



City of Tacoma
Hearing Examiner

August 8, 2014

Ralph Rodriguez, L.I.D. Administrator
City of Tacoma
747 Market Street, Room 620
Tacoma, WA 98402
(Inter-office Mail Delivery)

Re: Assessment Roll - Local Improvement District No. 5727
File No. HEX 2014-022

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 as a result of a public hearing held on July 31, 2014.

Sincerely,

Louisa Legg
Legal Assistant

Enclosure (1) – Findings, Conclusions, and Recommendation

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 8, 2014, at Tacoma, WA.

Louisa Legg

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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of:

**LOCAL IMPROVEMENT DISTRICT
NO. 5727**

FILE NO.: HEX 2014-022

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

A PUBLIC HEARING in the above-captioned matter was held on July 31, 2014, before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma. The City of Tacoma appeared through Ralph Rodriguez, Local Improvement District (L.I.D.) Administrator for the City's Department of Public Works (DPW). The Hearing Examiner, having considered the evidence presented, reviewed the files and being otherwise fully advised, makes the following:

FINDINGS OF FACT:

1. On November 13, 2007, the Tacoma City Council adopted Ordinance No. 27653, which provided for the formation of L.I.D. No. 5727. Ordinance No. 27653 provided for the construction of 8-inch water mains along South 69th Street, from Madison to Durango Streets, and along Proctor Street, from South 69th Street north approximately 250 feet, together with all other work necessary to complete the project in accordance with maps, plans, and specifications prepared and on file in the Office of the Director of Public Works. Ordinance No. 27653 is incorporated herein by reference as though fully set forth. *Ex. 4; Rodriguez Testimony.*

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 5727
(ASSESSMENT ROLL)**

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Tacoma Municipal Building
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Tacoma, WA 98402-3768
(253)591-5195 FAX (253)591-2003

- 1 -
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1 2. The Assessment Roll for Local Improvement District No. 5727 was filed in the
2 Office of the City Clerk on April 16, 2014, and the same shows the amount assessed against
3 each lot and parcel of land in payment of the cost and expense of the improvements previously
4 referred to, and said roll has been opened for inspection by all parties interested therein.

5 3. Pursuant to applicable laws and the direction of the Tacoma City Council, a
6 public hearing on the Assessment Roll was held by the Hearing Examiner on July 31, 2014.

7 4. The Notice of Filing of the Assessment Roll was published as required by law on
8 July 10, 2014 and July 14, 2014. An Affidavit of Publication has been filed with the City
9 Clerk. *Ex. 2; Rodriguez Testimony.* All procedures as provided for by law with respect to
10 adoption of the Assessment Roll have been taken, including, but not limited to, mailing
11 notices regarding the Assessment Roll hearing to owners of record on July 15, 2014. *Ex. 3;*
12 *Rodriguez Testimony.*

13 5. The work has been completed for L.I.D. No. 5727. The final project cost is
14 \$240,014.15, compared to the estimated project cost of \$169,400.00. The final rate per
15 Assessable Unit of Frontage (AUF) is \$204.26, compared to the estimated rate of \$160.00 per
16 AUF. The final total assessed to property owners is \$238,826.30, which includes work in the
17 amount of \$23,850.84 requested by individual property owners and assessed to them directly.
18 Water Service Credits held by property owner Peterson, totaling \$1,187.85, were calculated
19 into the final project cost. This is a 20-year Assessment Roll.¹ *Ex. 1; Rodriguez Testimony.*

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22 ¹ On August 7, 2014, Ralph Rodriguez filed a memorandum with the Hearing Examiner's Office requesting the
repayment period be revised from a 10-year roll to a 20-year roll. The request is a result of discussions held at
hearing with numerous property owners. The memorandum has been included as a supplement to the record.

23 **FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 5727
(ASSESSMENT ROLL)**

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:

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

12 *TMC 1.23.070.B* No party appeared to contest the Assessment Roll or to present expert
13 appraisal testimony contesting the City’s calculations in support of the Assessment Roll.

14 3. The evidence demonstrates that the proposed Assessment Roll conforms to
15 applicable legal requirements. The City Council should adopt an ordinance assessing the
16 property owners for benefits conferred under L.I.D. No. 5727 previously created by the City
17 Council and the Assessment Roll for L.I.D. No. 5727 should be approved and confirmed.

18 4. Any Finding of Fact hereinbefore stated which may be deemed to be a
19 Conclusion of Law herein is hereby adopted as such.

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

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23 **FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 5727
(ASSESSMENT ROLL)**

RECOMMENDATION:

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2 It is the recommendation of the Hearing Examiner that the Assessment Roll for L.I.D.
3 No. 5727 be approved.

4 **DATED** this 8th day of August, 2014.

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

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23 **FINDINGS OF FACT,
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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,
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- 6 -

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