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Margaret Y. Archer
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June 9, 2017

City Clerk
City of Tacoma
747 Market Street
Tacoma, WA 98402

RE: *William & Ann Riley's Notice of Appeal of Hearing Examiner Decision to City Council
LID Assessments - Broadway LID No 8645
LID Parcel Nos. 107, 108, 128, 131, 136, 137, 138, 146, 147*

I represent William and Ann Riley (collectively "Riley"), who own or are members of entities that own parcels that are within the Broadway LID No. 8645. This letter constitutes Riley's Notice of Appeal to the Tacoma City Council of the Tacoma Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation (Final Assessment Roll) dated May 26, 2017 ("Recommendation"), a copy of which is enclosed.

This Notice of Appeal is made pursuant to TMC chapter 1.70 and as directed by the Examiner at page 34 of the Recommendation. We are informed by the City Clerk that no appeal fee is required. Pursuant to TMC 1.70.020, notice of this filed appeal was provided to all parties to the proceeding before the Examiner by mailing a copy of the Notice of Appeal (without the appended Examiner's Recommendation) to the parties at the addresses stated on the Examiner's Transmittal List.

CC: HEX
CAD
FW-LID
FIN-LID

Reply to:
Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

STANDING

Riley has standing to assert this appeal because of their ownership interest in the specific Broadway LID parcels listed in the chart below,¹ and because the City proposes to levy assessments against Riley, as LID property owners, for the amounts stated in the chart.

LID	Tax Parcel	Street No. Broadway	Property Type	LID Assessment	Add'l Work	Total Assessment
107	200406-006-0	440	Vacant Land	91,123		91,123
108	200406-007-0	454	Vacant Land	122,084		122,084
128	200705-014-0	747-753	Office/Retail	46,130	14,381	60,511
131	200706-001-6	702-704	Office/Retail	57,949	18,132	76,081
136	200706-003-0	712-714	Office/Retail	32,417	13,675	46,092
137	200706-004-0	718-720	Office/Retail	32,417		32,417
138	200706-006-0	722	Office/Retail	48,625	31,903	80,529
146	200706-009-0	736-738	Office/Retail	77,704	5,310	83,014
147	200706-010-0	740-744	Office/Retail	52,158	6,076	58,234

Riley also has standing because they timely submitted to the Clerk a written objection of the LID assessments on March 29, 2017 (Examiner Exhibit 22) and, further, participated in the public hearing and timely submitted supplemental written objections (Examiner Exhibit 59) as authorized by the Examiner.

¹ LID Parcel No. 128, located at 747-753 Broadway is owned by William and Ann Riley, Doris Carlisle and the Estate of Dale Carlisle. LID Parcel No. 147, located at 740-744 Broadway, is owned by Bimbo Associates, LLC. William Riley is one of the owning members of the LLC.

ASSIGNMENTS OF ERROR / BASIS OF APPEAL

The City of Tacoma Public Works Department proposes to assess properties within the Broadway LID based upon the Broadway Special Benefits Study prepared by Valbridge Property Advisors ("Valbridge Study"). The Valbridge Study placed LID properties into three categories: Residential, Office/Retail and Vacant Land. The Valbridge Study applies a 4% increase in value to all Office/Retail properties, asserting that this increase is wholly attributable to the LID improvements. With respect to Vacant Land, the Valbridge Study asserts that the LID improvements resulted in an increase in value of \$10 per square foot. As noted in the chart on the preceding page, the City is proposing to levy LID assessments on seven of Riley's parcels (LID Parcels 128, 31, 136, 137, 138, 146, 147) based upon the Valbridge Retail/Office valuation analysis and two parcels (107 and 102) based upon the Valbridge Vacant Land valuation analysis.

Office/Retail:

The Examiner's Findings of Fact with respect to Valbridge's general Retail/Office valuation analysis are at Findings 28 through 35. The Examiner ultimately found at Finding 35:

The 4 percent increase is an adjustment applied generally to commercial properties within the Broadway L.I.D. boundary. The Valbridge Study has some rationale to support an increase in the values based on the significant upgrades that were installed along the streets in this area. The level of detail and justification using recognized appraisal techniques for quantifying the amount of increase is weak. At same the time, the proposed increase of 1 percent suggested by Mr. Riley (and not by his Review Appraiser) is wholly without support in the record.

The Examiner concludes at Conclusion of Law 6(c):

Office/Retail/Commercial property is not recommended for confirmation. Further appraisal analysis is needed to support the 4 percent benefit suggested for this type of property. The evidence at hearing showed that commercial property within the L.I.D. was benefitted by the significant improvements that were constructed by the project; however, the evidence was insufficient to support the specific 4 percent adjustment applied in the Valbridge Study. The City Council may wish to consider requesting further appraisal analysis from the Valbridge firm to more fully document the basis for selecting a 4

percent increase for office/retail/commercial properties within the project area.

Riley agrees with the Examiner's finding that the evidence presented at the hearing and in the record "was insufficient to support the specific 4 percent adjustment applied in the Valbridge Study;" and concurs with the Examiner's recommendation not to confirm the assessment. But, the process/action recommended to cure the City's failure to meet its burden of proof is contrary to the law and will deny LID owners due process.

More specifically, Riley assigns error to the above Finding and Conclusion as follows.

- The LID property owners, specifically Riley, proffered credible evidence sufficient to satisfy their evidentiary burden to rebut the initial presumption favoring the proposed assessment; and the burden of proof to support the proposed assessment as not exceeding the special benefit value shifted to the City. The Examiner's Findings demonstrate the City failed to meet that burden of proof. The record is now closed and LID property owners are precluded from submitting additional evidence.

Allowing the City to supplement the record with additional study as recommended at Conclusion 6(c) to cure the City's failure of proof is contrary to the statutory process set forth in chapter 35.44 RCW, and specifically 35.44.100, and Riley's due process rights. *See Hasit v. City of Edgewood*, 179 Wn. App. 917 (2014). Riley assigns error to Conclusion 6(c) as recommending an unlawful procedure, an erroneous interpretation of the law, not supported by the evidence and a clearly erroneous application of the law to the facts. The Council should set aside that portion of the assessment roll pertaining to Retail/Office properties. Any proposed new assessments based upon new or supplemental valuation analysis should be subject to a de novo objection process, with adequate notice to the LID property owners and affording them an opportunity to object with the presentation of additional evidence.

- The Examiner found and concluded that the proposed 4% assessment was not supported by the valuation methodology used by Valbridge or any other evidence in the record. Special assessments cannot simply spread the costs of improvements and may not substantially exceed the value of special benefits derived solely from the LID improvements. Assessments that violate these principles constitute a deprivation of property without due process of law. *Carlisle v. Columbia Irrigation Dist.*, 168 Wn.2d 555 at 569-70; *Hasit, supra*. Requesting the Valbridge firm for "further appraisal analysis" or "to more fully document the basis for selecting a 4 percent increase for office/retail/commercial properties within the project area," directs a conclusion and does not seek a determination of a true special benefit value, if any,

derived from the LID improvements. This further supports that Conclusion 6(c) recommends an unlawful procedure contrary to Riley's due process rights and is an erroneous interpretation of the law, not supported by the evidence and a clearly erroneous application of the law to the facts.

- Riley assigns error to Finding of Fact 5: "The level of detail and justification using recognized appraisal techniques for quantifying the amount of increase is weak." The appraisal techniques and methodology are not simply weak. The Valbridge Study is devoid of any evidence that will support a 4% increase in value or that will allow any perceived increase in value to be quantified. In this regard, Finding 5 is not supported by the substantial evidence in the record.
- Riley assigns error to Finding of Fact 5: "[T] he proposed increase of 1 percent suggested by Mr. Riley (and not by his Review Appraiser) is wholly without support in the record. The Examiner improperly placed the burden of proof on the LID property owner. *See, Hasit, supra.*

Riley further supports this Notice of Appeal and the above assignments of error with the previously submitted written objections (Exhibits 22 and 59 in the Examiner's record), which written submissions are incorporated by reference herein.

Vacant Land:

The Examiner's Findings of Fact with respect to Valbridge's general Vacant Land valuation analysis are at Findings 24 through 27. The Examiner ultimately found at Finding 25 that "the weight of the evidence supports the Valbridge Study's conclusions regarding the benefits to undeveloped land in the L.I.D.," and recommended confirmation of the proposed assessments at Conclusion 6(b). Riley assigns error to Findings 24 through 27 and Conclusion 6(b) as not supported by the substantial evidence in the record and an improper application of the burden of proof, making the recommendation a clearly erroneous application of the law to the facts. The substantial evidence in the record does not support a special benefit value of \$10 per square foot. The Council should set aside that portion of the assessment roll pertaining to Vacant Land LID properties. Any proposed new assessments based upon new or supplemental valuation analysis should be subject to a de novo objection process, with adequate notice to the LID property owners and affording them an opportunity to object with the presentation of additional evidence

Riley further supports this Notice of Appeal and the above assignments of error with the previously submitted supplemental objections and appended Appraisal Review (Exhibit 59 in the Examiner's record), which submissions are incorporated by reference herein.

Gordon Thomas Honeywell^{LLP}
June 9, 2017
Page 6

Parcel Specific Objection:

Riley assigns error to Finding of Fact 52 regarding LID Parcel 131 as not supported by the substantial evidence in the record and an improper application of the burden of proof, making the recommendation a clearly erroneous application of the law to the facts. Riley presented credible evidence that, because the existing sidewalks adjoining this parcel were recently replaced and new construction, the LID improvements did not add value to his property. This was sufficient to rebut the initial presumption and shift the burden of proof to the City to prove that there was a valuable special benefit to the property. The substantial evidence in the record establishes that the City failed to meet that burden.

Thank you for processing this appeal.

Very truly yours,



Margaret Y. Archer

MYA:mya
Enclosure (Examiner's Decision)
cc (without enclosure): All Parties Listed on
Examiner's Transmittal
List

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DECLARATION OF SERVICE

I, Lisa Blakeney, declare that on June 9, 2017, I caused the June 9, 2017 Letter Appeal together with this Declaration of Service, to be served on all parties listed on the attached Transmittal List - HEX 2017-004 - L.I.D. 8645 via prepaid, first class U.S. postage.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Lisa Blakeney, Legal Assistant
GORDON THOMAS HONEYWELL LLP

TRANSMITTAL LIST - HEX 2017-004 - L.I.D. 8645

First Class Mail Delivery:

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Passages Ventures, LLC, c/o The Passages Partnership, Inc., Attention: Warren D. Foster,
708 Broadway, Unit M113, Tacoma, WA 98402-3778
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Jacqueline Wihby, 201 Broadway, Unit A, Tacoma, WA 98402-4020
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Interoffice Mail Delivery:

Tacoma City Clerk's Office
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Michael Garrison, LID Representative, Public Works, City of Tacoma
Liz Wheeler, Customer Service Representative, Finance, City of Tacoma

→ NOA mailed to:

- 747 Market Street, Tacoma 98402



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MAY 31 2017

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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of:

**LOCAL IMPROVEMENT DISTRICT
NO. 8645.**

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

A PUBLIC HEARING in the above-captioned matter regarding the Final Assessment Roll for the Broadway Local Improvement District (L.I.D.)(No. 8645) was held on March 29 and 30, 2017, before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma. The City of Tacoma appeared through Ralph Rodriguez, L.I.D. Administrator for the City's Department of Public Works. Darin A. Shedd, MAI, principal of Valbridge Property Advisors (Valbridge) and author of the Special Benefits Study of the completed Broadway L.I.D. improvements, appeared and testified regarding the study prepared for the Department of Public Works. Numerous affected property owners or their representatives submitted written objections and/or gave testimony at the hearing. Upon the conclusion of the proceedings, at the request of several protesting parties, the hearing record was left open until May 8, 2017, to allow for submission of supplemental valuation information. Upon receipt of the additional material, the evidentiary record in the matter was closed on May 9, 2017.

The Hearing Examiner, having considered the evidence presented, having reviewed the

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 8645**

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768
(253)591-5195 FAX (253)591-2003

1 records and files in the case, and being otherwise fully advised, makes the following:

2 **FINDINGS OF FACT**

3 1. On April 18, 2006, the Tacoma City Council adopted Substitute Ordinance No.
4 27475, which approved the formation of L.I.D. No. 8645. Substitute Ordinance No. 27475
5 provided for the construction of permanent pavement, reconstruction, repair, and renewal of
6 sidewalks, installation of ornamental street lighting and landscaping, including but not limited
7 to, the renewing of shade and ornamental trees and shrubbery thereon, and the construction of
8 surface water, wastewater, and water main utility replacement, together with limited
9 maintenance of the landscaping in the following locations:

- 10 1) Broadway from South 2nd Street to South 9th Street;
11 2) St. Helens Avenue from South 7th Street to South 9th Street;
12 3) Market Street from St. Helens Avenue to South 9th Street;
13 4) South 4th Street from Stadium Way to Broadway; and
14 5) South 7th Street from Broadway to St. Helens Avenue.

15 The construction was to be done together with all other work necessary to complete the
16 project in accordance with maps, plans, and specifications prepared and on file in the Office of
17 the Director of Public Works. Substitute Ordinance No. 27475 is incorporated herein by
18 reference as though fully set forth. *Ex. 4.*

19 2. The Broadway L.I.D. was a major undertaking designed to create an urban village
20 atmosphere that would enhance the area and stimulate economic vitality. From the beginning,
21 the project was controversial, and the polling of property owners in the District

1 showed a divided response to the proposal. *Rodriguez Testimony; Ex. 60.* After the City
2 Council approved the creation of the L.I.D., the Public Works Department began the necessary
3 preparation to let contracts for the work. The initial bid opening resulted in all contracts
4 exceeding the engineering estimate of costs. The City rejected the bids and consulted with the
5 contracting community to determine what could be done to keep the project price down.
6 During these consultations it became clear that the costs owners would be responsible for
7 paying would be around 50 percent higher than originally estimated. Upon learning this
8 information, the City sent a mailing to owners within the L.I.D. boundaries notifying them of
9 the anticipated increase in costs and seeking input on whether they still supported or opposed
10 the project. *Ex. 7.* The results of this inquiry indicated that about 50 percent of those
11 responding were in favor of moving forward and around 50 percent were opposed. The City
12 chose to go forward with the improvements and put the contract out for bid two more times in
13 an effort to get the best price. The contract was ultimately awarded to Wm. Dickson Co. in
14 April 2008. *Rodriguez Testimony.*

15 3. As the City began the project, a problem was discovered with “structural block”
16 areas which involved properties with underground spaces extending beneath the sidewalk.
17 The structural block areas did not meet load standards and needed to be repaired or removed.
18 A separate contract with R. L. Alia was entered into in September 2009 to perform this type of
19 repair for the affected properties. The costs of the structural block repairs were assessed only
20 to the properties involved. One property owner opted not to replace the structural block area
21 associated with its property and the City pursued the correction through the abatement process.

1 Anthony Construction was contracted to do the abatement work in April 2012. The costs of
2 this abatement were not assessed against other properties in the L.I.D. *Rodriguez Testimony.*

3 4. The construction was extensive and was undertaken over the ensuing years. The
4 construction activity was completed in 2011, but the contracts had to be “closed out” with the
5 contractors. The allocation of costs could only be commenced after the quantities of materials
6 used were agreed upon and it was verified that subcontractors had no claims against the
7 general contractor. The prefinal contractor payments were paid in late 2012 and releases were
8 received in 2013. The L.I.D. Section then began an extensive allocation process for the
9 charges connected with the project. Unlike many L.I.D.s that are funded wholly by the private
10 owners benefitted, this project had significant participation by City departments and utilities.
11 The costs associated with various aspects of the work had to be allocated to the proper
12 responsible party or entity. This review of costs and allocation of expenses took more time
13 than the L.I.D. Section anticipated. The three separate contracts and the participating City
14 funding sources complicated the normal cost allocation process. *Rodriguez Testimony; Ex. 60.*

15 5. The Final Assessment Roll for L.I.D. No. 8645 was filed in the Office of the City
16 Clerk on January 23, 2017, and the same shows the amount assessed against each property in
17 payment of the cost and expense of the L.I.D. improvements. Said Assessment Roll has been
18 opened for inspection by all parties interested therein. *Ex. 9; Rodriguez Testimony.*

19 6. Pursuant to applicable laws, and at the direction of the Tacoma City Council, a
20 public hearing on the Final Assessment Roll was conducted by the Hearing Examiner on
21 March 29 and 30, 2017. Supplemental materials were allowed until the evidentiary record was

1 closed on May 9, 2017.

2 7. The Notice of the Assessment Roll Hearing was published as required by law,
3 and an Affidavit of Publication has been introduced into evidence. *Exs. 2 and 3.* All
4 procedures as provided for by law with respect to adoption of the assessment roll have been
5 taken, including, but not limited to, mailing notices to owners of record on March 2, 2017. *Id.*

6 8. Ralph Rodriguez, L.I.D. Administrator for the City's Department of Public
7 Works L.I.D. Section, testified that the improvements have been completed in accordance with
8 the plans and specifications for such work. The final project cost is \$21,345,815.53 compared
9 to the estimated project cost of \$12,005,250.00. The final total assessed to property owners is
10 \$7,644,443.17, compared to the originally estimated assessments to property owners of
11 \$3,915,000.00. The final assessment was based on a Special Benefits Study prepared by
12 Valbridge Property Advisors, Inc. (Valbridge), a real estate appraisal and consulting firm.
13 *Ex. 6.* This is a 28-year Assessment Roll. *Ex. 1; Ex. 4; Ex. 23; Rodriguez Testimony.*

14 9. A modified zone & termini formula was used to estimate the L.I.D. assessments
15 at the outset of the project; however, the final assessments were based upon the Valbridge
16 Special Benefits Study (Valbridge Study), which the City asserts will provide a more accurate
17 approach to determining the special benefits conferred by the L.I.D. than a modified zone and
18 termini method. *Rodriguez Testimony.* The zone and termini method of assessment relies
19 solely on the geographic location of the property benefitted. The methodology uses a
20 mathematical formula to allocate benefits without reference to the type of use. *Rodriguez*
21 *Testimony.* Due to the varied types of use contained within the Broadway L.I.D., the evidence

1 showed a special benefits approach would be the best measure of the benefits conferred by the
2 work performed.

3 10. The Valbridge Study addresses the benefits received by the properties within the
4 L.I.D. boundary as a result of the constructed project improvements. The District includes
5 over 400 parcels so the methodology did not involve an individualized appraisal of each
6 property. The basic approach in the Valbridge Study involves determining a value for the type
7 of properties before the improvements were constructed, based on recognized appraisal
8 techniques. An additive factor was then calculated for each general type of property based on
9 a value analysis and the figure was added to the "before" value to reach the "after" value. The
10 Valbridge Study used August 1, 2011, as the valuation date for the L.I.D. improvements
11 because at that time physical construction was complete. *Ex. 6; Shedd Testimony.*

12 11. Mr. Shedd acknowledges that general market conditions were negatively
13 impacted by the recession and property values in many cases declined after 2008. However,
14 the goal of the Valbridge Study was to isolate the impact of the project improvements on value
15 rather than track market fluctuation. *Shedd Testimony.* Mr. Shedd described the special
16 benefits calculation he was engaged in developing as follows:

17 The calculation of special benefits (as with the calculation of
18 damages, in an eminent domain appraisal) is to be based on the same
before and after valuation date:

19 Special benefit is the difference in the fair market value of the property
20 without the improvement and the fair market value of the property
21 with the improvement (commonly called 'before and after,' more
properly called 'without and with'); [Local and Road Improvement
Districts Manual for Washington State, Sixth Edition, pg. 26.]

1 The LRID manual further explains that:

2 Two appraisals are made of each parcel or economic entity. One
3 appraisal results in an opinion of market value of existing property
4 rights without the influence, if any, of the LID-funded project. The
5 second appraisal results in an opinion of market value of property
6 rights adhering to the property with the project constructed or to be
7 completed within a specific time period. Property characteristics,
8 highest and best use and market value opinions in the without and
9 with appraisals are considered as of the same date of valuation. (LRID
10 Manual, p. 55, emphasis mine).

11 *Ex. 60, Shedd Letter, Response to Written Protests, pp. 1 and 2.*

12 12. Mr. Shedd responds to many of the owners' complaints that the value of their
13 properties has declined during and after the construction by stating:

14 The objections presented are based on an incorrect before (or without)
15 project enhancement date of value well preceding the August 1, 2011
16 date of value and are not relevant. The fact that some of the areas I
17 studied illustrated decreasing assessed value or even appraised values
18 between 2008 and the current date is not relevant nor is it the question
19 being asked. As a general rule, most values decreased during the
20 recession from the crash in 2008 until the recovery was well
21 underway. The fact that an LID project was completed during this
time period did not insulate the properties within the LID from normal
market fluctuations. The special benefit question being asked is how
much more; if any, were the properties worth on the date of substantial
completion, in this case August 1, 2011, than they would have been on
that date if the project had never been done.

22 *Ex. 60, Shedd Letter, Response to Written Protests, p. 2.*

23 13. The Valbridge Special Benefits Study concludes that the fair cash market value
24 of the properties benefited by L.I.D. No. 8645 has been increased in an amount equal to or
25 greater than the assessments. *Ex. 6.* The details of the challenges to the Valbridge Study are
26 addressed below.

1 14. Numerous property owners within L.I.D. No. 8645 appeared at hearing to dispute
2 the amount of the assessments levied against their properties and others filed written
3 objections.¹ The DPW representative, Ralph Rodriguez and the author of the special benefits
4 study, Darin Shedd, MAI, responded to questions and inquiries.

5 15. Many of the persons and entities that appeared at hearing to protest the L.I.D.
6 Final Assessment Roll, and those who filed written protests, can be grouped for discussion by
7 the nature of their ownership and interest.

8 **Residential Condominium Owners**

9 16. Owners from a number of residential condominiums within the District testified
10 at the hearing and/or presented written protests of the assessments they received from the City.
11 One of the primary objections to the proposed assessments is the amount the owners are being
12 required to pay relating to interest charges that accrued during the lengthy period between
13 conclusion of the construction and the mailing of the final assessments. The actual
14 construction was conducted and concluded in the 2008-2011 period. The assessments were
15 not issued until 2017. In the intervening period, interest charges payable by the property
16 owners of over \$1,282,000 were accrued. *Ex. 27*. The owners object to paying these interest
17 charges, claiming that the City failed to timely process the L.I.D. assessments. The assessment
18 process outlined at the early stages of the project suggested a much shorter time between the
19 end of the construction and the assessments. *Ex. 22 (Ex. 1); Ex. 58*. The City indicated that
20 the amount of work necessary to close out the construction contracts and allocate the complex
21

¹ A listing of property owners submitting oral or written material for consideration as part of the hearing process is attached hereto as Attachment 1.

1 costs on the project took extra time. In addition, time demands on the L.I.D. personnel
2 relating to other projects delayed final work on the assessments. *Rodriguez Testimony.*

3 17. Owners are very concerned about the significant increase between the estimated
4 assessments identified during the formation process and the final assessment figures. In many
5 cases the final assessment was double or more the amount of the estimated assessment.
6 Owners do not think it is fair to obtain approval for the project based on one figure and then
7 assess a much higher figure for the same improvements. *Exs. 16, 21, 31, 40, 57; Abbott*
8 *Testimony; Balish Testimony; Krilich Testimony.*

9 18. Owners expressed the opinion that the job was mishandled and that the
10 administrative costs and engineering costs were excessive. They claim the City was not
11 required to stay within a budget and ran up design and administration costs much higher than
12 the percentages applicable in typical construction projects. *Exs. 25, 28, 29, 30, 39, 46, 52-54,*
13 *57, 58; Brown Testimony; Riley Testimony; Johnson Testimony; Anderson Testimony.*

14 19. Owners indicated that the market value of residential condominiums had actually
15 decreased between 2008 and the present, and that some units have been re-sold for less than
16 the original purchase price. Others showed evidence that assessed values for condominiums
17 had decreased in the 2008 to present timeframe.² *Exs. 12, 13, 15, 19, 20; Strege Testimony.*

18 20. The condominium owners presented the testimony of an experienced appraiser
19 who gave general opinions about the Valbridge Study, although he did not perform a formal
20 review of the work or prepare any contrary or independent valuation information. *Strege*

21

² A claim was made that similar units had received different assessment amounts. *Marinkovich Testimony.* Mr. Shedd stated that variances in square footage in assessor records had resulted in certain differences that are warranted. *Shedd Testimony.* The Shedd testimony adequately explains the general claim of discrepancy.

1 *Testimony.* Appraiser Larry Strege suggested that the Valbridge appraisal should have noted
2 the presence of sensitive environmental issues affecting the condominiums above Stadium
3 Way. He further indicated that some of the increased value demonstrated in the Valbridge
4 Study was probably due to market forces rather than the L.I.D. improvement alone. He also
5 maintained that the Valbridge Study did not contain enough detail in the analysis of
6 comparison areas. He noted that no list of pros and cons for each area was included. *Strege*
7 *Testimony.*

8 21. The Valbridge Study based the August 2011 “before” value for condominiums on
9 historical sales. Mr. Shedd developed three categories for projects based on features, view
10 amenities, age, quality of construction, and similar factors. He also checked the conclusions
11 against prices in competing neighborhoods. *Ex. 6, p.6.* The “after” values were based on a
12 review of vacancy rates in the L.I.D. and in competitive areas. Mr. Shedd also examined
13 paired sales of residential buildings inside and outside the District. *Ex. 6, p.12.* He found
14 higher prices per unit in the L.I.D. and better performance on vacancy within the District.
15 Actual sales of condominiums inside and outside the District were also studied and showed
16 higher performance inside the District. Finally, Mr. Shedd contacted real estate brokers active
17 in the condominium market and found that they considered a good streetscape a helpful factor
18 in marketing condominium units. *Shedd Testimony.*³

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21 ³ Some condominium owners stressed that the construction of their building enhanced the area and increased the tax base to the net benefit of the City. While the impact of quality development on an area is positive overall, it is not a specific component of measuring special benefits and is not a proper basis for adjusting assessments. Mr. Shedd did indicate he attached a lesser percentage benefit to the most expensive condominium complexes to reflect the market impact of enhanced construction quality and finishes. *Shedd Testimony; Ex. 6, p. 15.*

1 22. The Valbridge Study is based on documented values and utilizes multiple
2 approaches to determine condominium values and performance. While the market
3 fluctuations during the 2008-2012 timeframe may have reduced the overall value of individual
4 units, the proper comparison is between units with the streetscape amenity and those without
5 such an amenity. The market value of an individual condominium may have decreased due to
6 the recession, but the unit would still be benefitted by the streetscape improvements as
7 indicated in the in-district and out-of-district comparisons. *Shedd Testimony; Ex. 60.*

8 23. The weight of the evidence in the record establishes that the Valbridge Study
9 employed a legitimate analysis that generated reasonable values for the benefits conferred on
10 residential condominium units in the District. The record does not show that the report was
11 based on a fundamentally wrong methodology or that it failed to fairly reflect the relevant
12 values and benefits conferred.

13 **Undeveloped Land**

14 24. Certain property within the L.I.D. is considered undeveloped land. This category
15 includes surface parking lots that might currently be paved and striped but would have a
16 highest and best use as property for development consistent with the zoning. William Riley
17 owns property currently used for surface parking lots and he testified against his assessments
18 at the hearing.⁴ He was also represented by attorney Margaret Archer who questioned

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21 ⁴ Security Properties Inc. filed a protest of its assessment for two paved parking lots. *Ex. 14.* The analysis
pertaining to the Riley surface parking lots is equally applicable to the Security Properties Inc. parcels. The value
is based on benefits for the highest and best use of the property, which would be development consistent with
underlying zoning. The current use does not control the L.I.D. benefits analysis.

1 Mr. Rodriguez and Mr. Shedd during the hearing. Mr. Riley submitted written objections to
2 the assessments of his properties and filed an "Appraisal Review Report" authored by
3 Barbara R. Montro MAI, AI-GRS that commented on the Valbridge Study. *Ex. 59*. Mr.
4 Shedd responded to the Montro Review in a document contained in Exhibit 60. (Response
5 Review).⁵

6 25. The Valbridge Study used a sales comparison approach for establishing the
7 "before" value for unimproved land. The analysis used comparable sales of similarly zoned
8 land to conclude a market rate for land of \$25.00 per square foot. The Montro Review
9 disputes the amount of the deduction Mr. Shedd uses for the cost of constructing parking lot
10 improvements. She favors use of a construction manual cost that contains nationwide
11 averages for improvement construction. Those figures are less than the figure used by
12 Mr. Shedd. She concludes that Mr. Shedd has overstated the value of the improvements which
13 generates a lower "before" value than is justified. *Ex. 59, page 9 of 20*. Mr. Shedd responds
14 to the critique on this point by emphasizing that he disagrees with use of the reference manual
15 because costs in Washington for this type of improvement are greater. He has never utilized
16 that manual in his practice as an appraiser and does not think it is an accurate reflection of
17 cost. *Ex. 60, Shedd Letter, Response to Riley Objection/Montro Review, p. 4*. Mr. Shedd's
18 approach seems more specific to the values in this precise location and the Montro comments
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21 ⁵ Ms. Montro's Review raised several technical points regarding the Valbridge Study's failure to comply with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). Noted items such as conflicting wording regarding full property inspections, designation of exposure period for sales, lack of a particular signed certificate and wording on designated users that reflects the City of Tacoma versus City of Tacoma Public Works are not errors fundamentally affecting the validity of the valuation conclusions.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 8645**

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
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1 fail to demonstrate that the land value analysis in the Valbridge Study is faulty due to the
2 improvement costs used.

3 26. The second item raised by the Montro Review on land valuation challenges the
4 sales comparison analysis Mr. Shedd used to determine the “after” values for land. The sales
5 comparison methodology used by Mr. Shedd is a recognized tool in appraisal work.
6 Ms. Montro takes issue with how it was implemented in this particular case. With reference to
7 Land Sales 2 and 8, the Review points out that the same property sold in 2009 at \$36.46 per
8 square foot and for \$39.87 per square foot in 2012. The Review suggests that this 9.35%
9 increase would not be wholly attributable to the improvements, as opposed to general
10 improvements in market conditions. *Ex. 59, page 9 of 20.* Mr. Shedd responds to this
11 observation by explaining that the sales were completed with full knowledge of the L.I.D.
12 project and the costs that would be owing for the assessments. He asserts that the pending
13 assessments would actually support \$40 to \$45 per square foot for an “after” project value.
14 *Ex. 60, Shedd Letter, Response Riley Objection/Montro Review, p. 4.* The weight of the
15 evidence does not establish that the “before and after” value figures contained in the Valbridge
16 Study are in error.

17 27. The Montro Review presents a number of other sales from the southern part of
18 the Central Business District (CBD) as evidence that values for unimproved properties were
19 falling. *Ex. 59, page 10 of 20.* Mr. Shedd disputes whether this information is applicable to
20 the subject area. *Ex. 60, Shedd Letter, Response to Riley Objection/Montro Review, p. 5.* The
21 evidence does not show that the south CBD sales are from a location that reflects values in the

1 subject area. Accordingly, the proffered information is not helpful in analyzing the project
2 values or evaluating the approach taken in the Valbridge Study.⁶ The weight of the evidence
3 supports the Valbridge Study's conclusions regarding the benefits to undeveloped land in the
4 L.I.D.

5 **Office/Retail/Commercial Condominiums**

6 28. Another group of properties within the project boundaries are developed with
7 retail, office, and other commercial uses. Some of these properties are leased to businesses
8 and some are commercial condominiums. Testimony was received at hearing from a number
9 of persons challenging the assessments for commercial property in the District. Property
10 owner William Riley challenges the assessments on several office/retail/commercial properties
11 he owns. He provided the Barbara Montro MAI, AI-GRS Review to more fully specify the
12 elements of the Valbridge Study he finds insufficient or erroneous. *Ex. 59.*

13 29. The Valbridge Study developed the "before" values for office/retail/commercial
14 through an income analysis. The details of this analysis are contained in the Valbridge Study.
15 *Ex. 6, p. 6.* Based on a recognized set of inputs, Mr. Shedd used standard appraisal techniques
16 to determine a 2011 market value for office, retail, multi-family apartment, and commercial
17 condominium properties. Neither the witnesses nor the review appraiser leveled any serious
18 criticism at the income analysis put forward in the Valbridge Study.

19
20
21 ⁶ Appraisers Montro and Shedd disagree over the land residual analysis Mr. Shedd included in the Valbridge Study. While acknowledging that land residual analysis is a recognized valuation technique, Ms. Montro contends the Shedd figures are misleading because they fail to deduct increased property tax expense from the L.I.D. in the "after" condition. Mr. Shedd asserts that this argument misperceives the point that the land value does increase irrespective of the method used to pay taxes. Overall, the land residual analysis prepared by the Valbridge Study appears valid as an additional tool in the valuation process.

1 30. The dispute over office/retail/commercial property centers on whether the four
2 percent upward adjustment Mr. Shedd made to reflect the benefits provided by the L.I.D.
3 project is adequately supported. The Valbridge four percent adjustment to the “before” value
4 was based on a number of factors. It included a CoStar analysis of the project area and four
5 other test areas for vacancy rates. This work illustrated a decrease in vacancy rates in the
6 project area on a current basis and a five year average. The data showed that the project area is
7 outperforming the other competitive neighboring markets in commercial vacancy rates and
8 rate of decline in vacancy rates since the L.I.D. improvements were completed. *Ex. 6, p.9.*

9 31. Mr. Shedd also looked at walkability scores for the project area and the
10 competing areas. The project area has one of the best walkability scores. He considered this
11 evidence of a vital neighborhood with good property values. Published research was reviewed
12 to explore the economic impact of upgraded streetscapes. The primary study Mr. Shedd relied
13 upon was conducted by the New York City Department of Transportation (NYCDOT) and it
14 focused on study areas with components similar to the Broadway L.I.D. project. One case
15 study was very comparable in the design upgrades completed. The study found significantly
16 higher rates of retail sales in the project area as compared with neighborhoods lacking such
17 improvements. Mr. Shedd concludes that the NYCDOT study supports a positive property
18 value impact generated by streetscape enhancements. While acknowledging that the study is
19 not definitive for the present project, he believes the conclusions of economic benefit and
20 associated values can be properly extrapolated to the L.I.D. project area. *Ex. 6, p. 10; Shedd*
21 *Testimony.*

32. The Montro Review asserts that the office/retail/commercial analysis in the

1 Valbridge Study is erroneous and unsupported by proper data and analysis. She does not think
2 a vacancy rate analysis is a sound basis for attaching a 4 percent increase to property values.
3 She questions why a study based on income analysis, sales comparison, or other recognized
4 approach is not used to determine the “after” value. As to the vacancy study particulars, the
5 Montro Review suggests the Area 3 data is flawed because a property was erroneously
6 reported by the CoStar system as vacant when it actually was occupied for a portion of the
7 relevant period. *Ex. 59, page 11 of 20.* Mr. Shedd explains the scenario further and concludes
8 that even if Area 3 is not considered, the remaining three comparison areas provide adequate
9 information to reach his conclusions. *Ex. 60, Shedd Letter, Response to Riley*
10 *Objection/Montro Review, pp. 5 and 6.*

11 33. The Montro material also claims the Valbridge analysis fails to consider that the
12 high vacancy rates within the Broadway L.I.D. area could have been caused by the disruption
13 the project was creating for businesses and tenants in the area. *Ex. 59.* Mr. Shedd responds by
14 indicating that the data showed a marked drop in vacancy around the time the project was
15 completed that continued to decline in the ensuing years. The area was performing better than
16 other areas on this variable. *Ex. 6, p.9; Ex. 60, Shedd Letter, Response to Riley*
17 *Objection/Montro Review p. 6.*

18 34. The Montro Review discounts walkability as a factor demonstrating value change
19 because there is no comparison before and after the project. Unfortunately, this type of
20 information was not published before the project was initiated. She further maintains that
21 walkability is not necessarily linked to value and development potential, giving the example of

1 development on Tacoma's Dock Street, which has a lower walkability score than the project
2 area. The Montro material also asserts the NYCDOT study is not relevant to determining
3 values for the Broadway L.I.D. area. The Montro Review emphasizes data showing a decline
4 in rents over time within the Broadway project area. *Ex. 59, p. 14 of 20.* It is unclear whether
5 this data addresses the valuation date in question, but it has not been explained as part of the
6 Valbridge analysis.

7 35. The 4 percent increase is an adjustment applied generally to commercial
8 properties within the Broadway L.I.D. boundary. The Valbridge Study has some rationale to
9 support an increase in values based on the significant upgrades that were installed along the
10 streets in this area. The level of detail and justification using recognized appraisal techniques
11 for quantifying the amount of increase is weak. At the same time, the proposed increase of 1
12 percent suggested by Mr. Riley (and not by his Review Appraiser) is wholly without support in
13 the record.⁷

14 36. The Winthrop, LP is also seeking an adjustment to the assessment against its
15 property. The Winthrop building contains street level retail and upper story residential
16 apartments with a large component of rent-restricted units. The Valbridge Study's approach to
17 determining project benefits for this property involved calculating a "before" value for the
18 property using an income approach and then applying a benefit increase of 3 percent for the
19 residential portion of the structure and 4 percent increase for the retail area. *Ex. 6; Ex. 60.*
20 The Winthrop, LP contends that the property received no benefit from the project because
21 agreements executed in connection with the low-income housing use of the property prohibit

⁷ Counsel for Mr. Riley suggests a benefit rate for office/retail/commercial of 1 percent. *Ex. 59.*

1 raising rents to realize any additional value to the property. The Winthrop, LP submitted a
2 letter authored by two appraisers familiar with low-income housing expressing the opinion
3 that the improvements were of no benefit to The Winthrop property. *Ex. 17, Exhibit 1.*

4 37. Clearly the opinion addressing the impact of rent restrictions pertains only to the
5 residential portion of the structure and not the street level retail component. As to the
6 residential area, Mr. Shedd responds by observing that the property sold in May 2015 for
7 \$8,500,000 with a preliminary assessment on record (exclusive of supplemental work) in the
8 amount of \$124,345. The valuation placed on the property in the special benefits study was a
9 “before” value of \$7,163,318 and an “after” value of \$7,387,536. Mr. Shedd views the
10 subsidized housing restrictions as a choice made by the owner accompanied by financing
11 advantages and other allowances that made it more attractive than a market rate facility. He
12 does not believe that the owners’ choice to use the property for subsidized housing negates the
13 special benefits to the property from the streetscape improvements. *Ex. 60, Shedd Letter,*
14 *Response to Written Protests, pp. 2 and 3.*

15 38. The Winthrop property presents a bit different case than the other commercial
16 properties within the L.I.D. The restrictions on rental rates prevent the owner from simply
17 raising rates to recoup any assessments. Nevertheless, the property was sold with a substantial
18 preliminary L.I.D. assessment on the record. At a minimum, the property should be assessed a
19 benefit consistent with the assessment of record at the time the purchase was analyzed and
20 completed. The retail portion of the structure does not share any restrictions on rents and
21 should be assessed in the same manner as other office/retail/commercial properties in the

1 L.I.D. boundary.

2 39. The Winthrop, LP also seeks a reduction of the amounts paid for supplemental
3 work on the structural sidewalk construction required for their property. The owner suggests
4 eliminating all charges for City staff time for labor and equipment as well as interest and the
5 “discount” line item. As to the City staff charges, The Winthrop, LP should pay in the same
6 proportion as other owners in the L.I.D. (See ¶58 below). Similarly, if an adjustment is made
7 for interest that has accrued during the pendency of the assessment, The Winthrop, LP should
8 receive the same type of reduction as other property owners within the L.I.D. The City has
9 explained that the “discount” line item on the assessment detail is actually a cost of the
10 bonding process rather than a reduction in the amount owing. *Ex. 60, Rodriguez*
11 *Memorandum, p.2*. Therefore, a reduction on that basis is not warranted.

12 40. The Hearing Examiner is recommending a reduction in the special benefit to The
13 Winthrop, LP in the amount of \$ 93,615, which is the difference between the preliminary
14 assessment of \$124,345 on record at the time of the sale of the property and the final
15 assessment figure of \$217,960 (exclusive of supplemental work charges). *Ex. 9, p. 33*. The
16 subsidized housing restrictions on the property present a different long-term value situation
17 than a commercial property without similar limits on the monetary return. The evidence,
18 however, does not substantiate a conclusion that the property was afforded no benefit from the
19 substantial improvements installed during the project. The evidence supports no adjustment to
20 the charges for special work on the structural sidewalk.

21 41. Property owner 1300US LLC objected to the assessment of their commercial

1 office property at 728 Broadway. *Ex. 21*. One element of the objection was a comparison
2 with the commercial office property next door at 732 Broadway. The “before” and “after”
3 values identified for the properties were very close; however, 1300US LLC claims that the
4 amenities and finishes on the 732 Broadway property are superior. They reason that failing to
5 adequately distinguish between the properties’ amenities undermines the validity of the special
6 benefit study. *Ex. 21; Anderson Testimony*.

7 42. Mr. Shedd responds that the values for 728 and 732 Broadway were similar
8 because the properties are of similar age, building size, lot size, and number of commercial
9 condominium units. The valuation inputs were similar and the percentage increase applied
10 was the same for all commercial offices. To the extent there are higher quality buildout
11 features on the 732 Broadway property, Mr. Shedd sees that as a basis for raising the value of
12 that property rather than lowering the 728 Broadway assessment. *Ex. 60*. The details of
13 interior finishing were not part of the broad special benefits analysis contained in the
14 Valbridge Study. *Ex. 6*. The weight of the evidence did not show that a benefit reduction for
15 the 728 Broadway property was warranted.

16 43. Property owner 1300US LLC further objects to the excessive amount of
17 administrative costs associated with this L.I.D. project. *Ex. 21; Anderson Testimony*. The
18 issue of administrative costs is addressed below for the entire L.I.D. project.

19 44. Owens Financial Group challenges the assessment for the Mecca Building, which
20 is a property improved with commercial space at, and below, ground level and residential
21 condominiums above. The protesting party submitted an appraisal of the property performed

1 in 2007, prior to substantial renovation of the building, which showed an anticipated improved
2 value of \$5,935,000. In December 2013, a second appraisal found a property value of
3 \$2,250,000, far short of the anticipated value prior to the recessionary downturn. Owens
4 Financial Group does not think that the property has been benefitted in excess of the "cost" of
5 the improvements of \$171,000 and is seeking relief from the additional \$97,141 added to its
6 final assessed charges. *Ex. 10.* The City correctly points out that the \$170,181.69 was for
7 special work to reconstruct the vaulted structural sidewalk abutting the property. This work
8 was requested by the then-owner. *Ex. 60.* The additional \$97,959.21 is the L.I.D. assessment
9 for the streetscape work completed within the District. Owens Financial Group is suggesting
10 that they pay no part of the L.I.D. street improvements applicable to the property. There is no
11 evidentiary basis for contending that the substantial enhancements to the area failed to benefit
12 the commercial or residential properties in the Mecca Building.

13 45. Mr. Shedd responds to the 1300US LLC challenge on the Mecca Building by
14 pointing out that the dates of the appraisals submitted into evidence do not address the issue
15 being determined in the special benefits study. He acknowledges that property values
16 generally decreased after 2008 and may have been diminished in 2013 as well. The proper
17 inquiry, however, is the value of the property in August 2011 before and after the
18 improvements. Determining the overall value of real estate on the open market was not the
19 task being performed in the special benefits study. The decrease in value for the Mecca
20 Building reflected in the 2007 and 2013 appraisals does not provide evidence that the
21 streetscape improvements failed to enhance the property over what it would have been worth

1 without the improvements. *Ex. 60*. Based on the evidence presented, the Mecca Building is
2 not entitled to relief from the assessments for this L.I.D. on any greater basis than other
3 commercial and residential properties.

4 **Miscellaneous**

5 46. Paul Grigsby on behalf of Norma Grigsby submitted a protest regarding a portion
6 of the assessment for property at 753 St. Helens Avenue. During the course of the project, the
7 Grigsbys determined it would be more cost effective to independently eliminate the
8 underground vault beneath the sidewalk of the property in question. The Grigsby protest
9 objects to being charged for work connected with the structural sidewalk problem. *Ex. 18*.
10 The City has submitted a response indicating that the costs assessed to the Grigsby property
11 were only those incurred prior to the property owner's decision to do the work privately. The
12 assessment would have been higher if the full work had been performed by the City contractor.
13 *Ex. 60 Rodriguez Memorandum, pp. 2 and 3*. Based upon the facts surrounding this claim, the
14 evidence fails to support an adjustment to the assessment levied for the structural sidewalk
15 activity prior to the property owner's decision.

16 **Special And Supplemental Work**

17 47. Certain work within the L.I.D. project was performed at the request of individual
18 property owners or was undertaken to address a structural deficiency unique to their property.
19 This type of construction was referred to by the L.I.D. Section as special or supplemental
20 work. Costs associated with special work were accounted for separately and were charged
21 against only the property requesting or benefitting from the work. *Rodriguez Testimony*.

1 48. A particular form of special work was necessary to address the presence of areas
2 under the sidewalk that were being used as storage or useable space by adjacent landowners.
3 This practice was fairly widespread in parts of the L.I.D. area and presented a problem because
4 the so-called "structural block" areas did not meet load standards for large vehicles. The
5 contract to engineer and install the "structural block" repairs was awarded separately from the
6 main L.I.D. contract. The bid was awarded to the R.L. Alia Company in September 2009. No
7 evidence was presented to demonstrate that the costs expended by the R. L. Alia Company
8 were unnecessary or excessive. *Rodriguez Testimony.*

9 49. William Riley is an example of an owner challenging the amount charged for
10 special work benefitting his property. He acknowledges that he requested water stubs to four
11 of his properties. The initial estimate for the work was \$11,000 per installation. The final
12 assessments for the work were \$14,381(Parcel 128), \$18,132 (Parcel 131), \$13,675 (Parcel
13 136) and \$31,903 (Parcel 138). Mr. Riley contends he should not have to pay the full amount
14 of these assessments because they exceeded the estimates. *Ex. 22.* The City has compiled
15 records accounting for the charges associated with work done under the category of
16 special/supplemental work. *Ex. 27.* In the absence of proof from Mr. Riley that the charges
17 were not legitimately incurred in doing the work Mr. Riley requested, or that they were
18 significantly out of line with the normal cost for such work, no basis exists for modifying the
19 assessments for water main installations at the Riley properties.

20 50. As to Parcel 138, the supplemental work assessment includes costs that were
21 incurred for removal of an underground storage tank that was discovered in front of this

1 property. The tank had to be removed during the course of project construction. Mr. Riley
2 refused to agree with the City regarding the removal costs because he opposed the L.I.D. and
3 did not want to sign anything that could be construed as indicating agreement with the project.
4 He was exploring the prospect of litigation against the City. *Ex. 60, Attachment 21M.*
5 Mr. Riley claims he was not contacted later to discuss allocation of the charges for the tank
6 removal as the City had promised, but the City provided email evidence that he was contacted
7 to discuss the charges. *Ex. 22; Ex. 60.* No evidence was submitted demonstrating that the
8 work to remove the tank was not necessary or that the amount charged was inconsistent with
9 normal costs.

10 51. Mr. Riley also asserts that he should not have to pay for the costs associated with
11 installation of a requested handicap access ramp for Parcel 146. The amount assessed was
12 \$5,310. Mr. Riley acknowledges that the ramp was constructed and then removed because it
13 failed to meet governing standards. Apparently, three pre-existing stairs were restored after
14 the failed ramp installation. He contends this charge should not be levied if it pertains to the
15 failed ramp. If the City performed work that was inconsistent with the governing codes and
16 had to be removed, those charges should not be assessed to the property owner. The cost of
17 any improvement that actually benefitted the property, or is being used by the property, can be
18 recovered through the L.I.D. assessment.

19 52. Mr. Riley contends he should pay no assessment for general L.I.D. work on
20 Parcel 131. This property is adjacent to a sidewalk that Mr. Riley replaced with new sidewalk
21 prior to the outset of the L.I.D. *Ex. 59.* In Mr. Riley's opinion, the project added nothing to

1 the streetscape at this site. Moreover, the construction activity caused water intrusion in his
2 nearby building that resulted in damage claims from a tenant and ensuing litigation. *Riley*
3 *Testimony*. The evidence did not demonstrate that the work assessed against this parcel was
4 not performed or that it did not advance the overall benefit and uphold uniformity of the
5 project improvements. Accordingly, an assessment similar to that applied to other commercial
6 properties in the L.I.D. is proper. Any specific damage Mr. Riley is alleging based on
7 construction practices will have to be pursued through other appropriate channels.

8 **Interest Charges**

9 53. The City testified that the L.I.D. process involves short-term financing for the
10 project that starts at the outset and continues through construction. After final assessments are
11 confirmed, bonds are sold for the long-term financing of the owner's costs. In many cases, the
12 Final Assessment Roll is developed much closer in time to the completion of construction than
13 was the case in the Broadway L.I.D. The delay was a function of the complexity of the cost
14 allocations for the large number of properties, the multiple agencies participating in the
15 funding, and the fact that three separate construction contracts were awarded in the case. In
16 addition, the L.I.D. section employees were unable to do the work as quickly as they would
17 have normally because of the press of other L.I.D. projects including Point Ruston and the
18 LeMay Car Museum. During the delay, interest was accruing that is being allocated as part of
19 the owners assessments. *Rodriguez Testimony*.

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21 //

1 54. The interest for the project costs payable by the owners is running about
2 \$172,000 per year.⁸ The final allocation of L.I.D. costs to owners includes \$1,191,461 for
3 interest.⁹ *Ex. 27, p. 38.* During the 2015 mid-biennial budget discussions, the City granted
4 \$483,000 in funding to help offset the project's costs to owners, including interest. This sum
5 equates to approximately 2.8 years of interest. *Rodriguez Testimony.*

6 55. Property owners in every category dispute the charges attributable to interest.
7 The property owners assert that they should not be penalized for the City's failure to timely
8 process the L.I.D. Final Assessment Roll. Paying additional costs for interest in a situation
9 where the City chose to prioritize other projects over the Broadway L.I.D. seems very unfair to
10 the property owners and has contributed to the increases many owners are experiencing
11 beyond the original estimated assessments. *Exs. 28, 30-35, 37, 40, 50, 52, 53, 56-58; Wagner*
12 *Testimony.*

13 56. Mr. Rodriguez indicated that the assessments cannot be finalized until the
14 construction contracts are closed out with the contractors. In this case, the contracts were not
15 closed out until 2013. It is unclear whether this delay of 2 or more years after the construction
16 work was substantially completed was also a function of other pressing projects in the L.I.D.
17 Section. In any event, the length of time between the close of construction and final
18 assessment was much longer than usual. Interest was being charged to the owners throughout
19 the period. *Rodriguez Testimony.*

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⁸ City departments participating in the L.I.D. paid costs as they were incurred and did not participate in the short-term project financing. *Rodriguez Testimony.*

⁹ This figure is net of the \$113,153.57 in interest attributable to supplemental/special work for individual owners. *Ex. 27, p. 38.*

1 57. Under the facts of this case, the interest charges are costs that have been incurred.
2 However, due to the extended delay in processing the final assessments, owners are being
3 charged a much higher amount of interest for short-term financing than is typical. A partial
4 offset has been provided by the City as part of the 2015 mid-biennium adjustment process.
5 The Hearing Examiner is recommending a further adjustment to interest charges that accrued
6 during this delay to reflect the interest more typical to an L.I.D. project. After construction
7 was completed in 2011, a more common period for close-out would be approximately 18
8 months. Therefore, interest attributable to periods after 2012 would be outside the norm.
9 With interest running at \$171,000 per year and a delay of approximately 4.5 years after 2012,
10 the added interest would be around \$769,500. Recognizing an offset of \$438,000 for the funds
11 previously appropriated by the City, an interest adjustment of \$331,500 would appear to
12 alleviate the prejudice to owners arising strictly from the delay in processing this assessment.

13 **Administrative Charges**

14 58. Property owners in the L.I.D. boundary object, almost uniformly, to the
15 administrative charges and City staff charges allocated as costs of the project. *Exs. 25, 28-30,*
16 *39, 46, 52-54, 57, 58, Degginger Testimony; Brown Testimony; Riley Testimony; Johnson*
17 *Testimony; Anderson Testimony.* The Broadway L.I.D. included engineering and staff costs
18 payable by the owners of \$2,428,932.33 out of total engineering costs on the project of
19 \$4,881,932.71. *Ex. 49A.* The remaining engineering costs were paid by City departments and
20 utilities that participated in the project. *Ex. 27.* These costs for engineering include staff time
21 and other items such as construction management, L.I.D. administration, design drafting and

1 survey, long term landscape maintenance, landscaping, feasibility study, special benefits study,
2 signal charges, and water services. *Exs. 49B through 49E*. Charges specifically related to
3 supplemental/special work were removed from the calculation before the general property
4 owners were assessed. *Ex. 49; Ex. 27*.

5 59. Property owners also think the administrative and engineering charges are above
6 the amount typically spent during private construction projects. *Anderson Testimony; Riley*
7 *Testimony; Ex. 52*. The City has responded by asserting that the overhead costs, specifically
8 staff costs, allocated as part of the L.I.D. assessments are below what a typical project of this
9 size would incur:

10 The preliminary engineering costs of \$269,633.84 represent 6% of the
11 construction costs being borne by the owners, typically the costs for
12 this size of project would range between 8 to 12%. The construction
13 management, inspection and construction surveying expenses of
\$599,806 represent 13.6%, on a comparable project the costs would
range between 12 to 15%. The LID staff expense of \$296,236
represents 6.6%. The other costs are unique to this LID.

14 *Ex. 60, Rodriguez Memorandum, p. 4*. Presumably the unique expenses relate to the feasibility
15 study, special benefits study, long-term landscape maintenance, and other charges outlined in
16 Exhibit 49E that are incurred because the L.I.D. is a public project.

17 60. The owners would like to minimize the amount of money being charged for City
18 staff time. They want the City to use any means possible to relieve the increase many of them
19 face between the estimated assessment and the final assessment. Charges for work done by
20 staff members already on the City payroll is one area that could be used to offset the cost
21 overruns. The costs for engineering and other soft costs on this project were substantial.

1 However, the owners have not provided evidence that the charges are unwarranted for the
2 work performed. As far as L.I.D. staff costs are concerned, it does take staff time to conduct
3 construction using the L.I.D. mechanism. Records must be maintained and legal processes
4 must be completed beyond those applicable to private construction. Other than general
5 dissatisfaction with the administrative charges, there was little evidence submitted that would
6 provide a sound basis for reducing or reallocating the costs incurred. The City Council could
7 choose to provide some relief to property owners by reducing the allowed charges for City
8 employee time, but the proper amount for such an adjustment lacks a documented basis in the
9 record.

10 61. The verbatim digital recording in the referred-to matter is in the custody of the
11 Hearing Examiner's Office, and the file is in the custody of the City Clerk; and both are
12 available for review by the Council and any party in interest.

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

15 Based on the foregoing Findings of Fact the Hearing Examiner makes the following:

16 **CONCLUSIONS OF LAW**

17 1. The Hearing Examiner has jurisdiction over this hearing on the final assessment
18 roll for L.I.D. No. 8645 under Tacoma Municipal Code (TMC) 1.23.050.A.3.and TMC
19 10.04.065.

20 2. The Department of Public Works has complied with all applicable laws with
21 respect to the process for seeking approval and confirmation of the Final Assessment Roll for

1 L.I.D. No. 8645.

2 3. The property within an L.I.D. is subject to assessment for the special benefits to
3 each parcel resulting from the improvement project. *RCW 35.44.010*. The amount of the
4 special benefit generated by an L.I.D. is measured by the difference between the fair market
5 value of the property immediately before and immediately after the improvements. *Bellevue*
6 *Plaza v. Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993). Special assessments should not
7 exceed the value of the benefit conferred on each parcel by virtue of the project improvements.
8 In addition, properties within an improvement district should bear assessments that are
9 generally proportionate to similar parcels located within the L.I.D. *Hasit, LLC v. City of*
10 *Edgewood*, 179 Wn. App. 917, 933, 320 P.3d 163 (2014).

11 4. The Hearing Examiner is acting on behalf of the City Council in conducting a
12 hearing on an L.I.D. Final Assessment Roll. *RCW 35.44.070; TMC 1.23.050.A.3*. The hearing
13 is conducted so that property owners subject to the L.I.D. assessments can raise objections to
14 the proposed assessments and/or their proportionality, challenge the supporting appraisal
15 information or approach, and provide relevant evidence of the benefit their property has, or has
16 not, received from the project improvements. The Hearing Examiner is charged with
17 considering all of the objections raised at the hearing and correcting and revising the
18 assessment roll as needed to ensure that it reflects the benefits conferred to each property and
19 assesses the costs in a generally proportional manner. Under the TMC, the Hearing Examiner
20 makes a recommendation on the Final Assessment Roll to the City Council, which takes final
21 action on the proposed assessments. *TMC 10.04.065*.

1 5. In performing these duties, the Hearing Examiner can initially presume that the
2 properties within the L.I.D. are specially benefitted by the improvements and that the
3 recommended assessments are fair. *Indian Trail Trunk Sewer v. City of Spokane*, 35 Wn.
4 App. 840, 841-42, 670 P.2d 675 (1984). These presumptions place the initial burden of going
5 forward on the party challenging the assessment. However, upon presentation of credible
6 evidence contrary to these presumptions, the burden of proof shifts to the City to defend its
7 assessment.¹⁰ *Hasit LLC v. City of Edgewood*, 179 Wn. App. at 936.

8 6. The Final Assessment Roll in this matter conforms to applicable legal
9 requirements in large part. However, there is evidence that, in some instances, the
10 methodology used to substantiate the assessments was incomplete or erroneously applied. In
11 other cases, a factual difference specific to a particular property warrants a modified
12 assessment. Accordingly, the Hearing Examiner recommends that the City Council adopt an
13 ordinance assessing the property owners for benefits conferred under L.I.D. No. 8645, as
14 modified by the following adjustments:

15
16
17 ¹⁰ *Tacoma Municipal Code (TMC) 1.23.070.B*, sets forth a different presumption and burden of proof
pertaining to the final assessment roll hearing:

18 ...In regard to Local Improvement District assessments, the assessment roll
19 presented by the Department of Public Works or the Department of Public
20 Utilities shall be presumed to be legally correct; and a party contesting a
21 proposed Local Improvement 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.

TMC 1.23.070.B. The Court of Appeals decision in *Hasit LLC v. City of Edgewood*, 179 Wn. App. 917, 320
P.3d 163 (2014) has enunciated a different standard for considering the validity of L.I.D. assessments. While it is
possible that the TMC provision is still valid, in light of the Hasit decision, this recommendation will utilize the
Court of Appeals' standard for a City's initial consideration of assessment roll challenges.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 8645**

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768
(253)591-5195 FAX (253)591-2003

- 1 a. Residential Condominiums are recommended for confirmation as
2 assessed.
- 3 b. Undeveloped property is recommended for confirmation as
4 assessed.
- 5 c. Office/Retail/Commercial property is not recommended for
6 confirmation. Further appraisal analysis is needed to support the
7 4 percent benefit suggested for this type of property. The
8 evidence at hearing showed that commercial property within the
9 L.I.D. was benefitted by the significant improvements that were
10 constructed by the project; however, the evidence was
11 insufficient to support the specific 4 percent adjustment applied
12 in the Valbridge Study. The City Council may wish to consider
13 requesting further appraisal analysis from the Valbridge firm to
14 more fully document the basis for selecting a 4 percent increase
15 for office/retail/commercial properties within the project area.
- 16 d. Interest – An adjustment to the interest incurred during the
17 extended period of time the City took to issue a final assessment
18 is recommended in the amount of \$331,500 to bring the interest
19 cost in line with costs incurred in projects with more typical
20 processing times.
- 21 e. Administrative Costs – The administrative costs accrued for this
project could be adjusted downward to provide some relief to
property owners who received much higher assessments than
anticipated, however, no reasoned approach for determining the
amount of any such adjustment has emerged from the evidence.
Therefore, no adjustment is recommended.
- f. To the extent costs are assessed to William Riley for the failed
ramp constructed by the City on Parcel 146, they should be
removed from the assessment because the ramp was not a
useable improvement.

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1 g. The Winthrop, LP – The general assessment to The Winthrop,
2 LP is recommended for reduction only as it relates to the general
3 assessment and not as to special work. The general assessment
4 should be reduced to the \$124,345 amount showing of record at
5 the time the property was sold in 2015.

6 h. All other assessments are recommended for confirmation as
7 indicated in the Final Assessment Roll subject to any adjustments
8 for interest and administrative costs that the Council may grant
9 generally.

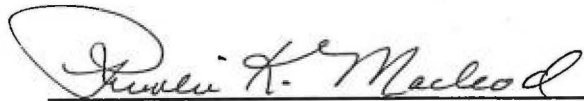
10 7. Any Finding of Fact hereinbefore stated which may be deemed to be properly
11 considered a Conclusion of Law is hereby adopted as such.

12 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing
13 Examiner enters this:

14 **RECOMMENDATION**

15 It is the recommendation of the Hearing Examiner that the Final Assessment Roll for
16 L.I.D. No. 8645 be confirmed and approved after implementation of the modifications and
17 exceptions outlined above.

18 **DATED** this 26th day of May, 2017.

19 

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

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,
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
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)

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

13 Within 14 days of the issuance of the Hearing Examiner's final recommendation, any
14 aggrieved person or entity having standing under the ordinance governing such application
15 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.

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

17 **GENERAL PROCEDURES FOR APPEAL:**

18 The Official Code of the City of Tacoma contains certain procedures for appeal, and while
19 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:

- 20 1. The written request for review shall also state where the Examiner's
findings or conclusions were in error.
- 21 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,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 8645**

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HEX 2017-004 – LID 8645

List of Property Owners that Submitted Oral/Written Material for Consideration Residential/Commercial/Undeveloped Properties

RESIDENTIAL:

<u>NAME:</u>	<u>TAXPAYER:</u>	<u>ADDRESSES:</u>	<u>EXHIBIT #:</u>
Jacqueline Wihby	Grandville A & Robbin Brinkman	201 Broadway, Unit A	Exhibit 32
Tom Krilich	for: Granville Condominiums	207 Broadway, Units (200-700)	Exhibits 40, 41, & 51
Patricia (Pat) Wagner	Taxpayer	235 Broadway, Unit 240	Exhibit 50
Terry Balish	Taxpayer	235 Broadway, Unit 560	Exhibits 35 & 45
Julie D. Hill	Taxpayer	235 Broadway, Unit 600	Exhibit 36
Doug Sloane	Taxpayer	505 Broadway, Unit 906	N/A
William Abbott	Taxpayer	505 Broadway, Unit 410	Exhibit 16
Larry Strege	Taxpayer	505 Broadway, Unit 600,	Exhibits 20 & 38
Eric Lawrence & Michelle Spicer	Taxpayer	505 Broadway, Unit 602	Exhibit 38
Hugh Moore	Taxpayer	505 Broadway, Unit 409	Exhibit 46
Stella J. Jones	Taxpayer	525 Broadway, Unit 103	Exhibits 33 & 58
Roxanne Augé	Taxpayer	525 Broadway, Unit 109	Exhibit 37
Ann H. Marinkovich	Taxpayer	525 Broadway, Unit 205	Exhibit 54
Madelynn Leifson	Taxpayer	525 Broadway, Unit 102 & 309	Exhibit 31 & 56
Paul & Kim Patino	Taxpayer	525 Broadway, Unit 401	Exhibits 34 & 55
Grant Degginger	for: The Winthrop LP	773 Broadway	Exhibits 17 & 52
& Ryan Fuson			
David Fisher	Taxpayer	708 Market Street, Unit 415	Exhibit 19
Blaine Johnson	Taxpayer	714 Market Street, Unit B100 & Unit 201	Exhibit 25
Steven Bellinghausen	Taxpayer	714 Market Street, Unit 301	Exhibit 25
Richard Beszhak	Taxpayer	714 Market Street, Unit 401	N/A
Nancy Brown	Taxpayer	714 Market Street, Unit 502	Exhibit 25
Linda Merelle	Taxpayer	744 Market Street, Unit 306	Exhibit 15
Judy Robinette	Taxpayer	744 Market Street, Unit 403	Exhibit 12
Owens Financial Group	for: Broadway & Commerce, LLC	760 Commerce St.	Exhibits 10

HEX 2017-004 - LID 8645

List of Property Owners that Submitted Oral/Written Material for Consideration Residential/Commercial/Undeveloped Properties

OFFICE/RETAIL - COMMERCIAL CONDOMINIUMS:

<u>NAME:</u>		<u>TAXPAYER:</u>	<u>ADDRESS:</u>	<u>EXHIBIT #:</u>
Heather L. Burgess	for:	YWCA Pierce County	405 Broadway	Exhibit 11
Brooks Dental Studio		Brooks @ 732 LLC	732 Broadway, STE 101	Exhibit 30
Brenda Gasper	of:	Brooks Dental Studio, Brooks @ 732 LLC	732 Broadway, STE 101	N/A
Henry F. George, IV	of:	Metera Inv., LLC	732 Broadway, Unit 302	Exhibit 24
William Riley		WM Riley & Co.	712-714; 718-720; 722; 736-738; 740-744 Broadway	Exhibits 22 & 59
Margaret Archer		Representing William Riley	712-714; 718-720; 722; 736-738; 740-744 Broadway	Exhibits 22 & 59
Rocky Anderson	for:	1300US LLC	728 #A1, #B1, #A2, and #B2 Broadway; 727 Court E #C; and 729 Court E	Exhibits 42, 43, & 44
Blaine Johnson		Roberson on Ledger Square	708-710 Market Street	Exhibit 29
Alex White	for:	Evergreen Investments of WA, LLC	744 Market Street, Unit 102 B	Exhibit 13
Owens Financial Group	for:	Broadway & Commerce, LLC	760 Commerce St.	Exhibits 10
Paul H. Grigsby	for:	Norma Rae Grigsby	754 Broadway	Exhibit 18
Max Mojarab	of:	1300US LLC	728 #A1, #B1, #A2, and #B2 Broadway; 727 Court E #C; and 729 Court E	Exhibit 21
Warren D. Foster	for:	Passages Partnership, Inc. & Passages Venture	708 #1 & #4 Broadway	Exhibits 28 & 53
J. Stanley Miner,	for:	City of Destiny, LLC	759 Market Street	Exhibit 39
Carol Ford, and J. Patrick Nagle				
Grant Degginger	for:	The Winthrop LP	773 Broadway	Exhibits 17 & 52
& Ryan Fuson				

UNDEVELOPED PROPERTIES:

<u>NAME:</u>		<u>TAXPAYER:</u>	<u>ADDRESS:</u>	<u>EXHIBIT #:</u>
Dorothy M. Denton	for:	SPI Enterprise, LLC	711-713 Broadway	Exhibit 14
William Riley		WM Riley & Co.	440 & 454 Broadway	Exhibits 22 & 59