

Meyers, Aundrea

From: Legg, Louisa on behalf of Hearing Examiner
Sent: Wednesday, December 23, 2020 4:57 PM
To: Rodriguez, Ralph; Garrison, Michael; San Soucie, Michael; Wheeler, Liz; sharlow@wamail.net; 'Mitchiep2@yahoo.com'; 'Jimgayletotten@comcast.net'; 'paulapostlejr@gmail.com'; 'dhapostle@gmail.com'; 'Mitchiep2@yahoo.com'; 'markgallinatti@outlook.com'; 'sgchnogler@msn.com'; 'bowmanjenny@yahoo.com'; 'burranderson@gmail.com'; 'kbreader@me.com'; 'sharlow@wamail.net'; 'b.michael.cushman@gmail.com'; 'fdwilliams@venture.com'; 'cuahingja@yahoo.com'; 'scottnowasky@comcast.net'; 'boatbuilder52@msn.com'; 'gayleholm@msn.com'; 'BrianLawson79@hotmail.com'; 'hammerntooth@hotmail.com'; 'banewton123@hotmail.com'; 'michlong3081@comcast.net'; 'Jillian.strayer@gmail.com'; 'dhoward@harbornet.com'; 'katrina.webb@ymail.com'; 'vickimurphy1958@gmail.com'; 'vrferguson@harbornet.com'; 'gretchen@betterproperties.com'; 'jack@adspecialtyproductsinc.com'; 'ladncd@hotmail.com'; 'deborahherforth@yahoo.com'; 'joanna@alumni.unc.edu'; 'samcl75@gmail.com'; 'jack@adspecialtyproductsinc.com'; 'southern_weyrman@hotmail.com'; 'ladncd@hotmail.com'; 'Fareed.Assad@yahoo.com'; 'deborahherforth@yahoo.com'; 'MINHRAU49@gmail.com'; 'REOEBill222@conservice.com'; 'PowderDog@wamail.net'; 'goowe68@gmail.com'; 'maxwrt@gmail.com'; 'waughtel33@gmail.com'; 'ptkwck@me.com'; 'waughtel33@gmail.com'; 'TLBrain@live.com'; 'baba.stewart@gmail.com'; 'JTDWolf@comcast.net'; 'Hughes3187@msn.com'; 'Kirby12343@msn.com'; 'CMVA60@gmail.com'; 'cherbearsch@aol.com'; 'JasonMStrayer@gmail.com'; 'LWIB@mac.com'; 'peairs_family@yahoo.com'; 'hovertac@gmail.com'; 'markgallinatti@outlook.com'; 'jack@adspecialtyproductsinc.com'; 'kbreader@me.com'; 'kathlee@bradtree.com'; 'mitchiep2@yahoo.com'; 'burranderson@gmail.com'; 'vickimurphy1958@gmail.com'; 'vickimurphy@harbornet.com'; 'ladncd@hotmail.com'; 'b.michael.cushman@gmail.com'; 'dhapostle@gmail.com'; 'joanna@alumni.unc.edu'; 'samcl75@gmail.com'; 'southern_weyrman@hotmail.com'; 'sharlow@wamail.net'; 'Fareed.Assad@yahoo.com'; 'dhoward@harbornet.com'; 'deborahherforth@yahoo.com'; 'gayleholm@msn.com'; 'MINHRAU49@gmail.com'; 'hammerntooth@hotmail.com'; 'katrina.webb@ymail.com'; 'jimgayletotten@comcast.net'; 'gretchen@betterproperties.com'; 'sgchnogler@msn.com'; 'vrferguson@harbornet.com'; 'CushingJa@hotmail.com'; 'cuahingja@yahoo.com'; 'PowderDog@wamail.net'; 'scottnowasky@comcast.net'; 'banewton123@hotmail.com'; 'goowe68@gmail.com'; 'BennyJo@ymail.com'; 'maxwrt@gmail.com'; 'waughtel33@gmail.com'; 'ptkwck@me.com'; 'TLBrain@live.com'; 'Keva.K.Peairs@kp.org'; 'BrianLawson79@hotmail.com'; 'trinityreid253@hotmail.com'; 'baba.stewart@gmail.com'; 'JTDWolf@comcast.net'; 'Hughes3187@msn.com'; 'cherbearsch@aol.com'; 'Kirby12343@msn.com'; 'CMVA60@gmail.com'; 'jillian.strayer@gmail.com'; 'JasonMStrayer@gmail.com'; 'ladncd@hotmail.com'; Darci Brandvold (dbrandv@co.pierce.wa.us); 'kathleen@bradtree.com'; 'MINHRAU49@gmail.com'; 'ptkwck@me.com'; 'fdwilliams@nventure.com'
Cc: Victor, Steve(Legal); Krupa, Angie (Legal); Hearing Examiner
Subject: Final Assessment Roll LID No. 8663
Attachments: SIGNED_HEX2020-033_LID8663_CombDecOnRecon_12.23.20.pdf
Importance: High

Dear Parties,

In regard to the above referenced matter, please find attached the Hearing Examiner's Combined Decision on Reconsideration entered on December 23, 2020.

Sincerely,

Louisa Legg

Office Administrator

Tacoma Hearing Examiner Office

Ph: 253-591-5195 | Fax: 253.591.2003

Hearing.examiner@cityoftacoma.org



City of Tacoma
Hearing Examiner

December 30, 2020

TO THE PARTIES
(See Transmittal List Below)

Re: Proposed Formation - Local Improvement District (LID) No. 8663

Dear Parties,

In regard to the above referenced matter, please find enclosed a copy of the Hearing Examiner's Combined Decision on Reconsideration, entered on December 23, 2020.

Sincerely,

Aundrea Meyers
Office Assistant

Enclosure (1): Combined Decision on Reconsideration

Transmittal List

PCA Band NY Mellon NA, c/o Michael Dephillips, ATTN: James H. Wiborg,

385 Rifle Camp Road, Floor 5, Woodland Park, NJ 07424-3200

Bradley Hoover, 4801 North Mullen Street, Tacoma, WA 98407-4505

US Bank Trust, c/o WRI Property Mgmt LLC, 3630 Peachtree Road NE, Suite 1500,

Atlanta, GA 30326-1598

Joseph D. Snope, Kimberly M. Snope, 3618 North Mullen Street, Tacoma, WA 98407-4125

Shirley R. Burdick, 3625 North Ferdinand Street, Tacoma, WA 98407-4113

Cc: Ralph Rodriguez, MA III, LID Administrator, City of Tacoma, Public Works

Michael Garrison, LID Representative, City of Tacoma Public Works

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

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

DATED December 30, 2020, at Tacoma, WA.

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

HEX2020-033

4 **PROPOSED LOCAL**
5 **IMPROVEMENT DISTRICT**
6 **NO. 8663**

COMBINED DECISION
ON RECONSIDERATION

7
8 **A PUBLIC HEARING** on the above-captioned matter was held on November 9, 2020,
9 before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma. Thereafter on
10 December 2, 2020, the Hearing Examiner issued his Findings of Fact, Conclusions of Law, and
11 Recommendation to the Tacoma City Council recommending formation of Local Improvement
12 District (“LID”) No. 8663 for Segments 1, 2 and 4, and recommending against the inclusion of
13 Segment 3 (the “Recommendation”).

14 Although not billed necessarily as a request for reconsideration, Mark Gallinatti
15 (“Gallinatti”), a property owner in the proposed LID boundary (in Segment 1), by email dated
16 December 5, 2020, renewed his opposition to formation along with other grievances. Gallinatti
17 was informed that his email would be treated as a request for reconsideration and responded to
18 in that format (the “Gallinatti Request”).

19 On December 16, 2020, Brian and Trinity Reid Lawson (hereafter collectively the
20 “Lawsons”), also identified owners of property within the proposed LID boundary
21 (in Segment 4), timely filed a request for reconsideration (the “Lawson Request”).

COMBINED DECISION
ON RECONSIDERATION

1 Also, on December 16, 2020, the City’s LID Section filed its own request for
2 reconsideration (the “City Request”) based on a post-hearing submission from a property
3 owner in Segment 3.

4 The Gallinatti request complained about the level of review generally, the absence of
5 answers to his questions, and alleged certain errors, as set forth below.

6 The Lawson Request alleged that the City’s advisory surveys were outdated and should
7 be recalculated to provide an accurate reflection of positive support for the LID among the
8 present property ownership.

9 The City Request asks the Examiner to reverse his recommendation to not form
10 Segment 3 of LID 8663 due to property owners George Lewandowski and Debbie Carson-
11 Lewandowski (the “Lewandowskis”) rescinding their opposition to the formation of Segment 3
12 of the LID.¹ Without the Lewandowskis’ opposition, the level of opposition to forming
13 Segment 3 stands at 45.61%.

14 **ASSIGNMENTS OF ERROR**

15 The combined requests appear to allege the following as assignments of error:

16 **Assignment of Error 1**

17 Finding of Fact 10.B was in error because certain of Gallinatti’s questions were not
18 answered (Gallinatti).

19 **Assignment of Error 2**

20 Finding of Fact 10.C was in error because there was actual opposition to formation
21 (Gallinatti).

¹ The Lewandowskis rescinded their prior stated opposition to formation in an email dated December 5, 2020.

1 **Assignment of Error 3**

2 Gallinatti appears to assign error to the level of review engaged by the Examiner on the
3 way to issuing the Recommendation in his statement “This was more of a rubber stamp
4 approval than a hearing.”

5 **Assignment of Error 4**

6 Both Gallinatti and Lawson appear to assign error to the City’s process of attempting to
7 assess support for formation early in the process, as opposed to the Examiner’s having only
8 calculated opposition at the hearing stage. The Lawson Request goes so far as to call for a new
9 City survey.

10 **City Request**

11 The City Request does not assign error to anything in the Recommendation, but rather
12 requests a change to the Recommendation regarding Segment 3 of the LID based on changed
13 information.

14 **AUTHORITY AND ANALYSIS**

15 **Assignment of Error 1**

16 Finding of Fact 10.B in the Recommendation is a general finding that the LID Section
17 had engaged in dialogue with property owners in the LID and had answered questions along
18 the way. It is not a definitive finding that every single question posed by a property owner had
19 been exhaustively answered.

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1 At the hearing, both prior to and during the public comment/testimony portion of the
2 hearing, all participants were informed that they could pose questions, but that the Examiner
3 would not be answering questions because that is not his role, nor is he usually the person best
4 situated to answer questions from members of the public. Instead, the LID Section was given
5 the opportunity to answer questions during its rebuttal time. The LID Section answered most
6 questions posed at the hearing. Some were deferred. Although the Examiner could choose to
7 order the LID Section to answer a given question, he did not do so at the hearing. This was not
8 error. While Gallinatti's dissatisfaction is unfortunate, it does not constitute an error such that
9 the Recommendation should be changed. To the extent that the LID Section chooses to contact
10 Gallinatti and attempt to provide additional answers to his questions, it is certainly free (and
11 even encouraged) to do so.

12 **Assignment of Error 2**

13 Finding of Fact 10.C simply states what the LID Section believed to be the case
14 regarding opposition to formation going into the hearing. The fact that opposition surfaced at
15 the hearing is not surprising, nor does it constitute error.

16 **Assignment of Error 3**

17 Gallinatti's apparent dissatisfaction with the level of scrutiny at the hearing, without more,
18 does not constitute error. No single property owner within a proposed LID is granted veto
19 power over formation. As is discussed in more detail immediately below, it is not the level of
20 positively stated support that is measured at this stage, but rather opposition to formation. To
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1 that end, Gallinatti’s express statement of opposition was taken into account. The legislative
2 policy consideration of whether some measure other than bare opposition should be used is
3 beyond the Hearing Examiner’s authority. Calling the hearing and Recommendation “a rubber
4 stamp of approval” is incorrect in any event, as the Examiner is not the decision maker and has
5 approved nothing. Approval is a legislative matter for the City Council. The Examiner only
6 makes a recommendation to the City Council based on the hearing record. On the way to
7 issuing that Recommendation, the Examiner made the requisite level of analysis, and there is
8 no error on that front.

9 **Assignment of Error 4**

10 Although the City uses affirmative support for formation in the early phases of inquiry
11 as the primary measure for continuing on in the LID formation process, once the process
12 reaches the hearing phase, and even more so the actual decision point, applicable laws take a
13 different approach. As explained at the hearing and addressed in the Recommendation, the
14 Revised Code of Washington (“RCW”) 35.43.180 focuses the formation inquiry on “protest”
15 to formation of an LID rather than the level of stated positive support. That approach is
16 adopted in the City’s local legislation as Resolution No. 40673 as well. *Recommendation at*
17 *Conclusion of Law 7*. The City’s advisory surveys are simply an in-the-moment tool used to
18 assess whether continuing on in the formation process might be worthwhile. The advisory
19 surveys are not binding on a formation decision by the City Council in any way; they are
20 merely informative of a given moment in time in the sometimes lengthy process. Again, what
21 matters at the decision stage is the level of protest, or verifiable opposition to formation.

1 In regard to timing, all property owners within a proposed LID are sent notice of the
2 hearing and given ample opportunity to either state their opposition to, or support for
3 formation. Positions are often made known while the hearing is approaching, during the
4 hearing, and even after the hearing. Once all comments are taken, the Examiner's authority in
5 making a recommendation, barring unusual circumstances,² is generally limited to making the
6 calculations of protest referenced in RCW 35.43.180 and City Resolution No. 40673, and
7 basing the recommendation to the City Council thereon. The Examiner made no errors in this
8 process. Although the City could choose to engage in additional opinion surveying, nothing in
9 applicable laws requires it. Under applicable laws, the time for making one's opposition known
10 is at the hearing, and during the window described in RCW 35.43.180 as "within thirty days
11 from the date of passage of the ordinance ordering the improvement..." Now, with the
12 Lewandowskis' change of heart, the level of opposition in the LID as a whole, and in each
13 segment individually, does not rise above 50%.

14 **City Request**

15 As just referenced, the City Request is well founded in that opposition to formation in
16 Segment 3 has now dropped below 50%.

17 **CONCLUSION AND ORDER**


18 Based on the foregoing and the record in this matter to date, the Gallinatti and Lawson
19 Requests are denied and no changes are made to the Recommendation as a result of these
20 requests. Conversely, because the level of protest in Segment 3 of the LID has now dropped
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² When it comes to unusual circumstances for this LID, the only thing that presented from the hearing record is that property owners are dealing with job loss and general economic hardship from the COVID-19 pandemic. As a result, several property owners testified that paying their LID assessment would constitute a hardship.

1 below both the State and City thresholds, formation of Segment 3 is warranted and the Hearing
2 Examiner recommends the same.

3 **DATED** this 23rd day of December, 2020.

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JEFF H. CAPELL, Hearing Examiner

1 **NOTICE**

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

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

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

11 **GENERAL PROCEDURES FOR APPEAL:**

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

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