OFFICE OF THE HEARING EXAMINER
CITY OF TACOMA

In the Matter of: LOCAL IMPROVEMENT DISTRICT NO. 8645 (FINAL ASSESSMENT ROLL).

HEX2017-004 SUPPLEMENTAL RECOMMENDATION AFTER REMAND

PURSUANT TO the Tacoma City Council’s motion passed in open session on August 29, 2017, remanding the above-captioned matter—the finalization of the assessment roll for the Broadway Local Improvement District (the “LID”)—the City of Tacoma’s Hearing Examiner offers the following supplemental information:

I. RELEVANT HISTORY

The LID officially began its journey to this present point on April 18, 2006, when the Tacoma City Council approved it through the adoption of Substitute Ordinance No. 27475. The LID was controversial from the outset, and had only divided support among property owners in the LID area (the “District” when referring to the area subject to the LID).

Once formed, the LID experienced (a) problems getting under contract, (b) difficulties

1 The word “relevant” is used here and at Section III below to indicate that both the history and the controlling authority offered here are not a complete compendium of either one, for this, or any local improvement district, but rather a selection of the background and authority that the Examiner thinks will be helpful to the City Council in catching up, and making its final determination based on the Original Recommendation (see Fn 2 below) and this Supplemental Recommendation. A reread of the Original Recommendation is also highly recommended.

2 For a detailing of what area comprises the District, please see Finding of Fact (“FoF”) 1 in the Hearing Examiner’s “Findings of Fact, Conclusions of Law, and Recommendation (Final Assessment Roll)” dated May 26, 2017 (hereafter referred to separately as the “Original Recommendation” and as “OR” in citation). The Original Recommendation was authored and issued by Phyllis K. Macleod who retired shortly after it was issued.

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with costs and scoping, (c) challenges arising from the City’s cost projections and thereby its assessment projections, which escalated by fifty percent (50%) over those originally projected, as well as (d) challenges related to unexpected physical conditions in the District during construction, among others.\(^3\) Along the way, related to (c) above, the City changed its method of calculating the ultimate LID assessment for the benefitted properties in the District from the zone and termini method (authorized in Revised Code of Washington ["RCW"] section 35.44.030 and .040), to a special benefit and proportionate assessment appraisal methodology (implicitly authorized by RCW 35.44.047,\(^4\) and recognized in controlling case law).

These challenges notwithstanding, construction of the intended improvements was completed in 2011. Final cost allocations and close out of the contract were not achieved until 2013, at which point, the City’s Public Works LID Section then began its “extensive allocation process for the charges connected with the project.”\(^5\)

Thereafter, Hearing Examiner Phyllis K. Macleod conducted a public hearing on March 29 and 30, 2017, regarding finalizing the assessment roll for the LID. Examiner Macleod’s Original Recommendation, issued on May 26, 2017, details what was presented at the hearing by whom, and sets forth her findings, conclusions and recommendations. Issuing the Original Recommendation was Examiner Macleod’s last official act with the City before retiring. Inasmuch as the LID is now returning to the City Council for decision regarding the finalization of the assessment roll, reviewing the Original Recommendation is certainly warranted.

\(^3\) OR at FoF 2–4.
\(^4\) OR at FoF 9.
\(^5\) OR at FoF 4.
After issuance of the Original Recommendation, two requests for reconsideration were filed in the Office of the Hearing Examiner (the “HEX Office”)—one by the City, and another by a property owner in the District.6 These were denied by written order dated June 20, 2017 (the “Reconsideration Order”). Two “appeals” of the Original Recommendation were then filed with the City Clerk pursuant to Tacoma Municipal Code (“TMC”) 1.70 by different property owners—the YWCA of Pierce County (the “YWCA”) and Ann and William Riley (the “Rileys”).7

The Original Recommendation and the two appeals were set to go before the City Council on August 22, 2017, at which time the Council would consider the Original Recommendation for the first time, and also hear the YWCA and the Rileys’ appeals before acting. After hearing the appealing parties’ presentations, and also from Deputy City Attorney Steve Victor in defense of the City staff position, the Council set the matter over until August 29, 2017, for decision. On that date, the Council voted to adopt the Original Recommendation with some exceptions, and to that end approved the following motion and order (the “Remand Order”) remanding parts of the LID process to the Hearing Examiner:

I move to concur in the findings, conclusions and recommendations of the Hearing Examiner, and deny the appeals with the following exceptions:

1. Council rejects the use of a four percent (4%) benefit for Office/Retail/Commercial properties, and remands to the Hearing Examiner to review the record or allow the record be supplemented to determine support for the use of a one percent (1%) benefit to be

6 Part of the City’s request asked for clarification in addition to its reconsideration request. The clarification request was granted, although the reconsideration was denied.
7 The word “appeals” is in quotations because that is how TMC 1.70 characterizes the process engaged by the YWCA and the Rileys. It is not an appeal in the traditional sense because there has been no final decision at this stage to appeal. Rather, a TMC 1.70 “appeal” is an interested party’s opportunity to be heard by the City Council before it acts on a Hearing Examiner recommendation.

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used for all Office/Retail/Commercial properties and allow property owners an opportunity to object to any new assessment roll created.

2. Council remands to the Hearing Examiner the general assessments recommended for all non-profit entities including the YWCA Pierce County and directs the Public Works Department to prepare and submit a new assessment based on a special benefits analysis that takes into consideration the not-for-profit nature of these entities.

3. Council accepts the recommendation of the Hearing Examiner to reduce the interest payment to $331,500 and directs the City to not assess the property owner's additional interest that may accrue while the final assessment role is prepared.  

With these marching orders in hand, the Hearing Examiner issued that certain document titled “Findings and Initial Order on Remand from the City Council” dated August 31, 2017 (the “Initial Order”), giving direction to the City and the appealing parties as to how the remand would proceed, acting under the presumption that the parties would want to resolve matters from the Remand Order quickly.

After some initial misconceptions were dispelled regarding the Initial Order, the City and the appealing parties were left to pursue a mutually agreed upon resolution to their differences over the proposed special benefit assessment, making the Initial Order essentially irrelevant. Nearly one year later, two separate settlement agreements were signed by the appealing parties and the City. The City’s settlement agreement with the YWCA is dated August 14, 2018, and the agreement with the Rileys is dated August 25, 2018 (collectively the “Settlement Agreements”).

8 On August 29, 2017, the Remand Order was given verbally during the course of the City Council’s regularly scheduled meeting. The written, three paragraph form set forth here was obtained by the HEX Office from the City Attorney as the script for Council’s verbal order. The Remand Order was separated verbally into these three distinct parts.

9 A copy of the Initial Order is attached hereto as Attachment I.

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Right around this same time, knowing that the City was on the verge of settling with
the YWCA and the Rileys, the HEX Office sent the following inquiry (in relevant part) to the
LID Section and its legal counsel on August 15, 2018:

I would request, however, given the wording of the City Council remand
regarding “office/retail/commercial properties” generally, that the City let me
know its intention regarding the non-Riley/non-YWCA owned office/retail/
commercial properties in LID 8645 in order to address these properties in the
[Supplemental] Recommendation [ ] for the return trip to the City Council. I…
hav[e] “review[ed] the record” as ordered by the Council, and also [have]
review[ed] applicable laws, but would like to know where the City stands in that
regard. I also need to know if the City is finished with its additional legwork that
would allow it “to prepare and submit a new assessment based on a special
benefits analysis that takes into consideration the not-for-profit nature of these
(non-profit) entities” also as ordered in the Council’s remand…

In response to the above request for information from the City, the HEX Office
received the following on January 23, 2019 from the City’s legal counsel Mr. Victor:

*Consistent with the City Council’s direction* following the appeal hearing before
the Council on August 29, 2017, the City’s administration re-analyzed both the
validity of a general 4% increase for commercial properties, and the particular
facts and circumstances of the properties of the only two owners who appealed
the assessment. [Emphasis added]

Regarding the 4% valuation increase for commercial properties, the City’s
administration re-engaged Valbridge consulting to perform a thorough review and
re-analysis of their Special Benefit Study, including actual valuation increases
within the LID after the date of the study. This thorough re-analysis affirmed the
validity of the general 4% increase for commercial property within the LID area.
Further consistent with the City Council’s order. [sic] The City’s administration
engaged the two appellants, and reviewed and re-analyzed the particular
circumstances of their properties. This work resulted in the City’s entry into
Settlement Agreements with both appellants.

The Public Works Department has revised the proposed assessments to take into
account three factors, the general applicability of the re-validated 4% increase
factor, the City Council’s direction to not charge interest for the period from
March 2015 forward, and the figures contained in the Settlement Agreements.
Please note that the reductions in the assessments of the two appellants, and the
Council-directed interest reduction did not alter the assessments of any properties that did not appeal. Rather the City will fully fund those deficits, and that funding is included in the City's 2019-2020 budget.

The materials are currently under review by the City's bond counsel and upon completion of that review, will be forwarded to your office with the request that the Examiner proceed to develop a final roll based on the revised calculations.

The materials just referenced in the City's communication were submitted to the HEX Office on May 22, 2019, clearing the LID’s return to the City Council for finalization of the assessment roll. They are attached to this Supplemental Recommendation as Attachment 2.

Aside from the YWCA Settlement Agreement, nothing in these supplemental materials addresses “non-profit entities” as requested in paragraph 2 of the Remand Order. That said, it appears to be the City's position that there are no other non-profit entities in the District besides the YWCA to address.10

II. INTERPRETING THE REMAND ORDER

When first issued, paragraph one of the Remand Order caused the Examiner no small amount of cognitive dissonance. The main reason for this is that the Remand Order did not appear to be designed to determine the actual special benefit to the office/retail/commercial properties (hereafter the “ORC Properties”), but rather seems to clearly direct the Examiner to determine support for a lesser amount (a one percent [1%] benefit) than City staff had championed at the hearing (the proposed four percent [4%] benefit).

As regards the City's request that a four percent (4%) special benefit be assessed to the

10 A review of the Taxpayer/owner of record information for property owners in the District appears to bear this out. The word “non-profit” does not appear anywhere in the Original Recommendation.
ORC Properties, Examiner Macleod stated in the Original Recommendation that, “The level of detail and justification using recognized appraisal techniques for quantifying the amount of increase is weak." As a result, Examiner Macleod could not recommend unreservedly the City’s requested 4 percent (4%) special benefit for confirmation on the ORC Properties. Instead, she suggested that “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.” The Remand Order does not follow this suggestion, however, which is fine. As will be discussed further below, the City Council has broad discretion in finalizing an assessment roll; provided that the Council may not assess more than the supportable special benefit to any given property. Instead, the Remand Order stated that:

“Council rejects the use of a four percent (4%) benefit for Office/Retail/Commercial properties, and remands to the Hearing Examiner to review the record or allow the record be supplemented to determine support for the use of a one percent (1%) benefit to be used for all Office/Retail/Commercial properties and allow property owners an opportunity to object to any new assessment roll created.”

Nowhere in the foregoing is there direction to shore up the four percent (4%) recommendation from City staff. Examiner Macleod paved the way for the City Council to do just that in the language of Conclusion of Law 6.a of the Original Recommendation, but Council did not do so. Again, that is fine. Instead, Council expressly “[r]ejected the use of a four percent (4%) benefit for the [ORC] properties.”

11 OR at FoF 35.
12 OR at Conclusion of Law ("CoL") 6.a.

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After so rejecting the four percent (4%) benefit, Council directed the “the Hearing Examiner to review the record or allow the record be supplemented to determine support for the use of a one percent (1%) benefit to be used for all Office/Retail/Commercial properties…” In the roughly two years that have intervened since the Council issued the Remand Order, the Examiner has done as ordered and has reviewed the record extensively.\textsuperscript{13}

In addition to the Examiner’s review, the City has now supplemented the record, of its own accord, with its 85-pages-in-length submission of May 22, 2019 (the “City Supplement”). The City Supplement consists of the following:

(a) A two page cover letter from the City’s legal counsel to the Examiner (the “City Cover Letter”),

(b) A four page letter from Valbridge to City LID staff primarily defending the original conclusions of the Valbridge Study, but adding at least some additional information in support of a four percent (4%) special benefit to the ORC Properties,

(c) Four pages of before and after photos of two selected ORC Properties,

(d) One page of area maps taken from the original Valbridge Study,

(e) A one page reproduction of page 9 from the Valbridge Study,

(f) Six pages of supporting figures for the two ORC Properties Valbridge used to shore up its case for a four percent (4%) benefit,\textsuperscript{14}

(g) Copies of the City’s Settlement Agreements with the Rileys and the YWCA, and

(h) Lastly, the City includes 59 pages of its proposed “Assessment Roll LID 8645,” which is explained to be “[r]evised LID calculations by the Public

\textsuperscript{13} It should be pointed out here that, although the undersigned Hearing Examiner was not the City’s Hearing Examiner when the March 29 and 30, 2017 hearing was held, he was in attendance for the hearing. He does, of course, have access to the entirety of the record.

\textsuperscript{14} Items (b) through (f) in the City Supplement are characterized by the City as “[a] thorough review and reanalysis of their (Valbridge’s) Special Benefit Study, including actual valuation increases within the LID after the date of the study” (collectively the “Valbridge Reanalysis”).
Works Department taking into account three factors: the general applicability of the re-validated 4% increase factor, the City Council's direction to not charge interest for the period from March 2015 forward, and the figures contained in the Settlement Agreements" (the "Revised Proposed Roll").

It is clear from the City’s correspondence with the HEX Office, from the City Cover Letter, and from the Valbridge Reanalysis that either the City had a very different interpretation of the Remand Order than the Examiner, or somehow otherwise chose not to follow it.\(^{15}\) As already stated above, nowhere in the Remand Order does it say to review and supplement the record in order to better justify the City’s proposed four percent (4%) benefit. It also does not direct the Examiner or City staff to see if there is support for a less than a four percent (4%) benefit for the Rileys and the YWCA, but not for the other ORC Properties. The Remand Order appears to require that all the ORC Properties be treated equally during the remand reexamination when it says, "[r]eview the record or allow the record be supplemented to determine support for the use of a one percent (1%) benefit to be used for all [ORC] properties..." [Emphasis added]. The City appears to have considered anything less than four percent (4%) only for the Rileys and the YWCA.\(^{16}\)

Ultimately, what City staff did in the last two years,\(^{17}\) as represented in the City Supplement, follows Examiner Macleod’s suggestion in the Original Recommendation to obtain "[f]urther appraisal analysis from the Valbridge firm to more fully document the basis...

\(^{15}\) It is also possible that the City Council’s stated language at its August 29, 2017 meeting did not accurately convey what the Council intended and City staff had directions from Council different than what presents in the language of the Remand Order, but the Examiner cannot rely on that being the case.

\(^{16}\) See the City Cover Letter at pg. 2 which states “Please note that the reductions in the assessments of the two appellants, and the interest reduction, did not alter the assessments of any properties that did not appeal.”

\(^{17}\) Other than reach successful settlement agreements with the Rileys and the YWCA.
for selecting a 4 percent increase for [the ORC Properties] within the project area,\textsuperscript{18} but does
not appear to actually be “Consistent with the City Council’s direction following the appeal
hearing…” as billed,\textsuperscript{19} at least insofar as that direction is represented in the plain language of
the Remand Order.

The fact that the City reached settled agreements with both the Rileys and the YWCA
is commendable, and the Examiner has no intention of recommending that the City do
anything other than what was agreed on in relation to the Riley and YWCA special benefit
assessments. That said, why City staff only looked at revising the assessments for the
appealing parties and not all ORC Properties is unclear given the language of the Remand
Order, specifically the directive to “[r]eview the record or allow the record be supplemented to
determine support for the use of a one percent (1%) benefit to be used \textit{for all} [ORC
Properties]…” [Emphasis again added].

The above recounted differences in interpretation notwithstanding, given the passage
of nearly two years of additional time since the Remand Order, the Examiner would suggest
that it is now time for the City Council to make a final determination on the assessment roll
for the LID regardless, and has tailored this Supplemental Recommendation accordingly.

\section*{III. RELEVANT CONTROLLING AUTHORITY}

\textbf{Statutes}

RCW 35.44.070, titled “Assessment roll—Filing—Hearing, date, by whom held”

requires the local “legislative authority” (the City Council) either to “hold a hearing on the

\textsuperscript{18} \textit{OR at Conclusion of Law (“CoL”) 6.a. This is abundantly clear in pg. 1 of the Valbridge Reanalysis that quotes
directly from the OR CoL 6.a.}

\textsuperscript{19} \textit{The City Cover Letter at pg. 1.}
assessment roll and consider all objections filed” itself, or to “direct that the hearing shall be
held before a committee” of the City Council or a “designated hearing officer.”20 In Tacoma,
the City Council has appointed the Hearing Examiner to be its designated hearing officer,

RCW 35.44.070 further states that the “[o]fficer designated shall hold a hearing on the
assessment roll and consider all objections filed following which the committee or officer
shall make recommendations to such legislative authority which shall either adopt or reject the
recommendations of the committee or officer,” all of which Examiner Macleod did. While this
sentence of the statute may seem somewhat inflexible in its wording, i.e., that the Council
must either accept or reject the recommendations entirely, such is not the case when read in
conjunction with other section of the LID statutes discussed below.

RCW 35.44.070 continues by stating that “If a hearing is held before such a committee
or officer it shall not be necessary to hold a hearing on the assessment roll before such
legislative authority.” This provision notwithstanding, property owners within the District can
still appeal their recommended assessment both under the last sentences of RCW 35.44.070,
and under the TMC 1.70 “appeal” process after the required hearing is concluded, but prior to
finalization of the assessment roll by the Council.

RCW 35.44.100, titled “Assessment roll—Hearing—Objections—Authority of
council,” gives the Tacoma City Council authority in local improvement district proceedings
as follows:

At the time fixed for hearing objections to the confirmation of the assessment roll,
and at the times to which the hearing may be adjourned, the council may correct,
**revise, raise, lower, change, or modify** the roll or any part thereof, or set aside the roll and order the assessment to be made de novo and at the conclusion thereof confirm the roll by ordinance. [Emphasis added].

The “broad discretion” the City Council has in finalizing an assessment roll referenced above in section II of this Supplemental Recommendation comes primarily from this provision of the LID statute, but is referenced also in controlling case law.\(^{21}\) The specific language of subsection 100 gives the Council far more flexible options in what it ultimately does with the recommendations of the Hearing Examiner than just accepting or rejecting the recommendation in its entirety, and the City Council already exercised this flexibility back on August 29, 2017, when it accepted Examiner Macleod’s recommendation in large part, but rejected her recommendation to obtain “[f]urther appraisal analysis from the Valbridge firm to more fully document the basis for selecting a 4 percent (4%) increase for [the ORC] [P]roperties,” and instead directed “[t]he Hearing Examiner to review the record or allow the record be supplemented to determine support for the use of a one percent (1%) benefit to be used for all [ORC] [P]roperties…” Of course, this flexibility can still be exercised in making final decisions on the LID assessment roll after considering the information in this Supplemental Recommendation.

RCW 35.44.110, titled “Assessment roll—Objections—Timeliness,” states in its entirety that “All objections to the confirmation of the assessment roll shall state clearly the grounds of objections. Objections not made within the time and in the manner prescribed in this chapter shall be conclusively presumed to have been waived.” As already mentioned, in the pre-remand process, of the several objecting parties at the hearing, and on reconsideration,\(^{21}\) See e.g., Hasit, 179 Wn. App. at 934.

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only two—the Rileys and the YWCA—filed objections under TMC 1.70 on the way to the
City Council’s first consideration of the LID proposed assessments. It appears from the City’s
correspondence with the HEX Office and the City Supplement that the City considers any
objections beyond the Rileys and the YWCA to have been waived.

RCW 35.44.120, titled “Assessment roll—Amendment—Procedure,” states in its
entirety as follows:

If an assessment roll is amended so as to raise any assessment appearing thereon
or to include omitted property, a new time and place for hearing shall be fixed and
a new notice of hearing on the roll given as in the case of an original hearing:
PROVIDED, That as to any property originally entered upon the roll the
assessment upon which has not been raised, no objections to confirmation of the
assessment roll shall be considered by the council or by any court on appeal
unless the objections were made in writing at or prior to the date fixed for the
original hearing upon the assessment roll.

The provisions of this section of the LID statute are germane to the remand process for
several reasons. First, there is a possibility that the proposed assessment roll may be amended
during the remand process. Secondly, under this section, a new hearing to address any
amendment is only necessary if the amendment raises the assessment or adds property to the
district. Finally, any objections to the amended amount\(^2\) are only considered if “the
objections were made in writing at or prior to the date fixed for the original hearing upon the
assessment roll.”

In this matter, although amending the assessment roll is likely, the amendment will
not be to “raise any assessment” on the proposed roll and no properties are being added that

\(^2\) Again this presumes an increase after amendment. It is hard to imagine an objection being lodged to a decrease
in one’s assessment.

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were previously omitted. In addition, the only property owners whose “objections were made in writing at or prior to the date fixed for the original hearing upon the assessment roll” have now settled with the City. As a result, no new hearing is required by the statute.

**Case Law**

“Local governments may impose special assessments on property owners within a local LID to pay for particular improvements that specially benefit those properties.”

“Special benefit is the increase in fair market value attributable to the local improvements.”

[Internal quotations omitted] “To be subject to an LID assessment, a property must realize a benefit that is ‘actual, physical and material[,] … not merely speculative or conjectural.’” An assessment may not substantially exceed a property’s special benefit. In these just mentioned rules from controlling case law lies the present challenge for the Examiner, in making a revised, supplemental recommendation, as the City Council’s hearing officer, and ultimately for the City Council, in finalizing the assessment roll for the LID. In other words, the issue at hand is: what is the actual special benefit that can be assessed to the benefitted property owners in the District?

**IV. THE CASE FOR ONE PERCENT (1%)**

Over the last almost two years, while waiting on the Settlement Agreements and the City Supplement, in accordance with the actual wording of the Remand Order, the present Hearing Examiner has considered the case for “support for the use of a one percent (1%)”

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25 *Id.*, citing Hastit, 179 Wn. App. at 933.

26 *Id.*
benefit to be used for all [ORC Properties].”27 It should be noted that Examiner Macleod was not wrong in the Original Recommendation when she stated “[t]he proposed increase of 1 percent suggested by Mr. Riley... is wholly without support in the record,”28 when viewed from the standpoint of trying to determine the actual special benefit to the ORC Properties. Examiner Macleod’s finding was based on the determination that there is no empirical data to show that one percent (1%) is the actual increase in value to the ORC Properties. There is ample support for a one percent (1%) special benefit/assessment to be found essentially as a subset, or lesser included amount of the Valbridge Study and City staff’s proposed four percent (4%) benefit/assessment, however. Where the support for four percent (4%) may have been weak, as Examiner Macleod deemed it, that weak support for the higher figure easily can be used to support a lower figure. The support for four percent (4%), whether weak or not, can be used to justify a one percent (1%) benefit as a discounted assessment in acknowledgment of the less than completely endorsed and iron clad four percent (4%) benefit/assessment.

A local legislative body’s ability under RCW 35.44.100 to lower the roll or any part thereof likely is granted to address situations such as the one presented to the City Council in the summer of 2017, i.e., the City advocating for a benefit/assessment not quite supported enough for the hearing officer and the Council’s complete comfort.29 All parties involved to this point have acknowledged that the after condition of the ORC Properties is better than before the LID improvements were made. Even the Rileys’

27 Remand Order at paragraph 1.
28 OR at FoF 35. The Rileys’ legal counsel first suggested a benefit for the ORC Properties of 1 percent in Ex. 59 of the Hearing Record.
29 That said, under the authority of RCW 35.44.100, the City Council could have simply approved a one percent (1%) assessment for the ORC Properties on the night of August 29, 2017 and been done with it. They did not.
reviewer clearly acknowledged that “[t]here is a benefit from the Broadway LID Project.”

Controlling case law supports the idea that where LID improvements have been made they are presumed to result in some special benefit to the associated property. The Valbridge Reassessment concludes by asserting that “[a]ny fair minded appraiser considering the LID properties without the improvements versus with the improvements would conclude each property is without a doubt qualitatively superior.” The before and after pictures in the Valbridge Reassessment show this to be the case.

Given Council’s authority to “correct, revise, raise, lower, change, or modify the roll or any part thereof,” under RCW 35.44.100, Council can already lower the proposed four percent (4%) benefit/assessment to one percent (1%) if it chooses to do so based on the existing record. Examiner Macleod’s suggestion that “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 the [ORC Properties] within the project area” was made in order to attempt to arrive at a firmer determination of the actual special benefit, or at least for a better foundation for assessing the City’s proposed four percent (4%).

Nothing in applicable laws requires that the entire cost of a local improvement district be assessed upon the property owners in the district.” If Council’s intention in the Remand Order was essentially to “cap” the assessment on the ORC Properties (after rejecting the four

necessarily need to remand the assessment roll to find support for one percent (1%) when that support could already be found in the less-than-iron-clad case for a four percent (4%) benefit/assessment.

30 Ex. 59 at pg. 18 of the Hearing Record.
31 Hasit, 179 Wn. App. at 935; Hamilton Corner I, LLC, 200 Wn. App. at 268.
32 Valbridge Letter at pg. 4.
33 Original Recommendation at pg. 32, Conclusion of Law 6.c.

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percent [4\%] benefit proposed) at one percent (1\%) with appropriate support, that intention can be easily met. There is support in the record for assessing at least one percent (1\%) as the special benefit to the ORC Properties. The City Council has no obligation to assess more, although there will almost certainly be budgetary impacts from assessing a lesser amount.

Further “support for the use of a one percent (1\%) benefit to be used for all [ORC Properties]”\textsuperscript{35} comes from the Settlement Agreements, which both landed on a net special benefit of around one to two percent (1\%–2\%).\textsuperscript{36}

If the Remand Order really did evidence the City Council’s intent to “[u]se...a one percent (1\%) benefit...for all [ORC Properties],” it may do so with support from the record, simply discounting the City’s proposed 4 percent (4\%) benefit/assessment. No reason is needed to make such a discount, given the statutory authority of RCW 35.44.10, but if the City Council needs a reason, the reason could be found in the questions that still at least partly remain around the four percent (4\%) proposed benefit/assessment (discussed below in section V). Given the foregoing, the Hearing Examiner has no problem recommending assessing a one percent (1\%) special benefit as being supported by both the facts and applicable law.

V. THE CASE FOR FOUR PERCENT (4\%)

As already mentioned above, the City Supplement/Valbridge Reassessment does not address the appropriateness of a one percent (1\%) benefit/assessment. Instead, it reassesses and reasserts the case for a four percent (4\%) benefit/assessment for all ORC Properties not

\textsuperscript{35} Remand Order at paragraph 1.
\textsuperscript{36} See the City Supplement at pg. 3 of the Riley Agreement and pgs. 2 through 3 of the YWCA Settlement, as well as the email correspondence included as Attachment 3.

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owned by the Rileys or the YWCA. The City characterizes the Valbridge Reassessment as “a thorough review and reanalysis of the[ ] [Valbridge] Study, including actual valuation increases within the LID after the date of the study.” Given the possibility that the City Council may still want to assess the validity of a four percent (4%) benefit/assessment, that option is also considered here briefly.

“[A]ppraising property is more of an art than a science . . . . It necessarily deals in imponderables and may involve wide disputes in expert opinion or judgment.” The Valbridge Reassessment concedes this in saying “Appraising is not physics, and the appraisal process necessarily requires the appraiser to make reasonable judgments in any valuation.”

The Valbridge Reassessment also acknowledges that “[a]ppraisers can have differences of opinion on the exact extent of any quantitative adjustment applied in the appraisal process…”

From the outset in 2017, part of the difficulty in processing the proposed four percent (4%) benefit/assessment no doubt came from the City’s appraiser having used what is considered to be the most complex and esoteric appraisal method in its before and after valuation of the ORC Properties, specifically the “income approach.” Grasping the intricacies of the income approach is far more difficult, and therefore more susceptible to...
challenge, than using a less complex and more common method such as the sales comparison
approach to valuation, for example. Nonetheless, the income approach is a recognized
appraisal technique.

The Valbridge Reassessment essentially reviews the Valbridge Study to conclude that
its four percent (4%) benefit/assessment was and remains correct. Along the way, Valbridge
provided a more in-depth look at two specific parcels from among the ORC Properties—
Parcel 183 (auto body shop at 620 Broadway) and Parcel 246 (NW Dental at 725 St.
Helens)—to add support for its reaffirmed conclusion.

In any appraisal, many factors and variables have to be accounted for mostly through
assumptions and the “quantitative adjustment[s]” referenced above. Valbridge is not wrong
that appraisers, hired by different parties with different interests, will very often disagree on
approaches, assumptions, adjustments and conclusions. Unfortunately, this is the nature of the
valuation business. The complexity of Valbridge’s chosen approach could be said to have
made its conclusions that much more susceptible to challenge.

Nonetheless, the only parties that challenged the Valbridge Study with their own expert
appraisal review, the Rileys, have now settled with the City (perhaps still pending City
Council approval), as has the other challenging party, the YWCA.

to value real estate. Compared to the other two techniques (the sales comparison approach and the cost approach),
the income approach is more complicated and therefore it is often confusing for many commercial real estate
professionals.” It should be noted that Valbridge used other tools in confirming its income approach valuation
conclusions such as its walkability study, and what it refers to as “Paired sales and a land residual analysis
showing superior underlying land values due to project LID improvements.” Valbridge Reassessment pg. 2.
42 “The Sales Comparison Approach compares recently-sold local similar properties to the subject property” to

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Except as qualified below, the Examiner finds nothing fundamentally wrong or arbitrary and capricious in the valuation resulting from the Valbridge Study and the Valbridge Reassessment. It is eminently possible to disagree on causal factors and conclusions, as the Rileys did at the hearing and before the City Council on their TMC 1.70 “appeal,” but again, that is true in nearly any valuation of consequence.\(^{43}\) To the extent that the City Council’s rejection of “the use of a four percent (4%) benefit for [the ORC Properties]” is being reconsidered, the City Council could consider a four percent (4%) benefit/assessment as valid, and not necessarily as “weak” anymore based on the reassessment and additional information and evaluation submitted by the City in the Valbridge Reassessment, with two qualifications.

First, after reading the Settlement Agreements multiple times, it appears that, as directed in the Remand Order, the City did “[d]etermine support for the use of a one percent (1%) benefit [or at least a heavily discounted benefit]\(^ {44}\) to be used for [the Riley and YWCA] [ORC Properties]…” The Remand Order directed that this analysis and determination be made for all ORC properties. The City did not do as the Remand Order directed. That failure, however, is harmless in the long run given that the City Council can determine and assess a one percent (1%) benefit on the ORC Properties in any event based on the support present for the higher four percent (4%) benefit/assessment, as discussed above.

Again after reading the Settlement Agreements multiple times, it is not entirely clear what the City’s basis is for reducing the assessment on the Riley and YWCA properties, while

\(^{43}\) This type of disagreement is virtually routine in LID proceedings and even more common in eminent domain actions where parties’ valuations will be vastly different.

\(^{44}\) The discount for the Rileys appears to be $198,522 ($560,607 before, and now $362,085 proposed in the Settlement Agreement). The YWCA discount appears to be $203,814 ($427,137 before, and now $223,323 proposed in the Settlement Agreement).
still advocating a four percent (4%) benefit/assessment on the rest of the ORC Properties. Both property owners were given significant reductions. Perhaps the City can address its rationale in more detail before the City Council when the LID is next placed on the Council’s agenda on the way to finalization.

Second, the Examiner must note that, although the Valbridge Study, as augmented by the Valbridge Reassessment, gives the City a firmer basis upon which to levy a four percent (4%) assessment on the remaining ORC Properties, doing so is not without some risk of challenge. The City Council’s final assessment roll, once approved by ordinance per RCW 35.44.100, is susceptible to being appealed under RCW 35.44.200. Regardless of whether the City may have good statutory, procedural and substantive arguments against any appeals (which it may), LID litigation in the courts has not been entirely uncommon in recent times, and there is no guarantee against appeal here.

VI. CONCLUSIONS AND RECOMMENDATIONS

IN FURTHERANCE OF the Tacoma City Council’s Remand Motion passed in open session on August 29, 2017, regarding the final assessment roll for the Broadway Local Improvement District (again, the “LID”), and BASED ON THE FOREGOING AUTHORITY AND ANALYSIS, the City of Tacoma’s Hearing Examiner sets forth the following Supplemental Conclusions and Recommendations:

45 Clearer “rationale” is provided in the YWCA agreement (at recital C. and in its “Rationale” column), than the Riley agreement, but even so was not entirely clear to the Examiner from his third party perspective. That said, the Examiner was not part of the negotiation of the Settlement Agreements (and rightly so), and therefore only has the text of the Settlement Agreements to go on.

46 See e.g., Doolittle v. Everett, 114 Wn.2d 88, 786 P.2d 253 (1990) (court reversed LID assessment on four commonly owned parcels valued together even though use was only consistent among three of the parcels and not the fourth); and Hasit, LLC v. City of Edgewood, 179 Wn. App. 917, 320 P.3d 163 (2014) (court reversed SUPPLEMENTAL RECOMMENDATION A24ER REMAND; L.I.D. 8645 (ASSESSMENT ROLL) - 21 -
Conclusions:

1. The Valbridge Reassessment, together with the original Valbridge Study provide ample support for a one percent (1%) assessment being levied on all ORC Properties. The support for a one percent (1%) special benefit/assessment comes from the City's continued and bolstered argument for a four percent (4%) benefit/assessment given the City Council's ability to lower assessments under RCW 35.44.100. Support for four percent (4%) logically can also support the lower benefit/assessment.

2. In the event that the City Council has reconsidered its prior rejection of a four percent (4%) special benefit/assessment for the ORC Properties, and now is seeking support for a higher special benefit/assessment for the ORC Properties, the Council has additional clarification and support for assessing up to the City's proposed (4%) special benefit/assessment on the ORC Properties. The City Council could also land on a special benefit/assessment for the ORC Properties somewhere less than four percent (4%) as well and still be within the Council's authority.

3. Although the assessment roll that ends up being finalized will likely be different (i.e., amended) from the roll presented in 2017, under RCW 35.44.120, because no assessments are proposed to be raised over the previous 2017 proposal, and no property is being added to the proposed roll that was previously omitted, there is no need for a new hearing to be held on the proposed assessment roll.

LID assessment roll primarily for notice defects and for including costs for future upsizing in present assessments).

47 Excluding the YWCA and Riley properties.

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4. Although the Remand Order specified that the ORC Property owners should be “allowed...an opportunity to object to any new assessment roll created,” this does not have to be done in a new hearing given that there is no proposal to raise their assessment over what was originally proposed and no new properties are being added that were previously omitted per RCW 35.44.120. The opportunity to object can come through the TMC 1.70 “appeal” process.

5. The Settlement Agreements appear to be reasonable in their resolution of the Rileys’ and the YWCA’s objections to their originally proposed assessments of four percent (4%) and are generally in keeping with the Remand Order’s directive “[t]o determine support for the use of a one percent (1%) benefit…”

Recommendations:

1. Given the plain language of the Remand Order and the authority for doing so set forth in section IV above, the Hearing Examiner has no problem recommending the assessment of a one percent (1%) special benefit/assessment for the ORC Properties as being supported under the record. If the City Council chooses this approach, the Public Works LID Section will have to prepare a new proposed roll reflecting a one percent (1%) special benefit/assessment for the ORC Property owners other than the Rileys and the YWCA.

2. Should the City Council be reconsidering its prior rejection of a four percent (4%) special benefit/assessment for the ORC Properties, there is now better support for assessing a four percent (4%) special benefit/assessment for the ORC Properties and the Hearing Examiner can recommend such an assessment, but with the qualification that
assessing four percent (4%) against the non-appealing property owners against the backdrop of the discounts given to the YWCA and the Rileys appears to create an inequity that may or may not be fully supported by any material differences in the actual properties. Such a disparity in assessment would also appear to not be in keeping with the language of the Remand Order that seemed to dictate treating all ORC Property owners the same.

3. As to the Riley and YWCA properties, the Hearing Examiner has no problem recommending approval of the Settlement Agreements.

4. The Hearing Examiner recommends that no new hearing before the Examiner be held because one is not necessary under controlling law. After mailing notice of (and links to) this Supplemental Recommendation to all property owners in the District, they will have the opportunity to object through the TMC 1.70 “appeal” process

DATED this 15th day of July, 2019.

JEFF H. CAPELL, 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.

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