



City of Tacoma
Hearing Examiner

August 8, 2014

Ralph Rodriguez, L.I.D. Administrator
City of Tacoma
747 Market Street Room 620
Tacoma WA 98402

Re: Assessment Roll - Local Improvement District No. 3966
File No. HEX 2014-021

Enclosed please find a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council in regard to the above referenced matter as the result of a hearing held on July 31, 2014.

Sincerely,

Louisa Legg
Legal Assistant

Enclosure (1) – Findings, Conclusions, and Recommendation

cc: City Clerk, City of Tacoma
Liz Wheeler, Customer Service Rep. Tech., Finance Department, City of Tacoma

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 August 8, 2014, at Tacoma, WA.

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **LOCAL IMPROVEMENT DISTRICT**
5 **NO. 3966**

FILE NO. HEX 2014-021

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
(ASSESSMENT ROLL)**

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8 **A PUBLIC HEARING** in the above-captioned matter was held on July 31, 2014,
9 before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma. The City of
10 Tacoma appeared through Ralph Rodriguez, Local Improvement District (L.I.D.)
11 Administrator for the City's Department of Public Works. The Hearing Examiner, having
12 considered the evidence presented, reviewed the files and being otherwise fully advised,
13 makes the following:

14 **FINDINGS OF FACT:**

15 1. On November 13, 2007, the Tacoma City Council adopted Ordinance No. 27652,
16 which provided for the formation of L.I.D. No. 3966. Ordinance No. 27652 provided for the
17 construction of an 8-inch sanitary sewer main extension from South Madison Street south of
18 South 69th Street easterly approximately 318 feet along the centerline of a 20-foot right-of-way
19 abutting the south line of Short Plat 77-134, thence north 394 feet, more or less along an
20 easement through Lot 4, Short Plat 77-134 and terminating in South Proctor Street, together
21 with all other work necessary to complete the project in accordance with maps, plans, and

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23 **FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 3966
(ASSESSMENT ROLL)**

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1 specifications prepared and on file in the Office of the Director of Public Works. Ordinance
2 No. 27652 is incorporated herein by reference as though fully set forth. *Ex. 4; Ex. 5.*

3 2. The Assessment Roll for Local Improvement District No. 3966 was filed in the
4 Office of the City Clerk on December 5, 2013, and the same shows the amount assessed
5 against each lot and parcel of land in payment of the cost and expense of the improvements
6 previously referred to, and said roll has been opened for inspection by all parties interested
7 therein.

8 3. Pursuant to applicable laws and the direction of the Tacoma City Council, a
9 public hearing on the Assessment Roll was held by the Hearing Examiner on July 31, 2014.

10 4. The Notice of Filing of the Assessment Roll was published as required by law on
11 July 10, 2014 and July 14, 2014. An Affidavit of Publication has been filed with the City
12 Clerk. *Ex. 2; Rodriguez Testimony.* All procedures as provided for by law with respect to
13 adoption of the Assessment Roll have been taken, including, but not limited to, mailing
14 notices regarding the Assessment Roll hearing to owners of record on July 15, 2014. *Ex. 3;*
15 *Rodriguez Testimony.*

16 5. The work has been completed for L.I.D. No. 3966. The final project cost is
17 \$259,696.43, compared to the estimated project cost of \$104,999.90. The final rate per
18 Assessable Unit of Frontage (AUF) is \$193.52, compared to the estimated rate of \$117.03 per
19 AUF. The final total assessed to property owners is \$227,920.65, which includes \$61,794.88
20 attributable to work requested by individual property owners and assessed to them directly.
21 The City's Environmental Services Wastewater Management fund contributed \$24,505.41 and

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23 **FINDINGS OF FACT,
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1 the Street Special Reserve Fund contributed \$7,270.37 to the final project cost. This is a 20-
2 year Assessment Roll.¹ *Ex.1; Rodriguez Testimony.*

3 6. Ralph Rodriguez, L.I.D. Administrator for the City's Department of Public
4 Works, testified that the improvements for L.I.D. No. 3966 have been completed in
5 accordance with the plans and specifications for such work. *Rodriguez Testimony.*

6 7. A zone & termini formula was used to determine the L.I.D. assessments, as
7 provided at RCW 35.44.030 and .040. *Rodriguez Testimony.*

8 8. The evidence established that the fair cash market value of the properties
9 benefited by L.I.D. No. 3966 has been increased in an amount equal to or greater than the
10 assessments. *Rodriguez Testimony.*

11 9. No owners of property within L.I.D. No. 3966 appeared at the hearing to contest
12 their assessments and no written objections were filed. DPW received telephone inquiries
13 from three owners within the L.I.D. seeking clarification of the assessments. After discussing
14 the matter with DPW personnel, none of the owners challenged the assessment roll.

15 *Rodriguez Testimony.*

16 10. A verbatim digital recording of the hearing is in the custody of the Examiner's
17 Office, and the file is in the custody of the City Clerk; and both are available for review by the
18 Council and any party in interest.

19 11. Any Conclusion of Law hereinafter stated which may be deemed to be a
20 Finding of Fact herein is hereby adopted as such.

21 _____
22 ¹ On August 7, 2014, Ralph Rodriguez filed a memorandum with the Hearing Examiner's Office requesting the
23 repayment period be revised from a 10-year roll to a 20-year roll. The request is a result of discussions held at
hearing with numerous property owners. The memorandum has been included as a supplement to the record.

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

2 **CONCLUSIONS OF LAW:**

3 1. The DPW has complied with all applicable laws with respect to approval and
4 confirmation of the Assessment Roll for L.I.D. No. 3966.

5 2. An improvement constructed under an L.I.D. is presumed to benefit properties
6 within the L.I.D. on an equitable basis, and the assessments are presumed to have been made
7 fairly and legally. *See Abbenhaus v. Yakima*, 89 Wn.2d 855, 860-61, 576 P.2d 888 (1978); *see*
8 *also Bellevue Plaza v. Bellevue*, 121 Wn.2d 397, 402-403, 851 P.2d 662 (1993); *Hansen v.*
9 *L.I.D.*, 54 Wn. App. 257-62, 773 P.2d 436 (1989). Consistent with the foregoing case law,
10 Tacoma Municipal Code (TMC) 1.23.070.B, provides in pertinent part:

11 “...In regard to Local Improvement District assessments, the
12 assessment roll presented by the Department of Public Works or the
13 Department of Public Utilities shall be presumed to be legally
14 correct; and a party contesting a proposed Local Improvement
15 District assessment shall have the burden of establishing, by a
preponderance of expert appraisal evidence, that the method of
assessment was founded on a ‘fundamentally wrong basis’ and does
not properly reflect the special benefits resulting from the
improvements constructed.”

16 *TMC 1.23.070.B.* No party appeared to contest the Assessment Roll or to present expert
17 appraisal testimony contesting the City’s calculations in support of the Assessment Roll.

18 3. The evidence demonstrates that the proposed Assessment Roll conforms to
19 applicable legal requirements. The City Council should adopt an ordinance assessing the
20 property owners for benefits conferred under L.I.D. No. 3966 previously created by the City
21 Council, and the Assessment Roll for L.I.D. No. 3966 should be approved and confirmed.

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

From these Findings of Fact and Conclusions of Law the Hearing Examiner enters this:

RECOMMENDATION:

It is the recommendation of the Hearing Examiner that the Assessment Roll for L.I.D. No. 3966 be approved.

DATED this 8th day of August, 2014.


PHYLLIS K. MACLEOD, Hearing Examiner

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 3966
(ASSESSMENT ROLL)**

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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,
5 or 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
10 decision/recommendation, not counting the day of issuance of the
11 decision/recommendation. If the last day for filing the motion for reconsideration falls on a
12 weekend day or a holiday, the last day for filing shall be the next working day. The
13 requirements set forth herein regarding the time limits for filing of motions for
14 reconsideration and contents of such motions are jurisdictional. Accordingly, motions for
15 reconsideration that are not timely filed with the Office of the Hearing Examiner or do not
16 set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be within
17 the sole discretion of the Examiner to determine whether an opportunity shall be given to
18 other parties for response to a motion for reconsideration. The Hearing Examiner, after a
19 review of the matter, shall take such further action as he/she deems appropriate, which may
20 include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code*
21 *1.23.140*)

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

23 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:

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

**FINDINGS OF FACT,
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