



City of Tacoma
Hearing Examiner

October 8, 2019

See Transmittal List

**Re: Proposed Local Improvement District 7731
Hearing Examiner File No. HEX2019-016**

To All:

In regard to the above referenced matter, please find enclosed a copy of the Hearing Examiner's Revised Recommendation on Request for Reconsideration entered on October 8, 2019.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) –Revised Recommendation

Transmittal List

Ralph Rodriguez, LID Administrator, Department of Public Works, City of Tacoma
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Richard and Maureen Levandowski, 4705 N Gove Street, Tacoma, WA 98407-5126
Frederick W Holt, 4716 N Waterview Street, Tacoma, WA 98407-5117
CN Zamjahn, 666 W Olympic Place, Unit 101, Seattle, WA 98119-3671
Zorawar and Dilpreet Singh, 4668 N Waterview Street, Tacoma, WA 98407-5115
Raymond W. and Mary F. Ellener Living Trust, 4664 N Waterview Street,
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Carmelita T. Lozner and D J Rossetto, 4658 N Waterview Street, Tacoma, WA 98407-5115
Jo Anne and John F. Borden, 5005 Main Street, Apt 808, Tacoma, WA 98407-3166
Waterview Point LLC, 17719 Erickson Road SW, Longbranch, WA 98351-9667
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Michael J. Reed and Witty Shelly, 4320 N Waterview Street, Tacoma, WA 98407-5710
Gregory J. and Nadine V. Duras, 4302 N Waterview Street, Tacoma, WA 98407-5710
Douglas Macleod, 502 South M Street, Tacoma, WA 98405-3728
Douglas Macleod, 4122 N Waterview Street, Tacoma, WA 98407-5708
Herminio A. and Agnes F. Doctolero, 505 SW 328th Court, Federal Way, WA 98023-5646
Herminio A. and Agnes F. Doctolero, 4116 N Waterview Street, Tacoma, WA 98407-5708
Corey L. Jones, 1666 South 55th Street, Tacoma, WA 98408-1425
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1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **In the Matter of:**

4 **Formation of Proposed**

5 **Local Improvement District No. 7731**

**REVISED RECOMMENDATION
ON REQUEST FOR
RECONSIDERATION**

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8 **A PUBLIC HEARING** on the above-captioned matter was held on July 22, 2019,
9 before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma. Thereafter on
10 August 20, 2019, the Hearing Examiner issued his Findings of Fact, Conclusions of Law, and
11 Recommendation to the Tacoma City Council recommending formation of Local Improvement
12 District (LID) No. 7731 (the “Initial Recommendation”). On September 3, 2019, Greg and
13 Nadine Duras (hereafter collectively the “Duras”), identified owners of property within the
14 proposed LID boundaries, timely filed a request for reconsideration (the “Request”). The City’s
15 LID Section filed a response to the Request on September 25, 2019.

16 The Duras’ Request alleged eight (8) errors in the findings and conclusions of the
17 Initial Recommendation. The City’s response does little to address the Duras’ contentions
18 specifically, and instead largely recites general principles of LID law as justification for what
19 the City already advocated regarding formation boundaries and LID estimated assessments.¹

20 As at the hearing, so also in their Request, the Duras’ chief complaint stems from the

¹ The City did present a somewhat detailed discussion of access, grades and slopes in its response, but how that discussion relates to the Duras’ assignments of error is not altogether clear.

**REVISED RECOMMENDATION
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ORIGINAL

1 estimated assessment assigned to the Durases' real property at 4302 Waterview Street North
2 (the "Duras Property"). Secondly, the Durases are not pleased that overhead lines and poles
3 running along the southeast boundary of the Duras Property² are not included in the scope of
4 work (i.e. not slated to be undergrounded) for LID No. 7731 as presently proposed by the City.

5 In addition, in the Request, the Durases suggested that the Examiner conduct a site visit.
6 He did so on October 1, 2019.

7 The Durases' assignments of error ("AoE") will now be addressed in the order they
8 were presented in the Request.

9 **Assignment of Error 1³**

10 This AoE is rejected as having no bearing on the "correctness" of the proposed LID
11 boundaries. The Durases' contention hinges on there being no overhead lines directly in front
12 of the Duras Property.⁴ There does not appear to be any requirement in applicable laws that
13 overhead lines must directly abut a property, or that those lines be directly in front of that
14 property for there to be a benefit to that property from underground conversion, and for that
15 property to be included in an LID.⁵ Whether the currently estimated assessment is
16 commensurate with the Durases' special benefit is not reviewable at the formation stage of the
17 LID, as was pointed out in the Initial Recommendation.⁶

18 _____
19 ² Hereafter, the lines and poles along the SE boundary of the Duras Property are referred to as the "SEBOL"
(South East Boundary Overhead Lines).

20 ³ The full verbiage of the Durases' assignments of error will not be repeated in this Revised Recommendation.

⁴ Only guy wires from a nearby pole actually encroach onto the Duras Property. The Durases' pointing out that these guy wires, or "stay lines" will not be buried is puzzling given that the guy wires are an inherently above ground phenomenon and would serve no purpose below ground.

⁵ The Durases cite no authority for such a requirement. The word "abut" does not even appear anywhere in RCW 35.43 or RCW 35.96.

⁶ See *Initial Recommendation* at Conclusion of Law 3, citing *Underground Equality v. Seattle*, 6 Wn. App. 338, 342, 492 P.2d 1071 (1972). The Durases acknowledged this in their request for reconsideration at the bottom of the first page carrying over to page 2, as well as at the hearing.

1 Ultimately, the basis for the Durases' AoE here is the assertion that there is no benefit
2 to the Duras Property from the proposed undergrounding, and therefore, the Duras Property
3 should be excluded from the proposed LID. This contention is without merit. The view from
4 the Duras Property is more or less 180 degrees across its frontage.⁷ The portion of that expanse
5 that is unencumbered by overhead lines is only part of that vista. This is shown clearly by the
6 City's Exhibit 3 to its response. The Durases' own complaints about the SEBOL and their
7 effect on the view confirm that the Durases' view is not limited simply to a straightforward
8 look from the front center of the Duras Property where no wires presently exist. The removal of
9 the pole from which the aforementioned guy wires descend, and the lines moving from that
10 point northwesterly along Waterview Street North will add more unobstructed scope to the
11 Duras Property's view, and therefore result in a special benefit of some amount to the Duras
12 Property. Again, the formation stage is not the point at which challenges to an assessment can
13 be made.

14 **Assignment of Error 2**

15 This AoE is rejected for largely the same reasons stated above. There is no requirement
16 that (an) overhead line(s) abut a given property or that said line(s) be positioned in any
17 particular place relevant to that property in order for that property to be benefitted and included
18 in an LID. Whether the City language quoted in assignment 2 contains inaccuracies is not
19 dispositive of the ultimate question of whether the Duras Property is benefitted by the proposed
20 undergrounding. Even the Duras-commissioned Valbridge Restricted Use Appraisal Report

⁷ Acknowledging that the view from within and without the house will vary.

1 concluded that there will be some benefit from the undergrounding.

2 **Assignment of Error 3**

3 The Durases open their argument here by stating “[t]he survey was not signed by the
4 owners of 52.1% of property owners within the proposed LID.” The Durases appear to support
5 this contention by arguing that certain properties in the area were not included in the proposed
6 LID boundary even though they are benefitted by the proposed LID scope of work, and
7 therefore, the City’s 52.1% is not a true calculation. The Durases provide no support for how
8 these properties would be benefitted from the proposed LID other than their own conclusory
9 statement. Given this lack of support, the Examiner is unable to conclude that the Durases’
10 assertion in this regard is correct. This AoE is therefore rejected.⁸

11 **Assignment of Error 4**

12 This AoE is rejected because it is an attack on the Duras Property’s estimated
13 assessment and the City’s calculation method. It is not properly considered at the formation
14 stage.

15 **Assignment of Error 5**

16 This AoE appears to be a repetition of AoE 3 above with the addition of the Durases’
17 objection to “[r]emoval of the City owned parcels...” AoE 3 has been addressed above. The
18 Durases provide no supporting reasoning for their contention that “[r]emoval of the City owned
19 parcels is also incorrect,” and therefore this AoE is rejected.

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⁸ If the City Council were to follow the Examiner’s recommendation set forth below, City LID staff could take a second look at some of the properties the Durases contend would be benefitted by the LID and possibly amend the LID’s boundary on resubmittal.

1 Assignment of Error 6

2 AoE 6 appears to be, at least in part, a repeat of AoE 3 and 4. The Durases provide no
3 separate support for their assertion that “[t]he survey of property owners for proposed LID No.
4 7731 has been incorrectly calculated by the City...” Without that support, this AoE must be
5 rejected as having no basis.

6 Assignment of Error 7

7 This AoE is rejected. The Durases’ contention here has no basis in light of the
8 admission that there is at least some benefit to the Duras Property from the improvements as
9 currently proposed.⁹ This AoE assumes that there is no benefit, in contravention of the
10 conclusions in the Valbridge Restricted Use Appraisal Report, and the assumption of no benefit
11 is the only basis for this AoE. This argument has already been rejected above.

12 Assignment of Error 8

13 The Durases begin this AoE by stating, “[p]roposed LID No. 7731 does not meet the
14 requirements of State law and the City’s ordinances and policies governing improvement
15 district formation.” The Durases provide no follow up to this statement with actual citations to
16 State law or City ordinances, nor is there any explanation as to how proposed LID No. 7731 is
17 out of compliance with the same. As such, this AoE is unfounded and rejected.

18 The Durases’ further claims in this AoE regarding critical areas, being raised for the
19 first time on reconsideration, are not well taken. The proposed LID area is developed with

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⁹ See *Valbridge Restricted Use Appraisal Report* at Conclusion, p. 3; and *Durases’ Request for Reconsideration*, at p. 1~2, as well as the Durases’ testimony at the hearing.

1 numerous houses and the infrastructure to support them. Previous undergrounding has already
2 been successfully completed in the immediate vicinity of the Duras Property. To the extent that
3 the actual work requires environmental review, that review will be done as part of the
4 permitting process for that work. It is not required as part of the LID formation process. This
5 AoE is rejected.

6 The rejection of AoE 1 through 8 in their entirety notwithstanding, the Request and the
7 City's response do raise additional issues that need addressing. In the Durases' Request, the
8 following was stated:

9 Our main concern is that the City does not intend to bury the lines next to our
10 house that come down the hillside above us, cross over our lawn near to our
11 house, then tie into a power pole directly in our view line and go across the
12 railroad tracks and down to Ruston Way. Accordingly, when this LID is complete,
13 we will be the only property on N. Waterview St that still has power/
14 communication lines and poles in front of us, so this LID will probably devalue
15 our home in comparison to others on our street... We are not requesting that the
16 lines and poles that are on the steep hill behind our house be included, only the
17 lines that run over our lawn and the poles and lines in front of us should be
18 included in this LID. It is significant that these poles and lines are perhaps the
19 most visible ones on N. Waterview St. for the thousands of people who regularly
20 walk on Ruston Way. Therefore, we request that the City bury those poles and
lines in the LID, and if so, this objection will be withdrawn.

16 Apparently, in answer to this part of the Durases' Request, the City provided the
17 following in its response:

18 The utility lines abutting the Duras parcel within the North 43rd Street Right of
19 Way contain lines owned by Tacoma Power (distribution lines), Comcast (Cable-
20 TV), Centurylink (telecommunications), and Click (Cable-TV) and were not
originally included in the proposed project. The City will continue the discussion
with various utilities, to determine the feasibility and cost to bury the lines or to
relocate the cable loops further up the hill to remove them from Mr. Duras [sic]
sight line.

1 At the hearing, the only reason given for the SEBOL not being included in the currently
2 proposed scope of the LID is that as the SEBOL continue down the hill, they cross railroad
3 tracks presumably owned by Burlington Northern Railroad (“BN”), and undergrounding them
4 would require dealing with BN who is notoriously difficult to deal with. That perceived
5 difficulty aside, the City deals with and works successfully with BN on a regular basis. Taking
6 the position that no overhead lines will be converted to underground anywhere in the City that
7 involves BN potentially makes for a strange patchwork of trellis-like remnant above ground
8 lines over railroad tracks at some point in the future.

9 For the Durases’, that future is now. Under the present scope of the proposed LID, all
10 overhead lines running along the uphill side of Waterview Street North stretching from Dale
11 Street to North 49th Street will be, or have already been undergrounded—except for the
12 SEBOL. The Durases’ contentions regarding the visibility and obtrusiveness of the SEBOL are
13 not overstated. It is easy to see why the Durases would like these lines and poles converted to
14 underground as part of the present LID.

15 For the City’s part, if it really is going to look into the feasibility of converting these
16 lines and poles to underground, it would seem the time to do so would be now, including that
17 work in the scope of proposed LID No. 7731. Forming LID No. 7731 without that
18 determination having first been made seems problematic for at least two reasons. First, whether
19 well-founded or not, additional challenges from the Durases could cause unnecessary delays in
20 getting the LID work done. If the City is reexamining undergrounding the SEBOL in any event,

1 why not do it now as part of the formation process? Secondly, if the City leaves the SEBOL out
2 of proposed LID No. 7731, the ability to handle undergrounding the SEBOL at a later date
3 through an LID becomes significantly more difficult because of the very limited scope of the
4 work, and presumably the very limited size of any LID that could be formed as a result.

5 GIVEN THE FOREGOING, the Examiner hereby REVISES the Initial
6 Recommendation as follows:

7 Although Conclusion of Law 10 from the Initial Recommendation is still valid in
8 that the City did meet the requirements for formation, and even though the Examiner
9 finds and concludes that the Durases' eight assignments of error are not well founded and
10 are herein rejected, the Examiner recommends that the Tacoma City Council remand the
11 formation of LID No. 7731 back to City LID staff in the Public Works Department to
12 determine the feasibility of adding the SEBOL to the scope of work for proposed LID No.
13 7731 prior to bringing the issue of formation back to the City Council for finalization.

14 Should the City Council reject this recommendation to remand and add the
15 SEBOL to the scope of work for proposed LID No. 7731, the Initial Recommendation
16 stands, as the Examiner does not recommend granting the Durases' request to be removed
17 from the LID based on their request for reconsideration.

18 DATED this 8th day of October, 2019.

19 
20 _____
JEFF H. CAPELL, Hearing Examiner

**REVISED RECOMMENDATION
ON REQUEST FOR
RECONSIDERATION**

1 **NOTICE**

2 **APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:**

3 Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved
4 person or entity having standing under the ordinance governing such application and feeling that
5 the recommendation of the Hearing Examiner is based on errors of procedure, fact or law may
6 have the right to appeal the recommendation of the Hearing Examiner by filing written notice of
7 appeal and filing fee with the City Clerk, stating the reasons the Hearing Examiner's
8 recommendation was in error.

9 **APPEALS SHALL BE REVIEWED AND ACTED UPON BY THE CITY COUNCIL IN
10 ACCORDANCE WITH TMC 1.70.**

11 **GENERAL PROCEDURES FOR APPEAL:**

12 The Official Code of the City of Tacoma contains certain procedures for appeal, and while not
13 listing all of these procedures here, you should be aware of the following items which are
14 essential to your appeal. Any answers to questions on the proper procedure for appeal may be
15 found in the City Code sections cited above:

- 16 1. The written request for review shall also state where the Examiner's findings or
17 conclusions were in error.
- 18 2. Any person who desires a copy of the electronic recording must pay the cost of
19 reproducing the tapes. If a person desires a written transcript, he or she shall arrange
20 for transcription and pay the cost thereof.