



City of Tacoma
Hearing Examiner

March 10, 2015

TO ALL: *See Transmittal List*

Re: File No. HEX2014-023 - Local Improvement District No. 6979 Assessment Roll

As a courtesy, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered on March 9, 2015.

Sincerely,

Louisa Legg
Legal Assistant

Enclosure (1)

Transmittal List:

Fred Walden, PO Box 44856, Tacoma, WA 98448-0856

Axcent (Accent) Servicing LLC, 7505 SE 28th St. Apt. 1, Mercer Island, WA 98040-2701

Evelyn J. Peterson TTEE, 4317 NE 66th Ave #19, Vancouver, WA 98661-3082

Estate of William G. Bradford c/o Betty J. Welling, Executrix, PO Box 64902,
University Place, WA 98464-0902

Ekawat Sunti, 1425 Sanford Drive, Fort Collins, CO 80526-4251

cc: Tacoma City Clerk's Office (cover letter only)

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 March 10, 2015, at Tacoma, WA.

L. Legg

ORIGINAL



City of Tacoma
Hearing Examiner

March 9, 2015

Mr. Matthew Austin
6901 S. Madison Street #C
Tacoma, WA 98409

Ms. Johanna Herrera
6739 S. Madison Street
Tacoma, WA 98409

Mr. Ralph Rodriguez, L.I.D. Administrator
City of Tacoma, Dept. of Public Works
747 Market Street, Room 520
Tacoma WA 98402
(Inter-office Mail Delivery)

Re: File No. HEX2014-023 - Local Improvement District No. 6979 Assessment Roll

To the Parties,

In regard to the above referenced matter please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered on March 9, 2015.

Sincerely,

Louisa Legg
Legal Assistant

Enclosure (1)

cc: Tacoma City Clerk's Office
Liz Wheeler, Customer Svc. Rep. Tech, Tacoma City Treasurer's Office
Mr. Steven Harrison, 5905 114th Place SE, Bellevue WA 98006

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 March 9, 2015, at Tacoma, WA.

ORIGINAL

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

FILE NO.: HEX 2014-023

4 **LOCAL IMPROVEMENT DISTRICT**
5 **NO. 6979**

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

6

7 **A PUBLIC HEARING** in the above-captioned matter was held on July 31, 2014,
8 before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma. The City of
9 Tacoma appeared through Ralph Rodriguez, Local Improvement District (L.I.D.)
10 Administrator for the City's Department of Public Works. Property owners Matthew Austin
11 and Johanna Herrera appeared and testified. Steven A. Harrison of Harrison Appraisal
12 appeared and testified regarding the 2-4 Unit Residential Appraisal Report he prepared. At the
13 City's request, the evidentiary record was held open for the City to obtain and present a special
14 benefit study providing further information on the value of properties before and after the
15 L.I.D. projects for street lighting (L.I.D. No. 6979) and paving (L.I.D. No. 8648). The Special
16 Benefit Study was submitted on November 17, 2014. The property owners who participated in
17 the assessment hearing were then given the opportunity to respond to the study. A response
18 was received from Matthew Austin on December 16, 2014. The Hearing Examiner asked the
19 City to provide further material responding to the submittal from the property owners. The
20 City filed its response on January 27, 2015. Mr. Austin requested an opportunity to respond

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22 **FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION -
L.I.D. NO.6979 (ASSESSMENT ROLL)**

ORIGINAL

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 to the January 27, 2015 submittal, which was granted. His response was received February 10,
2 2015. A final exhibit was requested from the City and when it was received on February 27,
3 2015, the evidentiary record was closed.

4 The Hearing Examiner, having considered all the evidence presented, having reviewed
5 the records and files in the case, and being otherwise fully advised, makes the following:

6 **FINDINGS OF FACT:**

7 1. On November 13, 2007, the Tacoma City Council adopted Ordinance No. 27654,
8 which provided for the formation of Local Improvement District (L.I.D.) No. 6979. Ordinance
9 No. 27654 called for the installation of six street lights along S. 69th Street, from S. Durango
10 Street to S. Madison Street; and along Proctor Street, from S. 69th Street north approximately
11 225 feet, together with all other work necessary to complete the project in accordance with
12 maps, plans, and specifications prepared and on file in the Office of the Director of Public
13 Works. Ordinance No. 27654 is incorporated herein by reference as though fully set forth.
14 *Ex.4.*

15 2. The Assessment Roll for Local Improvement District No. 6979 was filed in the
16 Office of the City Clerk on December 4, 2013, and the same shows the amount assessed
17 against each lot and parcel of land in payment of the cost and expense of the improvements
18 previously referred to, and said roll has been opened for inspection by all parties interested
19 therein. *Rodriguez Testimony.*

20 3. The Notice of Assessment Roll Hearing was published in the Tacoma Daily
21 Index, as required by law, on July 10, 2014 and July 14, 2014. An Affidavit of Publication has
22 been filed with the City Clerk. *Ex. 2; Rodriguez Testimony.* All procedures as provided for by

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1 July 15, 2014. *Ex. 3; Rodriguez Testimony.*

2 4. Pursuant to applicable laws and the direction of the Tacoma City Council, the
3 Hearing Examiner conducted a public hearing on the Assessment Roll on July 31, 2014.

4 5. Ralph Rodriguez, L.I.D. Administrator for the City's Department of Public
5 Works, testified that the street light improvements have been completed in accordance with
6 the plans and specifications for such work. The final rate per Assessable Unit of Frontage
7 (AUF) is \$95.86, compared to the estimated rate of \$56.00 per AUF. Mr. Rodriguez explained
8 that the increase between the estimated cost per AUF and the final cost per AUF was due to
9 numerous factors including a change in the style of pole that was requested by property
10 owners, increased design costs, and increased staff costs. The final project cost is \$106,566.40
11 compared to the estimated project cost of \$62,500.00. The final total assessed to property
12 owners is \$106,566.40. This is a 10-year Assessment Roll. *Ex. 1; Rodriguez Testimony.*

13 6. A zone and termini formula was used to determine the L.I.D. assessments, as
14 provided at RCW 35.44.030 and .040. Only abutting properties were included in the
15 assessment district. *Rodriguez Testimony.*

16 7. Property owners Matthew Austin and Johanna Herrera testified at the hearing
17 challenging the assessments applied to their properties. Mr. Austin is the owner of a triplex
18 located at the southeast corner of the intersection of S. Madison Street and S. 69th Street in
19 Tacoma, Washington. The driveway access to his triplex is off of S. Madison Street.
20 Ms. Herrera owns a single-family residence at the northeast corner of S. Madison Street and S.
21 69th Street. She purchased the property in the first part of 2014. The Herrera and Austin
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**FINDINGS OF FACT,
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1 properties sit directly across S. 69th Street from each other. *Austin Testimony; Herrera*
2 *Testimony.*

3 8. The evidence showed that the street lights in the L.I.D. project were installed
4 along S. 69th Street beginning at a point well to the east of the Austin and Herrera properties.
5 The closest street light installed as part of the project is some 79 feet east of the Austin
6 property line. *Exs. 7, 12, 22; Austin Testimony.* An existing street light mounted on a utility
7 pole serves the Austin and Herrera properties, and it was not altered or updated as part of the
8 street lighting L.I.D. No actual illumination from the new street lights will extend to the
9 Austin and Herrera properties. Mr. Austin and Ms. Herrera testified that the street light
10 project did nothing to benefit their properties. *Austin Testimony; Herrera Testimony.*

11 Appraiser Steven Harrison gave the opinion that the L.I.D. improvements did nothing to
12 increase the value of the Austin property. By analogy, the same conclusion can be applied to
13 the similarly situated Herrera property. *Harrison Testimony.* The City acknowledged that the
14 only benefit to the Austin and Herrera lots would be the increase in general neighborhood
15 value generated by extending street lighting to the undeveloped properties east of their parcels.
16 *Rodriguez Testimony.* The Special Benefit Study (Ex. 28) prepared for the City by Valbridge
17 Property Advisors/Allen Brackett Shedd did not discuss the benefit to the Austin and Herrera
18 properties, if any, attributable specifically to the street light installation.

19 9. The weight of the evidence at hearing failed to substantiate an increase in fair
20 cash market value of the Austin and Herrera properties resulting from the street lighting
21 installed under L.I.D. No. 6979. By contrast, Mr. Rodriguez's unchallenged testimony
22 demonstrated the project's benefits to properties that lacked street lighting prior to the L.I.D.

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1 installed under L.I.D. No. 6979. By contrast, Mr. Rodriguez's unchallenged testimony
2 demonstrated the project's benefits to properties that lacked street lighting prior to the L.I.D.
3 The evidence supported a finding that the value of the unlighted and undeveloped properties in
4 the L.I.D. was increased in an amount equal to or greater than the applicable assessments. No
5 property owner in the undeveloped portion of the L.I.D. challenged the final assessment roll
6 figures. *Rodriguez Testimony*.

7 10. The verbatim digital recording in this matter is in the custody of the Hearing
8 Examiner's Office, and the file is in the custody of the City Clerk; both are available for review
9 by the Council and any party in interest.

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

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

13 **CONCLUSIONS OF LAW:**

14 1. The DPW has complied with all applicable laws with respect to approval and
15 confirmation of the Assessment Roll for L.I.D. No. 6979.

16 2. An improvement constructed under an L.I.D. is presumed to benefit properties
17 within the L.I.D. on an equitable basis, and the assessments are presumed to have been made
18 fairly and legally. *See Abbenhaus v. Yakima*, 89 Wn.2d 855, 860-61, 576 P.2d 888 (1978); *see*
19 *also Bellevue Plaza v. Bellevue*, 121 Wn.2d 397, 402-403, 851 P.2d 662 (1993); *Hansen v.*
20 *L.I.D.*, 54 Wn. App. 257-62, 773 P.2d 436 (1989). Consistent with the foregoing case law,
21 *Tacoma Municipal Code (TMC)* 1.23.070.B, has established the City's standard of review for
22 final assessment rolls:

**FINDINGS OF FACT,
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1 District assessment shall have the burden of establishing, by a
2 preponderance of expert appraisal evidence, that the method of
3 assessment was founded on a 'fundamentally wrong basis' and does
4 not properly reflect the special benefits resulting from the
5 improvements constructed.

6 *TMC 1.23.070.B.*

7 3. The evidence presented regarding the street light improvement project
8 demonstrated that the Herrera and Austin properties were not benefitted by the installation of
9 street lights on S. 69th Street or S. Proctor Street. The lights do not abut their properties and
10 do not provide any illumination to their parcels. Austin/Herrera provided appraisal testimony
11 indicating the L.I.D. improvements failed to benefit their properties. The City was unable to
12 respond with testimony quantifying a benefit to the Austin and Herrera properties conferred by
13 the street lights installed for nearby property. The appraisal testimony presented by the City
14 did not attribute any specific value to the street lighting element of the improvements made in
15 the area. In the absence of any evidence of benefit to the Austin and Herrera parcels, the
16 assessment of their properties is based on a fundamental error. A property cannot be assessed
17 for improvements that do not benefit the parcel. *In re Schmitz*, 44 Wn.2d 430, 434, 268 P.2d
18 436 (1953).

19 4. Based upon the evidence in the case, the Final Assessment Roll should be
20 modified to exclude the Herrera and Austin properties from the assessment for L.I.D. No. 6979
21 because their parcels received no benefit from the street light project. After that modification
22 and any necessary recalculation, the Assessment Roll will conform to applicable legal
requirements. There is no evidence that the methodology used to substantiate the assessments
on the remaining properties was incorrect. Accordingly, the City Council should adopt an

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1 ordinance assessing the property owners other than Austin and Herrera for benefits conferred
2 under L.I.D. No. 6979, previously created by the City Council and the Assessment Roll for
3 L.I.D. No. 6979 should be confirmed and approved, as modified.

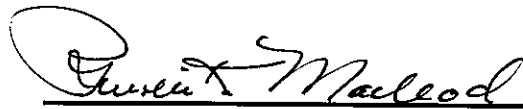
4 5. Any Finding of Fact hereinbefore stated which may be deemed to be properly
5 considered a Conclusion of Law is hereby adopted as such.

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

8 **RECOMMENDATION:**

9 The Hearing Examiner recommends that the Assessment Roll for L.I.D. No. 6979 be
10 recalculated and modified to exclude properties owned by Johanna Herrera and Matthew
11 Austin. The Hearing Examiner further recommends that the modified Assessment Roll for
12 L.I.D. 6979 be confirmed and approved.

13 **DATED** this 9th day of March, 2015.

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

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**FINDINGS OF FACT,
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1 **RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION**

2 **RECONSIDERATION:**

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

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

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

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

28 **GENERAL PROCEDURES FOR APPEAL:**

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

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

38 **FINDINGS OF FACT,
39 CONCLUSIONS OF LAW, AND
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