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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of:

FORMATION OF LOCAL IMPROVEMENT DISTRICT NO. 8662. **FILE NO. HEX 2014-047**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

A PUBLIC HEARING on the above-captioned matter was held on January 12, 2015, 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 December 9, 2014, the Tacoma City Council adopted Resolution No. 39067, 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 pervious asphalt concrete paving with a structural section and reservoir course, concrete banding along both sides of the pervious pavement and city sidewalks along the proposed meandering street surface or other green infrastructure options, modifying the existing storm drain lines, and storm water catch basins, where needed, on Bennett Street from North 35th Street to North 37th Street. Such improvements may include driveway entrances;

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION



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

- 2. Notice of Public Hearing for the proposed Local Improvement District (L.I.D.) No. 8662 was published in the Tacoma Daily Index on December 11 and 15, 2014. An Affidavit of Publication has been filed with the City Clerk, as well as plans and estimates required by said resolution. *Ex. 8; Rodriguez Testimony*. Notice of Public Hearing letters were mailed to property owners of record on December 12, 2014. *Ex. 9; Rodriguez Testimony*.
- Pursuant to applicable law and the direction of the Tacoma City Council, the Hearing Examiner conducted a public hearing on January 12, 2015, to consider the formation of L.I.D. No. 8662.
- 4. Property owners representing 60 percent of the assessments indicated their support for the project by signing Advisory Survey No. 8463 that was circulated within the neighborhood. *Ex. 1 and 5; Rodriguez Testimony*. The owners agreed to partner with the City and supported paving the street with a 20-foot wide meandering pervious asphalt street with 2-foot wide concrete bands along either side of the asphalt and sidewalks along both sides of the street. Surface water will be treated by means of pervious pavement instead of extending the surface water main to serve the proposed street. The project's meandering design allows the

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

retention of landscaping that has long been maintained on the public right of way and will tend to calm traffic using the roadway. *Ex.* 7; *Rodriguez Testimony*.

- 5. A staff report regarding the project has been prepared by the Department of Public Works (DPW), L.I.D. Section, and is entered into the record as Exhibit 1. The estimated total project cost of proposed L.I.D. No. 8662 is \$482,891.70. The owners of property will pay an estimated total cost of \$182,891.70, and the City's Environmental Services Service Water Fund will contribute \$300,000 based upon the proposal's status as a greenscape demonstration project. The estimated rate per Assessable Unit of Frontage (AUF) is \$160.00. The proposed L.I.D. is a 15-year Assessment Roll. *Exs. 1; 6, and 10; Rodriguez Testimony*.
- 6. The DPW used a modified zone and termini formula to calculate the preliminary assessments. The preliminary assessments reflect the benefits that will accrue to the properties included within the district. The assessments are limited to properties adjoining the improvements. *Rodriguez Testimony*.
- 7. Owners of property within proposed L.I.D. No. 8662 appeared and testified at the hearing. Some of the owners support the project and some of the owners oppose the project. Owners opposing the proposed roadway cited the cost of the assessments as a burden to homeowners. Ness Testimony; Lechich Testimony. Some indicated that they like the deadend street and do not want to see it linked to adjoining roads. Ness Testimony; Fowler Testimony. Others questioned the benefit of a "green road" rather than a gravel road (which exists at the present time). Fowler Testimony. Some oppose the meandering design because it

would favor some owners over others. Apple Testimony.

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

- 8. The verbatim digital transcript of the hearing is in the custody of the Examiner's Office, the file is in the custody of the City Clerk, and both are available for review by the Council and any party in interest.
- Any Conclusion of Law hereinafter stated which may be deemed to be properly considered a Finding of Fact herein is hereby adopted as such.

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

CONCLUSIONS OF LAW:

- 1. The Hearing Examiner has jurisdiction in the matter. *Tacoma Municipal Code* (*TMC*) 1.23.050.A.2.
- 2. The purposes of the initial hearing regarding formation of an L.I.D. are to determine if the formation of the district should proceed and if the limits of the district are

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

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
	in these proceedings. ¹
8	4. The only constraint on the City's authority to create an L.I.D. initiated by
9	resolution of a local legislative body, as is the case here, is contained in the following
10	provision:
11	35.43.180 Restraint by protest. The jurisdiction of the
12	legislative authority of a city or town to proceed with any local
13	improvement initiated by resolution shall be divested by a protest
13	filed with the city or town council within thirty days from the date of passage of the ordinance ordering the improvement, signed by the
14	
15	RCW 35.43.040 addresses the City's authority to conduct improvements, providing in pertinent part: Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof,
16	listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining and renewing of shade or ornamental trees and shrubbery
17	thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof,
18	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,
19	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
20	specifications for their improvement must be approved by the board of park commissioners before their adoption;
21	(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;

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owners of the property within the proposed local improvement district or utility local improvement district subject to sixty percent or more of the total cost of the improvement including federallyowned or other non-assessable property as shown and determined by the preliminary estimates and assessment roll of the proposed improvement district or, if all or part of the local improvement district or utility local improvement district lies outside of the city or town, such jurisdiction shall be divested by a protest filed in the same manner and signed by the owners of property which is within the proposed local improvement district or utility local improvement district but outside the boundaries of the city or town, and which is subject to sixty percent or more of that part of the total cost of the improvement allocable to property within the proposed local improvement district or utility local improvement district but outside the boundaries of the city or town, including federallyowned or other non-assessable property: . . . (Emphasis supplied.)

RCW 35.43.180.

- 5. The City has determined that it will not form an L.I.D. when owners of property, representing 50 percent or more of the total assessments, file remonstrances to formation, except in instances where the City Council has previously determined the L.I.D. to be in the 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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION the boundaries proposed for the L.I.D. include only those properties that would be specially benefited by the proposed improvement.

- 8. Based on the evidence presented, the Hearing Examiner concludes that proposed L.I.D. No. 8662 meets the standards for approval set forth in state statute and City policy and that L.I.D. No. 8662 should be formed.
- Any Finding of Fact hereinbefore stated which may be deemed to be properly considered a Conclusion of Law herein is hereby adopted as such.

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

RECOMMENDATION:

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

DATED this 9th day of February, 2015.

PHYLLIS K. MACLEOD, Hearing Examiner

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

RECONSIDERATION:

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

APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

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

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

GENERAL PROCEDURES FOR APPEAL:

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

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

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