May 26, 2017

FIRST CLASS MAIL DELIVERY

See Transmittal List

Re: File No. HEX.NCSD.2017-004
L.I.D.8645 – Final Assessment Roll

To All:

In regard to the above referenced matter, please find enclosed a copy of the Tacoma Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered on May 26, 2017, as the result of a hearing held on March 29 and March 30, 2017.

Sincerely,

[Signature]
Louisa Legg
Office Administrator

Enclosure (1) – Findings, Conclusions, and Recommendations
Attachments (1) – L.I.D. 8645 List of property owners that submitted oral/written material for consideration

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 May 26, 2017, at Tacoma, WA.

[Signature]
Louisa Legg

ORIGINAL
TRANSMITTAL LIST - HEX 2017-004 – L.I.D. 8645

First Class Mail Delivery:
William A. & Helen M. Abbott, 505 Broadway, Unit 410, Tacoma, WA 98402-3998
Rocky Anderson, 1300US LLC, 727 Opera Alley, Tacoma, WA 98402-3704
Roxanne Augé, 525 Broadway, Unit 109, Tacoma, WA 98402-3910
Margaret Y. Archer, Attorney at Law, Gordon Thomas Honeywell, P.O. Box 1157, Tacoma, WA 98401-1157
Terry Balish, 235 Broadway, Unit 560, Tacoma, WA 98402-4010
Steven Bellinghausen, 714 Market Street, Unit 301, Tacoma, WA 98402-3724
Richard A. Beszak, 714 Market Street, Unit 401, Tacoma, WA 98402-3724
Jamie L. Brooks & Brenda Gasper, Brooks Dental Studio, 732 Broadway, Suite 101, Tacoma, WA 98402-3702
Nancy Brown, 714 Market Street, Unit 502, Tacoma, WA 98402-3724
Heather Burgess & Kent van Alstyne, Phillips Burgess, PLLC, 505 Broadway, Suite 408, Tacoma, WA 98402-3998
Grant S. Degginger, Lane Powell, 1420 Fifth Avenue, Suite 4200, Seattle, WA 98101-2375
David K. Fisher, Fisher Architects, 708 Market Street, Unit 415, Tacoma, WA 98402-3744
Henry F. George IV, Materia Investment, 732 Broadway, Unit 302, Tacoma, WA 98402-3702
Norma Rae Grigsby & Paul Grigsby, 633 NW 116th Street, Seattle, WA 98177-4742
Julie D. Hill, 235 Broadway, Unit 600, Tacoma, WA 98402-4010
Blaine Johnson, 714 Market Street, Unit 201, Tacoma, WA 98402-3724
Stella J. Jones, 525 Broadway, Unit 103, Tacoma, WA 98402-3909
Tom Krlitch, Granville Condominium Homeowners Association, 207 Broadway, Unit 400, Tacoma, WA 98402-4024
Eric Lawrence & Michelle Spicer, 505 Broadway, Unit 602, Tacoma, WA 98402-3997
Madeylyn Leifson, 525 Broadway, Unit 309, Tacoma, WA 98402-3910
Darrel Lowe, Owens Financial Group, P.O. Box 2400 Walnut Creek, CA 94595-0400
Ann H. Marinkovich, 525 Broadway, Unit 205, Tacoma, WA 98402-3911
Linda Merelle, 744 Market Street, Unit 306, Tacoma, WA 98402-3700
J. Stanley Miner, Carole Ford, & J. Patrick Nagle, City of Destiny, LLC, 759 Market Street, Tacoma, WA 98402-3711
Alexandra Moravee & Dorothy M. Denton, SPI Enterprise, Inc., 701 Fifth Avenue, Suite 5700, Seattle, WA 98104-7014
Max Mojarrab, 1300US LLC, 727 Opera Alley, Tacoma, WA 98402-3704
Hugh Moore, 505 Broadway, Unit 409, Tacoma, WA 98402-3998
Passages Ventures, LLC, c/o The Passages Partnership, Inc., Attention: Warren D. Foster,
708 Broadway, Unit M113, Tacoma, WA 98402-3778
Paul & Kim Patino, 525 Broadway, Unit 401, Tacoma, WA 98402-3937
William Riley, 738 Broadway, Suite 201, Tacoma, WA 98402-3777
Judy Robinette, 744 Market Street, Unit 403, Tacoma, WA 98402-3700
Douglas A. Sloane, 505 Broadway, Unit 906, Tacoma, WA 98402-3997
Larry L. Strege, 505 Broadway, Unit 600, Tacoma, WA 98402-3997
Patricia A. Wagner, 235 Broadway, Unit 240, Tacoma, WA 98402-4009
Alex White, Managing Member, Evergreen Investments of WA, LLC, 744 Market Street, Unit 102B,
Tacoma, WA 98402-3700
Jacqueline Whlby, 201 Broadway, Unit A, Tacoma, WA 98402-4020
The Winthrop, LP, c/o Redwood Housing Partners, LLC, ATTN: Ryan Fuson, 329 Primrose Road, Unit 347,
Burlingame, CA 94010-4004

Interoffice Mail Delivery:
Tacoma City Clerk's Office
Ralph Rodriguez, LID Administrator, Public Works, City of Tacoma
Michael Garrison, LID Representative, Public Works, City of Tacoma
Liz Wheeler, Customer Service Representative, Finance, City of Tacoma

747 Market Street, Room 720 ■ Tacoma, Washington 98402-3768 ■ (253) 591-5195 ■ Fax (253) 591-2003
OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of:
LOCAL IMPROVEMENT DISTRICT NO. 8645.

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

A PUBLIC HEARING in the above-captioned matter regarding the Final Assessment Roll for the Broadway Local Improvement District (L.I.D.) (No. 8645) was held on March 29 and 30, 2017, before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma.

The City of Tacoma appeared through Ralph Rodriguez, L.I.D. Administrator for the City’s Department of Public Works. Darin A. Shedd, MAI, principal of Valbridge Property Advisors (Valbridge) and author of the Special Benefits Study of the completed Broadway L.I.D. improvements, appeared and testified regarding the study prepared for the Department of Public Works. Numerous affected property owners or their representatives submitted written objections and/or gave testimony at the hearing. Upon the conclusion of the proceedings, at the request of several protesting parties, the hearing record was left open until May 8, 2017, to allow for submission of supplemental valuation information. Upon receipt of the additional material, the evidentiary record in the matter was closed on May 9, 2017.

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

FINDINGS OF FACT

1. On April 18, 2006, the Tacoma City Council adopted Substitute Ordinance No. 27475, which approved the formation of L.I.D. No. 8645. Substitute Ordinance No. 27475 provided for the construction of permanent pavement, reconstruction, repair, and renewal of sidewalks, installation of ornamental street lighting and landscaping, including but not limited to, the renewing of shade and ornamental trees and shrubbery thereon, and the construction of surface water, wastewater, and water main utility replacement, together with limited maintenance of the landscaping in the following locations:

1) Broadway from South 2nd Street to South 9th Street;

2) St. Helens Avenue from South 7th Street to South 9th Street;

3) Market Street from St. Helens Avenue to South 9th Street;

4) South 4th Street from Stadium Way to Broadway; and

5) South 7th Street from Broadway to St. Helens Avenue.

The construction was to be done 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. Substitute Ordinance No. 27475 is incorporated herein by reference as though fully set forth. Ex. 4.

2. The Broadway L.I.D. was a major undertaking designed to create an urban village atmosphere that would enhance the area and stimulate economic vitality. From the beginning, the project was controversial, and the polling of property owners in the District
showed a divided response to the proposal. *Rodriguez Testimony; Ex. 60.* After the City Council approved the creation of the L.I.D., the Public Works Department began the necessary preparation to let contracts for the work. The initial bid opening resulted in all contracts exceeding the engineering estimate of costs. The City rejected the bids and consulted with the contracting community to determine what could be done to keep the project price down. During these consultations it became clear that the costs owners would be responsible for paying would be around 50 percent higher than originally estimated. Upon learning this information, the City sent a mailing to owners within the L.I.D. boundaries notifying them of the anticipated increase in costs and seeking input on whether they still supported or opposed the project. *Ex. 7.* The results of this inquiry indicated that about 50 percent of those responding were in favor of moving forward and around 50 percent were opposed. The City chose to go forward with the improvements and put the contract out for bid two more times in an effort to get the best price. The contract was ultimately awarded to Wm. Dickson Co. in April 2008. *Rodriguez Testimony.*

3. As the City began the project, a problem was discovered with “structural block” areas which involved properties with underground spaces extending beneath the sidewalk. The structural block areas did not meet load standards and needed to be repaired or removed. A separate contract with R. L. Alia was entered into in September 2009 to perform this type of repair for the affected properties. The costs of the structural block repairs were assessed only to the properties involved. One property owner opted not to replace the structural block area associated with its property and the City pursued the correction through the abatement process.
Anthony Construction was contracted to do the abatement work in April 2012. The costs of this abatement were not assessed against other properties in the L.I.D. *Rodriguez Testimony.*

4. The construction was extensive and was undertaken over the ensuing years. The construction activity was completed in 2011, but the contracts had to be “closed out” with the contractors. The allocation of costs could only be commenced after the quantities of materials used were agreed upon and it was verified that subcontractors had no claims against the general contractor. The prefinal contractor payments were paid in late 2012 and releases were received in 2013. The L.I.D. Section then began an extensive allocation process for the charges connected with the project. Unlike many L.I.D.s that are funded wholly by the private owners benefitted, this project had significant participation by City departments and utilities. The costs associated with various aspects of the work had to be allocated to the proper responsible party or entity. This review of costs and allocation of expenses took more time than the L.I.D. Section anticipated. The three separate contracts and the participating City funding sources complicated the normal cost allocation process. *Rodriguez Testimony; Ex. 60.*

5. The Final Assessment Roll for L.I.D. No. 8645 was filed in the Office of the City Clerk on January 23, 2017, and the same shows the amount assessed against each property in payment of the cost and expense of the L.I.D. improvements. Said Assessment Roll has been opened for inspection by all parties interested therein. *Ex. 9; Rodriguez Testimony.*

6. Pursuant to applicable laws, and at the direction of the Tacoma City Council, a public hearing on the Final Assessment Roll was conducted by the Hearing Examiner on March 29 and 30, 2017. Supplemental materials were allowed until the evidentiary record was
closed on May 9, 2017.

7. The Notice of the Assessment Roll Hearing was published as required by law, and an Affidavit of Publication has been introduced into evidence. Exs. 2 and 3. All procedures as provided for by law with respect to adoption of the assessment roll have been taken, including, but not limited to, mailing notices to owners of record on March 2, 2017. Id.

8. Ralph Rodriguez, L.I.D. Administrator for the City’s Department of Public Works L.I.D. Section, testified that the improvements have been completed in accordance with the plans and specifications for such work. The final project cost is $21,345,815.53 compared to the estimated project cost of $12,005,250.00. The final total assessed to property owners is $7,644,443.17, compared to the originally estimated assessments to property owners of $3,915,000.00. The final assessment was based on a Special Benefits Study prepared by Valbridge Property Advisors, Inc. (Valbridge), a real estate appraisal and consulting firm. Ex. 6. This is a 28-year Assessment Roll. Ex. 1; Ex. 4; Ex. 23; Rodriguez Testimony.

9. A modified zone & termini formula was used to estimate the L.I.D. assessments at the outset of the project; however, the final assessments were based upon the Valbridge Special Benefits Study (Valbridge Study), which the City asserts will provide a more accurate approach to determining the special benefits conferred by the L.I.D. than a modified zone and termini method. Rodriguez Testimony. The zone and termini method of assessment relies solely on the geographic location of the property benefitted. The methodology uses a mathematical formula to allocate benefits without reference to the type of use. Rodriguez Testimony. Due to the varied types of use contained within the Broadway L.I.D., the evidence
showed a special benefits approach would be the best measure of the benefits conferred by the work performed.

10. The Valbridge Study addresses the benefits received by the properties within the L.I.D. boundary as a result of the constructed project improvements. The District includes over 400 parcels so the methodology did not involve an individualized appraisal of each property. The basic approach in the Valbridge Study involves determining a value for the type of properties before the improvements were constructed, based on recognized appraisal techniques. An additive factor was then calculated for each general type of property based on a value analysis and the figure was added to the “before” value to reach the “after” value. The Valbridge Study used August 1, 2011, as the valuation date for the L.I.D. improvements because at that time physical construction was complete. Ex. 6; Shedd Testimony.

11. Mr. Shedd acknowledges that general market conditions were negatively impacted by the recession and property values in many cases declined after 2008. However, the goal of the Valbridge Study was to isolate the impact of the project improvements on value rather than track market fluctuation. Shedd Testimony. Mr. Shedd described the special benefits calculation he was engaged in developing as follows:

The calculation of special benefits (as with the calculation of damages, in an eminent domain appraisal) is to be based on the same before and after valuation date:

Special benefit is the difference in the fair market value of the property without the improvement and the fair market value of the property with the improvement (commonly called “before and after,” more properly called “without and with”); [Local and Road Improvement Districts Manual for Washington State, Sixth Edition, pg. 26.]
The LRID manual further explains that:

Two appraisals are made of each parcel or economic entity. One appraisal results in an opinion of market value of existing property rights without the influence, if any, of the LID-funded project. The second appraisal results in an opinion of market value of property rights adhering to the property with the project constructed or to be completed within a specific time period. Property characteristics, highest and best use and market value opinions in the without and with appraisals are considered as of the same date of valuation. (LRID Manual, p. 55, emphasis mine).

Ex. 60, Shedd Letter, Response to Written Protests, pp. 1 and 2.

12. Mr. Shedd responds to many of the owners’ complaints that the value of their properties has declined during and after the construction by stating:

The objections presented are based on an incorrect before (or without) project enhancement date of value well preceding the August 1, 2011 date of value and are not relevant. The fact that some of the areas I studied illustrated decreasing assessed value or even appraised values between 2008 and the current date is not relevant nor is it the question being asked. As a general rule, most values decreased during the recession from the crash in 2008 until the recovery was well underway. The fact that an LID project was completed during this time period did not insulate the properties within the LID from normal market fluctuations. The special benefit question being asked is how much more; if any, were the properties worth on the date of substantial completion, in this case August 1, 2011, than they would have been on that date if the project had never been done.

Ex. 60, Shedd Letter, Response to Written Protests, p. 2.

13. The Valbridge Special Benefits Study concludes that the fair cash market value of the properties benefited by L.I.D. No. 8645 has been increased in an amount equal to or greater than the assessments. Ex. 6. The details of the challenges to the Valbridge Study are addressed below.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645
14. Numerous property owners within L.I.D. No. 8645 appeared at hearing to dispute the amount of the assessments levied against their properties and others filed written objections. The DPW representative, Ralph Rodriguez and the author of the special benefits study, Darin Shedd, MAI, responded to questions and inquiries.

15. Many of the persons and entities that appeared at hearing to protest the L.I.D. Final Assessment Roll, and those who filed written protests, can be grouped for discussion by the nature of their ownership and interest.

**Residential Condominium Owners**

16. Owners from a number of residential condominiums within the District testified at the hearing and/or presented written protests of the assessments they received from the City. One of the primary objections to the proposed assessments is the amount the owners are being required to pay relating to interest charges that accrued during the lengthy period between conclusion of the construction and the mailing of the final assessments. The actual construction was conducted and concluded in the 2008-2011 period. The assessments were not issued until 2017. In the intervening period, interest charges payable by the property owners of over $1,282,000 were accrued. *Ex. 27.* The owners object to paying these interest charges, claiming that the City failed to timely process the L.I.D. assessments. The assessment process outlined at the early stages of the project suggested a much shorter time between the end of the construction and the assessments. *Ex. 22 (Ex. 1); Ex. 58.* The City indicated that the amount of work necessary to close out the construction contracts and allocate the complex

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1 A listing of property owners submitting oral or written material for consideration as part of the hearing process is attached hereto as Attachment 1.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645

- 8 -

City of Tacoma
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costs on the project took extra time. In addition, time demands on the L.I.D. personnel relating to other projects delayed final work on the assessments. Rodriguez Testimony.

17. Owners are very concerned about the significant increase between the estimated assessments identified during the formation process and the final assessment figures. In many cases the final assessment was double or more the amount of the estimated assessment. Owners do not think it is fair to obtain approval for the project based on one figure and then assess a much higher figure for the same improvements. Exs. 16, 21, 31, 40, 57; Abbott Testimony; Balish Testimony; Krilich Testimony.

18. Owners expressed the opinion that the job was mishandled and that the administrative costs and engineering costs were excessive. They claim the City was not required to stay within a budget and ran up design and administration costs much higher than the percentages applicable in typical construction projects. Exs. 25, 28, 29, 30, 39, 46, 52-54, 57, 58; Brown Testimony; Riley Testimony; Johnson Testimony; Anderson Testimony.

19. Owners indicated that the market value of residential condominiums had actually decreased between 2008 and the present, and that some units have been re-sold for less than the original purchase price. Others showed evidence that assessed values for condominiums had decreased in the 2008 to present timeframe.² Exs. 12, 13, 15, 19, 20; Strege Testimony.

20. The condominium owners presented the testimony of an experienced appraiser who gave general opinions about the Valbridge Study, although he did not perform a formal review of the work or prepare any contrary or independent valuation information. Strege

² A claim was made that similar units had received different assessment amounts. Marinkovich Testimony. Mr. Shedd stated that variances in square footage in assessor records had resulted in certain differences that are warranted. Shedd Testimony. The Shedd testimony adequately explains the general claim of discrepancy.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645
Testimony. Appraiser Larry Strege suggested that the Valbridge appraisal should have noted
the presence of sensitive environmental issues affecting the condominiums above Stadium
Way. He further indicated that some of the increased value demonstrated in the Valbridge
Study was probably due to market forces rather than the L.I.D. improvement alone. He also
maintained that the Valbridge Study did not contain enough detail in the analysis of
comparison areas. He noted that no list of pros and cons for each area was included. Strege
Testimony.

21. The Valbridge Study based the August 2011 “before” value for condominiums on
historical sales. Mr. Shedd developed three categories for projects based on features, view
amenities, age, quality of construction, and similar factors. He also checked the conclusions
against prices in competing neighborhoods. Ex. 6, p.6. The “after” values were based on a
review of vacancy rates in the L.I.D. and in competitive areas. Mr. Shedd also examined
paired sales of residential buildings inside and outside the District. Ex. 6, p.12. He found
higher prices per unit in the L.I.D. and better performance on vacancy within the District.
Actual sales of condominiums inside and outside the District were also studied and showed
higher performance inside the District. Finally, Mr. Shedd contacted real estate brokers active
in the condominium market and found that they considered a good streetscape a helpful factor
in marketing condominium units. Shedd Testimony.3

3 Some condominium owners stressed that the construction of their building enhanced the area and increased
the tax base to the net benefit of the City. While the impact of quality development on an area is positive overall,
it is not a specific component of measuring special benefits and is not a proper basis for adjusting assessments.
Mr. Shedd did indicate he attached a lesser percentage benefit to the most expensive condominium complexes to
reflect the market impact of enhanced construction quality and finishes. Shedd Testimony; Ex. 6, p. 15.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION - L.I.D. 8645
- 10 -
22. The Valbridge Study is based on documented values and utilizes multiple approaches to determine condominium values and performance. While the market fluctuations during the 2008-2012 timeframe may have reduced the overall value of individual units, the proper comparison is between units with the streetscape amenity and those without such an amenity. The market value of an individual condominium may have decreased due to the recession, but the unit would still be benefitted by the streetscape improvements as indicated in the in-district and out-of-district comparisons. Shedd Testimony; Ex. 60.

23. The weight of the evidence in the record establishes that the Valbridge Study employed a legitimate analysis that generated reasonable values for the benefits conferred on residential condominium units in the District. The record does not show that the report was based on a fundamentally wrong methodology or that it failed to fairly reflect the relevant values and benefits conferred.

Undeveloped Land

24. Certain property within the L.I.D. is considered undeveloped land. This category includes surface parking lots that might currently be paved and striped but would have a highest and best use as property for development consistent with the zoning. William Riley owns property currently used for surface parking lots and he testified against his assessments at the hearing. He was also represented by attorney Margaret Archer who questioned

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4 Security Properties Inc. filed a protest of its assessment for two paved parking lots. Ex. 14. The analysis pertaining to the Riley surface parking lots is equally applicable to the Security Properties Inc. parcels. The value is based on benefits for the highest and best use of the property, which would be development consistent with underlying zoning. The current use does not control the L.I.D benefits analysis.
Mr. Rodriguez and Mr. Shedd during the hearing. Mr. Riley submitted written objections to the assessments of his properties and filed an “Appraisal Review Report” authored by Barbara R. Montro MAI, AI-GRS that commented on the Valbridge Study. Ex. 59. Mr. Shedd responded to the Montro Review in a document contained in Exhibit 60. (Response Review).  

25. The Valbridge Study used a sales comparison approach for establishing the “before” value for unimproved land. The analysis used comparable sales of similarly zoned land to conclude a market rate for land of $25.00 per square foot. The Montro Review disputes the amount of the deduction Mr. Shedd uses for the cost of constructing parking lot improvements. She favors use of a construction manual cost that contains nationwide averages for improvement construction. Those figures are less than the figure used by Mr. Shedd. She concludes that Mr. Shedd has overstated the value of the improvements which generates a lower “before” value than is justified. Ex. 59, page 9 of 20. Mr. Shedd responds to the critique on this point by emphasizing that he disagrees with use of the reference manual because costs in Washington for this type of improvement are greater. He has never utilized that manual in his practice as an appraiser and does not think it is an accurate reflection of cost. Ex. 60, Shedd Letter, Response to Riley Objection/Monto Review, p. 4. Mr. Shedd’s approach seems more specific to the values in this precise location and the Montro comments

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5 Ms. Montro’s Review raised several technical points regarding the Valbridge Study’s failure to comply with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). Noted items such as conflicting wording regarding full property inspections, designation of exposure period for sales, lack of a particular signed certificate and wording on designated users that reflects the City of Tacoma versus City of Tacoma Public Works are not errors fundamentally affecting the validity of the valuation conclusions.
fail to demonstrate that the land value analysis in the Valbridge Study is faulty due to the improvement costs used.

26. The second item raised by the Montro Review on land valuation challenges the sales comparison analysis Mr. Shedd used to determine the “after” values for land. The sales comparison methodology used by Mr. Shedd is a recognized tool in appraisal work.

Ms. Montro takes issue with how it was implemented in this particular case. With reference to Land Sales 2 and 8, the Review points out that the same property sold in 2009 at $36.46 per square foot and for $39.87 per square foot in 2012. The Review suggests that this 9.35% increase would not be wholly attributable to the improvements, as opposed to general improvements in market conditions. Ex. 59, page 9 of 20. Mr. Shedd responds to this observation by explaining that the sales were completed with full knowledge of the L.I.D. project and the costs that would be owing for the assessments. He asserts that the pending assessments would actually support $40 to $45 per square foot for an “after” project value. Ex. 60, Shedd Letter, Response Riley Objection/Montro Review, p. 4. The weight of the evidence does not establish that the “before and after” value figures contained in the Valbridge Study are in error.

27. The Montro Review presents a number of other sales from the southern part of the Central Business District (CBD) as evidence that values for unimproved properties were falling. Ex. 59, page 10 of 20. Mr. Shedd disputes whether this information is applicable to the subject area. Ex. 60, Shedd Letter, Response to Riley Objection/Montro Review, p. 5. The evidence does not show that the south CBD sales are from a location that reflects values in the

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645

- 13 -
subject area. Accordingly, the proffered information is not helpful in analyzing the project values or evaluating the approach taken in the Valbridge Study. The weight of the evidence supports the Valbridge Study’s conclusions regarding the benefits to undeveloped land in the L.I.D.

**Office/Retail/Commercial Condominiums**

28. Another group of properties within the project boundaries are developed with retail, office, and other commercial uses. Some of these properties are leased to businesses and some are commercial condominiums. Testimony was received at hearing from a number of persons challenging the assessments for commercial property in the District. Property owner William Riley challenges the assessments on several office/retail/commercial properties he owns. He provided the Barbara Montro MAI, AI-GRS Review to more fully specify the elements of the Valbridge Study he finds insufficient or erroneous. **Ex. 59.**

29. The Valbridge Study developed the “before” values for office/retail/commercial through an income analysis. The details of this analysis are contained in the Valbridge Study. **Ex. 6, p. 6.** Based on a recognized set of inputs, Mr. Shedd used standard appraisal techniques to determine a 2011 market value for office, retail, multi-family apartment, and commercial condominium properties. Neither the witnesses nor the review appraiser leveled any serious criticism at the income analysis put forward in the Valbridge Study.

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6 Appraisers Montro and Shedd disagree over the land residual analysis Mr. Shedd included in the Valbridge Study. While acknowledging that land residual analysis is a recognized valuation technique, Ms. Montro contends the Shedd figures are misleading because they fail to deduct increased property tax expense from the L.I.D. in the “after” condition. Mr. Shedd asserts that this argument misperceives the point that the land value does increase irrespective of the method used to pay taxes. Overall, the land residual analysis prepared by the Valbridge Study appears valid as an additional tool in the valuation process.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645**
30. The dispute over office/retail/commercial property centers on whether the four percent upward adjustment Mr. Shedd made to reflect the benefits provided by the L.I.D. project is adequately supported. The Valbridge four percent adjustment to the “before” value was based on a number of factors. It included a CoStar analysis of the project area and four other test areas for vacancy rates. This work illustrated a decrease in vacancy rates in the project area on a current basis and a five year average. The data showed that the project area is outperforming the other competitive neighboring markets in commercial vacancy rates and rate of decline in vacancy rates since the L.I.D. improvements were completed. *Ex. 6, p.9.*

31. Mr. Shedd also looked at walkability scores for the project area and the competing areas. The project area has one of the best walkability scores. He considered this evidence of a vital neighborhood with good property values. Published research was reviewed to explore the economic impact of upgraded streetscapes. The primary study Mr. Shedd relied upon was conducted by the New York City Department of Transportation (NYCDOT) and it focused on study areas with components similar to the Broadway L.I.D. project. One case study was very comparable in the design upgrades completed. The study found significantly higher rates of retail sales in the project area as compared with neighborhoods lacking such improvements. Mr. Shedd concludes that the NYCDOT study supports a positive property value impact generated by streetscape enhancements. While acknowledging that the study is not definitive for the present project, he believes the conclusions of economic benefit and associated values can be properly extrapolated to the L.I.D. project area. *Ex. 6, p.10; Shedd Testimony.*

32. The Montro Review asserts that the office/retail/commercial analysis in the
Valbridge Study is erroneous and unsupported by proper data and analysis. She does not think a vacancy rate analysis is a sound basis for attaching a 4 percent increase to property values. She questions why a study based on income analysis, sales comparison, or other recognized approach is not used to determine the “after” value. As to the vacancy study particulars, the Monro Review suggests the Area 3 data is flawed because a property was erroneously reported by the CoStar system as vacant when it actually was occupied for a portion of the relevant period. Ex. 59, page 11 of 20. Mr. Shedd explains the scenario further and concludes that even if Area 3 is not considered, the remaining three comparison areas provide adequate information to reach his conclusions. Ex. 60, Shedd Letter, Response to Riley Objection/Monro Review, pp. 5 and 6.

33. The Monro material also claims the Valbridge analysis fails to consider that the high vacancy rates within the Broadway L.I.D. area could have been caused by the disruption the project was creating for businesses and tenants in the area. Ex. 59. Mr. Shedd responds by indicating that the data showed a marked drop in vacancy around the time the project was completed that continued to decline in the ensuing years. The area was performing better than other areas on this variable. Ex. 6, p.9; Ex. 60, Shedd Letter, Response to Riley Objection/Monro Review p. 6.

34. The Monro Review discounts walkability as a factor demonstrating value change because there is no comparison before and after the project. Unfortunately, this type of information was not published before the project was initiated. She further maintains that walkability is not necessarily linked to value and development potential, giving the example of
development on Tacoma’s Dock Street, which has a lower walkability score than the project area. The Montro material also asserts the NYCDOT study is not relevant to determining values for the Broadway L.I.D. area. The Montro Review emphasizes data showing a decline in rents over time within the Broadway project area. Ex. 59, p. 14 of 20. It is unclear whether this data addresses the valuation date in question, but it has not been explained as part of the Valbridge analysis.

35. The 4 percent increase is an adjustment applied generally to commercial properties within the Broadway L.I.D. boundary. The Valbridge Study has some rationale to support an increase in values based on the significant upgrades that were installed along the streets in this area. The level of detail and justification using recognized appraisal techniques for quantifying the amount of increase is weak. At the same time, the proposed increase of 1 percent suggested by Mr. Riley (and not by his Review Appraiser) is wholly without support in the record.⁷

36. The Winthrop, LP is also seeking an adjustment to the assessment against its property. The Winthrop building contains street level retail and upper story residential apartments with a large component of rent-restricted units. The Valbridge Study’s approach to determining project benefits for this property involved calculating a “before” value for the property using an income approach and then applying a benefit increase of 3 percent for the residential portion of the structure and 4 percent increase for the retail area. Ex. 6; Ex. 60. The Winthrop, LP contends that the property received no benefit from the project because agreements executed in connection with the low-income housing use of the property prohibit

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⁷ Counsel for Mr. Riley suggests a benefit rate for office/retail/commercial of 1 percent. Ex. 59.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645

- 17 -
raising rents to realize any additional value to the property. The Winthrop, LP submitted a letter authored by two appraisers familiar with low-income housing expressing the opinion that the improvements were of no benefit to The Winthrop property. *Ex. 17, Exhibit 1.*

37. Clearly the opinion addressing the impact of rent restrictions pertains only to the residential portion of the structure and not the street level retail component. As to the residential area, Mr. Shedd responds by observing that the property sold in May 2015 for $8,500,000 with a preliminary assessment on record (exclusive of supplemental work) in the amount of $124,345. The valuation placed on the property in the special benefits study was a “before” value of $7,163,318 and an “after” value of $7,387,536. Mr. Shedd views the subsidized housing restrictions as a choice made by the owner accompanied by financing advantages and other allowances that made it more attractive than a market rate facility. He does not believe that the owners’ choice to use the property for subsidized housing negates the special benefits to the property from the streetscape improvements. *Ex. 60, Shedd Letter, Response to Written Protests, pp. 2 and 3.*

38. The Winthrop property presents a bit different case than the other commercial properties within the L.I.D. The restrictions on rental rates prevent the owner from simply raising rates to recoup any assessments. Nevertheless, the property was sold with a substantial preliminary L.I.D. assessment on the record. At a minimum, the property should be assessed a benefit consistent with the assessment of record at the time the purchase was analyzed and completed. The retail portion of the structure does not share any restrictions on rents and should be assessed in the same manner as other office/retail/commercial properties in the
39. The Winthrop, LP also seeks a reduction of the amounts paid for supplemental work on the structural sidewalk construction required for their property. The owner suggests eliminating all charges for City staff time for labor and equipment as well as interest and the “discount” line item. As to the City staff charges, The Winthrop, LP should pay in the same proportion as other owners in the L.I.D. (See ¶58 below). Similarly, if an adjustment is made for interest that has accrued during the pendency of the assessment, The Winthrop, LP should receive the same type of reduction as other property owners within the L.I.D. The City has explained that the “discount” line item on the assessment detail is actually a cost of the bonding process rather than a reduction in the amount owing. Ex. 60, Rodriguez Memorandum, p.2. Therefore, a reduction on that basis is not warranted.

40. The Hearing Examiner is recommending a reduction in the special benefit to The Winthrop, LP in the amount of $93,615, which is the difference between the preliminary assessment of $124,345 on record at the time of the sale of the property and the final assessment figure of $217,960 (exclusive of supplemental work charges). Ex. 9, p. 33. The subsidized housing restrictions on the property present a different long-term value situation than a commercial property without similar limits on the monetary return. The evidence, however, does not substantiate a conclusion that the property was afforded no benefit from the substantial improvements installed during the project. The evidence supports no adjustment to the charges for special work on the structural sidewalk.

41. Property owner 1300US LLC objected to the assessment of their commercial
office property at 728 Broadway. *Ex. 21.* One element of the objection was a comparison
with the commercial office property next door at 732 Broadway. The “before” and “after”
values identified for the properties were very close; however, 1300US LLC claims that the
amenities and finishes on the 732 Broadway property are superior. They reason that failing to
adequately distinguish between the properties’ amenities undermines the validity of the special
benefit study. *Ex. 21; Anderson Testimony.*

42. Mr. Shedd responds that the values for 728 and 732 Broadway were similar
because the properties are of similar age, building size, lot size, and number of commercial
condominium units. The valuation inputs were similar and the percentage increase applied
was the same for all commercial offices. To the extent there are higher quality buildout
features on the 732 Broadway property, Mr. Shedd sees that as a basis for raising the value of
that property rather than lowering the 728 Broadway assessment. *Ex. 60.* The details of
interior finishing were not part of the broad special benefits analysis contained in the
Valbridge Study. *Ex. 6.* The weight of the evidence did not show that a benefit reduction for
the 728 Broadway property was warranted.

43. Property owner 1300US LLC further objects to the excessive amount of
administrative costs associated with this L.I.D. project. *Ex. 21; Anderson Testimony.* The
issue of administrative costs is addressed below for the entire L.I.D. project.

44. Owens Financial Group challenges the assessment for the Mecca Building, which
is a property improved with commercial space at, and below, ground level and residential
condominiums above. The protesting party submitted an appraisal of the property performed
in 2007, prior to substantial renovation of the building, which showed an anticipated improved value of $5,935,000. In December 2013, a second appraisal found a property value of $2,250,000, far short of the anticipated value prior to the recessionary downturn. Owens Financial Group does not think that the property has been benefitted in excess of the “cost” of the improvements of $171,000 and is seeking relief from the additional $97,141 added to its final assessed charges. Ex. 10. The City correctly points out that the $170,181.69 was for special work to reconstruct the vaulted structural sidewalk abutting the property. This work was requested by the then-owner. Ex. 60. The additional $97,959.21 is the L.I.D. assessment for the streetscape work completed within the District. Owens Financial Group is suggesting that they pay no part of the L.I.D. street improvements applicable to the property. There is no evidentiary basis for contending that the substantial enhancements to the area failed to benefit the commercial or residential properties in the Mecca Building.

45. Mr. Shedd responds to the 1300US LLC challenge on the Mecca Building by pointing out that the dates of the appraisals submitted into evidence do not address the issue being determined in the special benefits study. He acknowledges that property values generally decreased after 2008 and may have been diminished in 2013 as well. The proper inquiry, however, is the value of the property in August 2011 before and after the improvements. Determining the overall value of real estate on the open market was not the task being performed in the special benefits study. The decrease in value for the Mecca Building reflected in the 2007 and 2013 appraisals does not provide evidence that the streetscape improvements failed to enhance the property over what it would have been worth.
without the improvements. *Ex. 60.* Based on the evidence presented, the Mecca Building is not entitled to relief from the assessments for this L.I.D. on any greater basis than other commercial and residential properties.

**Miscellaneous**

46. Paul Grigsby on behalf of Norma Grigsby submitted a protest regarding a portion of the assessment for property at 753 St. Helens Avenue. During the course of the project, the Grigsbys determined it would be more cost effective to independently eliminate the underground vault beneath the sidewalk of the property in question. The Grigsby protest objects to being charged for work connected with the structural sidewalk problem. *Ex. 18.* The City has submitted a response indicating that the costs assessed to the Grigsby property were only those incurred prior to the property owner’s decision to do the work privately. The assessment would have been higher if the full work had been performed by the City contractor. *Ex. 60 Rodriguez Memorandum, pp. 2 and 3.* Based upon the facts surrounding this claim, the evidence fails to support an adjustment to the assessment levied for the structural sidewalk activity prior to the property owner’s decision.

**Special And Supplemental Work**

47. Certain work within the L.I.D. project was performed at the request of individual property owners or was undertaken to address a structural deficiency unique to their property. This type of construction was referred to by the L.I.D. Section as special or supplemental work. Costs associated with special work were accounted for separately and were charged against only the property requesting or benefitting from the work. *Rodriguez Testimony.*

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645
48. A particular form of special work was necessary to address the presence of areas under the sidewalk that were being used as storage or useable space by adjacent landowners. This practice was fairly widespread in parts of the L.I.D. area and presented a problem because the so-called “structural block” areas did not meet load standards for large vehicles. The contract to engineer and install the “structural block” repairs was awarded separately from the main L.I.D. contract. The bid was awarded to the R.L. Alia Company in September 2009. No evidence was presented to demonstrate that the costs expended by the R. L. Alia Company were unnecessary or excessive. Rodriguez Testimony.

49. William Riley is an example of an owner challenging the amount charged for special work benefitting his property. He acknowledges that he requested water stubs to four of his properties. The initial estimate for the work was $11,000 per installation. The final assessments for the work were $14,381 (Parcel 128), $18,132 (Parcel 131), $13,675 (Parcel 136) and $31,903 (Parcel 138). Mr. Riley contends he should not have to pay the full amount of these assessments because they exceeded the estimates. Ex. 22. The City has compiled records accounting for the charges associated with work done under the category of special/supplemental work. Ex. 27. In the absence of proof from Mr. Riley that the charges were not legitimately incurred in doing the work Mr. Riley requested, or that they were significantly out of line with the normal cost for such work, no basis exists for modifying the assessments for water main installations at the Riley properties.

50. As to Parcel 138, the supplemental work assessment includes costs that were incurred for removal of an underground storage tank that was discovered in front of this
property. The tank had to be removed during the course of project construction. Mr. Riley refused to agree with the City regarding the removal costs because he opposed the L.I.D. and did not want to sign anything that could be construed as indicating agreement with the project. He was exploring the prospect of litigation against the City. *Ex. 60, Attachment 21M.*

Mr. Riley claims he was not contacted later to discuss allocation of the charges for the tank removal as the City had promised, but the City provided email evidence that he was contacted to discuss the charges. *Ex. 22; Ex. 60.* No evidence was submitted demonstrating that the work to remove the tank was not necessary or that the amount charged was inconsistent with normal costs.

51. Mr. Riley also asserts that he should not have to pay for the costs associated with installation of a requested handicap access ramp for Parcel 146. The amount assessed was $5,310. Mr. Riley acknowledges that the ramp was constructed and then removed because it failed to meet governing standards. Apparently, three pre-existing stairs were restored after the failed ramp installation. He contends this charge should not be levied if it pertains to the failed ramp. If the City performed work that was inconsistent with the governing codes and had to be removed, those charges should not be assessed to the property owner. The cost of any improvement that actually benefitted the property, or is being used by the property, can be recovered through the L.I.D. assessment.

52. Mr. Riley contends he should pay no assessment for general L.I.D. work on Parcel 131. This property is adjacent to a sidewalk that Mr. Riley replaced with new sidewalk prior to the outset of the L.I.D. *Ex. 59.* In Mr. Riley’s opinion, the project added nothing to
the streetscape at this site. Moreover, the construction activity caused water intrusion in his nearby building that resulted in damage claims from a tenant and ensuing litigation. *Riley Testimony.* The evidence did not demonstrate that the work assessed against this parcel was not performed or that it did not advance the overall benefit and uphold uniformity of the project improvements. Accordingly, an assessment similar to that applied to other commercial properties in the L.I.D. is proper. Any specific damage Mr. Riley is alleging based on construction practices will have to be pursued through other appropriate channels.

**Interest Charges**

53. The City testified that the L.I.D. process involves short-term financing for the project that starts at the outset and continues through construction. After final assessments are confirmed, bonds are sold for the long-term financing of the owner’s costs. In many cases, the Final Assessment Roll is developed much closer in time to the completion of construction than was the case in the Broadway L.I.D. The delay was a function of the complexity of the cost allocations for the large number of properties, the multiple agencies participating in the funding, and the fact that three separate construction contracts were awarded in the case. In addition, the L.I.D. section employees were unable to do the work as quickly as they would have normally because of the press of other L.I.D. projects including Point Ruston and the LeMay Car Museum. During the delay, interest was accruing that is being allocated as part of the owners assessments. *Rodriguez Testimony.*
54. The interest for the project costs payable by the owners is running about $172,000 per year.\(^8\) The final allocation of L.I.D. costs to owners includes $1,191,461 for interest.\(^9\) Ex. 27, p. 38. During the 2015 mid-biennial budget discussions, the City granted $483,000 in funding to help offset the project's costs to owners, including interest. This sum equates to approximately 2.8 years of interest. *Rodriguez Testimony.*

55. Property owners in every category dispute the charges attributable to interest. The property owners assert that they should not be penalized for the City's failure to timely process the L.I.D. Final Assessment Roll. Paying additional costs for interest in a situation where the City chose to prioritize other projects over the Broadway L.I.D. seems very unfair to the property owners and has contributed to the increases many owners are experiencing beyond the original estimated assessments. *Exs. 28, 30-35, 37, 40, 50, 52, 53, 56-58, Wagner Testimony.*

56. Mr. Rodriguez indicated that the assessments cannot be finalized until the construction contracts are closed out with the contractors. In this case, the contracts were not closed out until 2013. It is unclear whether this delay of 2 or more years after the construction work was substantially completed was also a function of other pressing projects in the L.I.D. Section. In any event, the length of time between the close of construction and final assessment was much longer than usual. Interest was being charged to the owners throughout the period. *Rodriguez Testimony.*

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\(^8\) City departments participating in the L.I.D. paid costs as they were incurred and did not participate in the short-term project financing. *Rodriguez Testimony.*

\(^9\) This figure is net of the $113,153.57 in interest attributable to supplemental/special work for individual owners. *Ex. 27, p. 38.*
57. Under the facts of this case, the interest charges are costs that have been incurred. However, due to the extended delay in processing the final assessments, owners are being charged a much higher amount of interest for short-term financing than is typical. A partial offset has been provided by the City as part of the 2015 mid-biennium adjustment process. The Hearing Examiner is recommending a further adjustment to interest charges that accrued during this delay to reflect the interest more typical to an L.I.D. project. After construction was completed in 2011, a more common period for close-out would be approximately 18 months. Therefore, interest attributable to periods after 2012 would be outside the norm. With interest running at $171,000 per year and a delay of approximately 4.5 years after 2012, the added interest would be around $769,500. Recognizing an offset of $438,000 for the funds previously appropriated by the City, an interest adjustment of $331,500 would appear to alleviate the prejudice to owners arising strictly from the delay in processing this assessment.

Administrative Charges

58. Property owners in the L.I.D. boundary object, almost uniformly, to the administrative charges and City staff charges allocated as costs of the project. Exs. 25, 28-30, 39, 46, 52-54, 57, 58, Degginger Testimony; Brown Testimony; Riley Testimony; Johnson Testimony; Anderson Testimony. The Broadway L.I.D. included engineering and staff costs payable by the owners of $2,428,932.33 out of total engineering costs on the project of $4,881,932.71. Ex. 49A. The remaining engineering costs were paid by City departments and utilities that participated in the project. Ex. 27. These costs for engineering include staff time and other items such as construction management, L.I.D. administration, design drafting and
survey, long term landscape maintenance, landscaping, feasibility study, special benefits study, signal charges, and water services. *Exs. 49B through 49E.* Charges specifically related to supplemental/special work were removed from the calculation before the general property owners were assessed. *Ex. 49; Ex. 27.*

59. Property owners also think the administrative and engineering charges are above the amount typically spent during private construction projects. *Anderson Testimony; Riley Testimony; Ex. 52.* The City has responded by asserting that the overhead costs, specifically staff costs, allocated as part of the L.I.D. assessments are below what a typical project of this size would incur:

The preliminary engineering costs of $269,633.84 represent 6% of the construction costs being borne by the owners, typically the costs for this size of project would range between 8 to 12%. The construction management, inspection and construction surveying expenses of $599,806 represent 13.6%, on a comparable project the costs would range between 12 to 15%. The LID staff expense of $296,236 represents 6.6%. The other costs are unique to this LID.

*Ex. 60, Rodriguez Memorandum, p. 4.* Presumably the unique expenses relate to the feasibility study, special benefits study, long-term landscape maintenance, and other charges outlined in Exhibit 49E that are incurred because the L.I.D. is a public project.

60. The owners would like to minimize the amount of money being charged for City staff time. They want the City to use any means possible to relieve the increase many of them face between the estimated assessment and the final assessment. Charges for work done by staff members already on the City payroll is one area that could be used to offset the cost overruns. The costs for engineering and other soft costs on this project were substantial.
However, the owners have not provided evidence that the charges are unwarranted for the work performed. As far as L.I.D. staff costs are concerned, it does take staff time to conduct construction using the L.I.D. mechanism. Records must be maintained and legal processes must be completed beyond those applicable to private construction. Other than general dissatisfaction with the administrative charges, there was little evidence submitted that would provide a sound basis for reducing or reallocating the costs incurred. The City Council could choose to provide some relief to property owners by reducing the allowed charges for City employee time, but the proper amount for such an adjustment lacks a documented basis in the record.

61. The verbatim digital recording in the referred-to matter is in the custody of the Hearing Examiner’s Office, and the file is in the custody of the City Clerk; and both are available for review by the Council and any party in interest.

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

Based on the foregoing Findings of Fact the Hearing Examiner makes the following:

**CONCLUSIONS OF LAW**


2. The Department of Public Works has complied with all applicable laws with respect to the process for seeking approval and confirmation of the Final Assessment Roll for

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645**
L.I.D. No. 8645.

3. The property within an L.I.D. is subject to assessment for the special benefits to each parcel resulting from the improvement project. *RCW 35.44.010*. The amount of the special benefit generated by an L.I.D. is measured by the difference between the fair market value of the property immediately before and immediately after the improvements. *Bellevue Plaza v. Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993). Special assessments should not exceed the value of the benefit conferred on each parcel by virtue of the project improvements. In addition, properties within an improvement district should bear assessments that are generally proportionate to similar parcels located within the L.I.D. *Hasit, LLC v. City of Edgewood*, 179 Wn. App. 917, 933, 320 P.3d 163 (2014).

4. The Hearing Examiner is acting on behalf of the City Council in conducting a hearing on an L.I.D. Final Assessment Roll. *RCW 35.44.070; TMC 1.23.050.A.3*. The hearing is conducted so that property owners subject to the L.I.D. assessments can raise objections to the proposed assessments and/or their proportionality, challenge the supporting appraisal information or approach, and provide relevant evidence of the benefit their property has, or has not, received from the project improvements. The Hearing Examiner is charged with considering all of the objections raised at the hearing and correcting and revising the assessment roll as needed to ensure that it reflects the benefits conferred to each property and assesses the costs in a generally proportional manner. Under the TMC, the Hearing Examiner makes a recommendation on the Final Assessment Roll to the City Council, which takes final action on the proposed assessments. *TMC 10.04.065*.
5. In performing these duties, the Hearing Examiner can initially presume that the properties within the L.I.D. are specially benefitted by the improvements and that the recommended assessments are fair. *Indian Trail Trunk Sewer v. City of Spokane*, 35 Wn. App. 840, 841-42, 670 P.2d 675 (1984). These presumptions place the initial burden of going forward on the party challenging the assessment. However, upon presentation of credible evidence contrary to these presumptions, the burden of proof shifts to the City to defend its assessment.\(^\text{10}\) *Hastit LLC v. City of Edgewood*, 179 Wn. App. at 936.

6. The Final Assessment Roll in this matter conforms to applicable legal requirements in large part. However, there is evidence that, in some instances, the methodology used to substantiate the assessments was incomplete or erroneously applied. In other cases, a factual difference specific to a particular property warrants a modified assessment. Accordingly, the Hearing Examiner recommends that the City Council adopt an ordinance assessing the property owners for benefits conferred under L.I.D. No. 8645, as modified by the following adjustments:

\(^{10}\) *Tacoma Municipal Code (TMC) 1.23.070.B*, sets forth a different presumption and burden of proof pertaining to the final assessment roll hearing:

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

*TMC 1.23.070.B.* The Court of Appeals decision in *Hastit LLC v. City of Edgewood*, 179 Wn. App. 917, 320 P.3d 163 (2014) has enunciated a different standard for considering the validity of L.I.D. assessments. While it is possible that the TMC provision is still valid, in light of the Hastit decision, this recommendation will utilize the Court of Appeals’ standard for a City’s initial consideration of assessment roll challenges.

**FINDINGS OF FACT,**

**CONCLUSIONS OF LAW,**

**AND RECOMMENDATION - L.I.D. 8645**

- 31 -
a. Residential Condominiums are recommended for confirmation as assessed.

b. Undeveloped property is recommended for confirmation as assessed.

c. Office/Retail/Commercial property is not recommended for confirmation. Further appraisal analysis is needed to support the 4 percent benefit suggested for this type of property. The evidence at hearing showed that commercial property within the L.I.D. was benefitted by the significant improvements that were constructed by the project; however, the evidence was insufficient to support the specific 4 percent adjustment applied in the Valbridge Study. The City Council may wish to consider requesting further appraisal analysis from the Valbridge firm to more fully document the basis for selecting a 4 percent increase for office/retail/commercial properties within the project area.

d. Interest – An adjustment to the interest incurred during the extended period of time the City took to issue a final assessment is recommended in the amount of $331,500 to bring the interest cost in line with costs incurred in projects with more typical processing times.

e. Administrative Costs – The administrative costs accrued for this project could be adjusted downward to provide some relief to property owners who received much higher assessments than anticipated, however, no reasoned approach for determining the amount of any such adjustment has emerged from the evidence. Therefore, no adjustment is recommended.

f. To the extent costs are assessed to William Riley for the failed ramp constructed by the City on Parcel 146, they should be removed from the assessment because the ramp was not a useable improvement.
g. The Winthrop, LP – The general assessment to The Winthrop, LP is recommended for reduction only as it relates to the general assessment and not as to special work. The general assessment should be reduced to the $124,345 amount showing of record at the time the property was sold in 2015.

h. All other assessments are recommended for confirmation as indicated in the Final Assessment Roll subject to any adjustments for interest and administrative costs that the Council may grant generally.

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

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner enters this:

**RECOMMENDATION**

It is the recommendation of the Hearing Examiner that the Final Assessment Roll for L.I.D. No. 8645 be confirmed and approved after implementation of the modifications and exceptions outlined above.

**DATED** this 26th day of May, 2017.

[Signature]

PHYLLIS K. MACLEOD, Hearing Examiner
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, CONCLUSIONS OF LAW, AND RECOMMENDATION - L.I.D. 8645

- 34 -
# RESIDENTIAL:

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<thead>
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<th>NAME</th>
<th>TAXPAYER:</th>
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<tbody>
<tr>
<td>Jacqueline Wihby</td>
<td>Grandville A &amp; Robbin Brinkman</td>
<td>201 Broadway, Unit A</td>
<td>Exhibit 32</td>
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<td>Tom Krilich</td>
<td>Granville Condominiums</td>
<td>207 Broadway, Units (200-700)</td>
<td>Exhibits 40, 41, &amp; 51</td>
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<td>Patricia (Pat) Wagner</td>
<td>Taxpayer</td>
<td>235 Broadway, Unit 240</td>
<td>Exhibit 50</td>
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<td>Terry Balish</td>
<td>Taxpayer</td>
<td>235 Broadway, Unit 560</td>
<td>Exhibits 35 &amp; 45</td>
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<td>Julie D. Hill</td>
<td>Taxpayer</td>
<td>235 Broadway, Unit 600</td>
<td>Exhibit 36</td>
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<td>Doug Sloane</td>
<td>Taxpayer</td>
<td>505 Broadway, Unit 906</td>
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<td>William Abbott</td>
<td>Taxpayer</td>
<td>505 Broadway, Unit 410</td>
<td>Exhibit 16</td>
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<td>Larry Strege</td>
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<td>Exhibits 20 &amp; 38</td>
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<td>Eric Lawrence &amp; Michelle Spicer</td>
<td>Taxpayer</td>
<td>505 Broadway, Unit 602</td>
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<td>Hugh Moore</td>
<td>Taxpayer</td>
<td>505 Broadway, Unit 409</td>
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<td>525 Broadway, Unit 103</td>
<td>Exhibits 33 &amp; 58</td>
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<td>Roxanne Augé</td>
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<td>525 Broadway, Unit 109</td>
<td>Exhibit 37</td>
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<td>Ann H. Marinkovich</td>
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<td>Madelynn Leifson</td>
<td>Taxpayer</td>
<td>525 Broadway, Unit 102 &amp; 309</td>
<td>Exhibit 31 &amp; 56</td>
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<td>Paul &amp; Kim Patino</td>
<td>Taxpayer</td>
<td>525 Broadway, Unit 401</td>
<td>Exhibits 34 &amp; 55</td>
</tr>
<tr>
<td>Grant Degginger &amp; Ryan Fuson</td>
<td>for: The Winthrop LP</td>
<td>773 Broadway</td>
<td>Exhibits 17 &amp; 52</td>
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<td>David Fisher</td>
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<td>708 Market Street, Unit 415</td>
<td>Exhibit 19</td>
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<td>Blaine Johnson</td>
<td>Taxpayer</td>
<td>714 Market Street, Unit B100 &amp; Unit 201</td>
<td>Exhibit 25</td>
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<tr>
<td>Steven Bellinghausen</td>
<td>Taxpayer</td>
<td>714 Market Street, Unit 301</td>
<td>Exhibit 25</td>
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<td>Richard Beszhak</td>
<td>Taxpayer</td>
<td>714 Market Street, Unit 401</td>
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<td>Nancy Brown</td>
<td>Taxpayer</td>
<td>714 Market Street, Unit 502</td>
<td>Exhibit 25</td>
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<td>Linda Merelle</td>
<td>Taxpayer</td>
<td>744 Market Street, Unit 306</td>
<td>Exhibit 15</td>
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<td>Judy Robinette</td>
<td>Taxpayer</td>
<td>744 Market Street, Unit 403</td>
<td>Exhibit 12</td>
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<tr>
<td>Owens Financial Group</td>
<td>for: Broadway &amp; Commerce, LLC</td>
<td>760 Commerce St.</td>
<td>Exhibits 10</td>
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## OFFICE/RETAIL – COMMERCIAL CONDOMINIUMS:

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<tr>
<th>NAME</th>
<th>TAXPAYER</th>
<th>ADDRESS</th>
<th>EXHIBIT #</th>
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<tbody>
<tr>
<td>Heather L. Burgess</td>
<td>YWCA Pierce County</td>
<td>405 Broadway</td>
<td>Exhibit 11</td>
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<td>Brooks Dental Studio</td>
<td>Brooks @ 732 LLC</td>
<td>732 Broadway, STE 101</td>
<td>Exhibit 30</td>
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<tr>
<td>Brenda Gasper</td>
<td>Brooks Dental Studio, Brooks @ 732 LLC</td>
<td>732 Broadway, STE 101</td>
<td>N/A</td>
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<td>Henry F. George, IV</td>
<td>Metera Inv., LLC</td>
<td>732 Broadway, Unit 302</td>
<td>Exhibit 24</td>
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<td>William Riley</td>
<td>WM Riley &amp; Co.</td>
<td>712-714; 718-720; 722; 736-738; 740-744 Broadway</td>
<td>Exhibits 22 &amp; 59</td>
</tr>
<tr>
<td>Margaret Archer</td>
<td>Representing William Riley</td>
<td>712-714; 718-720; 722; 736-738; 740-744 Broadway</td>
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<td>Rocky Anderson</td>
<td>1300US LLC</td>
<td>728 #A1, #B1, #A2, and #B2 Broadway;</td>
<td>Exhibits 42, 43, &amp; 44</td>
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<td>Blaine Johnson</td>
<td>Roberson on Ledger Square</td>
<td>727 Court E #C; and 729 Court E</td>
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<td>Alex White</td>
<td>Evergreen Investments of WA, LLC</td>
<td>708-710 Market Street</td>
<td>Exhibit 29</td>
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<td>Owens Financial Group</td>
<td>Broadway &amp; Commerce, LLC</td>
<td>744 Market Street, Unit 102 B</td>
<td>Exhibit 13</td>
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<td>Paul H. Grigsby</td>
<td>Norma Rae Grigsby</td>
<td>760 Commerce St</td>
<td>Exhibit 10</td>
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<tr>
<td>Max Mojarab</td>
<td>1300US LLC</td>
<td>754 Broadway</td>
<td>Exhibit 18</td>
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<tr>
<td>Warren D. Foster</td>
<td>Passages Partnership, Inc. &amp; Passages Venture</td>
<td>728 #A1, #B1, #A2, and #B2 Broadway;</td>
<td>Exhibit 21</td>
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<tr>
<td>J. Stanley Miner, Carol Ford, and J. Patrick Nagle</td>
<td>City of Destiny, LLC</td>
<td>727 Court E #C; and 729 Court E</td>
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<tr>
<td>Grant Degginger</td>
<td>The Winthrop LP</td>
<td>708 #1 &amp; #4 Broadway</td>
<td>Exhibits 28 &amp; 53</td>
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<td>&amp; Ryan Fusion</td>
<td>759 Market Street</td>
<td>Exhibit 39</td>
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## UNDEVELOPED PROPERTIES:

<table>
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<th>EXHIBIT #</th>
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<tbody>
<tr>
<td>Dorothy M. Denton</td>
<td>SPI Enterprise, LLC</td>
<td>711-713 Broadway</td>
<td>Exhibit 14</td>
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<td>William Riley</td>
<td>WM Riley &amp; Co.</td>
<td>440 &amp; 454 Broadway</td>
<td>Exhibits 22 &amp; 59</td>
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