

Housing Affordability Response Team (HART) Draft Agenda

Thursday, March 22, 2017 from 1:00 PM - 4:00 PM | By phone: (360) 407-3780; Code 565340

Department of Commerce's Columbia Room | 1011 Plum Street, Olympia, WA

HART's Website for Materials: https://www.ezview.wa.gov/site/alias_1961/37020/default.aspx

Time	Agenda Item	Materials
1:00 PM 10"	Welcome <ul style="list-style-type: none"> Review agenda and materials 	
1:10 PM 5"	Public Comments Part I <ul style="list-style-type: none"> Verbal public comments (5 minutes) Summary of written public comments (5 minutes) 	
1:15 PM 5"	3/16 HART Meeting Summary <ul style="list-style-type: none"> Suggest edits before posting to HART's website 	-Draft 3/16 HART meeting summary -Draft HART Finance Funding Recommendations -Paul Purcell's slides
1:20 PM 30"	Meeting Topic: Construction and Planning Tools <ul style="list-style-type: none"> Receive a presentation on construction and planning tools related to affordable housing Questions and answers 	
1:50 PM 30"	Initial Brainstorm: Construction and Planning Tools Barriers <ul style="list-style-type: none"> <i>Key question for discussion: What statewide construction regulations and planning tools are barriers to responsibly increasing the supply of housing at all economic levels?</i> 	-Construction and Planning Tools Worksheet
2:20 PM 20"	Past Construction and Planning Tools Recommendations <ul style="list-style-type: none"> Discuss recommendations related to construction and planning tools from the 2006 Growth Management Housing Task Force Report <i>Key question for discussion: Which parts of these past recommendations are still relevant today?</i> 	-AHAB 2006 GMA Task Force Recommendations: Status Report -2013/14 AHAB ideas
2:40 20"	Current Construction and Planning Tools Bills <ul style="list-style-type: none"> Review 2017 WA State Legislature bills associated with construction and planning tools. <i>Key question for discussion: Which of these bills have policies/ideas that HART would like to recommend to the Affordable Housing Advisory Board (AHAB)?</i> 	-Draft current legislation related to Affordable Housing: 2017 Legislative Session
3:00 PM 30"	New Recommendations <ul style="list-style-type: none"> Generate any new recommendations Consolidate recommendations for HART to vote on during Meeting #5 	
3:30 PM 10"	Research Topics <ul style="list-style-type: none"> Identify topics that require further research by AHAB or other workgroups. 	
3:40 PM 5"	Public Comments Part II <ul style="list-style-type: none"> Verbal comments 	
3:45 PM 15"	Good of the Order <ul style="list-style-type: none"> Review next steps and action items Next HART meeting: 4/13 from 1-4 PM – Hilltop Regional Medical Center, Tacoma 	
4:00 PM	Adjourn	

Remaining HART Meetings

April 13th, Tacoma: Land Use

April 27th, Olympia: Consolidate recommendations

May 19th – Olympia: Meeting with AHAB

Draft Housing Affordability Response Team (HART) Meeting Notes: Meeting #2

March 16, 2017 from 1:00 – 4:00 pm

Triangle Associates, Seattle, WA

Draft 3/20/2017

Action Item	Who?	Status
Develop a memo on Tax Increment Financing (TIF)	Faith Pettis	complete
Send to Commerce information about added amenity costs for publically-subsidized housing projects	Kim Herman	pending
Send to Commerce the list of projects that have exceeded their regulatory agreements	Kim Herman	pending
Develop a memo on LIFT and Community Revitalization	Staff	pending
Develop a memo on prevailing wages	Staff	April mtg
Find GAO reports on public/affordable housing efficiency	Staff	April mtg
Post Paul Parcell's presentation to the EZ View Website	Staff	complete
Post the Runstad report on condominium reforms on the EZ View Website	Staff	complete
Research why 2017 WA State legislature bills related to affordable housing "died"	Staff	April mtg
Revise HART charter to include amended problem statement	Staff	complete
Send to Commerce affordable housing cost-benefit analyses	Tess Colby	Complete and posted

Attending

Committee Members: Peter Orser (Chair), Tony To, Tess Colby, Svenja Gudell, Rachael Myers, Bryce Yaden, Kim Herman, Nick Harper, and Mark McCaskill; by phone: Jeanette McCague, Paul Troutman, Christina Pegg.

Guests: Faith Pettis (subject matter expert), Robin Koskey (City of Seattle Housing Office), Roger Valdez (Smart Growth Seattle), and Allison Butcher (Master Builders of King and Snohomish County)

Commerce Staff: Anne Fritzel, Emily Grossman, Sophie Glass (Facilitator, Triangle Associates)

Welcome

Chair Orser introduced the main topic of the 3/16/2017 HART meeting: finance and funding. He reminded HART participants that the website is the repository for reports and information. He noted that the agenda has been modified to add 5-minute public comment periods at the beginning and end of the meeting. HART will generally not respond to the comments or engage verbally at the time, but staff will explore if additional work is needed.

Review of Meeting Summary

HART members reviewed their 3/7/17 meeting summary and corrected name spellings and affiliations. Commerce staff will post the approved meeting summary on the website.

Revised HART Charter

Facilitator Sophie Glass reviewed the amended “Roles and Responsibilities” section of the HART Charter:

Who?	Vote?	Sit at table?
Subject matter experts	No	Yes
Public	No	No, in public gallery
Alternates	Yes, but only if main representative is not in attendance	Yes, but only if main representative is not in attendance

HART members also reviewed their draft problem statement: *The population of Washington State is outpacing housing production. As a result, housing is unavailable or unaffordable for many income segments.* They suggested revising this problem statement to be *“Rental or purchase housing is unavailable or unaffordable for many income segments.”* Staff will update the HART Charter and respost to the website.

Presentation on Housing Finance and Funding, Paul Purcell

Paul Purcell, Beacon Development Group, provided a presentation on finance and funding mechanisms. See Attachment A for his slides. The main premise of Paul’s presentation was that there are a significant number of Washington households that cannot pay for the cost of market rate housing, and as a result, there are a number of financing/funding tools to develop affordable housing.

Question and Answer Session

Question: How competitive is it to obtain housing tax credits?

Answer: Usually there is a 2:1 or 3:1 competition for 9% tax credits, this has decreased over time as there is an application fee and applicants may not be able to get the tax credits. The 4% program is capped at a dollar volume, based on population. Some of the bond cap is allocated to the single family market rate program for special population groups (community land trust, habitat), and 95% is now in multifamily. In 2015, the Housing Finance Commission exhausted almost all of current bond cap plus carry forward from 2014 and 2013. In 2016, for the third time Multifamily Bond Cap has been a competitive process.

Question: How do market-rate developers pay for impact fees, as compared to non-profit affordable housing developers?

Answer: In market rate housing, impact fees/utility hookup fees are amortized over time. For non-profit housing that cannot carry debt, impact fees and hookup fees have to be paid up front and are not carried over time.

Funding and Finance Barriers

HART members generated the following list of funding and finance barriers:

- Maintenance Versus Expansion: There is a 30-plus year history of financing affordable housing but there is also a growing need for recapitalizing projects. As such, there is a tension between maintaining the existing supply of affordable housing and building new units.¹

¹ By 2020, at least 50% of previous projects will reach its 20-year stage, which means subsidies for Section 8 projects are “coming due”. In turn, there will be increased demand on tax credits and NOPAL dollars that need to be renewed.

- Transactional Friction: Using the tax credit program requires a lot of expertise. Many projects are coming up on the 30-year extended use period and falling out of regulatory compliance. Kim Herman will find the list of projects that have exceeded their regulatory agreements.
- Competition for Buildable Land: Competition leads to higher cost of land and labor.
- Program Inefficiency: There are potential inefficiencies with public/affordable housing programs. The Government Accountability Office is looking into this question, although in the past, GAO hasn't found inefficiencies in various public/affordable housing programs.
- Lack of Mobility: There is a lack of incentive to transition out of subsidized housing, because market rate is so expensive, and the IRS code allows renters to increase their income and not be evicted from affordable housing.
- Income Limits for Vouchers: In some cases, as tenants get close to the income limits, they will take steps to limit income because they are afraid of losing the voucher.
- Geographic Market Differences: The tax credit program does not reflect geographic market differences. For example, the bond 9% program works all across the state, but the 4% program works only in some urban areas.
- Added Affordable Housing Amenities: There is a perception that local governments may ask for added amenities because of the public subsidies in the proposal. This adds to the financial challenges to funding projects.
- Infrastructure Costs: Infrastructure expenses (i.e. impact fees, sewer hook-up fees) increase the cost of development.
- Funding Restrictions: Affordable housing projects receive a range of federal funds, but there are restrictions on the use of these funds.
- Reserves Requirements: Affordable housing projects require reserves. Investors and some public sources strive to have capitalized reserves up front to protect the investment.
- Uncaptured Benefits: Public housing cannot benefit and use the appreciation and value that private investments do. The public also benefits from investment in housing (as a part of the public infrastructure), but the "positive externalities" are not quantified.

It was noted that many barriers overlap affordable and market rate housing providers.

New Finance and Funding Recommendations

HART members discussed *new* finance and funding recommendations to vote on during their 5th meeting. See Attachment B for the list of new recommendations.

Research Topics

HART members proposed the following topics for further research:

- Cost Benefit: Is there a good cost benefit analysis on public housing? (Tess Colby will send information).
- MFTE: How to address issues regarding the fact that the Multifamily Tax Exemption (MFTE) program provides short-term affordability, rather than long-term affordability?
- Framing Housing as Infrastructure: What funding sources become available if housing is viewed as "infrastructure"?
- TIF: What is the role of tax increment financing (TIF) on affordable housing? (Faith Pettis will work with Jay Rich on a memo).

- LIFT and Community Revitalization Tools: How have LIFT and Community Revitalization tools impacted affordable housing?
- TOD: How to encourage transit orientated development (TOD) given the challenges of combining affordable housing with commercial space? Are there prohibitions against public dollars to fund the commercial component? Would this be lending credit and therefor unconstitutional? Are there specific users of commercial type space that this might work for?
- A Market for the Benefits of Affordable Housing: Is it possible to create a market for the benefits affordable housing? Is there a way to take negative and positive externalities and trade them? This is happening in the healthcare system with walkability for example. Recommendation: engage the University of Washington in this discussion.
- Inclusionary Zoning: What level of inclusionary zoning is “enough”?

Preparing for HART Meeting #3

The topic of the third HART meeting will be “Construction and Planning Tools.” To prepare, Commerce Staff will develop a one-page memo on prevailing wages. Resources will also be provided on condominium act reforms.

Public Engagement Survey

HART members expressed concern about the purpose and value of the draft HART survey. However, there was agreement that there needed to be a way to address HART’s gaps and blindspots. It was suggested that staff distribute HART’s draft recommendations to a wide range of stakeholders and ask for their feedback on these recommendations and any additional recommendations as well.²

Public Comment

From Roger Valdez (Smart Growth Seattle): “There were a lot of insightful comments. What I saw articulated very well is that regulation creates costs that are born by affordable housing developers and private developers. We need to be more efficient with given dollars, and cross off some of the things on the cost side of the ledger.”

² After the meeting, Commerce Staff decided to have an offline discussion with HART members about blindspots and gaps, and then solicit the names of groups/professional associations that might fill these gaps.

HART Committee

AFFORDABLE HOUSING FUNDING SOURCES




Paul Purcell
President, Beacon Development Group

Our Experience


	Projects	Total Units	Total Value
Completed	78	4,050	\$578M
Under Construction	8	1,056	\$283M
Funded/NTP	2	181	\$77M
In Development	14	1,132	\$500M
Total	102	6,521	\$1.4B

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What is Affordable Housing?



Senior Housing
Pearl at Oyster Bay
American Baptist Homes of the West




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What is Affordable Housing?



TOD / Mixed Use
Plaza Roberto Maestas
El Centro de la Raza



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What is Affordable Housing?

- Residents pay at most 30% of their income in housing costs**
 - Rental Housing Cost = **Rent + Utilities**
 - Ownership Housing Cost = **Principal + Interest + Taxes + Insurance**
- Includes a wide range of housing types**
 - Shelter** – night to night or permanent beds
 - Special Needs** – homeless, disabled, etc
 - Veterans**
 - Farm worker**
 - Working “poor”** minimum wage, 30% to 50%
 - Workforce 60% to 120%**
 - Ownership** – Single Family, Townhouse, Condo
- Percentages – Area Median Income (census data)**
 - 0 – 30% = **Extremely Low** Income
 - 30 – 50% = **Very Low** Income
 - 50 – 80% = **Low** Income (**60% is maximum for tax credits**)
 - 80 – 120% = **Moderate** Income

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What is Affordable RENTAL Housing?

WSHFC Income Limits (2016): 3 person household			
	30% AMI	50% AMI	60% AMI
Yakima	\$15,030	\$25,050	\$30,060
Spokane	\$17,700	\$29,500	\$35,400
King	\$24,390	\$40,650	\$48,780

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What is Affordable RENTAL Housing?

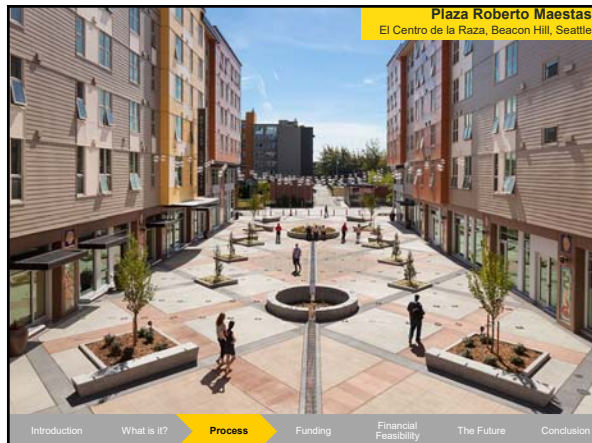
WSHFC Rent Limits (2016): 2 bedroom units			
	30% AMI	50% AMI	60% AMI
Yakima	\$15,030 \$375	\$25,050 \$626	\$30,060 \$751
Spokane	\$17,700 \$442	\$29,500 \$737	\$35,400 \$885
King	\$24,390 \$609	\$40,650 \$1,016	\$48,780 \$1,219

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Who Provides Affordable Housing?

- Housing Authorities
- Non-profit / social service organization
- Private Market

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How Is It Funded?

1. Local, State and Federal Resources

- **Capital Side** – subsidize cost of construction and development
- **Operating Side** – subsidize operations, maintenance, and services

2. Local – City & County

- Entitlement Cities & Counties – pass-through of CDBG and HOME funds
- Local property tax levies
 - City of Seattle, City of Bellingham,
 - King County Veterans and Human Services Levy
- 2060 & 2063 for services – recording fees
- Regional consortia – ARCH
- General funds
- Commercial linkage fees
- Impact fee exemption
- Surplus lands
- LIFT or Community revitalization funds

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How Is It Funded?

3. State

- **Housing Trust Fund**
 - \$165M in the 2007 – 2009 budget
 - \$95.5M in the 2009 – 2011 budget (100 + 30)
 - 106.6M in the 2011 – 2013 budget
 - \$67M in Supplemental budget in 2012
 - \$70M for 2013 – 2015 biennium
 - \$85.5M for 2015 – 2017 biennium
 - Approximately \$21M 2016 and \$28M 2017
- 2060 & 2063 – recording fees, state portion (REET I & 2)
- Washington Families Fund – homeless services
- Multifamily Tax exemption 8 year/12year

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How Is It Funded?

4. Federal

- **Housing & Urban Development**
 - 202/811 Capital/operating programs
 - HOME & CDBG
 - McKinney for homeless services
 - Public Housing Authorities
 - Section 8 Vouchers, VASH Vouchers, RAD, Project based
 - FHA – federally guaranteed loans
 - National Trust Fund (WA - \$23M in 2017)
- US Dept of Agriculture – Rural Development programs
- Fannie Mae and Freddie Mac 90% of market rate mortgages
- Home Mortgage Interest Deduction

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How Is It Funded?

And last but not least...

Which Federal Agency runs the nation's largest housing production program?



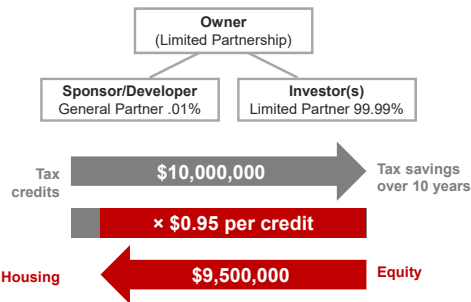
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Tax Credit Utilization

- 90% of all affordable housing in the US uses either the 9% or the 4% Low Income Housing Tax Credit
- 9% for extremely low income
- 4% for up to 60% of median
- In Washington, \$14MM in credit turns into approximately \$130MM in equity

Credit to Equity

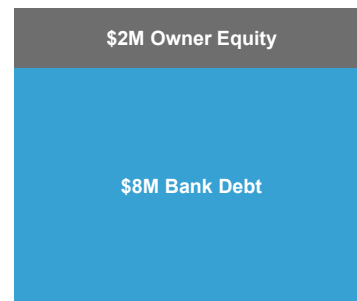
Example : \$1,000,000 in Credit



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Financing Comparison

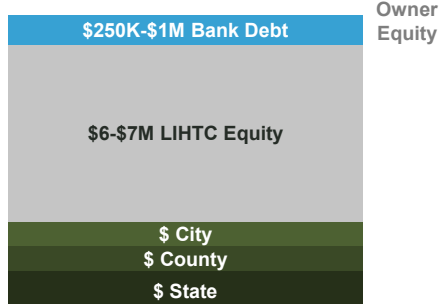
Conventional Deal



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Financing Comparison

Affordable Deal



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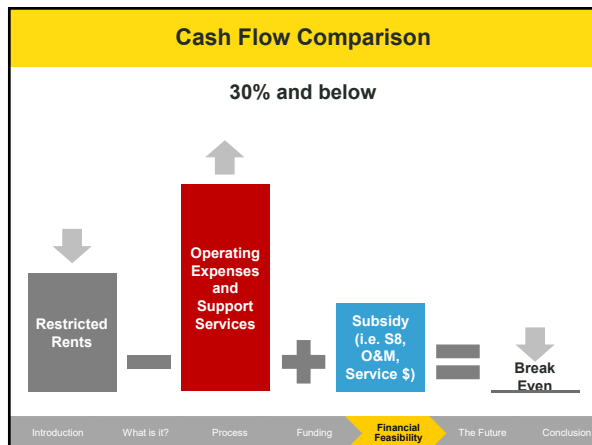
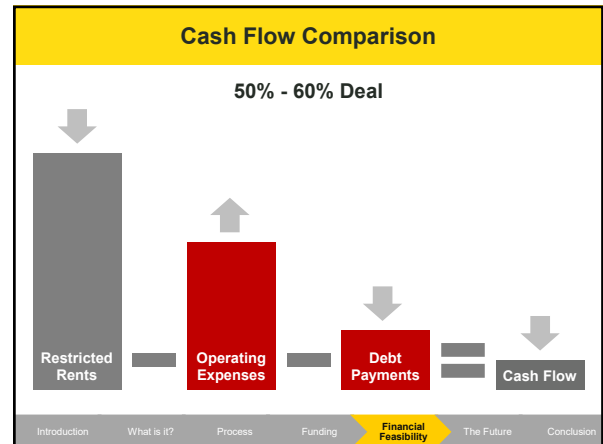
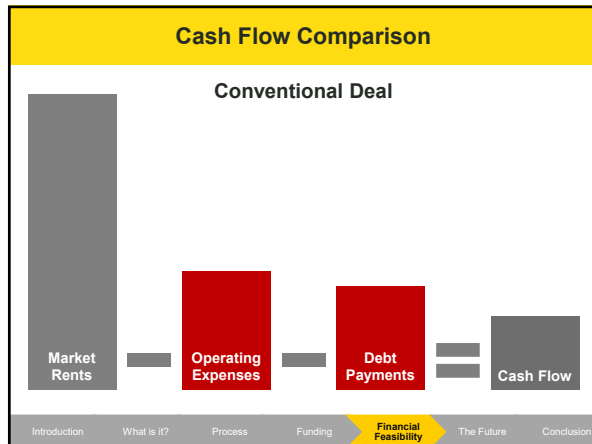
How Does It Pencil?

Why can't affordable housing work without all these subsidy programs?

Development Side

1. **Conventional Real Estate Development:**
 - Total Project Cost = Debt + Owner Equity
 - Debt paid by rental income
 - Equity re-captured by Owner through cash flow, appreciation, and sale of asset
2. **Affordable Real Estate Development**
 - Reduced rents mean little or no debt
 - Non-Profits: no Owner equity or re-sale of assets
 - Investor equity based on sale of tax credits
 - Gap funding from public sources for the difference

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LOW-INCOME HOUSING TAX CREDIT IMPACT IN WASHINGTON

THE LOW-INCOME HOUSING TAX CREDIT'S BENEFITS FOR WASHINGTON'S FAMILIES AND ECONOMY 1981 - 2014

- 63,371 Jobs generated or preserved
- 147,854 Low-income households provided affordable homes
- \$1.609 billion generated for state
- \$6.83 billion in economic activity
- \$2.89 billion in economic activity

THE AFFORDABLE HOUSING NEEDS THAT STILL REMAIN

Though the Housing Credit has had a tremendous impact in Washington, much more affordable housing is still needed.

In Washington alone, 245,252 HOUSEHOLDS pay more than half of their income housing on rent, leaving less than 10% for other expenses like food, gas, transportation and healthcare.

And in Washington, a minimum wage worker has to work 80 HOURS PER WEEK to make \$10 an hour.

The ACTION Campaign calls on Congress to expand and strengthen the Housing Credit.

AFFORDABLE RENTAL HOUSING ACTION

www.actionrentalhousing.org

BEACON DEVELOPMENT GROUP

Finance and Funding Recommendations	Source	Status	HART's Recommendation (carry	Revised Language for	Areas for Further Research
<i>In reviewing local government applications for state grants and loans (e.g. PTWF, TIB, CERB, Job Development Fund), the State of Washington should award bonus points to applications that clearly address state housing goals</i>	2006 GMA Report		<i>Carry forward, and address location and transit availability of projects</i>		
<i>Provide a partial property tax exemption for affordable rental or for sale units for households at 50% of median income or less (per RCW 84.36.560)</i>	2006 GMA Report	Not implemented	<i>Carry forward, also change 50% to 80% or less for sales units.</i>		
<i>Eliminate the "replacement rule" that requires counties and cities to pay from public funds for low income housing impact fee exemptions (RCW 82.02.060(2))</i>	2006 GMA Report	Partially implemented	<i>See above.</i>		
<i>Authorize a voter-approved local option regular property tax using the unused portion of the state regular property tax levy within a specified county or city. The funding may be used for purposes for which GMA impact fees are currently imposed, such as firefighting facilities, roads and parks. This funding source would replace GMA impact fees in counties and cities where it is levied.</i>	2006 GMA Report	Not implemented	<i>See above.</i>		
<i>Allow cities to retain the state's 20% of the taxes collected during the abatement period (on the incremental increase in value of land and non-housing improvements) for use with ADU and flex-lot programs</i>	2006 GMA Report	Not implemented	<i>See above.</i>		
<i>Update Washington State's tax increment financing legislation so that it is more effective. Amend the existing LIFT program to award bonus points to projects that meet the criteria in RCW 39.89</i>	2006 GMA Report	Not implemented	<i>See above.</i>		

<i>Create a Growth Management Infrastructure Account to fund projects in which the proponents will clearly address state housing goals (as listed above).</i>	2006 GMA Report	Not implemented	<i>See above.</i>
<i>Reallocate a portion of the state sales tax on construction activity to local jurisdictions (where collected) to use for infrastructure projects that increase capacity necessary to accommodate growth and provide affordable housing opportunities. Reallocation could be based on: -Anything above the rolling 10-year average of collections; -Collections above the projected revenues in the revenue forecast; or -A fixed fraction/share that captures a rise in revenue.</i>	2006 GMA Report	Not implemented	<i>See above.</i>
<i>Multifamily housing property tax exemption: extend the exemption time for projects that include more affordable housing than currently required.</i>	2017 HART		
<i>Surplus property: Ask the citizens of Washington to vote on a constitutional amendments which would allow public jurisdictions to donate, sell, or lease surplus property to a nonprofit or public entity for the development of affordable housing meeting certain qualifications.</i>	2017 HART		
<i>Encourage cities to pass local housing levies, incentivize at the state level by matching a percentage of local funds with state funds for the same purpose, or give priority for Housing Trust Fund dollars that meet other HTF criteria.</i>	2017 HART		<i>Three cities have now passed levies, Seattle, Bellingham and Vancouver.</i>
<i>Sin Taxes: In recognition that stable housing is a major contributor to stable communities, a portion of marijuana or sweetend beverage taxes or lottery proceeds, should be directed to the development and preservation of affordable housing and ending homelessness.</i>	2017 HART		

<i>Increase the initial allocation of bond cap to the housing category to 75% by lowering initial Student Loan, Small Issue and Remainder categories.</i>	2017 HART	<i>Housing currently has a right to 45% at the beginning of the year, and by the end of the year has used most of it as there is on uptake in the other categories.</i>
<i>Fund the Public Works Assistance Account and be sure that the criteria reflect housing affordability. Consider whether this fund could fund infrastructure to support affordable housing.</i>	2017 HART	
<i>Create a tax credit program in Washington for the development of affordable housing (against the B&O or carbon tax) if a lender is offering a loan at a lower interest rate, for example.</i>	2017 HART	<i>Developers/owners of affordable housing could be offered a B&O tax credit for that portion of fees/costs they defer in</i>
<i>Stabilize the Housing Trust Fund budget to allow for more accurate planning and development for affordable housing .</i>	2017 HART	
<i>Preservation tax exemption, builds off the MFTE to preserve existing stock.</i>	2017 HART	
<i>Holding Time Exemption for affordable housing: Provide a property tax exemption for property purchased for the purpose of developing affordable housing (no tax between purchase and development).</i>	2017 HART	
<i>REET tax or surcharge, based on the hold period, to discourage "flipping", and use the funds for affordable housing.</i>	2017 HART	
<i>REET 3, 0.25% additional tax on real estate authorized for the purpose of affordable housing.</i>	2017 HART	
<i>Make permanent and increase document recording fees</i>	2017 HART	
<i>Sales tax exemption on building materials and services for affordable housing.</i>	2017 HART	<i>Move this to construction/ regulations.</i>

<i>Affordable housing to develop their own credits . For example, social impact bond, environmental credit, transfer of development rights.</i>	2017 HART	<i>Already in place for farmworker housing, yielding 10% more units,</i>
<i>Allow cities to use the 10-year tax abatement for affordable housing development on small lots and low density conversions- for example for several dwelling units from a single lot. Tax averaging across all the units.</i>	2017 HART	
<i>Expand 10-year abatement to larger projects, that convert a single family lots to multiple units for less that 60% AMI.</i>	2017 HART	
<i>Tax increment financing . . .</i>	2017 HART	
<i>1797 local options bill - extend councilmanic sales tax to all counties.</i>	2017 HART	
<i>Preservation: (1980 and 5647) Creating a revolving loan fund for preservation, in order to leverage other funds, such as weatherization.</i>	2017 HART	
<i>Emphasize the importance of local options, and need for solutions that apply statewide</i>		

Finance and Funding Recommendations	Source	Status	HART's Recommendation	Revised Language for Voting (if needed)	Areas for Further Research
<i>Examine prevailing wages and the concern about paying commercial pw wages, versus residential wages by L&I determination. Review 4-story rule that triggers commercial for whole building.</i>	2006 GMA Report				Need more information on this topic
<i>Provide incentives for local governments to simplify and standardize local development standards and regulations.</i>	2006 GMA Report	Not implemented			
<i>SEPA: Explore a categorical exemption for projects in areas within urban growth areas that are designated by local jurisdictions and are generally characterized by a mix of uses, higher density and access to public services, including transit, if the jurisdiction has done an adequate environmental impact statement (EIS) for the designated area.</i>	2006 GMA Report	Partially implemented, see hand out.	See above.		
<i>Explore developing a higher threshold for categorical exemptions for larger projects (e.g. increase the exemption to 20 lot subdivisions).</i>	2006 GMA Report	Not implemented	See above.		
<i>Fund the Planning and Environmental Review Fund (PERF) as an incentive for local governments to do the up front environmental review in a planned action [include additional funding in the state general fund].</i>	2006 GMA Report	Not implemented			

<i>Provide state funding incentives (existing funding sources) for plans and zoning that require or encourage a diversity of housing choices and types – e.g. minimum densities, bonus densities for affordable housing, cottage housing, accessory dwelling units (ADUs), and mixed-used development. Incentives could include bonus points for state infrastructure funds or authority for increasing SEPA categorical exemptions in the UGA.</i>	2006 GMA Report	Not implemented			
<i>Provide information on best practices for design standards and review process on Commerce's Affordable by Design web site.</i>	2006 GMA Report	Not implemented			
<i>Convene the key interested and affected stakeholders to follow up on the work of this Task Force to explore in more depth the use of planning tools and potential changes to them that could expand the supply of affordable housing. E.g., adding affordability requirements for the housing element.</i>	2006 GMA Report	Not implemented			
<i>Expand the use of up-front SEPA review for <u>all</u> development occurring inside urban growth areas. Up-front SEPA review should be done in conjunction with all comprehensive plans and neighborhood plans. Once an EIS is developed for an area, there should be no more SEPA requirements at the project level, so long as the project fits the anticipated scope.</i>	2013 Idea	Not implemented			

<i>Latecomer agreements should be mandatory for all infrastructure investments, including roads and utility districts (expanding the requirement for construction of water and sewer facilities to other infrastructure for a twenty year period per HB 1717).</i>	2013 Idea	Not implemented			
<i>Cities should be required under the GMA to accommodate growth targets. Cities have to do their part to up-zone within their borders and reform their development regulations to achieve minimum net urban densities and accommodate new growth. In the absence of finding real incentives for cities to meet their housing and growth targets under GMA, cities should be required to accept their share of the region's housing needs.</i>	2013 Idea	Not implemented			
<i>Impact fees should be charged on a per-square-foot basis for multi-family housing development. Impact fees charged on a per-unit basis can have the unintended consequence of encouraging larger, more costly units, especially in the context of multi-family development.</i>	2013 Idea	Not implemented			

Legislation Related to Affordable Housing: 2017 Legislative Session

Draft v. 2/22/17

This is a compilation of bills introduced in the 2017 Legislative Session relating to affordable housing. This list is provided to inform the discussions of the 2017 Housing Affordability Response Team. For information on the status and current versions of individual bills, go to <http://apps.leg.wa.gov/billinfo/>. This document is intended to help Housing Affordability Response Team (HART) members answer the following question:

- *Which of these bills have policies/ideas that HART would like to recommend to the Affordable Housing Advisory Board (AHAB)?*

Planning Tools Growth Management Act (GMA) and Other Planning Revisions

HB 1085: Regulating the minimum dimensions of habitable spaces in single-family residential areas. Legislature finds a growing need for ecologically sustainable and affordable housing, and finds small home construction as a way to meet this need. The bill would allow counties, cities and towns to reduce or eliminate minimum gross floor area requirements for single-family dwellings below the minimum requirements of the state building code.

HB 1748: Addressing affordable housing opportunities in rural communities by:

- Eliminating measures that must be included in the rural element of the comprehensive plan under the GMA that protect the rural character of rural areas; and
- Declaring that rural development outside of urban growth areas under the GMA includes the use of exempt wells without restriction.

HB 1846/5615: Authorizing the development of new manufactured housing communities outside of urban growth areas under the GMA.

SHB 1987: Allowing affordable housing development on religious organization property. Prevents governing bodies of cities and counties from restricting the density of affordable housing development on property owned by a religious organization under certain conditions.

State Environmental Policy Act (SEPA) Revisions

HB 1009: Clarifying that the authority to mitigate environmental impacts under the state environmental policy act applies only to significant adverse environmental impacts

HB 1013: Reducing overlap between the state environmental policy act and other laws.

SHB 1086/5438: Promoting the completion of the environmental impact statement (EIS) within two years. Directs lead agencies to aspire to complete EIS's within two years of making a threshold determination; and to report back to the Legislature explaining the reason an EIS is late, an estimate of when it will be completed, and a plan for completion.

HB 1740: Extends until 2028, the termination of an option that allows a city to adopt an element of its comprehensive plan that allows certain developments consistent with the optional elements to be exempt from appeal under SEPA. Also requires that 20 percent of dwelling units in a project completed under a city's optional comprehensive plan element must be set aside for affordable housing in order for the project to be exempt from appeal under SEPA.

HB 1745: Creates a categorical exemption under SEPA for development proposals that are consistent with locally adopted land use and shoreline regulations.

Buildable Lands

SSB 5254: Ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs. The bill:

- Amends the buildable lands program under the GMA, including adding factors to the land capacity analysis and adding a housing supply and affordability review requirement.
- Limits regional transportation planning organizations' (RTPOs) authority regarding adopting targets for and certifying maximum population, household, employment and/or job growth targets to member counties, cities and towns.
- Prohibits countywide or multicounty planning policies from adopting maximum population, household, job and/or employment growth targets for allocation to local governments.
- Requires the Office of Financial Management's annual population trends report to include information of jobs and housing for the counties.
- Directs Commerce to conduct a study and make recommendations regarding time of reports and various assumptions contained in city and county growth targets.
- Creates a property tax exemption program for cities and counties— unincorporated areas only—to preserve affordable housing for low-income households.
- Requires updates to the state and local homeless housing plans.

This bill is very long and complicated, and is changing daily. This is a very high level summary of its provisions.

Provision of Affordable Housing

HB 1044: Requiring that at least 25 percent of the Housing Trust Fund appropriation be used for homeownership projects. A homeownership project may include, but is not limited to, down payment assistance, self-help projects, and short-term production loans. The funding set aside may be used nonexclusively for a number of types of housing units.

SHB 1532/SB 5143: Concerning the exemption of property taxes for nonprofit homeownership development. Clarifies the property tax exemption for nonprofit homeownership development by specifying that land that is to be leased for 99 years or life to a low-income household is included in the exemption. Specifies that the lease of the exempted land to a low-income household terminates the property tax exemption.

HB 1616: Clarifying the type of land eligible for purchase to include improved land under the affordable housing land acquisition revolving loan fund program.

HB 1752: Supporting the development of affordable housing in urban areas by:

- Creating the Affordable Housing Land Bank (Land Bank) within the Department of Commerce to hold and lease publically owned land for the construction and development of affordable housing within certain urban development areas.
- Requiring certain governmental entities to remit 20 percent of public lands sales to provide funding for the Housing Trust Fund.
- Allowing governmental entities to transfer or lease property within an urban development area into the Land Bank to obtain an exemption from the 20 percent remittance of a land sale.

HB 1797: Encouraging affordable housing development and preservation by:

- Allowing cities to apply for a one-time remittance of 4.37 percent of the state sales and use tax on public purchases for affordable housing development or public infrastructure to support such development.
- Allowing the governing body of a county with a population over 1.5 million and the cities within such county to authorize the existing 0.1 percent local sales and use tax used for mental health services and affordable housing.
- Allowing revenue from the local real estate excise tax (REET II) to be used for affordable housing development through 2022, so long as other local capital projects have adequate funding.

SB 5482: Relating to the preservation and creation of affordable housing. Two percent of the proceeds of the real estate excise tax currently allocated to the Public Works Assistance Account would be re-allocated to the Housing Trust Fund.

Tax Incentives

HB 1998: Providing a property tax exemption for mobile homes, manufactured homes, and park model trailers that were manufactured prior to 1976.

HB 2051: Increasing affordable housing opportunities in targeted areas. Eliminates the requirement for the multi-family tax abatement program that qualifying new development or rehabilitation be in an urban growth area.

SSB 5182: Providing local governments with options to preserve affordable housing in their communities. Allows a city or county to adopt a property tax exemption program to preserve affordable housing for very low-income households. To qualify for this exemption, a minimum of 25 percent of units in a multiple-unit property must be affordable, and in return the property is exempt from local property taxes for 15 consecutive years.

2014 AHAB Strategies: Discussed but Not Recommended

Draft v. 3-20-17

Below are ideas generated by the Affordable Housing Advisory Board (AHAB) Taskforce in 2014. In 2017, Department of Commerce staff members provided additional comments below. In reviewing this document, the Housing Affordability Response Team (HART) members should think about the following questions:

- *Do any of these ideas from 2014 have relevancy today?*
- *If so, which ideas should HART discuss further?*
- *And of these ideas, which should HART vote on during its 5th meeting?*

1. Expand the use of up-front SEPA review for all development occurring inside urban growth areas. Up-front SEPA review should be done in conjunction with all comprehensive plans and neighborhood plans. Once an EIS is developed for an area, there should be no more SEPA requirements at the project level, so long as the project fits the anticipated scope.

Not implemented.

2. Latecomer agreements should be mandatory for all infrastructure investments, including roads and utility districts (expanding the requirement for construction of water and sewer facilities to other infrastructure for a twenty year period per HB 1717).

Not implemented.

3. Cities should be required under the GMA to accommodate growth targets. Cities have to do their part to up-zone within their borders and reform their development regulations to achieve minimum net urban densities and accommodate new growth. In the absence of finding real incentives for cities to meet their housing and growth targets under GMA, cities should be required to accept their share of the region's housing needs.

Not implemented.

4. Impact fees should be charged on a per-square-foot basis for multi-family housing development. Impact fees charged on a per-unit basis can have the unintended consequence of encouraging larger, more costly units, especially in the context of multi-family development.

Not implemented.

Other Legislative Actions Regarding Housing Affordability

Impact fees

2015 Legislative Session

RCW 37.70A.070 ESB 5923 – Promoting economic recovery in the construction industry:

□ PAST

- Obligates counties, cities, and towns that collect impact fees to, by September 1, 2016, adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction.
- Delays the starting of the six-year frame for satisfying transportation concurrency provisions of the Growth Management Act until deferred impact fees are due.
- Establishes impact fee deferral reporting requirements for the Joint Legislative Audit and Review Committee and the Department of Commerce.
- Makes all provisions effective September 1, 2016.

Affordable Housing Advisory Board 2006 GMA Task Force Recommendations Implementation Status Summary February 2017

Below are recommendations related to planning tools and construction from the 2006 Growth Management Act (GMA) Taskforce. Washington State Department of Commerce staff members have provided additional comments to help Housing Affordability Response Team (HART) members answer the following questions:

- *Which of the recommendations listed below are still relevant today?*
- *What revisions are needed to these recommendations to make them relevant and useful today?*
- *Which of the recommendations listed below should be carried forward for HART voting?*

Planning Tools

1. *Provide incentives for local governments to simplify and standardize local development standards and regulations.*

Not implemented.

2. *Address State Environmental Policy Act (SEPA) issues, such as expanding categorical exemptions or eliminating SEPA review in urban growth areas (UGAs):*

a. *Explore a categorical exemption for projects in areas within urban growth areas that are designated by local jurisdictions and are generally characterized by a mix of uses, higher density and access to public services, including transit, if the jurisdiction has done an adequate environmental impact statement (EIS) for the designated area.*

Not implemented.

However RCW 43.21C.240, enacted in 2010 (ESHB 2538), provides for SEPA environmental review of a qualifying comprehensive plan element or subarea plan that leads to up-front development conditions and mitigation requirements. The provisions are similar to a planned action, but are limited to:

- Cities with a population greater than 5,000 and to areas that are either designated as mixed-use or urban centers; or within one-half mile of a major transit stop zoned with an average minimum density of 15 dwelling units per acre.
- Cities east of the Cascade mountains located in a county with a population of 230,000 or less and areas within mixed-use or urban centers. The optional plans and regulations must be consistent with existing GMA plans and regulations, and

must enhance pedestrian, bicycle, transit or other non-vehicular transportation methods.

For 10 years after an EIS is completed, projects consistent with the comprehensive plan element or subarea plan and development regulations do not require additional SEPA review and are not subject to administrative or judicial appeals under SEPA. Cities are allowed to recover a portion of the costs of the non-project EIS by assessing developer fees.

b. Explore developing a higher threshold for categorical exemptions for larger projects (e.g. increase the exemption to 20 lot subdivisions).

RCW 43.21C.031, as amended in 2012, directs Ecology to increase the rule-based categorical exemptions and update the environmental checklist. Ecology must, at a minimum, increase the existing categorical exemption maximum threshold levels for the construction or location of single-family and multifamily residential developments. Ecology adopted rules to increase the thresholds that took effect in January 2013. WAC 197-11-800(1)(d) Categorical Exemptions for residential development.

	<u>Fully planning GMA counties</u>		<u>All other counties</u>
<u>Project types</u>	<u>Incorporated and unincorporated UGA</u>	<u>Other unincorporated areas</u>	<u>Incorporated and unincorporated areas</u>
<u>Single family residential</u>	<u>30 units</u>	<u>20 units</u>	<u>20 units</u>
<u>Multifamily residential</u>	<u>60 units</u>	<u>25 units</u>	<u>25 units</u>

c. Fund the Planning and Environmental Review Fund (PERF) as an incentive for local governments to do the up front environmental review in a planned action [include additional funding in the state general fund].

Not implemented. Commerce has made several budget requests, but funding has not been provided for PERF due to state budget limitations.

However, ESHB 1717 enacted in 2013 allows local governments to recover reasonable expenses with developer fees for a non-project EIS for a planned action or infill development in a UGA subject to categorical exemption (RCW 43.21C.428). As noted above, RCW 43.21C.240 also allows a city to recover a portion of the costs of a non-project EIS for a qualifying comprehensive plan element or subarea plan by assessing developer fees.

3. Provide state funding incentives (existing funding sources) for plans and zoning that require or encourage a diversity of housing choices and types – e.g. minimum densities, bonus densities for affordable housing, cottage housing, accessory dwelling units (ADUs), and mixed-used development. Incentives could include bonus points for state infrastructure funds or authority for increasing SEPA categorical exemptions in the UGA.

Not implemented.

However, RCW 36.70A.540 was amended in 2009 to clarify provisions governing affordable housing incentive programs that may be enacted or expanded in jurisdictions planning under the GMA.

4. Allow cities to use the 10-year tax abatement for infill on smaller lots – lot size averaging.

Not implemented.

However, 2SSB 6330 enacted in 2014, promotes affordable housing in unincorporated areas of rural counties within urban growth areas by allowing rural counties to offer a property tax exemption for multi-family housing projects within unincorporated UGAs. The property tax exemption expires January 1, 2020.

Not implemented.

6. Provide information on best practices for design standards and review process on Commerce's Affordable by Design web site.

Not implemented.

7. Provide education for the development community, elected officials, planners and the public on these tools.

Not implemented.

8. Convene the key interested and affected stakeholders to follow up on the work of this Task Force to explore in more depth the use of planning tools and potential changes to them that could expand the supply of affordable housing. E.g., adding affordability requirements for the housing element.

AHAB convened a 2014 task force to follow up on some of the 2006 recommendations. The task force was not successful in its follow up work due to competing demands of the members' time on other related efforts.

Finance and Funding Recommendations	Source	Status	HART's Recommendation (carry forward/revise/eliminate)	Revised Language for Voting (if needed)	Areas for Further Research
<i>Examine prevailing wages and the concern about paying commercial pw wages, versus residential wages by L&I determination. Review 4-story rule that triggers commercial for whole building.</i>	2006 GMA Report				Need more information on this topic
<i>Provide incentives for local governments to simplify and standardize local development standards and regulations.</i>	2006 GMA Report	Not implemented			
<i>SEPA: Explore a categorical exemption for projects in areas within urban growth areas that are designated by local jurisdictions and are generally characterized by a mix of uses, higher density and access to public services, including transit, if the jurisdiction has done an adequate environmental impact statement (EIS) for the designated area.</i>	2006 GMA Report	Partially implemented, see hand out.	See above.		
<i>Explore developing a higher threshold for categorical exemptions for larger projects (e.g. increase the exemption to 20 lot subdivisions).</i>	2006 GMA Report	Not implemented	See above.		
<i>Fund the Planning and Environmental Review Fund (PERF) as an incentive for local governments to do the up front environmental review in a planned action [include additional funding in the state general fund].</i>	2006 GMA Report	Not implemented			
<i>Provide state funding incentives (existing funding sources) for plans and zoning that require or encourage a diversity of housing choices and types – e.g. minimum densities, bonus densities for affordable housing, cottage housing, accessory dwelling units (ADUs), and mixed-used development. Incentives could include bonus points for state infrastructure funds or authority for increasing SEPA categorical exemptions in the UGA.</i>	2006 GMA Report	Not implemented			
<i>Provide information on best practices for design standards and review process on Commerce’s Affordable by Design web site.</i>	2006 GMA Report	Not implemented			
<i>Convene the key interested and affected stakeholders to follow up on the work of this Task Force to explore in more depth the use of planning tools and potential changes to them that could expand the supply of affordable housing. E.g., adding affordability requirements for the housing element.</i>	2006 GMA Report	Not implemented			

<i>Expand the use of up-front SEPA review for <u>all</u> development occurring inside urban growth areas. Up-front SEPA review should be done in conjunction with all comprehensive plans and neighborhood plans. Once an EIS is developed for an area, there should be no more SEPA requirements at the project level, so long as the project fits the anticipated scope.</i>	2013 Idea	Not implemented
<i>Latecomer agreements should be mandatory for all infrastructure investments, including roads and utility districts (expanding the requirement for construction of water and sewer facilities to other infrastructure for a twenty year period per HB 1717).</i>	2013 Idea	Not implemented
<i>Cities should be required under the GMA to accommodate growth targets. Cities have to do their part to up-zone within their borders and reform their development regulations to achieve minimum net urban densities and accommodate new growth. In the absence of finding real incentives for cities to meet their housing and growth targets under GMA, cities should be required to accept their share of the region’s housing needs.</i>	2013 Idea	Not implemented
<i>Impact fees should be charged on a per-square-foot basis for multi-family housing development. Impact fees charged on a per-unit basis can have the unintended consequence of encouraging larger, more costly units, especially in the context of multi-family development.</i>	2013 Idea	Not implemented

PUBLIC COMMENTS RECEIVED

TO MARCH 20th 2017

Fritzel, Anne (COM)

From: rogval@gmail.com on behalf of Roger Valdez <rogval@smartgrowthseattle.org>
Sent: Friday, March 17, 2017 8:07 PM
To: Fritzel, Anne (COM)
Cc: Sophie Glass; Grossman, Emily (COM); Peter Orser
Subject: Re: Resources from Roger Valdez

Sorry folks,

I forgot to mention I know a lot about TIF and did a lot of work on it a few years ago. The long and short of it is that we need a constitutional amendment. One of my favorite memories (achievements?) is when I finally was able to persuade Hugh Spitzer to draft the amendment. We got it put together in legislation and it went nowhere.

Additionally, because of the way our tax code works, I think we could pull TIF off in a limited sense. Special taxing districts could allow pay back of debt over time from a narrow collection in a geographic area.

But otherwise, it just won't work because of constitutional limits on property taxes. If you want me to dust off that part of my brain, I'd be glad to tell you everything I can remember.

Fortunately I wrote about it a lot as well and here's a sample: <http://www.sightline.org/2010/12/24/uniform-taxation-a-tif-problem-to-solve/>

Let me know..

Roger--

On Fri, Mar 17, 2017 at 1:36 PM, Fritzel, Anne (COM) <anne.fritzel@commerce.wa.gov> wrote:

Thanks!

From: rogval@gmail.com [mailto:rogval@gmail.com] **On Behalf Of** Roger Valdez
Sent: Friday, March 17, 2017 1:32 PM
To: Sophie Glass <sglass@triangleassociates.com>
Cc: Grossman, Emily (COM) <emily.grossman@commerce.wa.gov>; Fritzel, Anne (COM) <anne.fritzel@commerce.wa.gov>; Peter Orser <peterorser7@gmail.com>
Subject: Re: Resources from Roger Valdez

Thank you!

One more you might want to consider. This is the WSHFC policies on 9 percent tax credits. Kim referenced much of this in his comments on tax credits.

Roger--

On Fri, Mar 17, 2017 at 11:49 AM, Sophie Glass <sglass@triangleassociates.com> wrote:

Hi Anne and Emily,

Can one of you please upload [this study](#) to HART's EZ View website? Thanks!

From Roger Valdez:

"And Peter mentioned wanting more material. Please share this study (http://www.treasurer.ca.gov/ctcac/affordable_housing.pdf) with the group as well. It's a little old, 2014, but it covers the idea that many of the same regulatory and local community issues drive up costs of subsidized housing. You'll notice parking requirements figure in there."

Sophie Glass
Associate
Triangle Associates, Inc.

811 1st Ave, Ste. 255

Seattle, WA 98104
Offices in WA | OR | MT

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Follow Triangle on Facebook and LinkedIn:  

--

Roger Valdez

Director

Smart Growth Seattle



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

July 17, 2008

The Honorable Fred Jarrett
State Representative, 41st District
P. O. Box 40600
Olympia, WA 98504-0600

Dear Representative Jarrett:

By letter previously acknowledged, you have asked for an opinion on a question I have slightly paraphrased as follows:

May a city operating under the Optional Municipal Code (RCW 35A), under its general authority set forth in RCW 35A.11.010 and any related statutes and constitutional limitations, donate surplus personal property to a qualified charity organized as a nonprofit organization, with a requirement that the donated assets be used for the benefit of the needy?

BRIEF ANSWER

I would answer your question in the affirmative: An optional municipal code city may lawfully donate surplus city property to an organization for use for the benefit of the needy.

ANALYSIS

As explained in your request, the background for your question is article VIII, § 7 of the Washington Constitution, which provides as follows:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, *except for the necessary support of the poor and infirm*, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

(Italics added.) Your question is whether an optional municipal code city may lawfully donate surplus property to an organization to be used for the benefit of the needy. I understand your question to have two aspects: (1) whether the city has sufficient statutory authority for the activity in question, and (2) whether the activity would be consistent with article VIII, § 7.

ATTORNEY GENERAL OF WASHINGTON

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July 17, 2008
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Cities and towns in Washington may be organized under several different sets of laws. Many cities are now organized under the Optional Municipal Code, codified as RCW Title 35A, and your question concerns such cities. The Optional Municipal Code provides that, "All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality." RCW 35A.01.010. An optional municipal code city may "purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease, control, *convey or otherwise dispose of it for the common benefit.*" RCW 35A.11.010 (italics added).¹ Therefore, such cities have the general authority to acquire property and to dispose of it.

Furthermore, the legislative body of an optional code city "may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city" and "shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law." RCW 35A.11.020. Code cities are limited in their powers by the state constitution, by the limits of the term "local or municipal affairs," and also by the "general law of the state where not inconsistent with this title". RCW 35A.11.030.

If you had expressed your question in more general terms, asking whether a city has statutory authority to donate city property to non-profit organizations, I would have given a generally negative answer. There is no general municipal authority to donate city property to private organizations, whether or not they are charitable organizations. Even under the poor and infirm exception of the constitution, an organization is not itself "poor and infirm". See, e.g., AGO 2005 No. 1 (county may not generally donate real property to a nonprofit organization); AGO 1973 No. 18 (county may not donate public funds to a nonprofit-operated senior center). However, you have asked whether an optional code city may dispose of *surplus* city property (personal property rather than real property) by donating it to a nonprofit organization for use for the benefit of the needy. As noted above, code cities have express authority to acquire property and to "dispose of it for the common benefit." RCW 35A.11.010. You have built into your question the assumption that the property in question is surplus to the city's needs, and it is reasonable to conclude that any city has authority to dispose of its unneeded property in some reasonable manner.²

¹ The case law confirms that the statutory powers of an optional code city are to be liberally construed in favor of the city. See, e.g., *Burns v. City of Seattle*, 161 Wn.2d 129, 164 P.3d 475 (2007) (city has broad authority to contract); *In re Petition of City of Long Beach*, 119 Wn. App. 628, 82 P.3d 259 (2004) (optional code city may condemn property outside city to build trail); *City of Edmonds v. Gen. Tel. Co. of Nw., Inc.*, 21 Wn. App. 218, 584 P.2d 458 (1978) (city has authority to require utility to reimburse for cost of placing telephone lines underground).

² This opinion does not analyze the extent to which a city could donate *non-surplus* property to a nonprofit organization for the benefit of the needy. Your question is based on the assumption that the property in question is no longer of use to the city, and the city can document that it has either no value or very slight value in terms of how the city might dispose of it.

ATTORNEY GENERAL OF WASHINGTON

The Honorable Fred Jarrett
July 17, 2008
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Furthermore, it does not appear that there is any general statute defining how optional code cities must dispose of their surplus property. RCW 39.33 authorizes cities and other municipalities to dispose of surplus property by transferring it to other governmental units, subject to certain limitations. However, this power “shall be deemed to provide an alternative method for the doing of the things authorized herein, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.” RCW 39.33.010(2). In other words, these statutes give municipalities the option of making intergovernmental transfers but do not require that surplus property be disposed of in this manner. Donating surplus property for the benefit of the needy is not inconsistent with this or other general statutes. It is therefore within the statutory authority of an optional municipal code city.

The only remaining question is whether this practice is consistent with the state constitution. As noted above, the constitution generally prohibits gifts of municipal property “in aid of any individual, association, company or corporation”. Const. art. VIII, § 7. However, the provision contains a built-in exception for transfers of property “for the necessary support of the poor and infirm”. *Id.* Although the constitution at first blush appears to limit the exception to programs aiding persons who are both poor and infirm, case law establishes that the exception applies to either class of persons. *Washington Health Care Facilities v. Ray*, 93 Wn.2d 108, 605 P.2d 1260 (1980); *Morgan v. Dep’t of Soc. Sec.*, 14 Wn.2d 156, 127 P.2d 686 (1942). The *Morgan* opinion also recognizes that the term “poor” is essentially synonymous with the term “needy” and states, for instance, that the “support of the poor and needy is a recognized public governmental function.” *Morgan*, 14 Wn.2d at 169. Although your request speaks of benefiting the “needy” and the constitutional exception is for the “poor and infirm,” the common understanding of the term “needy” would encompass persons who meet the definition of “poor” and might also be infirm. As I understand your question, the nonprofit organization would be legally committed to using the city property received for the benefit of the “needy.”³ Therefore, it is not necessary to analyze whether the disposal program serves a fundamental governmental purpose, or whether the city is receiving sufficient consideration.⁴ However, a different question would be presented if the nonprofit organization were free to use the donated city property for purposes other than support of the poor and infirm.

Accordingly, I conclude that a program designed to benefit the needy, which is otherwise carried out in a lawful manner, is not barred by article VIII, § 7 of the state constitution.

³ Your letter makes reference to a nonprofit organization that serves both low and middle income persons. I doubt that middle income people would be classified as “poor” if the issue came before a court.

⁴ It would obviously be helpful for a city to adopt policies concerning the disposal of surplus city property. These policies could establish how the city determines which property is surplus, whether the property should be offered to another governmental entity or advertised for sale, and which city property might be appropriately disposed of in other ways (for example, the donation described in your request).

ATTORNEY GENERAL OF WASHINGTON

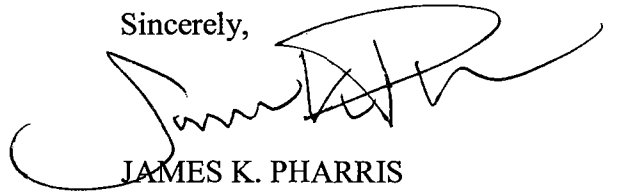
The Honorable Fred Jarrett

July 17, 2008

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I hope this information will prove helpful. This informal opinion will not be published in the compendium of official Attorney General Opinions.

Sincerely,

A handwritten signature in black ink, appearing to read 'James K. Pharris', with a large, stylized flourish at the end.

JAMES K. PHARRIS
Deputy Solicitor General
(360) 664-3027

:pmd

Fritzel, Anne (COM)

From: rogval@gmail.com on behalf of Roger Valdez <roger@smartgrowthseattle.org>
Sent: Monday, March 20, 2017 4:51 PM
To: Peter Orser; Fritzel, Anne (COM)
Cc: Sophie Glass; Walker, Steve; Nick Harper
Subject: AGO on Gift of Public Lands for Housing
Attachments: Attorney General Poor Infirm Opinion.pdf

Hello Peter and Anne,

We've been around the block several times on using publicly owned land for housing.

There are limits to this (mostly political and bureaucratic) but the barrier, we believe, is not constitutional.

We have advocated for the use of City owned land to build hundreds if not thousands of units of housing. While land costs vary as part of the overall cost of housing, there is no doubt that acquisition of land is a huge barrier to the production of subsidized housing.

Attached you'll find a letter from then Attorney General Mckenna to then Representative Fred Jarrett that seems to affirm that land owned by cities, "may lawfully donate surplus city property to an organization for use for the benefit of the needy." I think a new request might be issued from Commerce perhaps to clarify this point, but I think based on this letter it's likely that there is no constitutional problem here

I'd suggest sharing this with the Committee members however is appropriate since it emerged as a topic and may emerge again.

Roger--

--

Roger Valdez
Director
Smart Growth Seattle
(206) 427-7707
www.smartgrowthseattle.org



Fritzel, Anne (COM)

From: rogval@gmail.com on behalf of Roger Valdez <roger@smartgrowthseattle.org>
Sent: Monday, March 20, 2017 12:57 PM
Subject: Pacific Legal Foundation: City of Seattle's Housing Policy Fails Legal Tests
Attachments: Ltr to Sea City Council from EWB re MHA 3-20-17.pdf

Greetings,

The City of Seattle has undertaken a program of Mandatory Inclusionary Zoning (MIZ) they have called Mandatory Housing Affordability (MHA).

We hold that his program is an illegal exaction under RCW 82.02.020 and also creates more burdens on the production of market rate housing which will push prices in Seattle even higher. Furthermore, this measure may fail constitutional tests as well.

After a careful legal review, the Pacific Legal Foundation has corroborated our concerns: the City of Seattle's program is on thin legal ice (see attachment or [this blog post](#)).

We continue to urge the Legislature and the Governor to take a much closer look at the legal issues of this program and it's impact on housing economics as well. **Is a program of illegal exactions that will push up the price of housing in Seattle's largest city the best way to accomplish affordability?**

We think the answer is a definitive, "No!"

Roger--

--

Roger Valdez
Director
Smart Growth Seattle
(206) 427-7707
www.smartgrowthseattle.org





PACIFIC LEGAL FOUNDATION

March 20, 2017

**VIA EMAIL AND
FIRST CLASS U.S. MAIL**

Seattle City Council
PO Box 34025
Seattle, WA 98124-4025

RE: The legality of Seattle's Mandatory Housing Affordability program

Dear Councilmembers:

Pacific Legal Foundation (PLF) and many housing developers and builders have watched with growing concern as the City of Seattle moves forward with the "Grand Bargain," a Mandatory Inclusionary Zoning (MIZ) program that exacts set-asides and in-lieu fees in a manner that violates statutory and constitutional property rights. PLF urges the City to reconsider its Mandatory Housing Affordability (MHA) framework to avoid a legal challenge under the federal and state constitutions, as well as Washington's impact fee statute.¹ We urge the City, as have many others, to focus instead on incentive programs like the Multifamily Tax Exemption (MFTE) program, which has produced thousands of units legally.

PLF is widely respected as an experienced advocate of property rights, particularly in the field of exactions—mandates requiring a developer to abandon a property interest in exchange for a permit. PLF has litigated and won major exaction cases before the Supreme Court of the United States in *Nollan v. California Coastal Commission* and *Koontz v. St. Johns River Water Management District*.² Our experience also includes

¹ RCW 82.02.020.

² *Koontz v. St. Johns River Water Management Dist.*, __ U.S. __, 133 S. Ct. 2586 (2014); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

numerous Washington state exaction cases involving the state's impact fee statute.³ Given PLF's state and federal experience with exactions, we can offer key insight into the legal problems surrounding the Grand Bargain and MHA.

Argument

The Fifth Amendment prohibits government from taking private property without offering just compensation. At its core, the Takings Clause embodies a basic notion of fairness: "The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."⁴ The government enjoys the power to take property for various public purposes, but it may not force private individuals to shoulder the cost.

A taking is not limited to physical seizures of property; land-use regulations also can constitute a taking if they become burdensome enough. The Supreme Court has said, "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."⁵ An abundance of caselaw has sprung up to define this boundary.

I. A city cannot demand that developers abandon a property right in exchange for a permit except under narrow circumstances

One category of cases that go "too far" involves exactions—typically a dedication or fee extracted from a developer in exchange for a permit. The exactions concept stems from the "unconstitutional conditions doctrine," which "vindicates the Constitution's

³ See, e.g., *Citizens' Alliance for Property Rights v. Sims*, 148 Wn. App. 649 (2008); *Common Sense Alliance v. GMBH*, 189 Wn. App. 1026 (2015) (unpublished).

⁴ *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

⁵ *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

enumerated rights by preventing the government from coercing people into giving them up.”⁶

Permits are often essential to make any valuable use of property. By conditioning the grant of such a permit on the forfeiture of a property interest, permitting authorities violate the underlying constitutional right to just compensation for a taking of property. So long as the permit exceeds the value of the property sought by the government, permit seekers will tend to abandon a constitutionally protected right in order to secure the permit.⁷ Government can thus use permits as leverage to evade compensating property owners—what amounts to “an out-and-out plan of extortion.”⁸

Governments may, however, impose exactions under narrow circumstances. All permit conditions must address a direct impact of the proposed development.⁹ This narrow exception allows for exactions that satisfy two criteria: (1) the exaction must have an “essential nexus” to a problem directly caused by the project;¹⁰ and (2) the exaction must be roughly proportional in scope to a project’s impact.¹¹ Washington has codified a similar test in its impact fee statute.¹²

Under both the Fifth Amendment and the impact fee statute, Seattle must demonstrate that the affordable housing exaction imposed under the MHA program satisfies this essential nexus and rough proportionality rule. Since new development does not directly harm affordable housing—instead helping to lower prices—and the city hasn’t made any individual determinations regarding proportionality, the city satisfies neither the constitutional nor the statutory standard.

⁶ *Koontz*, 133 S. Ct. at 2594.

⁷ *Id.* at 2594-95.

⁸ *Nollan*, 483 U.S. at 837.

⁹ *Koontz*, 133 S. Ct. at 2595.

¹⁰ *Nollan*, 483 U.S. at 837.

¹¹ *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

¹² RCW 82.02.020; *see also Sims*, 145 Wn. App. at 796 (applying the federal nexus and proportionality tests under RCW 82.02.020).

A. The nexus and proportionality tests apply to legislative exactions like the MHA program because the legality of a taking does not turn on the type of government entity involved

Some confusion has arisen over whether the exaction doctrine applies to legislative exactions. Under federal and Washington precedent, however, generally applicable laws imposed by a legislative body face the same test as ad-hoc permit conditions imposed by administrative agencies. Indeed, the Supreme Court's major exaction cases each involved an underlying legislative mandate. In *Nollan v. California Coastal Commission*, the unconstitutional condition was imposed under a state law demanding that coastal property owners provide public access across beachfront property as a condition on new development.¹³ *Dolan v. City of Tigard* involved a bike path and greenway dedication mandated by a city development code.¹⁴ *Koontz v. St. Johns River Management District*, too, sprung from a legislative mandate that permitting authorities impose conditions on wetlands development.¹⁵

Washington state caselaw has also applied *Nollan* and *Dolan* to legislative exactions. In *Sparks v. Douglas County*, the Supreme Court demanded that a legislatively mandated road dedication satisfy *Dolan*.¹⁶ Another case, *Trimen Development Co. v. King County*, involved a county ordinance demanding dedication of land for park development or an in-lieu fee as a permit condition.¹⁷ The Supreme Court applied *Dolan*.¹⁸ The court followed the same pattern in *Isla Verde International Holdings v. City of Camas*, applying the statutory exactions framework to an open-space ordinance.¹⁹ Indeed, there, the court held that the uniform application of the open-space law across all

¹³ *Nollan*, 483 U.S. at 828-30.

¹⁴ *Dolan*, 512 U.S. at 377-78.

¹⁵ *Koontz*, 133 S. Ct. at 2592.

¹⁶ *Sparks v. Douglas County*, 127 Wn.2d 901, 910-11 (1995).

¹⁷ *Trimen Dev., Co. v. King Cty.*, 124 Wn.2d 261, 274 (1994).

¹⁸ *Id.* at 274.

¹⁹ *Isla Verde Intern. Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 747-48 (2002).

development was a reason to *condemn* the law rather than inoculate it from exactions scrutiny.²⁰

Nothing in the Fifth Amendment or the impact fee statute implies that an exaction's legality depends on the type of entity that imposes the leverage. If anything, legislative exactions often stray farther from the nexus and proportionality standards than their administrative counterparts, since the former tend to lack flexibility or consideration for individual impact. The MHA program must, therefore, satisfy the exaction tests imposed by statute and the constitution.

B. The MHA program fails the nexus test because new residential development doesn't have a direct, negative impact on housing affordability

Any exaction imposed by Seattle must have an essential nexus to a direct impact. In the language of the impact fee statute, no city can impose an exaction on development unless the city "can demonstrate [that the exaction is] reasonably necessary as a direct result of the proposed development or plat to which the [exaction] is to apply."²¹ As the Washington Supreme Court has noted, this demands more than a tenuous relationship between project and impact: "We have repeatedly held . . . that development conditions must be tied to a specific, identified impact of a development on a community."²² For example, in *Isla Verde*, an ordinance required proposed subdivisions to keep thirty percent of the property as open space.²³ The Court concluded that this "uniformly applied" open-space condition with a "preset amount" could not satisfy the nexus

²⁰ See *id.* at 880 ("[The ordinance] says nothing about why an open space set aside is necessitated by a particular proposed subdivision. Instead, the open space condition to obtain plat approval is uniformly applied, in the preset amount, regardless of the specific needs created by a given development."); see also *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649 (2008) (applying the *Nollan-Dolan* standard to a legislative mandate that limited clearing on rural residential properties).

²¹ RCW 82.02.020.

²² *Isla Verde*, 146 Wn.2d at 761; see also *Honesty in Environmental Analysis & Legislation v. Central Puget Sound Growth Management Hearings Board*, 96 Wn. App. 522, 533-34 (1999) ("Simply put, the nexus rule permits only those conditions necessary to mitigate a specific adverse impact of a proposal.").

²³ *Isla Verde*, 146 Wn.2d at 746-47.

requirement because it wasn't tied to the "specific needs created by the given development."²⁴

So far, Seattle has failed to demonstrate that the MHA program is reasonably necessary to mitigate for any direct impact on housing costs. The nexus study relies, for its analysis, on a "prototypical market-rate residential development" to establish the required link between the impact of a development and the problem being addressed.²⁵ This focus on a broad generalization rather than individual projects defies the Washington Supreme Court's repeated holding that an exaction must "be tied to a specific, identified impact of a development on a community."²⁶

The causal chain used by the city's nexus study to demonstrate new housing's impact on the affordable-housing problem is also too attenuated. Exactions can only address a problem that is a "direct result" of the proposed development.²⁷ Here, however, only a circuitous and thin causal chain ties new housing to decreased affordability, if such impact exists at all.

The nexus study seems to rely on the following rationale:

1. New housing draws new residents to Seattle.
2. These new residents will result in new expenditures.
3. These new expenditures will precipitate job growth.
4. Job growth will attract more people to Seattle.
5. These new residents will not be able to afford market-rate housing.²⁸

²⁴ *Id.* at 763.

²⁵ Seattle Affordable Housing Nexus Study (Administrative Review Draft) 5, David Paul Rosen & Associates (September 11, 2014).

²⁶ *Isla Verde*, 146 Wn.2d at 761.

²⁷ RCW 82.02.020.

²⁸ Seattle Affordable Housing Nexus Study at 5-10.

These lengthy and speculative ratiocinations fail to show how new residential development has a “direct” impact on affordability. Indeed, they instead lay bare the indirect and hypothetical nature of such impacts.

The nexus study also doesn’t account for the primary causes of the affordability crisis. Limited supply and rising demand that drive prices upward stem from market forces such as job growth and regulatory decisions made by Seattle over decades of managing its housing stock.²⁹

The city’s effort to force developers to solve an affordability problem that they did not create resembles Seattle’s Housing Preservation Ordinance at issue in *San Telmo Associates v. City of Seattle*.³⁰ There, developers who demolished low-income housing to convert the property to non-residential uses had to pay relocation assistance and replace a percentage of the housing.³¹ Our supreme court held that this scheme violated the impact fee statute because developers had not caused the affordability problem faced by displaced tenants: “The City is instead shifting the public responsibility of providing housing to a limited segment of the population.”³² Here, new residential development has even less impact on housing affordability than demolition of low-income housing because new development does not directly displace low-income residents and destroy housing stock. Indeed, new development bolsters supply, easing the strain on the housing market. Viewed alongside the sweeping backdrop of the market and regulatory context, individual residential development projects do not have a direct or measurable impact on increased housing costs. As the Washington Supreme Court has said on multiple occasions, “the problem of the decrease in affordable rental housing in the city of Seattle is a burden to be shouldered commonly and not imposed

²⁹ See *Levin v. City and Cty. of San Francisco*, 71 F.Supp.3d 1072, 1084-85 (N.D. Cal. Dist. Ct. 2014) (concluding that a relocation assistance law did not establish a nexus between evictions and housing affordability).

³⁰ 108 Wn.2d 20 (1987).

³¹ *Id.* at 22.

³² *Id.* at 24; see also *Sintra Inc. v. City of Seattle*, 119 Wn.2d 1, 23 (1992) (“[T]he lack of low income housing was brought by a great number of economic and social causes cannot be attributed to an individual parcel of property.”).

on individual property owners.”³³ The MHA program cannot establish an essential nexus between increased housing cost and residential development.

C. The MHA program fails to establish proportionality because it doesn’t make any individualized determinations regarding the extent of a given project’s impact

The proportionality standard set by *Dolan v. City of Tigard* requires that an exaction be tailored to the specific impacts caused by the particular development. While eschewing the need for surgical precision, the Court affirmed that governments need to make an “individualized determination” as to the particular project’s impact and demonstrate that the exaction “is related both in nature and extent to [that] impact.”³⁴ The burden of demonstrating proportionality rests with the exacting authority.³⁵

Even assuming Seattle could establish an essential nexus between new housing and affordability, Seattle’s MHA program cannot satisfy rough proportionality. The set aside and in-lieu fee calculations do not stem from an “individualized determination”³⁶ regarding the particular project’s “specific, identified impact.”³⁷ Instead, the calculation of a particular project’s exaction is based on its size and its location in the city. This formula suffers from the same flaw as the open-space dedication in *Isla Verde*. Like *Isla Verde*—which used a fixed thirty percent dedication—the set-aside percentage here is a “preset amount” that is applied uniformly across a zone.³⁸ Likewise, the fee is preset and fixed by square footage, with no accounting for specific impacts. The city can’t paint with such a broad brush if it wants to satisfy proportionality; it must make site-specific calculations of impact. Thus, Seattle has failed to shoulder its burden of proving that these exactions are roughly proportional.

³³ *Guimont v. Clarke*, 121 Wn.2d 586, 611 (quoting *Robinson v. City of Seattle*, 119 Wn.2d 34, 55 (1992)).

³⁴ *Dolan*, 512 U.S. at 391.

³⁵ *Isla Verde*, 146 Wn.2d at 755-56.

³⁶ *Dolan*, 512 U.S. at 391.

³⁷ *Isla Verde*, 146 Wn.2d at 761.

³⁸ *Id.* at 763.

II. The waiver or reduction available under the MHA program does not inoculate the ordinance from facial invalidity

The MHA program allows the city to reduce or waive the fee or set-aside requirements due to inability to use the increased capacity offered under the program or severe economic impact that would result from performance or payment.³⁹ The city's discretion to alleviate or remove the inclusionary zoning requirements, however, does not solve the legal issues described above.

The city bears the burden of demonstrating nexus and proportionality.⁴⁰ It cannot therefore hoist the burden on developers to prove they deserve a reprieve. Plus, the ordinance does not even allow the city to grant a reduction or waiver should a developer demonstrate a lack of nexus or proportionality; the waiver or reduction only applies to developers severely harmed by the MHA requirements or who can't use the increased capacity.⁴¹ The city therefore can't escape constitutional peril now by forcing developers to carry the city's burden later.⁴²

III. The exceptions to the impact fee statute do not apply

None of the statutory exceptions to the impact fee prohibition apply here. Washington's impact fee law allows for payments under a "voluntary agreement" so long as the payment is "reasonably necessary as a direct result of the proposed development."⁴³ Even assuming that offering an option between an in-lieu fee and a set-aside

³⁹ SMC 23.58C.035.

⁴⁰ *Isla Verde*, 146 Wn.2d at 755-56.

⁴¹ It's also worth noting that, based on economic analysis of the MHA program, almost every project exposed to the program's framework would be eligible for the increased-capacity reduction, rendering the program moot and little more than an inefficient and costly hoop to leap for developers trying to ease the city's housing-supply problem. See Dan Bertolet, *Seattle's Flawed Plan for Mandatory Housing Affordability Would Suppress 'Missing Middle' Housing*, Sightline Institute (March 13, 2017), <http://www.sightline.org/2017/03/13/seattles-flawed-plan-for-mandatory-housing-affordability-would-suppress-missing-middle-housing/>.

⁴² See *Building Industry Ass'n of San Diego Cnty., Inc. v. City of San Diego*, No. GIC817064, 2006 WL 1666822 at *2 (San Diego Sup. Ct. 2006) ("Inasmuch as the waiver provision enacted by the City of San Diego does not allow the City to avoid the unconstitutional application of the ordinance, the ordinance on its face results in an unconstitutional taking.").

⁴³ RCW 82.02.020(3).

constitutes a “voluntary agreement,” the MHA program still fails to form a proper nexus between affordability and new development. The increasing affordability problem is not a “direct result” of proposed residential developments for the reason discussed above. Thus, this program is not a valid “voluntary agreement” that can escape RCW 82.02.020.

Nor can the city find harbor in the impact-fee exception for affordable housing incentive programs.⁴⁴ That exception allows cities or counties to “enact or expand affordable housing incentive programs providing for the development of low-income housing units through development regulations or conditions on rezoning or permit decisions.”⁴⁵ In return for a fee or set-aside, a city can offer density or height bonuses, among other things.⁴⁶

This exception, however, does not apply to mandatory schemes. By its plain language, the incentive exception applies solely to programs that developers can choose to forgo. The city may only offer certain benefits in order to encourage developer participation, which necessarily implies choice. If the MHA program could fit into this exception, the word “incentive”—used repeatedly in the statute’s wording—would become superfluous. Plus, the exception explicitly states that a developer can choose “not to participate in an optional affordable housing incentive program adopted and authorized under this section.”⁴⁷ Any program under this subsection must offer an optional incentive only—not a demand. Even though the MHA program grants an upzone as part of the affordable housing initiative, the city’s scheme still doesn’t qualify as an incentive program because it lacks any element of choice; the developer must perform or pay, regardless of whether they want the increased FAR from an upzone.

⁴⁴ See *id.* (stating that 82.02.020 does not limit municipal authority to implement affordable housing incentive programs).

⁴⁵ RCW 36.70A.540

⁴⁶ *Id.* (1)(a).

⁴⁷ *Id.* (1)(c).

Finally, even if the option of an in-lieu fee rather than a set-aside rendered this mandatory program a “voluntary agreement” under the impact fee statute, the program would still violate the Fifth Amendment’s Takings Clause. *Koontz* confirmed that the Constitution forbids exactions even when they offer an in-lieu fee alternative; otherwise, officials could evade *Nollan* and *Dolan* with ease.⁴⁸ Thus, the MHA program violates statutory and constitutional law alike.

Conclusion

The Grand Bargain hopes to fix a pervasive problem afflicting Seattle. The city cannot, however, conscript private property to achieve a public purpose without paying for it. Instead, programs that broadly distribute taxes on property to generate revenue for subsidized housing like the housing levy or that forgo tax revenue in exchange for restricting rents like the MFTE program are fair, less costly to the end users of housing, and legal. A public problem demands a public response—not one that places a public burden on private shoulders.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ethan W. Blevins', with a long horizontal line extending to the right.

ETHAN W. BLEVINS
Attorney
Pacific Legal Foundation

⁴⁸ *Koontz*, 133 S. Ct. at 2599.



TOWARD A NEW MEASURE OF HOUSING AFFORDABILITY

Residual income approach offers advantages for policy makers.

Author: **Roger Valdez**

On September 10, 2009 at 5:05 pm

Last week I wrote about the [strange way](#) we measure poverty in the United States. Canada doesn't have a defined poverty level but instead uses a Low Income Cut Off or LICO. The LICO is a level of income below which a family ends up spending more of its income on necessities than an average family of the same size ([this is a good rundown](#) of poverty measures in Canada).

The history of measuring poverty in the United States is not one that has inspired a great deal of confidence. There is a sense from advocates working on poverty issues that people above the established level are still poor, while others worry that setting the bar too high would incentivize poverty. Housing affordability measures have a similar story. A new way of looking at housing affordability called the residual income approach is one that offers a real alternative to the current method.

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For the better part of the last 100 years, housing affordability has been calculated as a ratio of housing cost to income on a monthly basis. The normative standard (that is, what a person should be paying) for housing affordability is 30 percent (or less) of monthly income. The 30 percent threshold started as a 25 percent threshold (a week's wages for a month's rent) and then crept up to 30 percent. This rule of thumb has been constant since 1981, and because the [Department of Housing and Urban Development](#) has used this standard it has dominated the field in terms of how affordability is determined.

The problems with the 30 percent rule of thumb are pretty obvious. First, a person of means might spend well over 30 percent of their monthly budget on a mortgage or rent and still not be struggling to get by. A person who earns \$500,000 per year and lives in Portland could easily spend \$200,000 on housing and still be considered well-to-do. Secondly, on the opposite end of the spectrum, there are some families for whom even 20 percent of the monthly budget spent on housing creates a significant challenge—making for excruciating choices between food, childcare, healthcare, and other needs. And the 30 percent rule doesn't

account for regional differences. Prices for other necessities might be much higher in one area than another, throwing the whole thing off-kilter.

But are there any better ideas out there? Yes and no. While housing advocates and academics alike have long expressed frustration with the 30 percent rule of thumb we haven't yet seized on a silver bullet solution. Patches have been developed like pegging the rule to some percentage of Area Median Income (AMI). In Seattle, for example, the latest affordability debate has been over creating "work force housing" which would be affordable to people earning 80 percent of AMI. But this system has some of the same drawbacks and doesn't really account for the other factors that drive where people live, like perceptions of school quality or public safety, both considerations which might influence residence in places where they might pay more for housing in exchange for better schools or safer streets.

This summer, Sightline sent our intern, Avi Allison, on a mission to comb through the housing affordability literature to see if there were any good alternative approaches to setting a standard that works. This is where we came upon the **residual income approach** championed by Michael Stone of the University of Massachusetts-Boston. The residual income model is similar to the **self-sufficiency standard** for considering poverty in that it looks at more than just income to determine what is affordable.

The residual income model looks at how much money is left over after paying for housing and considers the costs of other basic necessities. Here is how Stone describes the concept:

This means that a household has a housing affordability problem if it cannot meet its nonhousing needs at some basic level of adequacy after paying for housing. The appropriate indicator of the relationship between housing costs and incomes is thus the difference between them—the residual income left after paying for housing—rather than the ratio.

Like the self-sufficiency measure, residual income adjusts for local factors and costs in a way that the 30 percent rule of thumb can't. And, because it considers a basket of goods and services that families need in addition to housing, it addresses the problem of housing affordability more broadly. Here is Stone on the benefits of the approach.

First, it offers a more precise and finely honed instrument for assessing housing needs and problems. Second, it points toward revisions in housing subsidy formulas that would result in a more equitable and efficient allocation of subsidies. And third, it suggests a way of refining residential mortgage underwriting that might perhaps yield a more accurate assessment of risk.

But does this approach work? Well, Stone applied it to **housing costs in the United Kingdom** and found that if it were used there, some households that pay less than 25 percent of their

monthly income on housing would qualify for a subsidy, while some households that pay more wouldn't. He found that a critical factor was family size, with larger families, not surprisingly, having much higher expenses after housing costs, even if they paid less than 25 percent of income on housing.

We'll be doing more work to see how the residual income approach might fit together with the self-sufficiency standard for an even better whole-picture model. Understanding poverty and housing affordability in our region is the first step toward sustainable solutions.

We are a community-sponsored resource and we can't do this work without you!

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