



City of Tacoma
Hearing Examiner

June 20, 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 Tacoma Hearing Examiner Capell's Order Granting City's Request for Clarification and Denying City of Tacoma and Grigsby Motions for Reconsideration entered in June 20, 2017.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – Order Granting/Denying Motions

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 June 20, 2017, at Tacoma, WA.

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. Beszhak, 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, Metera 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 Krilich, Granville Condominium Homeowners Association, 207 Broadway, Unit 400, Tacoma, WA 98402-4024
Eric Lawrence & Michelle Spicer, 505 Broadway, Unit 602, Tacoma, WA 98402-3997
Madelynn 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 Mojarab, 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. Stregge, 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 Wihby, 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of:

HEX2017-004

**LOCAL IMPROVEMENT DISTRICT
NO. 8645 (FINAL ASSESSMENT
ROLL).**

**ORDER GRANTING CITY'S
REQUEST FOR CLARIFICATION
AND DENYING CITY OF TACOMA
AND GRIGSBY MOTIONS FOR
RECONSIDERATION**

AFTER THE PUBLIC HEARING in the above-captioned matter regarding the final assessment roll for the Broadway Local Improvement District (L.I.D.) was held on March 29 and 30, 2017, before PHYLLIS K. MACLEOD, the Hearing Examiner for the City of Tacoma at the time of the hearing (hereinafter "Examiner Macleod"), Examiner Macleod issued in writing that certain document titled FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION dated May 26, 2017 (hereinafter the "Recommendation"). Examiner Macleod has since retired.¹

After issuance of the Recommendation, two requests for reconsideration have been received in the Office of the Hearing Examiner. The first was filed as a Memo during normal business hours on June 9, 2017, by the City of Tacoma Public Works Department (hereinafter "PWD") through its L.I.D. Administrator, Ralph Rodriguez (the "PWD Request"). The second was submitted by e-mail at approximately 11:28 pm on June 9, 2017, by Paul Grigsby,

¹ At the close of the hearing on March 30, 2017, in conjunction with agreeing to keep the record open until May 9, 2017, Examiner Macleod made it clear to all in attendance that she was retiring.

**ORDER GRANTING CLARIFICATION
AND DENYING RECONSIDERATION
L.I.D. 8645 (ASSESSMENT ROLL) - 1 -**

ORIGINAL

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768
(253)591-5195 FAX (253)591-2003

1 apparently on behalf of the owner of “753 St. Helens Avenue, Tacoma, Washington” Norma
2 Rae Grigsby (the “Grigsby Request”).

3 **I. APPLICABLE LAWS/RULES ON RECONSIDERATION**

4 Requests for reconsideration of a Hearing Examiner recommendation are directly
5 governed by Tacoma Municipal Code (“TMC”) section 1.23.140.² Under TMC 1.23.140, an
6 aggrieved person or entity with standing may request reconsideration of an L.I.D.
7 recommendation even though such a recommendation is not a final determination. The City
8 Council makes final decisions on L.I.D. assessments pursuant to Revised Code of Washington
9 (“RCW”) 35.44.080-100.

10 Given that both requests were submitted to the Office of the Hearing Examiner on
11 June 9, 2017, and inasmuch as neither TMC 1.23.140 nor the RPH makes mention of any
12 timing requirement beyond reconsideration requests having to be filed within “14 calendar
13 days of the issuance of the Examiner’s...recommendation...,” both requests are technically
14 timely.

15 Similarly, neither TMC 1.23.140 nor the RPH imposes any requirements as to form for
16 reconsideration requests other than to state that, “A motion for reconsideration must be in
17 writing and must set forth the alleged errors of procedure, fact, or law...” (TMC 1.23.140).
18 The Hearing Examiner has chosen to respond to the PWD Request and the Grigsby

19 //

20
21 ² TMC 1.23.140 is titled “Reconsideration of Hearing Examiner decisions and recommendation” [sic]. Requests
22 for reconsideration are also referenced in the Hearing Examiner’s “Rules of Procedure for Hearings” (“RPH”) at
sections 2.20 and 3.10 (both titled “Reconsideration”). RPH 3.10 applies here as hearings on L.I.D. assessments
are “pre-decision” hearings that result only in a recommendation to the City Council.

1 Request for reconsideration together in this Order for purposes of economy and timing.

2 **II. ISSUES ON RECONSIDERATION**

3 Presented in order of filing, the requesting parties' issues on reconsideration appear to
4 be as follows:³

5 **A. City of Tacoma Public Works Department ("PWD") Issues.**

6 **1.** Whether all references in the Recommendation to "structural block" should
7 be changed to "structural walk"?

8 **2.** Whether Conclusion of Law 6.c. of the Recommendation was in error,
9 because, as PWD asserts, the evidence and testimony presented at the hearing
10 was sufficient to support the L.I.D. Section and its appraiser's benefit
11 determination of four percent (4%) for all "Office/Retail/Commercial"
12 properties?

13 **2a.** Whether, at this stage of the proceedings, the Hearing Examiner can
14 consider PWD's newly submitted support⁴ for its contention that its
15 benefit determination of four percent (4%) to "Office/Retail/
16 Commercial" properties is correct?

17 **3.** Whether Conclusion of Law 6.d. of the Recommendation and related Finding
18 of Fact 57 were in error such that Examiner Macleod's recommended reduction
19 in interest charged to property owners should be reversed?

20 **3a.** Whether the Hearing Examiner can consider PWD's newly
21 submitted "clarification of the timeline of the project"⁵ at this stage of
22 the proceedings?

4. Whether Conclusion of Law 6.g. of the Recommendation and related Finding
of Fact 40 were in error such that Examiner Macleod's recommended
assessment reduction for the Winthrop, LP property should be reversed?

5. Whether the Winthrop, LP property should not be granted any reduction in
interest owed if the reduction to its general assessment is not reversed (see
Issue 4 above).

³ The Examiner has added Issues 2a. and 3a. based on the content of both the PWD Request and Grigsby Request as submitted.

⁴ Included as Exhibit A to the PWD Request for reconsideration.

⁵ Included as Exhibit B to the PWD Request for reconsideration.

1 among these obstacles, is the fact that the present Hearing Examiner did not hold this position
2 at the time of the public hearing on March 29 and 30, 2017, and as a result was not in a
3 position to hear the testimony given at the hearing with the same charge, in the same manner,
4 and with the same level of scrutiny as Examiner Macleod.⁸ Examiner Macleod's retirement
5 obviously prevents her from considering and responding to the two filed requests.

6 Second, both requests for reconsideration rely on newly submitted documents that were
7 not before Examiner Macleod and that were not submitted prior to the closing of the record.
8 Reconsideration is generally not an opportunity to establish a position that the moving party
9 failed to establish during the main course of the proceedings.⁹ New evidence is typically only
10 considered on reconsideration if it is not just new, but also "newly discovered." Generally, in
11 most Washington State cases, in order to qualify as "newly discovered," the evidence must
12 meet the test set forth in Civil Rule 59(a)(4)¹⁰ which states in pertinent part as follows:

13 (a) Grounds for New Trial or Reconsideration. On the motion of the party
14 aggrieved, ...reconsideration [may be] granted. Such motion may be
15 granted for any one of the following causes materially affecting the
substantial rights of such parties:

16

17 (4) Newly discovered evidence, material for the party making the
18 application, which the party could not with reasonable diligence have
19 discovered and produced at the trial;

20 ⁸ In the spirit of full disclosure, the present Hearing Examiner did attend the majority of the hearing on both days,
but not in any formal capacity for the Office of the Hearing Examiner.

21 ⁹ Reconsideration is not intended to be a second bite at the apple. 15A Karl B. Tegland & Douglas J. Ende,
Washington Practice: Handbook On Civil Procedure § 65.1 at 520 (2009).

22 ¹⁰ The Examiner recognizes that the requests for reconsideration addressed here are not Superior Court
proceedings, and therefore, the Civil Rules ("CR") do not strictly apply. That said, the CRs are, by analogy, a
good guide to follow for procedural and evidentiary issues, even in these proceedings.

1 It does not appear from the requesters' submissions that any of the newly submitted
2 materials qualify as "newly discovered evidence" as will be addressed further below.

3 **A. City of Tacoma Public Works Department's Request for Reconsideration.**

4 The individual requests for reconsideration, and the issues raised therein, will now be
5 addressed specifically in turn starting with the PWD Request:

6 **Issue 1.** Whether all references in the Recommendation to "structural block"
7 should be changed to "structural walk"?

8 PWD's first issue is a request for correction or clarification rather than reconsideration.
9 This request is easily granted. The references in the Recommendation to "structural block"¹¹
10 were erroneous and should have instead read "structural walk" as PWD contends. PWD is
11 correct in its request that "Changing of the wording does not change the intent of the
12 Examiner's findings." Nevertheless, for the sake of correctness and accuracy, all references to
13 "structural block" in the Recommendation should be considered to read "structural walk"
14 instead.

15 **Issue 2.** Whether Conclusion of Law 6.c. of the Recommendation was in error,
16 because, as PWD asserts, the evidence and testimony presented at the hearing
17 was sufficient to support the L.I.D. Section and its appraiser's benefit
determination of four percent (4%) for all "Office/Retail/Commercial"
properties?

18 **Issue 2a.** Whether, at this stage of the proceedings, the Hearing
19 Examiner can consider PWD's newly submitted support for its
20 contention that its benefit determination of four percent (4%) to
21 "Office/Retail/ Commercial" properties is correct?

22 ¹¹ PWD points out instances of this error at "paragraph 3 at page 3 and paragraph 48 at page 23." *Request for reconsideration*, at p. 1.

1 PWD Issue 2 is essentially a claim that Examiner Macleod erred by not following the L.I.D.
2 Section and its appraiser's benefit determination of four percent (4%) for all
3 "Office/Retail/Commercial" properties in spite of there being sufficient evidence to support
4 such a finding. As such, the issue is not unlike a "sufficiency of evidence" challenge. PWD
5 attempts to bolster its position on the four percent (4%) increase with newly submitted
6 material comprising its Exhibit A to its Request for reconsideration.

7 It should be noted that PWD's four percent (4%) increase approach is not, of itself,
8 prohibited or otherwise *per se* invalid under governing law.¹² Examiner Macleod simply found
9 the evidence at the hearing insufficient to support a blanket four percent (4%) increase for all
10 "Office/Retail/ Commercial" properties after presiding at the hearing and weighing all the
11 testimony and evidence.

12 In most trial, or trial-like proceedings where testimony is given and other evidence is
13 presented, substantial deference is given to the findings that result, "Because the trial court has
14 the opportunity to hear the testimony and observe the witnesses..."¹³ Although the March
15 2017 hearing here was not a trial, that part of the L.I.D. proceeding functions the most like a
16 trial and it is where all testimony is taken and other evidence ruled on and admitted (or
17 rejected).

18 For the present Examiner to second guess Examiner Macleod's findings and
19

20 _____
21 ¹² See RCW 35.44.047, which states in part: "Notwithstanding the methods of assessment provided in RCW
22 35.44.030, 35.44.040 and 35.44.045, the city or town may use any other method or combination of methods to
compute assessments which may be deemed to more fairly reflect the special benefits to the properties being
assessed."

¹³ *In re Welfare of S.J.*, 162 Wn. App. 873, 881, 256 P.3d 470, 474 (2011), see also *Baxter v. Greyhound Corp.*,
65 Wn.2d 421, 437, 397 P.2d 857, 867 (1964).