

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **PROPOSED LOCAL**
5 **IMPROVEMENT DISTRICT**
6 **NO. 8670**

HEX2020-038

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

7
8 **A PUBLIC HEARING** on the above-captioned matter was held on December 14, 2020,
9 before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma (the “City”).¹ The Hearing
10 Examiner having considered the testimony and evidence presented, having reviewed the file, and
11 being otherwise fully advised, makes the following:

12 **FINDINGS OF FACT**

13 1. The Tacoma City Council adopted Resolution No. 40688 on November 17, 2020 (the
14 “Hearing Resolution”), addressing the potential formation of Local Improvement District No. 8670
15 (the “LID” or “LID 8670”).² The Hearing Resolution was the result of (among other efforts)
16 Advisory Surveys the City distributed to property owners, and then received back signed by certain
17 property owners within the LID. Based on these Advisory Surveys, the City’s Department of Public
18 Works (“DPW”) LID Section staff determined that there was sufficient property owner support to
19
20

21 ¹ Due to National, State of Washington (“State”) and City Proclamations of Emergency caused by the COVID-19 virus, the City closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom. Due primarily to the format of the hearing, the record was left open until December 16, 2020, for the submission of additional written comments.

² Local improvement districts may be referred to herein generally as “LID”s as well.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 1

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1 bring LID 8670 before the City Council to schedule a formation hearing.³ *Rodriguez Testimony,*
2 *Ex. C-2~Ex. C-6.*⁴

3 2. The Hearing Resolution formally set a hearing date of December 14, 2020, to consider
4 the formation of LID 8670. The location of LID 8670, and the improvements proposed, are
5 described in the Hearing Resolution as follows:

6 [f]or establishing a grade and placing thereon a permanent street pavement
7 with a structural section, together with the installation of concrete curbs,
8 gutters, surface water mains and surface water catch basins, where needed
9 on the following street:

Ferry Street from South 12th Street to South 14th Street.

10 The Hearing Resolution states that other improvements in the overall project may include driveway
11 entrances; wastewater lateral connections from the wastewater main to the property line; the
12 removal and planting of trees; and all other work necessary to complete the same in accordance
13 with plans and specifications to be prepared by the City Engineer. The Hearing Resolution is
14 incorporated herein by reference as though fully set forth. *See also Ex. C-1, Ex. C-6, Ex. C-9.*

15 3. The proposed boundary of the LID, is legally described in the Hearing Resolution as
16 follows:

Ferry Street from South 12th Street to South 14th Street

18 Those portions of the Northeast Quarter of the Southeast Quarter of Section 06,
19 Township 20 North, Range 03 East, W.M., described as follows:

20 Lots 1 through 13, Block 2, Lots 1 through 18, Block 3, Lots 1 through 4, and
21 the East 15 feet of Lot 5, Block 7, all in **J.S. Howell & Sons 3rd Addition to
Tacoma, Washington**, according to the plat thereof recorded in Volume 7,
Page 11, filed September 9, 1892, records of Pierce County Auditor.

³ The City's Advisory Surveys are an in-the-moment tool used to gauge preliminary support/opposition to formation at the early stages of the process. They are not a definitive statement of either support or opposition.

⁴ Exhibit subparts may also be included whenever an exhibit main number is singly referenced.

1 And together with the North 100 feet of the West 115 feet, the South 10 feet of
2 the North 110 feet of the West 115 feet and the West 50 feet of the South 121
3 feet, all of “**Howell Place**” as the same is shown on **J.S. Howell & Sons 3rd
Addition to Tacoma, Washington**, according to the plat thereof recorded in
4 Volume 7, Page 11, filed September 9, 1892, records of Pierce County Auditor.

5 All situate in the City of Tacoma, County of Pierce, State of Washington;

6 *Rodriguez Testimony; Ex. C-6, Ex. C-9.*

7 4. For purposes of statutory application and process,⁵ LID 8670 is a City initiated (by
8 resolution) LID. Initial contacts with property owners in the proposed LID were commenced
9 through a noticed community meeting held on February 15, 2018. The meeting was intended to
10 inform property owners of the City’s planned paving project, and let them know of other options
11 for neighborhood consideration such as adding curb and gutters⁶ to the paving project through LID
12 financing. *Rodriguez Testimony; Ex. C-2.1.*

13 5. Notices of Public Hearing for LID 8670 were mailed on November 20, 2020, to all
14 owners of record within the proposed LID, as such are listed on the Pierce County tax rolls. Notices
15 were sent to both listed mailing addresses (when different than the LID site address) as well as to
16 the actual residence within the proposed LID boundary. The Hearing Resolution was published on
17 November 19 and 20, 2020, in the Tacoma Daily Index. An Affidavit of Publication has been filed
18 with the City Clerk, together with plans and estimates required by applicable laws. *RCW
35.43.150; Rodriguez Testimony; Ex. C-7, Ex. C-8.1~Ex. C-8.3.*

19 6. Pursuant to applicable law, and at the direction of the Tacoma City Council through
20 the Hearing Resolution, the Hearing Examiner conducted a public hearing on December 14, 2020,
21

⁵ See Revised Code of Washington (“RCW”) 35.43.120~.150.

⁶ The differences between the City’s basic paving project and what was being offered as an LID financed upgrade option are shown in Exhibits C-2.7 and C-2.8.

1 to consider formation of LID 8670. *RCW 35.43.150, Ex. C-1.*

2 7. DPW's LID Section prepared a staff report which was entered into the record as
3 Exhibit C-1. The staff report indicates that the total estimated project cost is \$492,691.50 with an
4 estimated \$190,730.50 being assessed to property owners within the proposed LID, an estimated
5 \$118,750.00 being contributed by the City of Tacoma's Environmental Services Department, and
6 \$183,211.00 coming from Streets Initiative funds. The LID is proposed to have a 20-year
7 Assessment Roll/repayment period, and the estimated cost per Assessable Unit of Frontage is
8 \$180.00 *Rodriguez Testimony; Ex. C-1.*

9 8. The testimony of Ralph Rodriguez, LID Section Representative for DPW, further
10 established the following:

- 11 A. DPW discussed options and answered property owner questions both
12 through the meetings referenced above, through individual phone and
13 email contacts, and at the hearing as well.
- 14 B. Going into the hearing, the LID Section believed that there was 0.00%
15 property owner opposition to LID formation. *Rodriguez Testimony, Ex.
16 C-1.*

17 9. The LID Section indicated that it used the zone and termini method to estimate the
18 preliminary assessments for each property within the LID. *RCW 35.44. 030 and .040; Rodriguez
19 Testimony; Ex. C-1.*

20 10. No members of the public offered oral testimony during the public comment portion
21 of the hearing. The Examiner held the hearing record open until close of business on December 16,
2020 as an extended opportunity for property owners to comment. No written comments were
received before the record closed.

1 (b) Whether the proposed boundaries for the district are proper.

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

3 4. No party in these proceedings has challenged the City’s authority to create this LID
4 for street improvements under the provisions of RCW 35.43.

5 5. No party to these proceedings has challenged the City’s determination of the proper
6 boundary for proposed LID No. 8670 under the terms of RCW, Chapter 35.43.

7 6. The City’s authority to form an LID initiated by resolution is divested if owners of
8 property shouldering a sufficient proportion of the project costs protest formation of the district per
9 the following provision of State LID law:

10 **§ 35.43.180 Restraint by protest.** The jurisdiction of the legislative
11 authority of a city or town to proceed with any local improvement initiated
12 by resolution *shall be divested by a protest filed with the city or town*
13 *council within thirty days from the date of passage of the ordinance*
14 *ordering the improvement, signed by the owners of the property within the*
15 *proposed local improvement district or utility local improvement district*
16 *subject to sixty percent or more of the total cost of the improvement*
17 *including federally-owned or other nonassessable property as shown and*
18 *determined by the preliminary estimates and assessment roll of the*
19 *proposed improvement district or if all or part of the local improvement*
20 *district or utility local improvement district lies outside of the city or town,*
21 *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 federally-owned or
other non-assessable property:... [Emphasis added]. *RCW 35.43.180.*

20 The State Supreme Court has determined that, for purposes of RCW 35.43.180, the phrase “the
21 total cost of the improvement” means only the part of the cost to be assessed against property

1 owners, and not the actual total cost of the project. To that end costs taken on by the municipality
2 are not included in calculating the percentage of opposition under RCW 35.43.180.⁷

3 7. The City of Tacoma, has further limited its authority to proceed with formation of an
4 LID in the face of protest by adopting Resolution No. 37956 which expresses the Council's policy
5 to refrain from forming an LID if property owners representing 50 percent or more of the total
6 assessments file protests to formation of the district. This policy contains an exception allowing
7 formation if the City Council has previously determined the LID to be in the best interest of the
8 City, but this exception has not been invoked here.

9 8. There is no protest at this point to the formation of proposed LID 8670. Under RCW
10 35.43.180, only protesting property owners and their percentage of the total cost of the
11 improvement are accounted for in determining whether the City has been divested of its authority
12 to form a(n) LID.

13 9. There has been no evidence presented indicating that the boundaries of proposed LID
14 No. 8670 are not properly drawn. The LID boundaries appear to embrace, as nearly as practicable,
15 all the real property that will be specially benefitted by the upgraded paving project.⁸ The benefits
16 of the project are special to those properties and, accordingly, they have been properly included
17 within the boundaries of proposed LID No. 8670.

18 10. Based upon the foregoing, the Hearing Examiner concludes that proposed LID No.
19 8670 meets the requirements of state law and the City's code and policies governing LID formation,
20 thereby authorizing the LID to be formed, and the Examiner has no problem recommending the
21 same.

⁷ *Kasper v. Edmonds*, 69 Wn.2d 799, 420 P.2d 346 (1966), *Thymian v. Massart*, 69 Wn.2d 806, 420 P.2d 351 (1966).

⁸ See RCW 35.43.080.

1 **NOTICE**

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

3 **RECONSIDERATION:**

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

19 **APEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:**

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

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

27 **GENERAL PROCEDURES FOR APPEAL:**

28 The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all
29 of these procedures here, you should be aware of the following items which are essential to your appeal.
30 Any answers to questions on the proper procedure for appeal may be found in the City Code sections
31 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.