



TACOMA HOUSING AUTHORITY

RESOLUTION 2021-06-23 (2)

Date: June 23, 2021
To: THA Board of Commissioners
From: Michael Mirra
Executive Director
Re: Power of Eminent Domain for Acquisition of Affordable Housing

This resolution would authorize Tacoma Housing Authority (THA) to use its power of eminent domain (aka condemnation) to acquire existing multifamily properties. The Board of Commissioners would retain final approval of all condemnations or negotiated purchases in lieu thereof.

Background

As indicated in THA Resolution 2021-05-26(1), THA is pursuing the acquisition of multifamily properties that may currently offer rents that are affordable to households earning 60% to 120% of Area Median Income. The competition for acquiring such properties is quite strong, and such properties are vital to THA's mission to provide affordable housing. One possible strategy for acquisition of these properties is condemnation (aka the exercise of the power of eminent domain) or negotiated purchase in lieu of condemnation.

Under RCW 35.82.110, THA has "the right to acquire by the exercise of the power of eminent domain any real property which [THA] may deem necessary for its purposes under [Chapter 35.82 RCW] after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes." However, even when the power of eminent domain is invoked, RCW 8.26.180(1) directs government agencies with the power of eminent domain to make every reasonable effort to acquire real property by negotiation.

This power of eminent domain gives THA a competitive advantage over buyers who do not have such power. Specifically, RCW 82.45.010(3)(h) and WAC 458-61A-206 provide that transfers made pursuant to condemnation proceedings or by purchase under an imminent threat of condemnation are exempt from real estate excise tax. The graduated real estate excise tax rate charged by the State of Washington on sales of real property such as multifamily property currently ranges from 1.1% to 3%. The local real estate excise tax rate charged in Tacoma is currently 0.5%. This means that, depending on the sale price of a property, a condemnation or purchase in lieu thereof can result in savings to a seller of between 1.6% and nearly 3.5% of the price as compared with a sale not made under threat

of condemnation. Thus, it may be possible for THA to offer a price that is the same or slightly lower than that offered by other buyers but that will result in higher net proceeds to the seller.

Similarly, while THA would not provide income tax advice to real estate sellers, it may be possible for those sellers to defer gain on the proceeds of a condemnation or purchase in lieu thereof pursuant to Internal Revenue (“IRC”) Section 1033. More particularly, IRC Section 1033 has distinct advantages over more common “like-kind exchanges” performed pursuant to IRC Section 1031. IRC Section 1033 provides for a much longer period for identification and purchase of replacement property than IRC Section 1031. In addition, a like-kind exchange under IRC Section 1031 requires the use (and expense) of a qualified exchange facilitator who generally must receive and hold sale proceeds on behalf of the seller pending acquisition of replacement property; IRC Section 1033 does not require the involvement of an exchange facilitator.

Recommendation

Approve Resolution 2021-06-23 (2) authorizing THA to acquire multifamily properties by condemnation or by negotiated purchase in lieu thereof. All acquisitions by condemnation or purchase in lieu thereof will be subject to further board resolutions of necessity and final board approval.



TACOMA HOUSING AUTHORITY

RESOLUTION 2021-06-23 (2) **(Power of Eminent Domain for Acquisition of Affordable Housing)**

A RESOLUTION of the Board of Commissioners of the Housing Authority of the City of Tacoma

Whereas, There is a critical shortage of modestly priced rental housing in the City of Tacoma; and

Whereas, Time is of the essence as THA has secured funding for equity and is willing and able to use THA resources to supplement those funds; and

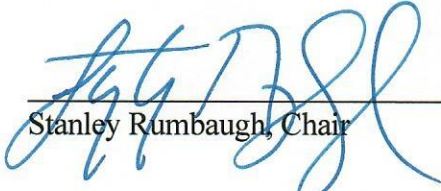
Whereas, Sellers are made aware of the advantages of selling to a Public Housing Authority pursuant to condemnation (aka the exercise of the power of eminent domain) or purchase in lieu thereof. These include favorable real estate excise tax treatment and the possibility of deferring gain pursuant to Internal Revenue Code Section 1033; and

Whereas, All acquisitions by condemnation or purchase in lieu thereof will be subject to further board resolutions of necessity and final board approval; now, therefore, be it

Resolved by the Board of Commissioners of the Housing Authority of the City of Tacoma, Washington as follows:

Subject to further board resolutions of necessity and final board approval, THA is authorized to acquire multifamily housing by condemnation or by negotiated purchase in lieu thereof.

Approved: June 23, 2021



Stanley Rumbaugh, Chair