



City of Tacoma
Hearing Examiner

August 30, 2013

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

Paul E. Miller
LeMay – America's Car Museum
PO Box 1117
Tacoma WA 98401

Re: Assessment Roll - Local Improvement District No. 5729

Enclosed please find your copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council in regard to the above referenced matter as the result of a hearing held on August 20, 2013.

Sincerely,

Louisa Legg
Legal Assistant

Enclosure

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

CERTIFICATION

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

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

DATED August 30, 2013, at Tacoma, WA.

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **LOCAL IMPROVEMENT DISTRICT**
5 **NO. 5729**

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

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8 **A PUBLIC HEARING** in the above-captioned matter was held on August 20, 2013,
9 before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma.¹ The City of
10 Tacoma appeared through Ralph Rodriguez, Local Improvement District (L.I.D.) Administrator
11 for the City's Department of Public Works. The owner being assessed, the Harold E. LeMay
12 Museum, appeared through Paul Miller. The Hearing Examiner, having considered the
13 evidence presented, having reviewed the records and files in the case, and being otherwise fully
14 advised, makes the following:

15 **FINDINGS OF FACT:**

16 1. On June 7, 2011, the Tacoma City Council adopted Ordinance No. 27992, which
17 provided for the formation of L.I.D. No. 5729. Ordinance No. 27992 called for the installation
18 of a 12-inch water main crossing East D Street, being approximately 15-feet south of the
19 easterly extension of the northerly line of Parcel B, Boundary Line Adjustment MPD 2004-
20 40000137475, recorded under Pierce County Auditor's File Number 2010-05-11-5001, from

21

¹ The hearing in the matter was rescheduled from July 11, 2013 to August 20, 2013, by agreement of the parties. The sole abutting property owner, America's Car Museum (Harold E. LeMay Museum), requested the postponement of the hearing to meet with City staff to discuss the increase in the final project cost.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. No. 5729
(FINAL ASSESSMENT ROLL)

- 1 -

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1 the existing 12-inch water main east of East D Street, thence west to a point approximately 40
2 feet west of East 'D' Street, together with all other work necessary to complete the project in
3 accordance with the maps, plans, and specifications prepared and on file in the Office of the
4 Director of Public Works. Ordinance No. 27992 is incorporated herein by reference as though
5 fully set forth. *Ex. 4.*

6 2. The Assessment Roll for L.I.D. No. 5729 was filed in the Office of the City Clerk
7 on June 3, 2013, and the same shows the amount assessed against each lot and parcel of land in
8 payment of the cost and expense of the improvements previously referred to, and said roll has
9 been opened for inspection by all parties interested therein.

10 3. Pursuant to applicable laws and the direction of the Tacoma City Council, the
11 Hearing Examiner conducted a public hearing on the Assessment Roll on August 20, 2013.

12 4. Notices of the Assessment Roll Hearing were published as required by law on
13 June 20, and 24, 2013, and an Affidavit of Publication has been introduced into evidence.
14 *Ex. 2.* All procedures, as provided for by law with respect to adoption of the Assessment Roll,
15 have been taken including, but not limited to, mailing of the Notice of Hearing on June 19,
16 2013, to the owners or reputed owners of all lots, tracts, and parcels of land or other property to
17 be specially benefited. *Ex. 3.*

18 5. Ralph Rodriguez, L.I.D. Administrator for the City's Department of Public
19 Works, testified that the improvements have been completed in accordance with the plans and
20 specifications for such work. The estimated rate per Assessable Unit of Frontage (AUF) was
21 \$418.93, compared to the final AUF of \$414.26. The final project cost is \$188,980.90,

**FINDINGS OF FACT,
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AND RECOMMENDATION - L.I.D. No. 5729
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1 compared to the estimated project cost of \$150,085.30. The increased in cost was the result of
2 change orders incurred when the contractor encountered conflicting utilities during construction
3 of the water line extension. In addition, the final assessment included costs associated with
4 installing three water services at the museum facility. The final total assessed to the property
5 owner is \$188,980.90. This is a 10-year Assessment Roll. *Rodriguez Testimony; Ex. 1.*

6 6. A zone & termini formula was used to calculate the L.I.D. assessment. *Rodriguez*
7 *Testimony.*

8 7. The fair cash market value of the property benefited by L.I.D. No. 5729 has been
9 increased in an amount equal to or greater than the assessment. *Rodriguez Testimony.*

10 8. No owner of property within L.I.D. No. 5729 appeared to contest the assessments.
11 The assessed property owner testified that the Harold E. LeMay Museum was satisfied with the
12 assessment roll. *Miller Testimony.*

13 9. The verbatim digital recording of the hearing in this matter is in the custody of the
14 Hearing Examiner's Office, and the file is in the custody of the City Clerk. Both are available
15 for review by the Council and any party in interest.

16 10. Any Conclusion of Law hereinafter stated which may be deemed to be properly
17 considered a Finding of Fact is hereby adopted as such.

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

19 **CONCLUSIONS OF LAW:**

20 1. The Department of Public Works has complied with all applicable laws with
21 respect to approval and confirmation of the Assessment Roll for L.I.D. No. 5729.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. No. 5729
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1 2. An improvement constructed under an L.I.D. is presumed to benefit properties
2 within the L.I.D. on an equitable basis, and the assessments are presumed to have been made
3 fairly and legally. *See Abbenhaus v. Yakima*, 89 Wn.2d 855, 860-61, 576 P.2d 888 (1978); *see*
4 *also Bellevue Plaza v. Bellevue*, 121 Wn.2d 397, 402-403, 851 P.2d 662 (1993); *Hansen v.*
5 *L.I.D.*, 54 Wn. App. 257-62, 773 P.2d 436 (1989). Consistent with the foregoing case law,
6 Tacoma Municipal Code (TMC) 1.23.070.B provides in pertinent part in regard to a final
7 assessment roll:

8 ...In regard to Local Improvement District assessments, the
9 assessment roll presented by the Department of Public Works or the
10 Department of Public Utilities shall be presumed to be legally correct;
11 and a party contesting a proposed Local Improvement District
12 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.

13 *TMC 1.23.070.B.*

14 No such testimony was presented at the public hearing on this final Assessment Roll.

15 3. The Assessment Roll conforms to applicable legal requirements, and there is no
16 evidence that the methodology used to substantiate the assessments was incorrect.

17 Accordingly, the City Council should adopt an ordinance assessing the property owner for
18 benefits conferred under L.I.D. No. 5729, previously created by the City Council, and the
19 Assessment Roll for L.I.D. No. 5729 should be confirmed and approved.

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. No. 5729
(FINAL ASSESSMENT ROLL)**

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

RECOMMENDATION:

It is the recommendation of the Hearing Examiner that the Assessment Roll for L.I.D. No. 5729 be confirmed and approved.

DATED this 30th day of August, 2013.



PHYLLIS K. MACLEOD, Hearing Examiner

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Hearing Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not counting the day of issuance of the 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*)

APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

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

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

GENERAL PROCEDURES FOR APPEAL:

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

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. No. 5729
(FINAL ASSESSMENT ROLL) - 6 -**

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