

1 **OFFICE OF THE HEARING EXAMINER**
2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **PROPOSED LOCAL**
5 **IMPROVEMENT DISTRICT**
6 **NO. 3971**

HEX2020-032

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

7
8 **A PUBLIC HEARING** on the above-captioned matter was held on October 26, 2020,
9 before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma (the “City”).¹ Having
10 considered the testimony and evidence presented, having reviewed the file, and being otherwise
11 fully advised, the Hearing Examiner makes the following:

12 **FINDINGS OF FACT**

13 1. The Tacoma City Council adopted Resolution No. 40660 on October 6, 2020 (the
14 “Hearing Resolution”), acknowledging receipt of Advisory Survey No. 8634, which requested that
15 the Tacoma City Council schedule a hearing to consider the formation of Local Improvement
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19 ¹ Due to National, State of Washington (“State”) and City of Tacoma Proclamations of Emergency caused by the
20 COVID-19 virus the City of Tacoma 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. The hearing record was held open for two days following the hearing’s conclusion to allow for the
submission of additional written comments. None were received.

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

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1 District No. 3971 (“the LID” or “LID 3971”).² *Exs. C-2~C-5.*³ In the Hearing Resolution, the City
2 Council set the formation hearing date on October 26, 2020, for LID 3971. Formation hearings are
3 part of the process by which the City considers ordering the local improvements described below
4 and whether all or part of the cost of such improvements should be imposed upon specially
5 benefitted property owners in the LID.

6 2. Notices of Public Hearing for LID 3971 were mailed on October 9, 2020, to all owners
7 of record within the LID, as such are listed on the Pierce County property tax rolls. The Hearing
8 Resolution was published on October 8 and 9, 2020, in the Tacoma Daily Index. An Affidavit of
9 Publication has been filed with the City Clerk, together with plans and estimates required by
10 applicable laws. *RCW 35.43.150; Rodriguez Testimony; Ex. C-1, Ex. C-2, Ex. C-6, Ex. C-7.*

11 3. The improvements in LID 3971 are proposed to consist of the following:

12 [a]n 8-inch diameter wastewater main with tees and/or risers for
13 wastewater laterals, utility access maintenance points in East 48th Street
14 from East D Street west to East C Street, thence north in East C Street
approximately 390 feet. (the “Improvements”) *Rodriguez Testimony; Ex. C-5.*

15 The Improvements would include all other work necessary to complete the same in accordance with
16 plans and specifications to be prepared by the Tacoma City Engineer. The Hearing Resolution (*Ex. C-5*) is incorporated herein by reference as though fully set forth.

18 4. The proposed boundary of the LID is legally described as follows:
19

20 ² Local improvement districts may be referred to herein generally as “LIDs.”

³ Unless otherwise indicated, references to single numbered exhibits will include their subparts as well, e.g., a reference to Exhibit C-3 would include Exhibits C-3.1 and C-3.2 as applicable.

**FINDINGS OF FACT,
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1 Those portions of the Southwest Quarter of the Southeast Quarter, Section
2 16, Township 20 North, Range 03 East, W.M., described as follows:

3 Platted Property:

4 West 204.247 feet of the North 100 feet of the South 392.265 feet of Block
5 54, Amended Map of First School Land Addition to the City of Tacoma, as
6 per plat recorded in Volume 7, Pages 77 & 77A, records of the Pierce
7 County Auditor;

8 Together with the West 214.242 feet of the South 42.265 feet of the North
9 256.015 feet of said Block 54;

10 And Together with West 214 feet of the North 10 feet of the South 250 feet
11 of said Block 54;

12 And Together with North 140 feet of the West 214 feet of the South 240 feet
13 of said Block 54; Except the South 50 feet of the West 120 feet thereof;

14 And Together with the South 50 feet of the North 100 feet of the South 150
15 feet of said Block 54; Except the West 100 feet thereof;

16 And Together with the South 50 feet of said Block 54; Except the West 150
17 feet thereof;

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

19 and,

20 Unplatted Property:

That portion of the Northwest Quarter of the Northeast Quarter of Section
21, Township 20 North, Range 03 East, W.M., more particularly described
as follows:

Beginning at a point on the North line 1,850.5 feet West of the Northeast
section corner; Thence South 130 feet; Thence East 165 feet; Thence North
130 feet; Thence West 165 feet to the Point of Beginning; Except the West
100 feet thereof.

**FINDINGS OF FACT,
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1 All situate in the City of Tacoma, County of Pierce, State of Washington.

2 *Rodriguez Testimony; Ex. C-1, Ex. C-4, Ex. C-5.*

3 5. For purposes of statutory application and process,⁴ proposed LID 3971 is a City
4 resolution initiated LID, even though efforts leading to the potential formation of this LID had some
5 component of owner participation and sponsorship from the outset. The potential formation of this
6 LID was initiated when the City’s Department of Public Works (“DPW”) was contacted on
7 November 27, 2019, by Mark Matthews, an owner of property within the proposed LID at 4609
8 East C Street, who was interested in ascertaining the cost of extending City wastewater facilities
9 into East C Street. Subsequently, DPW staff sent out an LID information packet to Matthews on
10 December 3, 2019, which included, among other items (*See Exs. C-2.1~C-2.7*) an LID Advisory
11 Survey. On May 7, 2020, Matthews returned what is now Advisory Survey No. 8634 to the City
12 *Rodriguez Testimony; Ex. C-3.*

13 6. DPW verified the survey was signed by the owners of 63.08% of properties within the
14 proposed LID. *Rodriguez Testimony; Ex. C-1, Ex. C-3.* Properties within the proposed LID are
15 located on slopes, and there are elevation changes present over the terrain of the proposed LID.
16 DPW concluded that the Improvements will likely need to be constructed at a significant depth (15
17 to 17 feet) for gravity feed into the main to be achieved. *Rodriguez Testimony; Ex. C-1, Ex. C-9.*

18 7. On October 6, 2020, the Tacoma City Council adopted the Hearing Resolution setting
19 October 26, 2020, at 5:00 pm, as the date and time for the Hearing Examiner to conduct a public
20

⁴ See Revised Code of Washington (“RCW”) 35.43.120~.150.

**FINDINGS OF FACT,
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1 hearing to consider construction of the Improvements, and to consider formation of LID 3971 in
2 order to provide long-term financing for the Improvements. *Rodriguez Testimony; Ex. C-5.*

3 8. Pursuant to applicable laws, and at the direction of the Tacoma City Council, the
4 Hearing Examiner conducted a public hearing on October 26, 2020, to consider formation of LID
5 3971. *RCW 35.43.125, RCW 35.43.150; Ex. C-1.*

6 9. DPW's LID Section (the "LID Section") prepared a staff report which was entered
7 into the record as Exhibit C-1 at the hearing. The LID Section's report indicates that the estimated
8 project cost is \$278,961.38, with an estimated \$117,123.55 being assessed to property owners
9 within the proposed district, and an estimated \$161,837.83 being contributed by the City of
10 Tacoma. The LID is proposed to have a 20-year Assessment Roll and the estimated cost per
11 Assessable Unit of Frontage (AUF) is \$305.00. *Rodriguez Testimony; Ex. C-1.*

12 10. The testimony of Ralph Rodriguez, Management Analyst III, LID Administrator for
13 DPW, further established the following:

14 A. The LID is proposed to include seven residential properties along East
15 48th Street and East C Street. Several of the properties are large enough that
16 they could be subdivided, although there is no evidence in the record that the
owners intend to do so.

17 B. Prior to the hearing held on October 26, 2020, the City had received no
objections to the proposed LID's formation.

18 C. LID Section representatives have discussed options, provided written information
19 on various pertinent topics to, and answered questions from the property owners. *See*
20 *also Ex. C-1, Ex. C-9.*

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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1 11. Property owners in the proposed LID showing support for formation either by signing
2 the Advisory Survey, or by voicing support at the hearing are as follows:

- 3 - Theodore Rohde, Parcel No. 747001-458-0,
4 - Nicholas Reid, Parcel No. 747001-466-0,
5 - Mark Matthews, Parcel No. 747001-471-0, and
6 - Michael Norgren, Parcel No. 747001-467-0. *Rodriguez Testimony; Ex.C-3, Ex. C-8.*⁵

7 12. At the conclusion of the hearing, no property owners within the LID had objected to
8 formation. That notwithstanding, property owner Dorsey, of 302 East 48th Street, objected to
9 having the eastern portion of her property included in the LID because her property is already
10 connected to the City’s wastewater system in East D Street. Dorsey offered through the chat
11 function in the Zoom hearing room⁶ that she had already paid \$17,000 to be connected to the City’s
12 wastewater system and did not see why she should be paying additionally. Rodriguez confirmed
13 that the Dorsey property had paid and was connected, but testified that the City bases her perceived
14 benefit and inclusion in the LID on the possibility that Dorsey might subdivide her property in the
15 future, and an additional house on two lots, where there is only one house and one lot at present,
16 would require an additional connection and payment if the LID were not joined now. No evidence
17 was submitted showing that Dorsey intends to subdivide.

18 _____
19 ⁵ What appears to be the name “Charles W. Blanchard” is also signed to the Advisory Survey listing an address of 4635
20 East C Street, but this name does not appear to be listed anywhere else in the record, e.g., on the City’s proposed
assessment roll (*Ex. C-8*), in the City’s mailing list (*Ex. C-7*), etc., nor did anyone with that name appear at the hearing.

⁶ Dorsey tried to offer verbal testimony at the hearing, but her communications were not coming through in a manner
that could be understood. She, and all hearing participants, were offered the opportunity to submit written statements to
the Office of the Hearing Examiner for two days following the hearing. No submissions were received.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 6**

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1 13. This same reasoning—benefit to the property by facilitating the possibility of
2 subdivision—was used to include eastern sections of the Rohde property at 4641 East C Street, and
3 the Holmes property at 4637 East C Street, even though it appears that these two properties are
4 similarly situated with Dorsey and have already paid for connections for existing improvements on
5 the two properties. Neither Rohde nor Holmes have registered any objection to being included in
6 the LID, however. *Rodriguez Testimony; Ex. C-9.*

7 14. Other property owners in and around the proposed LID boundary have been excluded
8 from LID 3971 if they are already connected to the City’s wastewater system, or have previously
9 paid a connection charge. *Rodriguez Testimony; Ex. C-9.*

10 15. It appears that the LID Section used one, or some combination of, the formulae set
11 forth in RCW 35.44.030 and .040 to estimate the preliminary assessments for each property within
12 the LID. The Hearing Resolution did specifically state that “[t]he actual assessments may vary from
13 assessment estimates, so long as they do not exceed a figure equal to the increased true and fair
14 value the improvement adds to the property” as required by RCW 35.43.120. *Ex. C-5.*

15 16. City staff recommends formation of the LID as proposed. The digital audio recording
16 of the hearing in this matter is in the custody of the Hearing Examiner’s office, and the file is in the
17 custody of the City Clerk. Both are available for review by the City Council and any party in
18 interest.

19 17. Any Conclusion of Law more properly deemed or considered a Finding of Fact is
20 hereby adopted as such.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 7**

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

2 **CONCLUSIONS OF LAW**

3 1. The Hearing Examiner has jurisdiction in this matter to conduct a hearing and issue a
4 written recommendation to the City Council under Tacoma Municipal Code (“TMC”) 1.23.050.A.2
5 and TMC 10.04.026. *See also RCW 35.43.125, 35.43.140, and 35.43.150.*

6 2. The State Legislature has determined that sanitary sewer systems (among other
7 facilities) are necessary for the “[i]mprovement of public health and the implementation of both
8 urban and rural development...,” *RCW 35.91.010*. *RCW 35.43.040* gives the legislative body of
9 any city or town the authority to order the whole or any part of any local improvement including for
10 “sewers, and sewer appurtenances.”

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

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

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

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

19 4. No party in these proceedings has challenged the City’s authority to create this LID for
20 sewer improvements under the provisions of RCW 35.43.

**FINDINGS OF FACT,
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AND RECOMMENDATION - 8**

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1 5. With the exception of Dorsey, no party to these proceedings has challenged the City's
2 determination of the proper boundary for proposed LID No. 3971 under the terms of RCW 35.43.
3 Property owner Dorsey, however, has asked to be excluded because her property is already lawfully
4 connected to the City's wastewater system.

5 6. The City's authority to create an LID initiated by resolution is limited if owners of
6 property shouldering a sufficient proportion of the project costs protest formation of the district per
7 the following section of the State LID statute:

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

7. The City of Tacoma has further limited its authority to proceed with formation of an
LID in the face of protest by adopting Resolution No. 37956 which expresses the Council's policy
to refrain from forming an LID if property owners representing 50 percent or more of the total

**FINDINGS OF FACT,
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1 assessments file remonstrances to formation of the district. This policy contains an exception
2 allowing formation if the City Council has previously determined the LID to be in the best interest
3 of the City.⁷

4 8. There has been no protest to formation of proposed LID 3971. The zero percent (0%)
5 remonstrance rate is below both the City's 50 percent limitation and the State's 60 percent
6 limitation. Therefore, the City has the authority, by statute and its own LID policies, to proceed
7 with formation of LID 3971.

8 9. There has been evidence presented indicating that the boundaries of proposed LID No.
9 3971 may not be properly drawn. With the exception of the Dorsey property, the LID boundaries
10 appear to embrace, as nearly as practicable, all real property that will be *specialy benefitted* by the
11 wastewater main project.⁸ The boundary includes properties that will have access to wastewater
12 disposal into the main extension. The benefit to the Dorsey property only materializes if Dorsey or
13 a subsequent owner decides to subdivide, making the benefit speculative. Again, no evidence of an
14 intention to subdivide the Dorsey property was presented for the record, and the City presented no
15 authority for inclusion of the Dorsey property based on a speculative benefit. Dorsey could choose
16 to join LID 3971 now in order to open up the prospect for subdividing her property, but she has
17 rejected that proposition. This rejection does leave the Dorsey property open to being charged in the
18 future if subdivision is undertaken. Unless Dorsey responds to this Recommendation within the
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⁷ See Resolution No. 37956.

⁸ See RCW 35.43.080.

**FINDINGS OF FACT,
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1 period for reconsideration (*see below*) changing her stance and asking to remain included, the
2 Examiner's conclusion is that there is no present special benefit to the Dorsey property in the
3 absence of an intention to subdivide, and the proposed LID boundary should be redrawn to exclude
4 Tax Parcel No. 03-20-21-1-024. This exclusion will require the LID boundary to be redrawn with a
5 corresponding change to the legal description in Finding of Fact 3, and a recalculation of the
6 numbers in Finding of Fact 9.

7 10. Otherwise, and in the absence of objection, the benefits of the project can be
8 considered special to the remaining properties and, accordingly, they have been properly included
9 within the boundary proposed for LID 3971.

10 11. Based upon the foregoing, the Hearing Examiner concludes that proposed LID No.
11 3971 meets the requirements of State law and the City's policies governing improvement district
12 formation, thereby authorizing the LID to be formed, and the Examiner recommends the same.

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

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

17 **RECOMMENDATION**

18 Based upon applicable provisions of the TMC, Tacoma City Council policies, and
19 controlling State law with respect to formation of local improvement districts for wastewater
20 facilities, the Hearing Examiner recommends the City Council approve the formation of proposed

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 11**

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1 Local Improvement District No. 3971, but with a revised boundary that does not include the
2 additional portion of the Dorsey property at her election. This exclusion will require the LID
3 Section to make revisions to its costs and contributions and legal description. Once the LID Section
4 has made these revisions, they shall submit them to the Office of the Hearing Examiner for
5 inclusion in this Recommendation through an addendum.

6 **DATED** this 16th day of November, 2020

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8 **JEFF H. CAPELL, Hearing Examiner**

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 12**

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1 **NOTICE**

2 **RECONSIDERATION/APPEAL 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 **APPEALS 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
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
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,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - 13**

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