

1 sanitary sewer connections from the sewer main to the property line; the removal and planting
2 of trees and shall include all other work necessary to complete the same in accordance with
3 the plans and specifications to be prepared by the Tacoma City Engineer. Resolution No.
4 39067 (proposed Local Improvement District No. 8662) is incorporated herein by reference as
5 though fully set forth. *Ex. 7; Rodriguez Testimony.*

6 2. Notice of Public Hearing for the proposed Local Improvement District (L.I.D.)
7 No. 8662 was published in the Tacoma Daily Index on December 11 and 15, 2014. An
8 Affidavit of Publication has been filed with the City Clerk, as well as plans and estimates
9 required by said resolution. *Ex. 8; Rodriguez Testimony.* Notice of Public Hearing letters
10 were mailed to property owners of record on December 12, 2014. *Ex. 9; Rodriguez*
11 *Testimony.*

12 3. Pursuant to applicable law and the direction of the Tacoma City Council, the
13 Hearing Examiner conducted a public hearing on January 12, 2015, to consider the formation
14 of L.I.D. No. 8662.

15 4. Property owners representing 60 percent of the assessments indicated their
16 support for the project by signing Advisory Survey No. 8463 that was circulated within the
17 neighborhood. *Ex. 1 and 5; Rodriguez Testimony.* The owners agreed to partner with the City
18 and supported paving the street with a 20-foot wide meandering pervious asphalt street with 2-
19 foot wide concrete bands along either side of the asphalt and sidewalks along both sides of the
20 street. Surface water will be treated by means of pervious pavement instead of extending the
21 surface water main to serve the proposed street. The project's meandering design allows the

1 retention of landscaping that has long been maintained on the public right of way and will tend
2 to calm traffic using the roadway. *Ex. 7; 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. 8662 is \$482,891.70. The owners of
6 property will pay an estimated total cost of \$182,891.70, and the City's Environmental
7 Services Service Water Fund will contribute \$300,000 based upon the proposal's status as a
8 greenscape demonstration project. The estimated rate per Assessable Unit of Frontage (AUF)
9 is \$160.00. The proposed L.I.D. is a 15-year Assessment Roll. *Exs. 1; 6, and 10; Rodriguez*
10 *Testimony.*

11 6. The DPW used a modified zone and termini formula to calculate the preliminary
12 assessments. The preliminary assessments reflect the benefits that will accrue to the
13 properties included within the district. The assessments are limited to properties adjoining the
14 improvements. *Rodriguez Testimony.*

15 7. Owners of property within proposed L.I.D. No. 8662 appeared and testified at the
16 hearing. Some of the owners support the project and some of the owners oppose the project.
17 Owners opposing the proposed roadway cited the cost of the assessments as a burden to
18 homeowners. *Ness Testimony; Lechich Testimony.* Some indicated that they like the dead-
19 end street and do not want to see it linked to adjoining roads. *Ness Testimony; Fowler*
20 *Testimony.* Others questioned the benefit of a "green road" rather than a gravel road (which
21 exists at the present time). *Fowler Testimony.* Some oppose the meandering design because it

1 would favor some owners over others. *Apple Testimony.*

2 Owners favoring the project pointed to the need for changing the road to improve
3 emergency vehicle access. Some owners wanted to take advantage of the available City
4 funding rather than wait until later and be forced to shoulder the entire cost. *Kirkevold*
5 *Testimony; Allen Testimony; Casey Testimony.* While some testified they would like to leave
6 the street the same, they acknowledge that things are changing and the proposal would keep
7 the road as a low impact area. *Casey Testimony.* Three property owners lodged written
8 protests at the L.I.D. hearing and their objections were entered into evidence. *Exs. 13-15.*
9 Taking into consideration the protests submitted at hearing, the remonstrance rate for the
10 project is 31.10 percent. *Ex. 16.*

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

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

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

17 **CONCLUSIONS OF LAW:**

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

20 2. The purposes of the initial hearing regarding formation of an L.I.D. are to
21 determine if the formation of the district should proceed and if the limits of the district are

1 proper. *Chandler v. City of Puyallup*, 70 Wash. 632, 633 (1912). Accordingly, the only
2 issues properly presented during the formation stage of the L.I.D. process are:

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

5 (b) The proper boundaries of the district.

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

7 3. No challenge to the City's authority to create L.I.D. No. 8662 has been presented
8 in these proceedings.¹

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

12 **35.43.180 Restraint by protest.** The jurisdiction of the
13 legislative authority of a city or town to proceed with any local
14 improvement initiated by resolution shall be divested by a protest
filed with the city or town council within thirty days from the date
of passage of the ordinance ordering the improvement, signed by the

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
19 to 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;

....
(10) Sidewalks, curbing, and crosswalks;
....

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

1 owners of the property within the proposed local improvement
2 district or utility local improvement district subject to sixty percent
3 or more of the total cost of the improvement including federally-
4 owned or other non-assessable property as shown and determined
5 by the preliminary estimates and assessment roll of the proposed
6 improvement district or, if all or part of the local improvement
7 district or utility local improvement district lies outside of the city
8 or town, such jurisdiction shall be divested by a protest filed in the
9 same manner and signed by the owners of property which is within
10 the proposed local improvement district or utility local
11 improvement district but outside the boundaries of the city or town,
12 and which is subject to sixty percent or more of that part of the total
13 cost of the improvement allocable to property within the proposed
14 local improvement district or utility local improvement district but
15 outside the boundaries of the city or town, including federally-
16 owned or other non-assessable property: . . . (Emphasis supplied.)

17 *RCW 35.43.180.*

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

6. There is 30.10 percent remonstrance to the formation of L.I.D. No. 8662, and the
City has the authority by statute and its own L.I.D. policies to proceed with formation of the
district. *Ex. 16.*

7. The evidence showed that all properties within proposed L.I.D. No. 8662 would
be specially benefited by the proposed improvements. The evidence further demonstrated that

1 the boundaries proposed for the L.I.D. include only those properties that would be specially
2 benefited by the proposed improvement.

3 8. Based on the evidence presented, the Hearing Examiner concludes that proposed
4 L.I.D. No. 8662 meets the standards for approval set forth in state statute and City policy and
5 that L.I.D. No. 8662 should be formed.

6 9. Any Finding of Fact hereinbefore stated which may be deemed to be properly
7 considered a Conclusion of Law herein is hereby adopted as such.

8 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing
9 Examiner enters the following:

10 **RECOMMENDATION:**

11 The proposed L.I.D complies with state law and applicable Tacoma City Council
12 policies governing the formation of local improvement districts. Accordingly, the Hearing
13 Examiner recommends that the City Council form Local Improvement District No. 8662.

14 **DATED** this 9th day of February, 2015.

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16 **PHYLLIS K. MACLEOD, Hearing Examiner**

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

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