 17, Finding of Fact 35.

⁵ Capitalized defined terms are used uniformly with the Original Recommendation.

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1 Review. His legal counsel then appears to contend that these alleged errors should lead one to
2 conclude that there is no special benefit to the Office/ Retail/Commercial properties
3 whatsoever, offering the one percent (1%) assessment alternative ostensibly as a kind of
4 compromise.⁶ The one percent (1%) alternative is even more lacking in empirical support that
5 the four percent (4%) proposed by the Valbridge Study. This, coupled with Examiner
6 Macleod's determination that "The level of detail and justification using recognized appraisal
7 techniques for quantifying the [4%] amount of increase is weak," is most likely the reason
8 behind Examiner Macleod's suggestion that "The City Council may wish to consider
9 requesting further appraisal analysis from the Valbridge firm to more fully document the basis
10 for selecting a 4 percent increase for office/retail/commercial properties within the project
11 area."⁷ The City Council has now done as Examiner Macleod suggested by passing its motion
12 to "remand to the Hearing Examiner to review the record or allow the record be supplemented
13 to determine support for the use of a one percent (1%) benefit to be used for all
14 Office/Retail/Commercial properties..."

15 7. Given that it would be inappropriate for a party involved in LID valuation to pick a
16 target number, and then attempt to cobble-up support for the desired valuation destination, the
17 Hearing Examiner interprets the City Council's remand motion to allow both the Rileys and
18 the City, through its LID Section of the Public Works Department, the opportunity to
19 supplement the record with additional support for their respective positions regarding the

20
21 ⁶ See Exhibit 59 at page 2 ("The Valbridge study [sic] provides no data or analysis to support the selected 4%.").
22 This does not square with the Montro Review, which states at page 18 of 20 "In my opinion there is a benefit
to supports its findings, and offers no alternative valuation supported by evidence.

⁷ Original Recommendation at page 32, Conclusion of Law 6.c.

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1 special benefit to the Office/Retail/Commercial properties.⁸ To the extent that other owners of
2 Office/Retail/Commercial properties within the LID desire to submit their own supplemental
3 information, City Council's motion seems to allow for that and the Examiner will take all
4 submissions from owners in the LID with standing into account in ultimately issuing an
5 amended recommendation.

6 8. In contrast to the Office/Retail/Commercial properties, the second paragraph of the
7 City Council's motion did not reopen the record for general supplementation regarding
8 properties in the LID owned by non-profit entities. Instead, City Council directed "the Public
9 Works Department to prepare and submit a new assessment based on a special benefits
10 analysis that takes into consideration the not-for-profit nature of these entities." As a result, no
11 general supplementation of the record will be permitted regarding properties in the LID owned
12 by non-profit entities, but any reassessment of these properties by the Public Works
13 Department will be evaluated and made part of an amended recommendation to the City
14 Council.⁹

15 **NOW THEREFORE, it is hereby Ordered:**

16 1. The City and the owners of Office/Retail/Commercial properties within the LID
17 shall submit, by close of business on September 11, 2017, their desired deadline by which they
18 will submit any and all additional support to the record for their positions regarding the special
19 benefit to their properties within the LID. To the extent that the City and the property owners

20 _____
21 ⁸ This would allow the information the City previously submitted with its request for Reconsideration to now be considered.

22 ⁹ This presumes that any reassessment and adjustment to these properties, to the extent such is supported by applicable LID law, and using recognized appraisal methodologies, would be downward, and therefore unobjectionable to the property owners.

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1 can agree on, and stipulate to a submission deadline, that would be ideal, keeping in mind that
2 this is a time sensitive matter to all involved. If a stipulated deadline cannot be reached, the
3 Hearing Examiner will take the submissions and issue an order supplemental hereto setting a
4 submission deadline for all parties based on the parties' requested deadlines.

5 2. After this Office sets the deadline for submission of supplemental materials, and
6 submissions are received, the Hearing Examiner will review the supplemental materials and
7 issue an amended recommendation to the City Council regarding the special benefit to the
8 Office/Retail/Commercial properties within the LID. Unless the parties can show good cause
9 for the necessity of additional oral testimony, the amended recommendation will be based on
10 the supplemented written record alone.

11 3. The Public Works Department, LID Section shall submit its "new assessment based
12 on a special benefits analysis that takes into consideration the not-for-profit nature" of the
13 properties in the LID that are owned by non-profit entities at the same time as the
14 supplemental materials addressing the special benefit to the Office/Retail/Commercial
15 properties, unless good cause is shown justifying a different submission deadline.

16 4. In conformance with the City Council's motion, the Public Works Department, LID
17 Section shall charge no further interest to the LID property owners in excess of \$331,500.

18 **DATED** this 31st day of August, 2017.

19 
20 **JEFF H. CAPELL, Hearing Examiner**

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