

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **Formation of Proposed**

5 **Local Improvement District No. 7731**

FILE NO. HEX2025-001

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
ON REMAND**

6
7
8 **A PUBLIC HEARING** on the remand of the above-captioned matter was held on
9 January 13, 2025, before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma.

10 The following property owners from the proposed Local Improvement District's
11 boundaries (the "LID Area" defined further at Finding of Fact 1,¹ below) testified at the
12 hearing:

- 13
- 14 • Shawna Grambo, 4654 N. Waterview Street,
 - 15 • Joel Snodgrass, 4652 N. Waterview Street,
 - 16 • Mo Mousa, 3712 N. Waterview Street,
 - 17 • Gordon Howins, 4818 N. Waterview Street,
 - 18 • Roxane Hreha – 4030 N. Waterview Street, and
 - 19 • Mark Gisse -- 4122 N. Waterview Street.

20 Ralph Rodriguez, City LID Administrator, testified for the City.²

PROCEDURAL BACKGROUND

On June 12, 2019, the Tacoma Public Utility Board adopted Resolution No. U-11087,
which acknowledged receipt of Advisory Survey No. 8596 and requested that the

¹ Findings of Fact are cited hereafter using the abbreviation "FoF."

² All listed individuals' testimony will be cited using last names only.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
ON REMAND**

1 Tacoma City Council schedule a hearing to consider the formation of a Local Improvement
2 District (generically an “LID”) for the undergrounding of above ground utility lines and
3 facilities. On June 25, 2019, the Tacoma City Council adopted Resolution No. 40354 (the
4 “First Hearing Resolution”), which set July 22, 2019, as the hearing date regarding the
5 formation of LID 7731 (the “LID” or “LID 7731”). Notices of the public hearing were mailed
6 to owners of record on June 28, 2019.

7 After the first public hearing, on August 20, 2019, the Hearing Examiner issued his
8 Findings of Fact, Conclusions of Law, and Recommendation, with copies mailed and/or
9 emailed to the property owners of record. Subsequently, a Request for Reconsideration was
10 filed by Gregory J. and Nadine V. Duras (collectively the “Duras”) on September 3, 2019.

11 The Hearing Examiner issued a Revised Recommendation on Request for
12 Reconsideration on October 18, 2019. In accordance with Tacoma Municipal Code 1.70, the
13 Duras filed an appeal to the Tacoma City Council on October 21, 2019.

14 The Tacoma City Council conducted the hearing on the Duras’ appeal on
15 December 10, 2019. At the hearing, in accordance with the Examiner’s Revised
16 Recommendation, the Tacoma City Council made the decision to remand the matter to the
17 Public Works Department to determine if it is practicable to revise the proposed LID scope and
18 boundary to include additional overhead lines to the proposed undergrounding project as was
19 suggested in the Duras’ reconsideration request and appeal.

20 //

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
ON REMAND**

1 The Examiner, being well aware of the above procedural background and having
2 considered the testimony and evidence presented at the remand hearing, having reviewed the
3 file,³ and being otherwise fully advised, makes the following:

4 **FINDINGS OF FACT:**

5 1. On December 17, 2024, the Tacoma City Council adopted Resolution No. 41582
6 (the “Second Hearing Resolution”), which set January 13, 2025, as the date to reconvene the
7 public hearing for consideration of the formation of LID 7731 including the addition of a new
8 segment to the district from what was proposed at the initial formation hearing.⁴ During the
9 intervening time on remand, the Department of Public Works (“DPW”) LID Section (the “LID
10 Section”) staff conducted Advisory Survey 8668 which identified the scope of Segment 2 and
11 showed support initially at 57.46 percent (57.46%) of the estimated assessments of this
12 additional segment. The formation hearing was scheduled with the intent to consider ordering
13 the now revised Improvements described below, and to pay the cost of such Improvements by
14 imposing and collecting special assessments upon the real property that would receive special
15 benefit from those Improvements. The Improvements are proposed to consist of the following:

16 Conversion of the existing overhead electrical primary, telephone and
17 cable-TV lines (collectively the “Improvements”) to underground
along:

18 **Segment 1** – Waterview Street from North 49th Street southeasterly
19 4,400 feet, more or less, also along Dale Street from Waterview Street
southwesterly 100 feet, more or less.

20 **Segment 2** – North 43rd Street from Ruston Way to Tacoma Public
Utility Pole No. 19510 being approximately 160 feet southwesterly of

³ Previous Hearing Examiner File No. HEX2019-016 for Local Improvement District No. 7731 was included in the mentioned review.

⁴ It should be understood throughout this Recommendation that the LID is as yet just proposed, and not yet approved for formation regardless of whether the modifier “proposed” precedes every reference to the LID.

1 Waterview Street and south of 4302 North Waterview Street
2 (collectively the “LID Area”).

3 The Improvements would include all other work necessary to complete the same in accordance
4 with plans and specifications to be prepared by the Tacoma City Engineer and/or Tacoma
5 Power Superintendent. The Second Hearing Resolution (No. 41582 for proposed LID No.
6 7731, Exhibit C-25) is incorporated herein by reference as though fully set forth. The proposed
7 boundaries of the LID are as legally described in the second recital (WHEREAS clause) of the
8 Second Hearing Resolution, which legal description is incorporated herein by this reference.
9 *Ex. C-20, Ex. C-25; Rodriguez Testimony.*

10 2. Notices of Public Hearing for the revised LID were mailed on December 19,
11 2024, to all owners of record within the revised LID Area as such are listed on the Pierce
12 County property tax rolls. The Second Hearing Resolution was published on January 3, 2025,
13 through January 6, 2025, in the Tacoma Daily Index. An Affidavit of Publication has been
14 filed with the City Clerk, together with plans and estimates required by applicable laws.
15 *Rodriguez Testimony; Ex. C-18, Ex. C-26, Ex. C-27, Ex. C-29.*

16 3. For purposes of statutory application (*See Revised Code of Washington* [“RCW”]
17 35.43.130~.150), proposed LID 7731 is considered a City initiated LID, even though efforts
18 leading to the potential formation of this LID were first initiated by the City of Tacoma
19 (“City”) Department of Public Works (again, sometimes abbreviated as “DPW” herein) being
20 contacted on June 15, 2018, by an owner of property within the proposed LID who was

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
ON REMAND**

1 interested in ascertaining the cost of burying overhead utility lines. Subsequent to that property
2 owner contact, DPW staff conducted site visits to determine appropriate LID boundaries and
3 conducted advisory surveys to gauge resident interest in forming an LID. *Ex. C-1, Ex. C-3.*

4 4. Properties within the LID are located primarily on a plateau above Waterview
5 Street North and enjoy scenic views of their natural surroundings, including the Puget Sound/
6 Commencement Bay. In its analysis of the potential LID, DPW concluded that the properties in
7 the LID would benefit from the proposed Improvements. On January 7, 2019, DPW received a
8 neighborhood advisory survey dated November 13, 2018 regarding the proposed Segment 1
9 Improvements and DPW verified the survey was signed by the owners of 52.1 percent (52.1%)
10 of properties within the proposed LID. *Rodriguez Testimony; Exs. C-3~C-5.*

11 5. On January 14, 2022, after the Tacoma City Council remanded the matter, DPW
12 mailed Advisory Survey Nos. 8668 and 8669 to owners of five parcels that were determined to
13 be benefitted by adding a new segment (Segment 2) to the LID. Advisory Survey 8668 was
14 initially supported by 57.46 percent (57.46%) of the estimated assessments. DPW used this
15 tentative support to move forward with adding Segment 2 to proposed LID 7731. However, in
16 the interim time from the Tacoma City Council setting the reconvened hearing, holding the
17 hearing, and now issuing this Recommendation, protest letters have been received opposing the
18 formation of Segment 2 of the LID, which changes the foregoing percentage. *Rodriguez*
19 *Testimony; Exs. C-19~C-23.*

20 //

1 6. Pursuant to applicable laws, and at the direction of the Tacoma City Council
2 through the Second Hearing Resolution, the Hearing Examiner reconvened a public hearing on
3 January 13, 2025, to consider the formation of LID No. 7731, as now proposed for revision.
4 The hearing was conducted with in-person participation available in the First Floor Council
5 Chambers, Tacoma Municipal Building at 747 Market Street, together with participation
6 available over Zoom at no cost by video, audio, and telephone. *RCW 35.43.150, RCW*
7 *35.96.050; Ex. C-18, Ex. C-26.*

8 7. At the conclusion of the reconvened hearing on January 13, 2025, it appeared that
9 the final calculations of support for Segment 2 had dropped below 50 percent (50%), resulting
10 in DPW recommending Segment 2 be left out of the proposed LID and instead proceeding
11 forward with only proposed LID Segment 1. After the conclusion of the reconvened hearing,
12 the Durases contacted Office of the Hearing Examiner (“OHEX”) staff, and indicated that they
13 were no longer protesting Segment 2, but rather were in favor of Segment 2 being included in
14 LID 7731. The change of heart ended up not mattering by the time of issuance of this
15 Recommendation because the Harrises sent a letter dated “1/29/25” protesting the formation of
16 Segment 2, again bringing the level of protest to over 50% for Segment 2. *Rodriguez*
17 *Testimony; Ex. C-18; Duras Email dated January 28, 2025, Harris Letter dated 1/29/25.*

18 8. Prior to the first hearing in 2019, DPW’s LID Section, prepared a report regarding
19 the proposed Segment 1 Improvements consistent with the description in Finding of Fact 1
20 above. The LID Section’s report indicates the estimated project cost of proposed LID No.

1 7731, Segment 1, totals \$1,415,228.83. At that time, the City of Tacoma Power Utility
2 intended to contribute \$93,653.18 toward the total estimated project cost for Segment 1,
3 leaving the estimated total amount assessed to property owners within proposed Segment 1 of
4 the LID to be \$1,321,575.65. The estimated total amount contained costs provided by Tacoma
5 Power, Click!,⁵ Century Link, and Comcast, as well as for associated costs for engineering,
6 inspection, and termination. Also contained were costs for a special benefit study that was
7 conducted, LID administration expenses, and City interim financing. The LID, as amended to
8 add Segment 2, is proposed to have a 20-year assessment roll. The estimated cost per
9 Assessable Unit of Frontage (“AUF”) for Segment 1 in 2019 was \$385.00. *Ex. C-1, Ex. C-18;*
10 *Rodriguez Testimony.*

11 9. Prior to the remand hearing in 2025, DPW’s LID Section, added to its report the
12 estimated costs for the Segment 2 Improvements consistent with the description in Finding of
13 Fact 1 above. The LID Section’s report indicates the estimated project cost of proposed LID
14 No. 7731, Segment 2, totals \$286,318.00. The estimate states that the City of Tacoma Power
15 Utility intends to contribute \$85,894.45 toward the total estimated project cost for Segment 2,
16 leaving the estimated total amount assessed to property owners within proposed Segment 2 of
17 the LID to be \$200,423.55. The estimated cost per AUF for Segment 2 is estimated at
18 \$1,275.00. *Ex. C-18; Rodriguez Testimony.*

19 10. At the hearing, public testimony included some concern from property owners
20 regarding the DPW/LID Section’s cost estimates for the Improvements. The Segment 1

⁵ Click! as a city internet and cable provider no longer exists as such and any contribution attributed to Click! is suspect now.

1 estimates have not been updated to reflect 2025 construction costs. As a result, the LID Section
2 suggested that once cost estimates are updated, the new figures be sent out to affected property
3 owners and those owners given another chance to register their protest, if they so choose.⁶

4 11. The LID Section indicated that a modified zone and termini formula was used to
5 estimate the preliminary assessments for each property within the proposed LID. *RCW*
6 *35.44.030* and *.040*. For Segment 1, the LID Section created five (5) zones parallel to the
7 proposed improvements along Waterview Street North, thirty feet (30') in depth, with the
8 square footages calculated per zone. Each zone was then assigned a multiplier used in
9 calculating the estimated special benefit. In addition, the LID Section used three improvement
10 categories—(a) Neighborhood improvement, (b) Neighborhood and View improvement, and
11 (c) View improvement—to categorize the level of benefit and assist in calculating the
12 estimated special benefit to the properties in the proposed LID. *Rodriguez Testimony; Ex. C-17*.

13 12. Prior to the reconvened hearing, individual property owners Neil M. Gray,
14 Meagan M. Foley, Corey Jones, Cheryl A. Ayers, and Ann M. Taylor all had personal or
15 written contact with the LID Section regarding formation. Some of the owners made personal
16 inquiries about details of the proposed Improvements and about their proposed assessments i.e.,
17 calculations and payment due date, while others submitted letters of protest or letters of
18 concern. Ms. Carmichael and the Durases' incorporated photographs with their comment

19 //

20 //

⁶ At least one property owner in Segment 1 is protesting now because of the perceived unreliability of the outdated cost estimate and she wants the updated figures before she makes a final decision. The LID Section's approach, at least for Segment 1, will afford this opportunity perhaps.

1 letters. The Durases additionally provided an independent Restricted Appraisal Report with
2 their original protest. *Ex. C-33~C38; Public Comments.*⁷

3 13. The six property owners listed at the beginning of this Recommendation testified
4 at the hearing. Of those, five testified in support of formation and one testified essentially in
5 opposition.⁸ As of the finalization of this Recommendation, the protest rate appears to be 46%
6 for Segment 1 and approximately 57% for Segment 2. Protests, both those offered in writing
7 and those given verbally at the hearing, centered around the City's estimated assessments, and
8 the perceived lack of benefit commensurate with the estimated cost. *See, e.g., Hreha*
9 *Testimony.* The City owns two parcels within the proposed LID; those parcels were excluded
10 from the protest⁹ calculation. *Ex. C-1; Rodriguez Testimony.*

11 14. The digital audio recording of the hearing in this matter is in the custody of the
12 Examiner's Office, the file is in the custody of the City Clerk. Both are available for review by
13 the Council and any interested party.

14 15. Any Conclusion of Law set forth below, which may be more properly deemed to
15 be a Finding of Fact herein is hereby adopted as such.

16 From these Findings of Fact the Examiner makes the following:

17 **CONCLUSIONS OF LAW:**

18 1. The Hearing Examiner has jurisdiction in this matter pursuant to RCW 35.43.140,
19

20 ⁷ All public comments received are considered part of the overall hearing record. Public comments were not uniformly admitted as exhibits and assigned an exhibit number, however, depending on when they were submitted, e.g., post-hearing.

⁸ Testimony seemed to center on Segment 1.

⁹ The LID Section often uses the term "remonstrance" to indicate property owners in opposition to the LID formation. RCW 35.43.180 uses the term "protest" to indicate property owner opposition to formation. The Examiner adopts and uses the statutory term "protest" which in most cases is synonymous with the LID Section's "remonstrance."

1 Tacoma Municipal Code (“TMC”) 1.23.050.A.2, and TMC 10.04.026.

2 2. The state legislature has determined that “[t]he conversion of overhead electric
3 and communication facilities to underground facilities is substantially beneficial to the public
4 safety and welfare, is in the public interest and is a public purpose...,” *RCW 35.96.010*, and
5 that “[e]very city or town shall have the power to create local improvement districts and to levy
6 and collect special assessments against the real property specially benefited by such
7 conversion.” *RCW 35.96.030*, *see also RCW 35.43.040(12)*.

8 3. The purposes of the initial hearing in regard to formation of an LID are to
9 determine if the formation of the district should proceed and if the limits of the district are
10 proper. *Chandler v. City of Puyallup*, 70 Wash. 632, 633, 127 P.293 (1912). Accordingly, the
11 only issues properly presented during the formation stage of the LID process are:

- 12 (a) Whether the City has jurisdiction or authority to proceed with creating the
13 district; and
14 (b) Whether the boundaries of the proposed district are proper.

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

15 It is presumed that a local improvement benefits property unless the challenging party produces
16 competent evidence to the contrary. The burden of proof shifts to the City only after the
17 challenging party presents expert appraisal evidence showing that the property would *not* be
18 benefited by the improvement. *Seattle v. Rogers Clothing for Men*, 114 Wn.2d 213, 231, 787
19 P.2d 39, 48, (1990)

20 4. No party to these proceedings has validly challenged the City’s authority to create

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
ON REMAND**

1 LID No. 7731 under the terms of RCW Chapter 35.43 or RCW Chapter 35.96.¹⁰

2 5. No party to these reconvened proceedings has challenged the City's determination
3 of the proper boundary for proposed LID No. 7731 under the terms of RCW, Chapter 35.43.¹¹

4 6. The City's authority to create an LID initiated by resolution, as is the case here, is
5 limited if owners of property shouldering a sufficient proportion of the project costs protest
6 formation of the district, as set forth in controlling state law here:

7 **35.43.180 Restraint by protest.** The jurisdiction of the
8 legislative authority of a city or town to proceed with any local
9 improvement initiated by resolution *shall be divested by a*
10 *protest filed with the city or town council within thirty days from*
11 *the date of passage of the ordinance ordering the improvement,*
12 *signed by the owners of the property within the proposed local*
13 *improvement district or utility local improvement district subject*
14 *to sixty percent or more of the total cost of the improvement*
15 including federally-owned or other non-assessable property as
16 shown and determined by the preliminary estimates and
17 assessment roll of the proposed improvement district or, if all or
18 part of the local improvement district or utility local
19 improvement district lies outside of the city or town, such
20 jurisdiction shall be divested by a protest filed in the same
manner and signed by the owners of property which is within the
proposed local improvement district or utility local improvement
district but outside the boundaries of the city or town, and which
is subject to sixty percent or more of that part of the total cost of
the improvement allocable to property within the proposed local
improvement district or utility local improvement district but

10 RCW 35.43.040 provides, in pertinent part, that:

Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining and renewing of shade or ornamental trees and shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:... (12) Underground utilities transmission lines;. . .

¹¹ The Durases' various challenges were addressed previously in the October 8, 2019 Revised Recommendation on Request for Reconsideration.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
ON REMAND**

1 outside the boundaries of the city or town, including federally-
2 owned or other non-assessable property: . . . (Emphasis added.)
RCW 35.43.180.

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

9 8. Since the percentage of protest against formation of the proposed LID No. 7731
10 for Segment 2 rises above 50 percent,¹² the City policies and State statutes regarding under
11 grounding support formation of the proposed LID for Segment 1 only.

12 9. Although contested by some, the benefits of the proposed improvements are special
13 to those properties proposed for inclusions and, accordingly, they have been properly included
14 within the boundaries of proposed LID No. 7731 Segment 1.

15 10. Based on the foregoing, the Hearing Examiner concludes that originally proposed
16 LID No. 7731, Segment 1 meets the requirements of State law and the City's policies
17 governing Local improvement district formation, thereby authorizing the LID to be formed as
18 to Segment 1, and the Examiner recommends the same.

19 11. Any Finding of Fact stated herein above which may be more properly
20 considered or deemed to be a Conclusion of Law is hereby adopted as such.

¹² As of the finalization of this Recommendation, the approximate percentage of protest is 46% for Segment 1 and 57% for Segment 2. *FoF 13.*

1 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing
2 Examiner enters the following recommendation:

3 **RECOMMENDATION:**

4 Based on applicable Tacoma City Council policies and controlling state law with
5 respect to formation of local improvement districts for undergrounding utilities, the Hearing
6 Examiner recommends the City Council approve the formation of Segment 1 of proposed
7 Local Improvement District No. 7731, but that Segment 2 be omitted. The Examiner further
8 recommends that the City move forward with LID formation, but that when estimated costs of
9 the Improvements for Segment 1 are updated, that the updated figures be sent to the property
10 owners in Segment 1, and that they be given one last opportunity, for fifteen (15) calendar days
11 from the date the updated figures are sent, to protest based on the updated figures. If protest
12 does not exceed 50%, the project should proceed, and the Improvements be completed.

13 **DATED** this 6th day of February, 2025.

14 
15 **JEFF H. CAPELL, Hearing Examiner**

16
17
18
19
20
**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
ON REMAND**

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 may 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 cited above:

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 tapes. 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
ON REMAND**