ATTACHMENT 1
Supplemental Recommendation
After Remand; L.I.D. 8645
(Assessment Roll)

OFFICE OF THE HEARING EXAMINER
CITY OF TACOMA

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

HEX2017-004
FINDINGS AND INITIAL ORDER
ON REMAND FROM THE CITY
COUNCIL

IN FURTHERANCE OF the Tacoma City Council’s motion passed in open session
on August 29, 2017, regarding the above-captioned matter—the final assessment roll for the
Broadway Local Improvement District (the “LID”)—the City of Tacoma’s Hearing Examiner
makes the following Findings:

1. At its regularly convened meeting on August 29, 2017, the following motion was
made, seconded and passed by the City Council in regard to the Hearing Examiner’s “Findings
of Fact, Conclusions of Law, and Recommendation,” dated May 26, 2017, as amended by that
certain “Order Granting City’s Request for Clarification and Denying City of Tacoma and
Grigsby Motions for Reconsideration,” dated June 20, 2017 (collectively the “Original
Recommendation”):

The City Council “concur[red] in the findings, conclusions and recommendations
of the Hearing Examiner, and den[ied] the appeals [of William and Ann Riley and
the YWCA Pierce County] with the following exceptions:

A. 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 [to] be supplemented to determine
support for the use of a one percent (1%) benefit to be used for all

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

B. 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.

C. 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 [sic] additional interest that may accrue while the final assessment role is prepared.

2. In conformance with the authority set forth at Conclusion 2 below, the City Council is intending to “correct, revise, raise, lower, change, or modify the [proposed] roll or any part thereof” based on additional analysis and information, in the case of A. and B, above, and cap the interest being assessed on the benefitted property owners under C.

BASED ON THE FOREGOING, the Hearing Examiner sets forth the following

Conclusions:

1. The Hearing Examiner is the City Council’s designated officer, under Revised Code of Washington (“RCW”) Section 35.44.070, for conducting local improvement district hearings and making recommendations to the City Council.

2. RCW 35.44.100 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.

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3. As stated above, under RCW 35.44.100, the City Council has authority to “correct, revise, raise, lower, change, or modify the roll or any part thereof, and the City Council is endeavoring to correct the assessment roll as much as possible before finalization based on additional review, analysis and information. The City Council is within its authority to remand for additional review, analysis and information.

4. The City Council is within its authority to cap the interest assessed on the benefitted property owners in accordance with section C of the recounted motion at Finding 1 above. Nothing in applicable laws requires that the entire cost of a local improvement district be assessed upon the property owners in the district. In fact, regardless of the cost of the improvements, a municipality is limited to charging the property owner only the amount that the property was specially benefitted.

5. The present Examiner agrees with Examiner Macleod’s determination in the Original Recommendation that “the proposed increase of 1 percent suggested by Mr. Riley (and not by his Review Appraiser) is wholly without support in the record,” as the record presently exists, even after a separate review of Mr. Riley’s submissions included as Exhibit 59. As a result, the present Examiner cannot recommend reducing the assessment for Office/Retail/Commercial properties to one percent (1%) in the absence of additional support.

6. Mr. Riley’s arguments against a four percent (4%) special benefit (and assessment) are based on the various, alleged errors of the Valbridge Study as set forth in the Montro

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1 RCW 35.44.100.
4 At page 17, Finding of Fact 35.
5 Capitalized defined terms are used uniformly with the Original Recommendation.

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Review. His legal counsel then appears to contend that these alleged errors should lead one to conclude that there is no special benefit to the Office/Retail/Commercial properties whatsoever, offering the one percent (1%) assessment alternative ostensibly as a kind of compromise. The one percent (1%) alternative is even more lacking in empirical support that the four percent (4%) proposed by the Valbridge Study. This, coupled with Examiner Macleod’s determination that “The level of detail and justification using recognized appraisal techniques for quantifying the [4%] amount of increase is weak,” is most likely the reason behind 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 office/retail/commercial properties within the project area.” The City Council has now done as Examiner Macleod suggested by passing its motion to “remand 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…”

7. Given that it would be inappropriate for a party involved in LID valuation to pick a target number, and then attempt to cobble-up support for the desired valuation destination, the Hearing Examiner interprets the City Council’s remand motion to allow both the Rileys and the City, through its LID Section of the Public Works Department, the opportunity to supplement the record with additional support for their respective positions regarding the

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6 See Exhibit 59 at page 2 ("The Valbridge study [sic] provides no data or analysis to support the selected 4%."). This does not square with the Montro Review, which states at page 18 of 20 “In my opinion there is a benefit from the Broadway LID Project,” but then concludes that the Valbridge Study does not "provide adequate data" to supports its findings, and offers no alternative valuation supported by evidence.

7 Original Recommendation at page 32, Conclusion of Law 6.c.
special benefit to the Office/Retail/Commercial properties. To the extent that other owners of Office/Retail/Commercial properties within the LID desire to submit their own supplemental information, City Council’s motion seems to allow for that and the Examiner will take all submissions from owners in the LID with standing into account in ultimately issuing an amended recommendation.

8. In contrast to the Office/Retail/Commercial properties, the second paragraph of the City Council’s motion did not reopen the record for general supplementation regarding properties in the LID owned by non-profit entities. Instead, City Council directed “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.” As a result, no general supplementation of the record will be permitted regarding properties in the LID owned by non-profit entities, but any reassessment of these properties by the Public Works Department will be evaluated and made part of an amended recommendation to the City Council.

NOW THEREFORE, it is hereby Ordered:

1. The City and the owners of Office/Retail/Commercial properties within the LID shall submit, by close of business on September 11, 2017, their desired deadline by which they will submit any and all additional support to the record for their positions regarding the special benefit to their properties within the LID. To the extent that the City and the property owners

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8 This would allow the information the City previously submitted with its request for Reconsideration to now be considered.
9 This presumes that any reassessment and adjustment to these properties, to the extent such is supported by applicable LID law, and using recognized appraisal methodologies, would be downward, and therefore unobjectionable to the property owners.

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can agree on, and stipulate to a submission deadline, that would be ideal, keeping in mind that
this is a time sensitive matter to all involved. If a stipulated deadline cannot be reached, the
Hearing Examiner will take the submissions and issue an order supplemental hereto setting a
submission deadline for all parties based on the parties’ requested deadlines.

2. After this Office sets the deadline for submission of supplemental materials, and
submissions are received, the Hearing Examiner will review the supplemental materials and
issue an amended recommendation to the City Council regarding the special benefit to the
Office/Retail/Commercial properties within the LID. Unless the parties can show good cause
for the necessity of additional oral testimony, the amended recommendation will be based on
the supplemented written record alone.

3. The Public Works Department, LID Section shall submit its “new assessment based
on a special benefits analysis that takes into consideration the not-for-profit nature” of the
properties in the LID that are owned by non-profit entities at the same time as the
supplemental materials addressing the special benefit to the Office/Retail/Commercial
properties, unless good cause is shown justifying a different submission deadline.

4. In conformance with the City Council’s motion, the Public Works Department, LID
Section shall charge no further interest to the LID property owners in excess of $331,500.

DATED this 31st day of August, 2017.

JEFF H. CAPELL, Hearing Examiner