



City of Tacoma
Hearing Examiner

October 28, 2014

Ms. Sandra Guffey, Engineering Tech IV
City of Tacoma, Dept. of Public Works
747 Market Street, Room 644
Tacoma WA 98402
(Inter-office Mail Delivery)

Ms. Greg and Lois Hansen
618 N. 6th Street
Tacoma, WA 98403-2327

Ms. Alvarez Higdon
858 S. 59th Street
Tacoma, WA 98408-5658

Mr. Al Abers
18534 Meridian Avenue N.
Shoreline, WA 98133-4219

Ms. Alma Lizarraras
4018 S. Asotin Street
Tacoma, WA 98418-2529

Mr. Chris Hewitt
3129 N. Cheyenne
Tacoma, WA 98407-4733

Re: File No. HEX2014-020 – Sidewalk Construction Fund -11 Final Assessment Roll

Dear Parties,

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 entered on October 28, 2014.

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 October 28, 2014, at Tacoma, WA.

Louisa Legg

Sincerely,

Louisa Legg
Legal Assistant

Enclosure (1)

cc: Tacoma City Clerk's Office
Liz Wheeler, Customer Svc. Rep. Tech, Tacoma City Treasurer's Office

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **HAZARDOUS SIDEWALK**
5 **IMPROVEMENT SCF-11**
6 **PROPOSED FINAL ASSESSMENT**
7 **ROLL**

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

8 **A PUBLIC HEARING** in the above-captioned matter was held on September 18, 2014,
9 in Tacoma, Washington, before PHYLLIS K. MACLEOD, the Hearing Examiner for the City
10 of Tacoma. The hearing record was initially left open until September 25, 2014, in order to
11 allow the Department of Public Works and the City of Tacoma Treasurer's Office to respond to
12 inquiries raised by citizens during the hearing. The hearing record was further extended after
13 receipt of the Department of Public Works' initial material to allow for submission of additional
14 information clarifying certain points. Upon receipt of all requested supplemental material, the
15 record of the hearing was closed on October 20, 2014.¹ The Hearing Examiner having
16 considered the evidence, having reviewed the files, and being otherwise fully advised makes the
17 following:

18 **FINDINGS OF FACT:**

19 1. On October 25, 2011, the Tacoma City Council adopted Resolution No. 38351.
20 The resolution authorized the Department of Public Works (hereinafter "DPW") to initiate
21

¹ The supplemental material was entered into the record as Exhibits 9-13.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

ORIGINAL

1 unfit or unsafe sidewalk procedures as to 91 identified properties. The resolution gave notice
2 of a public hearing before the Tacoma Hearing Examiner regarding the sidewalk abatement
3 project scheduled for November 17, 2011, and stated that, based on the hearing, the City
4 Council would determine whether or not to proceed with the sidewalk improvements. *Ex. 13.*

5 2. On November 17, 2011, a Preliminary Assessment Roll hearing was conducted by
6 the then Hearing Examiner Rodney Kerslake, as directed by Resolution No. 38351. Hearing
7 Examiner Kerslake subsequently forwarded a Recommendation to the City Council supporting
8 creation of the sidewalk improvement project.

9 3. On March 6, 2012, the Tacoma City Council adopted Ordinance No. 28054,
10 which authorized the re-construction of sidewalks and other appurtenances and works
11 necessary for specified properties and directed the levy of special assessments according to the
12 properties' proportionate cost of the improvements. *Ex. 1; Ex. 13.* Pursuant to Ordinance
13 28054, a fund known as Sidewalk Construction Fund -11 (hereinafter "SCF-11") was
14 established to pay the cost of the improvements.

15 4. Ordinance No. 28054 provided that the special assessments levied upon the
16 identified parcels shall be, "in an amount equal to the cost of each separate improvement to
17 the property on which it abuts, and no property shall be assessed or liable for the cost of any
18 other improvement included herein." *Exhibit 1; Ex. 13.* After Ordinance No. 28054 was
19 enacted, the preliminary assessment roll was provided to the City Treasurer's Office and the
20 assessments were posted and made available for research by title and escrow companies.

21 *Ex. 13.*

1 5. All property owners on the assessment roll for the project were notified of the
2 adoption of Ordinance No. 28054 by letter dated January 25, 2013. The letter also informed
3 property owners that the City would reconstruct the sidewalk if the unfit or unsafe sidewalk
4 reconstruction had not been completed by June 1, 2012. *Ex. 1.*

5 6. The sidewalk reconstruction work was performed by the City's contractor during
6 June and July 2013. The contract was deemed substantially and physically complete as of
7 July 17, 2013. *Ex. 13.*

8 7. Upon completion of the sidewalk improvement project, the City Council adopted
9 Resolution No. 38972 that affixed September 18, 2014, as the date of the public hearing before
10 the Hearing Examiner to confirm the proposed Final Assessment Roll in order to the bill the
11 abutting property owners for the construction. Thereafter, the Notice of Public Hearing was
12 published in the Tacoma Daily Index on August 1, 2014, and August 4, 2014, and mailed to the
13 owners of all parcels of land benefitted by the sidewalk reconstruction project. *Ex. 1; Ex. 4.*
14 Additionally, the Notice of Public Hearing was posted on the City of Tacoma's website and in
15 both display windows in the Tacoma Municipal Building. *Guffey Testimony.*

16 8. The Hearing Examiner conducted the Final Assessment Roll hearing on
17 September 18, 2014. At the conclusion of the hearing, the Hearing Examiner held the hearing
18 record open until September 25, 2014, to allow the DPW and the City of Tacoma Treasurer's
19 Office to respond to inquiries raised by citizens during the hearing and to allow one citizen to
20 submit additional photographs. After receipt of the DPW's initial material, the hearing record
21 was further held open for submission of additional information, requested by the Hearing

1 Examiner, to clarify certain points. Upon receipt of the supplemental material from DPW, the
2 record of the hearing was closed on October 20, 2014.

3 9. The sidewalk construction work has been completed and the Final Assessments to
4 property owners total \$168,472.35, which is a sizable reduction from the Preliminary
5 Assessment to property owners that totaled \$314,577.20. Of the 91 sites listed in the
6 Preliminary Assessment Roll, 21 property sites now have a final assessment of \$0.00 because
7 either: a) the sidewalk was replaced by the property owner and the work was found acceptable
8 by the City; b) the sidewalk was no longer declared to be unfit or unsafe; c) the sidewalk will
9 be replaced under the Sidewalk Replacement Relief Program; or d) properties were sold prior
10 to the Council passing Ordinance No. 28054 on March 6, 2012, and the new owners have been
11 notified of the unfit or unsafe sidewalk condition. Therefore, the construction contract
12 reconstructed sidewalk at a total of 70 sites. The amount being assessed against each individual
13 property is the sum of construction costs plus engineering, inspection, and administrative costs.
14 This is a 5-year Assessment Roll. *Ex. 1; Guffey Testimony.*

15 10. The construction costs assessed are equal to the actual expense of the construction
16 work on each property. The engineering and administrative costs were determined and then
17 allocated to individual properties in proportion to the percentage of the whole of each
18 property's share of construction costs bears to the total construction costs. *Guffey Testimony.*

19 11. Al Abers, son of a property owner in the project area, testified that he had
20 arranged for repairs to the sidewalk at 716 South Sheridan Avenue. Photographs depicting the
21 area and the repairs were submitted into evidence. *Ex. 10.* A receipt showing payment to the

1 company performing the work was also provided.² *Ex. 6*. In response, the City indicated that
2 the repair work had not been undertaken with a building permit so an inspection at the time of
3 repair was not performed. The City inspector examined the property immediately before the
4 project work was commenced and did not find the repairs sufficient to meet governing City
5 standards. Therefore, the sidewalk sections were replaced as part of the sidewalk abatement
6 project. *Guffey Testimony; Ex. 11; Ex 13*.

7 12. Lois and Greg Hansen, owners of property located at 618 N. 6th Street, questioned
8 the methodology for determining which sidewalks should be replaced and asked for detailed
9 information about how the assessment amounts were calculated. They were concerned that the
10 final assessment figures for their property of \$6,909 had increased substantially over the
11 preliminary assessment amount of \$5,558.³ *Hansen Testimony*. The City responded that the
12 estimated assessment was based on an inspection conducted in September 2010. The City
13 conducted a follow-up inspection in December 2011 after Mrs. Hansen questioned the original
14 inspection during the abatement hearing. The follow-up inspection identified an increased
15 amount of lineal footage needing replacement. Mrs. Hansen was notified of the increased
16 lineal footage by letter dated December 16, 2011. The cost contained in the final assessment
17 roll reflected the additional footage, as well as the cost to repair an irrigation system placed on

18 ² Mr. Abers also questioned the length of sidewalk replaced by the City and whether notice was given before
19 actual construction began. The length of sidewalk subject to replacement is established by the City's inspector
20 based upon controlling safety standards. *Guffey Testimony*. As to notice of the construction work, the City
21 indicated that the contractor is required to provide notice before commencing construction. This is often
completed by hanging door tags at affected residences. In this case, the home was unoccupied and the door tag
may not have been retrieved by the property owner.

³At one point, the record contains a figure of \$9,662 for the estimated assessment on the Hansen property (See Exhibit 2), however, this appears to be in error. Evidence presented by both Mrs. Hansen and the City referred to the estimated assessment as \$5,558.

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

1 the right-of-way without a permit that was damaged during the abatement project. *Ex. 13*. An
2 itemized statement of charges applicable to the property was included in the City's
3 supplemental exhibit materials. *Ex. 13*. The calculation shows the assessed charges were
4 incurred specifically for work undertaken at the 618 North 6th Street site.

5 13. Property owner Alvarez Higdon questioned why her property at 858 South 59th
6 Street was selected for replacement when other nearby properties appeared to be in worse
7 condition. She was also interested in obtaining detailed information regarding calculation of
8 the final assessment amount for her property. *Alvarez Higdon Testimony*. The scope of the
9 sidewalk repair and replacement project is determined through the City inspection process and
10 the initial sidewalk abatement hearing. The first City inspection is often triggered by
11 complaints. Although it may seem unfair to a property owner being assessed, the substandard
12 condition of a neighbor's sidewalk does not form a defense to abatement charges against an
13 unsafe sidewalk. There was no evidence refuting the City's finding that the Higdon sidewalk
14 was in an unsafe condition. The City provided a detailed statement of the charges included in
15 the final assessment. *Ex. 13*. The statement included only charges directly relating to the
16 replacement work on the Higdon property, together with an administrative cost of \$110.

17 14. The property owner at 4018 S. Asotin Street purchased the home in February of
18 2014 and moved in during April 2014. She was unaware of the assessment for sidewalk repairs
19 pending against the property. *Lizarraras Testimony*. The City indicated that the assessments
20 are a matter of public record and that the owner might want to inquire with the title insurance
21

1 company involved in the sales transaction to see if some relief is available through that process.

2 *Ex. 11.*

3 15. The Hearing Examiner asked the City Treasurer's Office to provide information
4 for the hearing record addressing the payment options and interest rate available to parties
5 included in the Final Assessment Roll. The City Treasurer's Office responded that after
6 Council action the property owners will be given notice that they have 30 days to pay their
7 assessments without any interest charges accruing. If they choose to make yearly payments, as
8 allowed by the sidewalk abatement process the interest rate will be 5.0%, which is based on
9 long-term financing rates identified as the governing standard in Ordinance No. 28054. *Ex. 9.*

10 16. The verbatim transcript of the hearing is in the custody of the Office of the
11 Hearing Examiner and the file is in the custody of the City Clerk and both are available for
12 review by the City Council or any party in interest.

13 17. Any Conclusion of Law hereinbefore stated which may be deemed to be a
14 Finding of Fact herein, is hereby adopted as such.

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

16 **CONCLUSIONS OF LAW:**

17 1. The Hearing Examiner has jurisdiction in the matters that are subject of these
18 proceedings. *Tacoma Municipal Code (TMC) 1.23.050.A.4.*

19 2. The TMC addresses sidewalk abatement proceedings, in pertinent part, as follows:

20 Whenever a portion, not longer than one block in length, of any
21 street...is not improved by the construction of a sidewalk thereon...or
the sidewalk thereon has become unfit or unsafe for purposes of public

1 travel, and such street adjacent to both ends of said portion is so
2 improved and in good repair, and the City Council, by resolution, finds
3 that the improvement of such portion by the construction or
4 reconstruction of a sidewalk thereon is necessary for the public safety
5 and convenience, the duty, burden, and expense of constructing or
6 reconstructing such sidewalk shall devolve upon the property directly
7 abutting upon such portion...provided that such abutting property shall
8 not be charged with any costs of construction or reconstruction under
9 this chapter in excess of 50 percent of the valuation of such abutting
10 property, exclusive of improvements thereon, according to the
11 valuation last placed upon it for purpose of general taxation.
12 (Emphasis supplied.)

13 *TMC § 10.18.020.*⁴

14 The assessment process for sidewalk abatements is further addressed by the TMC, in
15 pertinent part, as follows:

16 Whenever the City Council has adopted such resolution, it shall cause
17 a notice to be served upon the owner of the property directly abutting
18 on such portion of such street, instructing said owner to construct or
19 reconstruct a sidewalk on such portion in accordance with plans and
20 specifications which shall be attached to such notice...Such notice
21 shall specify a reasonable time within which such construction or
reconstruction shall be made, and shall state that, in case the owner
fails to make the same within such time, the City will proceed to make
the same...Upon the expiration of the time fixed within which the
owner is required to construct or reconstruct such sidewalk, if the
owner has failed to perform such work, the City may proceed to
perform such work and shall, within the time fixed in said notice,
report to the City Council an assessment roll...The City Council shall,
at the time in such notice designated, or at an adjourned time or times,
assess the cost of such improvement against said property, and shall fix
the time and manner for payment thereof, which said assessment shall
become a lien upon said property and shall be collected in the manner
provided by law for collection of local improvement assessments
under Title 35 RCW. (Emphasis supplied.)

TMC § 10.18.030.

⁴ TMC § 10.18 mirrors RCW 35.69, SIDEWALKS-CONSTRUCTION, RECONSTRUCTION IN FIRST AND SECOND-CLASS CITIES.

1 3. The governing state statutes are Chapters 35.68 and 35.69 RCW. The sections of
2 the TMC quoted above, are substantially a repetition of the statutory language of RCW
3 35.69.020 and 35.69.030. The provisions of Chapter 35.68 RCW are complementary,
4 authorizing among other things, the creation of a sidewalk construction fund to be used to pay
5 for the improvements.

6 4. In prior sidewalk abatement proceedings recommendations, the Hearing Examiner
7 has indicated that the assessment process relating to hazardous sidewalks is analogous to the
8 assessment process relating to local improvement districts, and that the review for hazardous
9 sidewalks should be governed by similar standards. Under TMC 1.23.070, the assessment roll
10 for a local improvement district is presumed correct and the burden is on the party contesting it
11 to establish otherwise.

12 5. The Hearing Examiner notes that under RCW 35.68.050, appeals to court of the
13 City Council's actions on sidewalk assessment rolls are taken as provided by Chapters 35.43 to
14 35.54 RCW. The referenced chapters deal with local improvement districts. As to such
15 districts, RCW 35.44.250 states the following concerning judicial review:

16 ...The judgment of the court shall confirm, unless the court shall find
17 from the evidence that such assessment is founded upon a
18 fundamentally wrong basis and/or the decision of the council...was
19 arbitrary or capricious....

20 6. The Hearing Examiner concludes that a presumption of correctness attaches to the
21 assessment roll for hazardous sidewalks and that the objectors have the burden of showing that
the assessment roll does not properly reflect the costs. Further, she concludes that the burden is

1 not carried unless an objector shows that the basis for the assessment was clearly wrong or that
2 the amount assessed was assigned unreasonably without regard to the facts and circumstances.

3 7. In this case, the Hearing Examiner concludes that the presumption of correctness
4 was not overcome in regard to the objected assessments. The proposed assessment roll
5 reflected only costs that were properly incurred for work associated with and benefitting the
6 assessed properties. Accordingly, the proposed final assessments for all properties should be
7 approved and confirmed.

8 8. Any Finding of Fact hereinbefore stated which may be deemed to be a Conclusion
9 of Law is hereby adopted as such.

10 From the Conclusions of Law, the Hearing Examiner enters the following:

11 **RECOMMENDATION:**

12 It is hereby recommended that any objections to proposed Final Assessment Roll for
13 SCF-11 should be overruled and that the assessment roll should be approved and confirmed by
14 the Tacoma City Council.

15 **DATED** this 28th day of October, 2014.

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

18
19
20
21
**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

- 10 -

ORIGINAL

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

1 **NOTICE**

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

3 **RECONSIDERATION:**

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

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

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

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

16 **GENERAL PROCEDURES FOR APPEAL:**

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

- 19 1. The written request for review shall also state where the Examiner's findings
20 or conclusions were in error.
- 21 2. 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.

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