



City of Tacoma
Hearing Examiner

August 20, 2019

Ralph Rodriguez
LID Administrator
747 Market Street Room 522
Tacoma WA 98402-3701

Re: HEX2019-016 Proposed Local Improvement District 7731

Dear Mr. Rodriguez,

Concerning the above reference matter, please find enclosed copies of the Hearing Examiner's Findings of Fact, Conclusions, and Recommendation to the Tacoma City Council entered on August 20, 2019.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1): Findings, Conclusions, and Recommendation

Transmittal List

Gordon Howins and Marilyn S Cummings, 4818 N Waterview Street, Tacoma, WA 98407-4510
Hian and Pamela L Kwa, 4812 N Waterview Street, Tacoma, WA 98407-4510
Richard and Maureen Levandowski, 4705 N Gove Street, Tacoma, WA 98407-4510
Richard and Maureen Levandowski, 4705 N Gove Street, Tacoma, WA 98407-4510
Frederick W Holt, 4716 N Waterview Street, Tacoma, WA 98407-5117
CN Zamjahn, 666 W Olympic Place, Unit 101, Seattle, WA 98119-3671
Zorawar and Dilpreet Sing, 4668 N Waterview Street, Tacoma, WA 98407-5115
Raymond W. and Mary F. Ellener Living Trust, 4664 N Waterview Street,
Tacoma, WA 98407-5115
Carmelita T. Lozner & D J Rossetto, 4658 N Waterview Street, Tacoma, WA 98407-5115
Shawna M. Grambo, 1301 S Proctor Street, Tacoma, WA 98405-2050
Joel Snodgrass, 1301 S Proctor Street, Tacoma, WA 98405-2050
Jo Anne and John F. Borden, 5005 Main Street, Apt 808, Tacoma, WA 98407
Waterview Point LLC, 6450 Crossing Place SW, Port Orchard, WA 98367
Kathleen M. and Anthony L. Ditcharo, 4416 N Waterview Street, Tacoma, WA 98407-5711
Jason Bingham and Jacquelyn Windfeldt, 4414 N Waterview Street, Tacoma, WA 98407-5711

(continued)

Gregory J. and Nadine V. Duras, 4302 N Waterview Street, Tacoma, WA 98407-5710
Douglas Macleod, 502 South M Street, Tacoma, WA 98405-3728
Douglas Macleod, 4122 N Waterview Street, Tacoma, WA 98407-4510
Herminio A. and Agnes F. Doctolero, 505 SW 328th Court, Federal Way, WA 98023-5646
Herminio A. and Agnes F. Doctolero, 4116 N Waterview Street, Tacoma, WA 98407-4510
Corey L. Jones, 1666 South 55th Street, Tacoma, WA 98408-1425
Cheryl A. Ayres & Ann M. Taylor, 4915 N 16th Street, Tacoma, WA 98406-3311
Cheryl A. Ayres & Ann M. Taylor, 4104 N Waterview Street, Tacoma, WA 98407-4510
Roxane J. Hreha, 4030 N Waterview Street, Tacoma, WA 98407-5706
Ariel L. Carmichael, 4026 N Waterview Street, Tacoma, WA 98407-5706
City of Tacoma - GG Real Property Services, 747 Market Street, Rm 737,
Tacoma, WA 98402-3701
James T. Petramalo and Kayla M. Rischman, 3810 N Waterview Street,
Tacoma, WA 98407-5705
Modem Urban Dwellings LLC, 2523 S 118th Street, Seattle, WA 98168-1221
Modem Urban Dwellings LLC, 3810 N Waterview Street, Tacoma, WA 98407-5705
Ryan T. Webster, 3806 N Waterview Street, Tacoma, WA 98407-5705
Gordon C. and Rebecca S. Felt, 3801 Dale Street, Tacoma, WA 98407-5701
Matthew L. and Amy L. Welch, 3811 Dale Street, Tacoma, WA 98407-5701
Gordon P. Howins & Marilyn S Cummings, 4818 N Waterview Street,
Tacoma, WA 98407-4510
Gordon P. Howins and Marilyn S. Cummings, 3720 N Waterview Street,
Tacoma, WA 98407-5705
Marilyn S. Cummings, 4818 N Waterview Street, Tacoma, WA 98407-4510

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**

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

6
7 **A PUBLIC HEARING** on the above-captioned matter was held on July 22, 2019,
8 before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma. The Examiner having
9 considered the testimony and evidence presented, having reviewed the file, and being otherwise
10 fully advised, makes the following:

11 **FINDINGS OF FACT:**

12 1. The Tacoma Public Utility Board adopted Resolution No. U-11087 on June 12,
13 2019, which acknowledged receipt of Advisory Survey No. 8596 and requested that the
14 Tacoma City Council schedule a formation hearing to consider the formation of a Local
15 Improvement District ("LID"). On June 25, 2019, the Tacoma City Council adopted Resolution
16 No. 40354 (the "Hearing Resolution"), which set the formation hearing date of July 22, 2019,
17 for LID 7731. The formation hearing was scheduled with the intent to consider ordering the
18 local improvements described below and to pay the cost of such improvements by imposing
19 and collecting special assessments upon the real property that would receive special benefit
20 from those improvements. The improvements are proposed to consist of the following:

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FINDINGS OF FACT,
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1 Conversion of the existing overhead electrical primary, telephone and
2 cable-TV lines to underground along Waterview Street North from
3 North 49th Street southeasterly 4,400 feet, more or less, also along Dale
Street from Waterview Street North southwesterly 100 feet, more or
less.

4 Such improvements would include all other work necessary to complete the same in
5 accordance with plans and specifications to be prepared by the Tacoma City Engineer and/or
6 Tacoma Power Superintendent. The Hearing Resolution (No. 40354 for proposed LID No.
7 7731, *Ex. C-8*) is incorporated herein by reference as though fully set forth. The proposed
8 boundaries of the LID are as legally described in the second recital (WHEREAS clause) of the
9 Hearing Resolution, which legal description is incorporated herein by this reference. *Ex. C-1,*
10 *Ex. C-3, Ex. C-5~C-8, Ex. C-11, Ex. C-12; Rodriguez Testimony.*

11 2. For purposes of statutory application (*See Revised Code of Washington* ["RCW"]
12 *35.43.130~.150*), proposed LID 7731 is considered a City initiated LID, even though efforts
13 leading to the potential formation of this LID were initiated when the City of Tacoma ("City")
14 Department of Public Works ("DPW") was contacted on June 15, 2018, by an owner of
15 property within the proposed LID who was interested in ascertaining the cost of burying
16 overhead utility lines. Subsequently, DPW staff conducted site visits to locations at the
17 southeasterly end of Waterview Street North¹ including visits to 1) those properties located
18 between 3512 and 3706 Waterview Street North and to 2) those properties located between
19 4208 and the center of the property located at 4302 Waterview Street North. DPW found that
20 the utility lines abutting those properties were already underground and therefore, for

¹ City GIS maps indicate that the proper street name here is Waterview Street North, although it is not referred to uniformly that way throughout the record.

1 remonstrance calculation purposes, would not be included within the proposed LID with the
2 exception of one parcel, 4302 Waterview Street North.

3 3. Properties within the proposed LID are located on a plateau above Waterview
4 Street North and enjoy scenic views of their natural surroundings. DPW concluded those
5 properties would benefit from the proposed improvements. On January 7, 2019, DPW received
6 a neighborhood advisory survey regarding the proposed improvements that was dated
7 November 13, 2018, and DPW verified the survey was signed by the owners of 52.1 percent
8 (52.1%) of properties within the proposed LID. *Exs. C-3~C-5; Rodriguez Testimony.*

9 4. On June 25, 2019, the Tacoma City Council adopted the Hearing Resolution
10 setting aside July 22, 2019, at 5:00 pm, as the date and time for the Hearing Examiner to
11 conduct a public hearing to consider construction of the proposed improvements, and to
12 consider formation of LID No. 7731 in order to provide long-term financing for the
13 improvements. Notices of Public Hearing for proposed LID No. 7731 were mailed on June 28,
14 2019, to all owners of record within the proposed LID, as such are listed on the Pierce County
15 tax rolls.² The Hearing Resolution was published on June 27 and 28, 2019, in the Tacoma
16 Daily Index. An Affidavit of Publication has been filed with the City Clerk, together with plans
17 and estimates required by applicable laws. *RCW 35.43.150; Ex. C-1, Ex. C-8~C-10, C-14;*
18 *Rodriguez Testimony.*

19 5. Pursuant to applicable laws, and at the direction of the Tacoma City Council
20 through the Hearing Resolution, the Hearing Examiner convened a public hearing on July 22,

² Duplicate notices were also mailed to the taxpayer's individual property address (site location) if they differed from the taxpayer's mailing address. *Rodriguez Testimony.*

1 2019, to consider the formation of LID No. 7731. The hearing was conducted in the First Floor
2 Council Chambers, Tacoma Municipal Building, 747 Market Street, and was open to the
3 public. *RCW 35.43.150, RCW 35.96.050; Ex. C-1.*

4 6. DPW's, LID Section (the "LID Section"), prepared a report regarding the
5 proposed improvements. The LID Section's report indicates the estimated project cost of
6 proposed LID No. 7731 totals \$1,377,175.28. The City of Tacoma Power Utility intends to
7 contribute \$93,653.18 towards the total estimated project cost, leaving the estimated total
8 amount assessed to property owners within the proposed LID to be \$1,283,522.10. The
9 estimated total amount contains costs provided by Tacoma Power, Click!, Century Link, and
10 Comcast, as well as for associated costs for engineering, inspection, and termination. Also
11 contained were costs for a special benefit study that was conducted, LID administration
12 expenses, and City interim financing. The LID is proposed to have a 20-year assessment roll,
13 and the estimated cost per Assessable Unit of Frontage ("AUF") is \$385.00. *Ex. C-1, Ex. C-2,*
14 *Ex. C-11, C-12; Rodriguez Testimony.*

15 7. The LID Section indicated that a modified zone and termini formula was used to
16 estimate the preliminary assessments for each property within the proposed LID. *RCW*
17 *35.44.030 and .040.* The LID Section created five (5) zones parallel to the proposed
18 improvements along Waterview Street North, thirty feet (30') in depth, with the square footages
19 calculated per zone. Each zone was then assigned a multiplier used in calculating the estimated
20 special benefit. In addition, the LID Section used three improvement categories—

1 Neighborhood improvement, Neighborhood and View improvement, and View improvement—
2 to categorize the level of benefit and assist in calculating the estimated special benefit to the
3 properties in the proposed LID. *Ex. C-17; Rodriguez Testimony.*

4 8. Prior to the hearing, individual property owners Greg and Nadine Duras, Julie
5 Bilbro, Gordon Felt, Corey Jones, Ann Taylor, and Ariel Carmichael all had personal or written
6 contact with the LID Section regarding formation. Some of the owners made personal inquiries
7 about details of the proposed improvements and about their proposed assessments i.e.,
8 calculations and payment due date, while others submitted letters of objection/protest or letters
9 of concern. Ms. Carmichael and the Duras's incorporated photographs with their comment
10 letters. The Duras's additionally provided an independent Restricted Appraisal Report. *Ex. C-1;*
11 *Public Comments.*³ Seven (7) property owners within the district testified at the hearing. Of
12 those, three (3) testified in support of formation and four (4) testified essentially in opposition.
13 *Snodgrass Testimony, Grambo Testimony, Borden Testimony, Klingenberg Testimony, Duras*
14 *Testimony, Howins Testimony, Felt Testimony.* One additional owner verbalized her support for
15 the proposed LID without offering formal testimony. At the conclusion of the hearing, the
16 protest rate had increased to 37.68 percent (37.68%). Protests, both those offered in writing and
17 those given verbally at the hearing, centered around the City's estimated assessments, and the
18 perceived lack of benefit commensurate with the estimated cost. *Klingenberg Testimony, Duras*
19 *Testimony, Howins Testimony, Felt Testimony; and the written comments of Carmichael,*
20 *Jones, and Duras.* The City owns two parcels within the proposed LID; those parcels were

³ All public comments received are considered part of the overall record. Public comments were not admitted as exhibits and assigned an exhibit number, however.

1 removed from the remonstrance calculation. *Ex. C-1; Rodriguez Testimony.*

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

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

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

8 **CONCLUSIONS OF LAW:**

9 1. The Hearing Examiner has jurisdiction in this matter pursuant to RCW 35.43.140,
10 Tacoma Municipal Code ("TMC") 1.23.050.A.2, and TMC 10.04.026.

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

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

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

3 (b) Whether the boundaries of the proposed district are proper.

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

5 4. No party to these proceedings has challenged the City's authority to create LID
6 No. 7731 under the terms of RCW Chapter 35.43 or RCW Chapter 35.96.⁴

7 5. With the exception of Greg and Nadine Duras, no party to these proceedings has
8 challenged the City's determination of the proper boundary for proposed LID No. 7731 under
9 the terms of RCW, Chapter 35.43.⁵

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

13 **35.43.180 Restraint by protest.** The jurisdiction of the
14 legislative authority of a city or town to proceed with any local
15 improvement initiated by resolution *shall be divested by a protest*
16 *filed with the city or town council within thirty days from the*
17 *date of passage of the ordinance ordering the improvement,*
18 *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 non-assessable property as
shown and determined by the preliminary estimates and

19 ⁴ RCW 35.43.040 provides, in pertinent part, that:

20 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; . .

⁵ Greg and Nadine Duras did state that they should not be included in the LID because no power lines will be removed in front of their house.

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

14 7. The City of Tacoma, however, has further limited its authority to proceed with
15 formation of an LID in the face of protest by adopting Resolution No. 37956, which expresses
16 the Council's policy to refrain from forming an LID if property owners representing 50 percent
17 or more of the total assessments protest formation of the district. This policy contains an
18 exception allowing formation if the City Council has previously determined the LID to be in
19 the best interest of the City.

20 8. Since the rate of protest against formation of the proposed LID No. 7731 does not
rise above 50 percent⁶, the City policies and State statutes regarding undergrounding support
formation of the proposed LID.

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

10. Based on the foregoing, the Hearing Examiner concludes that proposed LID No.

1 7731 meets the requirements of State law and the City's policies governing improvement
2 district formation, thereby authorizing the LID to be formed, and the Examiner recommends
3 the same.

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

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

8 **RECOMMENDATION:**

9 Based on applicable Tacoma City Council policies and controlling state law with
10 respect to formation of local improvement districts for undergrounding utilities, the Hearing
11 Examiner recommends the City Council approve the formation of proposed Local
12 Improvement District No. 7731.

13 **DATED** this 20th day of August, 2019.

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

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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 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**