

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **PROPOSED LOCAL**
5 **IMPROVEMENT DISTRICT**
6 **NO. 8669**

HEX2020-037

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

7
8 **A PUBLIC HEARING** on the above-captioned matter was held on December 14, 2020,
9 before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma (the “City”).¹ The Hearing
10 Examiner having considered the testimony and evidence presented, having reviewed the file, and
11 being otherwise fully advised, makes the following:

12 **FINDINGS OF FACT**

13 1. The Tacoma City Council adopted Resolution No. 40687 on November 17, 2020 (the
14 “Hearing Resolution”), addressing the potential formation of Local Improvement District No. 8669
15 (the “LID” or “LID 8669”).² The Hearing Resolution was the result of (among other efforts)
16 Advisory Surveys the City distributed to property owners, and then received back signed by certain
17 property owners within the LID. Based on these Advisory Surveys, the City’s Department of Public
18 Works (“DPW”) LID Section staff determined that there was sufficient property owner support to
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21 ¹ Due to National, State of Washington (“State”) and City Proclamations of Emergency caused by the COVID-19 virus, the City closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom. Due primarily to the format of the hearing, the record was left open until December 16, 2020, for the submission of additional written comments. All comments were reviewed on the way to the issuance of this Recommendation.

² Local improvement districts may be referred to herein generically as “LID”s as well.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 1

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1 bring LID 8669 before the City Council to schedule a formation hearing.³ *Rodriguez Testimony,*
2 *Ex. C-2~Ex. C-6.*⁴

3 2. The Hearing Resolution formally set a hearing date of December 14, 2020, to consider
4 the formation of LID 8669. The general location of LID 8669, and the improvements proposed, are
5 described in the Hearing Resolution as follows:

6 [f]or establishing a grade and placing thereon a permanent street pavement
7 with a structural section, together with the installation of concrete curbs,
8 gutter, sidewalks, surface water mains and surface water catch basins,
9 where needed on the following street:

Fir Street from North 13th Street to North 15th Street.

10 The Hearing Resolution states that other improvements in the overall project may include driveway
11 entrances; wastewater lateral connections from the wastewater main to the property line; the
12 removal and planting of trees; and all other work necessary to complete the same in accordance
13 with plans and specifications to be prepared by the City Engineer. The Hearing Resolution is
14 incorporated herein by reference as though fully set forth. *See also Ex. 1, Ex. C-6, Ex. C-9.*

15 3. The proposed boundary of the LID, is legally described in the Hearing Resolution as
16 follows:

Fir Street from North 13th Street to North 15th Street

18 Those portions of the Northeast Quarter of the Southwest Quarter, in Section
19 34, Township 21 North, Range 02 East, W.M. described as follows:

20 //
21 //
//

³ The City's Advisory Surveys are an in-the-moment tool used in tallying preliminary support/opposition to formation at the early stages of the process. They are not a definitive statement of either support or opposition at the actual formation stage.

⁴ Subparts are also inclusively referenced whenever a main exhibit number is referenced.

1 Platted Property:

2 Lots 11 through 20, Block 4, **Narrows Bridge Addition to Tacoma,**
3 **Washington** according to the plat thereof recorded in Volume 12, Page 41,
4 filed October 3, 1941, records of Pierce County Auditor;

5 Lots 1 through 4, **Haddow's Narrows Addition** according to the plat thereof
6 recorded in Volume 39, Pages 55 & 56, filed February 10, 1970, records of
7 Pierce County Auditor;

8 All situate in the City of Tacoma, County of Pierce, State of Washington.

9 Unplatted Property:

10 Beginning at the Northeast Corner of the Southwest Quarter of the Northeast
11 Quarter of the Southwest Quarter of Section 34, Township 21 North, Range 02
12 East, W.M., with said Northeast Corner being 1.88 feet North of the monument
13 at the centerline of North 15th & Fir Streets in **Narrows Bridge Addition to**
14 **Tacoma, Washington** according to the plat thereof recorded in Volume 12,
15 Page 41, filed October 3, 1941, records of Pierce County Auditor; thence on the
16 North line of said subdivision West 165 feet, thence parallel with the East line
17 of said subdivision South 375.5 feet more or less to the North line of Lot 1 of
18 **Haddow's Narrows Addition**, according to the plat thereof recorded in
19 Volume 39, Pages 55 & 56, filed February 10, 1970, records of Pierce County
20 Auditor; , thence east along said North line and extension thereof 165 feet,
21 thence North 375.5 feet more or less to the Point of Beginning;
 Except the East 30 feet for Fir Street per deed to City of Tacoma recorded
 under recording number 1525378, records of Pierce County Auditor.

 All situate in the City of Tacoma, County of Pierce, State of Washington;

Rodriguez Testimony; Ex. C-8~Ex. C-10.

 4. For purposes of statutory application and process,⁵ LID 8669 is a City initiated (by
 resolution) LID. Initial contacts with property owners in the proposed LID were commenced
 through a noticed community meeting held on April 10, 2019. The meeting was intended to inform
 property owners of the City's planned paving project, and let them know of that options for

⁵ See Revised Code of Washington ("RCW") 35.43.120~.150.

1 neighborhood consideration such as adding curb and gutters⁶ to the paving project through LID
2 financing were available. *Rodriguez Testimony; Ex. C-2.2.*

3 5. Notices of Public Hearing for LID 8669 were mailed on November 20, 2020, to all
4 owners of record within the proposed LID, as such are listed on the Pierce County tax rolls. Notices
5 were sent to both listed mailing addresses (when different than the LID site address) as well as to
6 the actual residence within the proposed LID boundary. The Hearing Resolution was published on
7 November 19 and 20, 2020, in the Tacoma Daily Index. An Affidavit of Publication has been filed
8 with the City Clerk, together with plans and estimates required by applicable laws. *RCW*
9 *35.43.150; Rodriguez Testimony; Ex. C-1, Ex. C-7~Ex. C-8.*

10 6. Pursuant to applicable law, and at the direction of the Tacoma City Council through
11 the Hearing Resolution, the Hearing Examiner conducted a public hearing on December 14, 2020,
12 to consider formation of LID 8669. *RCW 35.43.150, Ex. C-1.*

13 7. DPW's LID Section prepared a staff report which was entered into the record as
14 Exhibit C-1. The staff report indicates that the total estimated project cost is \$685,798.05 with an
15 estimated \$244,302.40 being assessed to property owners within the proposed LID, an estimated
16 \$43,750.00 being contributed by the City of Tacoma's Environmental Services Department, and
17 \$397,745.65 coming from Streets Initiative funds. The LID is proposed to have a 20-year
18 Assessment Roll/repayment period, and the estimated cost per Assessable Unit of Frontage is
19 \$195.00. *Rodriguez Testimony; Ex. C-1.*

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⁶ Pictorial examples showing the differences between the City's basic paving project and what was being offered as an LID financed upgrade option are shown in Exhibit C-2.8.

1 8. The testimony of Ralph Rodriguez, LID Section Representative for DPW, further
2 established the following:

- 3 A. DPW discussed options and answered property owner questions through
4 the community meeting referenced above, as well as through individual
5 phone and email contacts, and at the hearing.
6 B. Going into the hearing, the LID Section reported that there was 0.00%
7 property owner opposition to LID formation.⁷ *Rodriguez Testimony, Ex.*
8 *C-1.*

9 9. The LID Section indicated that the zone and termini method was used to estimate the
10 preliminary assessments for each property within the LID. *RCW 35.44. 030 and .040; Rodriguez*
11 *Testimony; Ex. C-1.*

12 10. During the public comment portion of the hearing, Jack Hawkins, a new property
13 owner in the proposed LID, asked questions of the LID Section staff concerning a neighbor's
14 parking structure that he believes encroaches into City right-of-way, LID construction questions,
15 and LID formation questions. Mr. Rodriguez responded to some of these questions and the
16 Examiner weighed in on some of the strictly legal questions. No other members of the public
17 offered oral testimony during the public comment portion of the hearing.⁸ The Examiner held the
18 hearing record open until close of business on December 16, 2020 for additional written comment.
19 Three written comments were received before the record closed:

- 20 • On December 2, 2020, Gary Glasgow sent an email confirming that his and Tamara
21 Glasgow's support for the proposed LID remains unchanged.
- On December 15, 2020, Jack Hawkins sent an email formally opposing formation of
the LID.
- On December 16, 2020, Drew Calhoun sent an email in support of the proposed
LID.

⁷ This has now changed slightly as addressed further below.

⁸ The written chat function, a feature of Zoom, was also utilized during the public comment period of the hearing.

1 Hawkins' protest to formation amounts to approximately 7% of the total cost of the improvements
2 assessed to the property owners for the LID. ($\$17,636.15 \div \$244,302.40 = \text{approx. } 7\%$) *Rodriguez*
3 *Testimony, Hawkins Testimony and written comment in opposition dated December 15, 2020; Ex.*
4 *C-1, Ex. C-4 Ex. C-12.*

5 11. The LID Section recommended formation of LID 8669 at the hearing based on what it
6 believed to be an insufficient level of protest (0.00% at the time, now approx. 7%).

7 12. The digital audio recording of the hearing in this matter is in the custody of the
8 Hearing Examiner's office, and the file is in the custody of the City Clerk. Both are available for
9 review by the City Council and any party in interest.

10 13. Any Conclusion of Law more properly deemed or considered to be a Finding of Fact
11 is hereby adopted as such.

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

13 **CONCLUSIONS OF LAW**

14 1. The Hearing Examiner has jurisdiction in the matter, under Tacoma Municipal Code
15 ("TMC") 1.23.050.A.2 and TMC 10.04.026, to conduct a hearing and issue a written
16 recommendation to the City Council. *See also RCW 35.43.125 and 35.43.150.*

17 2. Washington State LID law provides that every city or town shall have the power to
18 create local improvement districts for paving of public streets and alleys and adding curbing and
19 drainage thereto, and to levy and collect special assessments against the real property specially
20 benefited thereby. *See RCW 35.43.040.*

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

5 (a) Whether the City has jurisdiction or authority to proceed with creating the
6 district; and

7 (b) Whether the proposed boundaries for the district are proper.

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

9 4. No party in these proceedings has challenged the City’s authority to create this LID
10 for street improvements under the provisions of RCW 35.43, except insofar as the one property
11 owner addressed in Finding of Fact (“FoF”) 10 has registered his formal opposition to formation.

12 5. No party to these proceedings has challenged the City’s determination of the proper
13 boundary for proposed LID No. 8669 under the terms of RCW, Chapter 35.43, again except insofar
14 as there is general opposition to formation as recounted in FoF 10.

15 6. The City’s authority to form an LID initiated by resolution is divested if owners of
16 property shouldering a sufficient proportion of the project costs protest formation of the district per
17 the following provision of State LID law:

18 **§ 35.43.180 Restraint by protest.** The jurisdiction of the legislative
19 authority of a city or town to proceed with any local improvement initiated
20 by resolution *shall be divested by a protest filed with the city or town*
21 *council within thirty days from the date of passage of the ordinance*
ordering the improvement, signed by the owners of the property within the
proposed local improvement district or utility local improvement district
subject to sixty percent or more of the total cost of the improvement
including federally-owned or other nonassessable property as shown and
determined by the preliminary estimates and assessment roll of the
proposed improvement district or if all or part of the local improvement

1 district or utility local improvement district lies outside of the city or town,
2 such jurisdiction shall be divested by a protest filed in the same manner and
3 signed by the owners of property which is within the proposed local
4 improvement district or utility local improvement district but outside the
5 boundaries of the city or town, and which is subject to sixty percent or more
6 of that part of the total cost of the improvement allocable to property within
7 the proposed local improvement district or utility local improvement district
8 but outside the boundaries of the city or town, including federally-owned or
9 other non-assessable property:... [Emphasis added]. *RCW 35.43.180*.

6 The State Supreme Court has determined that, for purposes of RCW 35.43.180, the phrase “the
7 total cost of the improvement” means only the part of the cost to be assessed against property
8 owners, and not the actual total cost of the project. To that end costs taken on by the municipality
9 are not included in calculating the percentage of opposition under RCW 35.43.180.⁹

10 7. The City of Tacoma, has further limited its authority to proceed with formation of an
11 LID in the face of protest by adopting Resolution No. 37956 which expresses the Council’s policy
12 to refrain from forming an LID if property owners representing 50 percent or more of the total
13 assessments file protests to formation of the district. This policy contains an exception allowing
14 formation in the face of a 50 percent or greater protest if the City Council has previously
15 determined the LID to be in the best interest of the City, but this exception has not been invoked
16 here.

17 8. The protest to proposed LID 8669, filed or otherwise attested to by the property
18 owners, is well below both the City’s 50 percent limitation and the State’s 60 percent limitation.
19 Under RCW 35.43.180, only protesting property owners and their percentage of the total cost of the
20 improvement are accounted for in determining whether the City has been divested of its authority
21 to form a(n) LID.

⁹ *Kasper v. Edmonds*, 69 Wn.2d 799, 420 P.2d 346 (1966), *Thymian v. Massart*, 69 Wn.2d 806, 420 P.2d 351 (1966).

1 9. There has been no evidence presented indicating that the boundaries of proposed LID
2 No. 8669 are not properly drawn. The LID boundaries appear to embrace, as nearly as practicable,
3 all the real property that will be specially benefitted by the upgraded paving improvements.¹⁰ The
4 benefits of the specified improvements are special to those properties and, accordingly, they have
5 been properly included within the boundaries of proposed LID No. 8669.

6 10. Based upon the foregoing, the Hearing Examiner concludes that proposed LID No.
7 8669 meets the requirements of state law and the City's code and policies governing LID formation,
8 thereby authorizing the LID to be formed, and the Examiner has no problem recommending the
9 same.

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

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

14 **RECOMMENDATION**

15 Based upon applicable Tacoma City Council policies and controlling state and local law
16 with respect to formation of local improvement districts for street improvements the Hearing
17 Examiner recommends the City Council approve the formation of proposed Local Improvement
18 District No. 8669.

19 **DATED** this 5th day of January, 2021.

20 
21 **JEFF H. CAPELL, Hearing Examiner**

¹⁰ See RCW 35.43.080.

1 **NOTICE**

2 **RECONSIDERATION/APEAL OF EXAMINER'S RECOMMENDATION**

3 **RECONSIDERATION:**

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

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

20 Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or
21 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 may have the right
23 to appeal the recommendation of the Hearing Examiner by filing written notice of appeal and filing fee
24 with the City Clerk, stating the reasons the Hearing Examiner's recommendation was in error.

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

27 **GENERAL PROCEDURES FOR APPEAL:**

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