WASHINGTON STATE DEPARTMENT OF LICENSING

Washington
Real Estate Commission

Meeting Packet
September 13, 2016
Spokane, Washington

dol.wa.gov

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9021, Olympia, Washington 98507-9021

REAL ESTATE COMMISSION MEETING
AGENDA

DATE: September 13, 2016

PLACE: Red Lion at the Park
303 W North River Drive
Spokane, WA 99201

PERSON: Jerry McDonald, Administrator
(360) 664-6525
Email: jmcdonald@dol.wa.gov

ORDER OF AGENDA: OPEN SESSION

CALL TO ORDER: Kathleen Drew Assistant Director/Chair 9:00 a.m.

A. Attendance
B. Approval of Agenda
C. Approval of Minutes
D. Review of WCRER
E. Exam Vendor Update
F. City of Seattle Ordinance
G. Education Update
H. Changing Business Practices Update
I. Commission Meeting Schedule
J. Budget Report
K. Open Forum/Other Business
L. Review of Action Items
M. Adjourn

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9021, Olympia, Washington 98507-9021

REAL ESTATE COMMISSION
MEETING MINUTES

DATE: June 15, 2016

PLACE: Double Tree Airport
18740 International Blvd.
SeaTac, WA 98188

CONTACT PERSON: Jerry McDonald, Administrator
(360) 664-6525
Email: jmcdonald@dol.wa.gov

ORDER OF AGENDA: **OPEN SESSION**

CALL TO ORDER: Jess Salazar/Vice-Chair 9:00 a.m.

A. Commissioners present – Jess Salazar, Cate Moye, George Pilant, Kyoko Wright, and Dave Azose.
Commissioners excused – Kathleen Drew, Jeff Thompson
Staff present –Jerry McDonald, Bill Dutra, Colin Pippin-Timco
B. Approval of Agenda – It was moved and seconded to approve the agenda with the modification that Peter Orser will give his presentation just after Jerry McDonald's reports on current contracts. **Approved**
C. Approval of Minutes – April 20, 2016 – It was moved and seconded to accept the minutes as presented. Later in the meeting Bob Mitchell asked to correct the account coding error in the Budget Report. **Approved**
D. Summary of Contracts – At the last commission meeting, the commission wanted a list of all outstanding contracts. Jerry McDonald provided a list in the handout of the seven outstanding contracts the program was working on.
E. Update on Exam Vendor Contract – Jerry announced a new vendor, PSI bought our current vendor AMP and won the next contract. They will continue to use the AMP test for now, but will eventually become PSI as of 1/1/2017. Commissioners continue to work on the very difficult task of writing test questions for the new State Simulation Test.
E. Peter Orser, Acting Director and Vice Chair of the board, announced that they have chosen a new director for the Runstad Center and they will be looking to Jerry to

help form a Research Committee to assist with any coordination efforts. The latest newsletter was just published and can be found on the website. The condo report is drafted and should be published about the end of July. One thing they discovered is we build more condos than any other city on the west coast. This report precipitated comments from meeting attendees. Mr. Orser reported on several other items discovered while compiling this report. There seems to be a need for legislation regarding litigation in regard to condo construction. Bob Mitchell with Washington Realtors offered to meet with Mr. Orser's team to discuss this.

F. Investigation Trends – Bill Dutra, Investigations Manager, presented information on regulations regarding what records are required to be retained. There was a discussion on what is required on a transaction log, including Brokers Price Opinion (CMA). Bob Mitchell suggested it would be helpful to have a little more clarity on what constitutes a "brokers price opinion".

G. City of Seattle Ordinance – Dave Azose was approached by several commercial real estate licensees and asked to bring before the commission information regarding a new Seattle City ordinance requiring a multifamily building of 5+ units with at least one unit meeting the criteria for rents below the 80 percent of the median income. The new ordinance states that the building owner must inform the city of his intention to list the property for sale no later than 60 days prior to listing it for sale. Jerry McDonald mentioned some concerns regarding compliance issues. The only action item from this discussion was that Commissioner Kyoko Wright will get more information on this city ordinance.

H. Education - Curricula Review Contractor – Colin Pippin-Timco reported on the plan to contract with a specialist to help develop a curriculum approval review process to review and update curricula and evaluate courses. He will be updating us with more information at the next meeting.

I. Changing Business Practices – Advertising – Cate Moye reported a Changing Business Practices Committee meeting will be scheduled soon to create a plan to provide licensees with more information and a checklist for advertising. The original idea came from the Real Estate Counsel of British Columbia. Jerry McDonald received permission to use their written material and modify it to Washington's laws and rules.

J. Report Outs

- Singapore Visit – Kyoko Wright and Jesse Salazar reported on an informative meeting with the Real Estate delegates from Singapore.
- NWMLS Insurance Form – George Pilant reported that in light of changes made by the National Flood Insurance Program there is a need for licensees to direct all buyers to consult their insurance agents prior to purchasing.
- Assumed Names – This was an action item from the last meeting, asking the department to find out how many assumed names were in use. Jerry McDonald reported on that there are 196 registered assumed names.
- Mobile Devices – State's on-line licensing programs – Jerry reported that after reaching out to other states he found that Alabama and Idaho have

systems that can be accessed with cell phones while Missouri has no web based system at all.

- Commercial Brokers/Residential Brokers – Dave Azose reported that there seem to be a trend of more residential realtors working in the commercial arena. He suggested there are lots of classes including a wide range of classes offered by CBA that could be most useful to those brokers. Several stakeholders made comments on this topic. Jerry suggested that Dave write an article for the next newsletter.

K. Budget Report – Jerry McDonald reported that even though the Real Estate Commission budget looks good we need to remember that the Legislature will still be sweeping half a million dollars from that budget. The research account will also be a legislative sweep to the research account so future funding for research may have to be cut back.

L. Commission Meeting Dates:

- **September 13, 2016 9:00 am,** Red Lion at the Park, Spokane, Washington
- **December 6, 2016 9:00 am,** Double Tree Hotel, SeaTac, Washington.

M. Open Forum - Commissioner Jess Salazar opened the floor.

- Dave Azose suggested the December meeting be held at University of Washington, however, we already have a contract for that meeting at another meeting space located near the airport.
- Natalie suggested the real estate program look into rental companies for Air B&Bs questioning if they should be licensed? Jerry McDonald responded that if the Air B&B's are similar to vacation rentals where the tenant is given a license to enter, and not an interest in real property, then persons renting Air B&B's would not need to have a real estate license.

N. Review of Current Action Items:

- Kyoko Wright will call city of Seattle for information on the new Condominium Ordinance.
- Cate Moye will schedule a Changing Business Practices Subcommittee meeting for advertising guidelines.
- Dave Azose to contact Chris Osborn regarding an article on commercial practices.
- Jerry McDonald will correct minutes.

O. Adjourn – The Meeting adjourned at approximately 11:40 am.

From: Peter Orser [mailto:porser@uw.edu]
Sent: Monday, August 22, 2016 1:03 PM
To: McDonald, Jerry (DOL) <JMCDONALD@DOL.WA.GOV>
Cc: anne lawler <alawler@jbsl.com>
Subject: RE: Real Estate Commission Meeting-WCRER status report

Jerry-

I apologize that I will not be able to attend the September meeting. In my absence I wanted to be sure you had an updated status on our various contract work.

Newsletter-Volume 9 issue 1 – winter 2016 is complete

Condo Report is complete, but subject to approval by the Commission at their September meeting

Commercial property snap shot- We have made some progress in designing the template and are in the process of loading data for our first property type test run. We have not achieved any milestones quite yet so no invoices have been submitted.

Housing snap shot/market summary and tables 2016 Q2 is complete

Apartment Market report- Spring 2016 is complete

I know you have heard but for the benefit of the Commission we have hired our new permanent director for the Runstad Center—Simon Stevenson. He begins his transition in September and will be with us full time by the first of the year. I have attached a paper he did on the Brexit issue, which is fascinating and because he is from England he is right in the thick of it. We are excited to have a Director of such substance who will also bring an international perspective. Here is a brief note from him on his background...

Simon Stevenson joins the Runstad Center from the Henley Business School, University of Reading in the UK where he had been Professor of Real Estate Finance & Investment and Director of Masters program in Real Estate Finance. He previously held positions at Cass Business School-City University London and University College Dublin. Simon's primary research focus is on the public real estate markets, in particular REITs, real estate investment management and housing economics. He has published over 75 papers in leading real estate and finance journals and was awarded the 2006 International Real Estate Society Achievement Award. Simon is a past president of the International Real Estate Society and is currently co-editor of the Journal of Real Estate Portfolio Management, the American Real Estate Society's industry facing applied investment journal.

"I am looking forward enormously to taking up position at the Runstad Center. The Center has already established a world class masters program and is at an extremely exciting point in its history. I hope that, together with the great team already in position, I can contribute to the continued growth and development of the Center and its activities. An added attraction and benefit is Seattle itself, moving to such a vibrant economy and real estate market has huge appeal professionally. Furthermore, myself and Alison are looking to bringing up our three young children in such a beautiful part of the world".

kind regards

Simon

We have also opened the position of Associate Director for the Washington State Real Estate Research Center. A job posting is attached. This is a non-academic hire meaning, among other things, they can be entirely focused on Industry related research and will not have to pursue academically focused research in pursuit of advancement and ultimately tenure at the university. As discussed we are reenergizing the WCRER committee, and while we will have some representation both geographically and within the Realtor community, I want to expand the committee's expertise in actual research. Matthew Gardner is a perfect example and will continue as co-chair along with John Bliss who works with Urban Renaissance, a local commercial developer. He began with our program way back when it was under Glenn Crellin at WSU- so brings an excellent historical back ground. We are assembling an interview committee now and would hope to have this position staffed by the end of the year.

I hope this provides an appropriate update for the commission. As always feel free to call with any questions you may have.

Peter Orser
Director|Runstad Center for Real Estate Studies
College of Built Environments|University of Washington

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Incentivizing Condominium Development in Washington State: A Market and Legal Analysis

by
David Leon[1]
Washington Center for Real Estate Research
July 28, 2016

Abstract

The City of Seattle has been experiencing unprecedented population and economic growth over the last five years. As the city's population has increased and the number of high-paying jobs has grown, prices for housing have increased significantly. Condominium development could provide an affordable in-city option for new housing. At present, condominiums are not being built in sufficient numbers to meet demand, and those that are being built are being sold at prices that are beyond the means of the average-income individual. Reasons for this dynamic include financing and capital markets, insurance coverage, and to some degree, legal liability for condominium developers. This paper examines the current state of the housing market in Seattle, focusing on construction of new condominiums, with comparisons to six other Western cities. The paper then examines elements of the Washington Condominium Act that may bear on the heightened liability for condominium builders, and suggests some options for reducing the liability, after comparison to four other states and the Canadian province of British Columbia. Changes to the Washington Condominium Act may be necessary but not sufficient conditions for the building of more affordable condominium units in Seattle. Financial incentives may be required to create the conditions for more affordable condominiums. For the market to be incentivized to build more affordable condominiums without public subsidy, economic opportunity for builders must offset the greater perceived risks and inefficiencies of smaller scale building through lower costs. Insurance costs and the risk of litigation are factors that, if mitigated, can contribute to tipping the scale toward the delivery of more affordable for-sale condominium product.

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[1] B.A., University of California at Berkeley, J.D., University of Miami, M.S.R.E. Candidate (2017), University of Washington.

I. INTRODUCTION

The City of Seattle has been experiencing unprecedented population and economic growth over the last five years. As the city's population has increased and the number of high-paying jobs has grown, the prices for housing have increased significantly. Condominium development provides an affordable in-city option for new housing in Seattle. First time buyers, middle-income buyers, and families benefit. If built in sufficient numbers and at an affordable price, condominiums provide opportunities for many types of buyers and could help to address some of Seattle's problems around affordability, as well as transit and urban density.

Condominiums could provide housing opportunities not only for first time buyers and middle-income buyers, but also for "empty nesters", many of whom occupy larger single-family homes. If these homes were then listed because an empty nester moved to a condominium, there would be more single-family housing opportunities for younger families.

Condominiums could provide purchase opportunities for families who want to stay in the urban core. Multi-family housing developers are not currently building rental housing for families since construction of studio and one bedroom units provides a greater financial return. Condominiums can be an alternative for family housing in a higher density format if certain market incentives are in place.

Condominiums could also help contribute to more sustainable development, especially around transit hubs, easing the burden on traffic and parking, and providing opportunities for walkable neighborhoods. Condominiums are also more energy efficient than single-family homes.

Condominiums can be built in a number of forms: large and small unit sizes; large and small total unit count; high-rise, mid-rise and low-rise; and in downtown as well as outlying neighborhoods. In short, they can be flexible to fit almost any neighborhood density or design regimen, adding architectural diversity to the economic and environmental benefits derived from more condominium supply.

At present, however, there is a lack of affordable condominium development in Seattle. In 2015, the Mayor of Seattle commissioned a report on ways to improve housing affordability in the city. One of the findings specifically referenced the state law that imposes a heightened warranty on condominium builders as a hindrance to development:

> Condominium developers are subject to an implied warranty for construction under the State's Condominium Act. Courts in Washington have interpreted the statutory language broadly, resulting in a plethora of law suits against condominium developers, a chilling of condominium development in the state, and – often adverse consequences for the condominium owners, despite significant improvements in condominium construction practices.[2]

The main purpose of this report is to provide an overview of the market context and consider possible legislative changes that could be made to facilitate condominium development. Section II will outline the state of the current condominium market in Seattle. Section III will analyze the market and legal forces influencing condominium development, and cite opportunities for legislative consideration that may encourage the development of more and more affordable condominiums. Section IV will conclude, summarizing the paper.

As shown in the analysis below, there are currently a large number of condominiums being built in Seattle relative to other western cities, although overall supply does not appear to be meeting demand. The trend has also been toward building condominiums for the upper end of the income scale. As Seattle has grown in population and

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[2] Seattle Housing Affordability and Livability Agenda, Final Advisory Committee Recommendations to Mayor Edward B. Murray and the Seattle City Council (July 13, 2015), p. 35, recommendation H.3.

wealth over the last five years, the price of new condominiums has outpaced the middle-income individual's ability to afford them.

This issue, however, is multifaceted, with capital market forces, developer goals, the conservative nature of financing, insurance concerns, and litigation avoidance strategy all playing a role. This report focuses on the state of the market and the potential legislative solutions that might better encourage a greater supply of affordable condominiums. Legislative changes, however, may at best be necessary but not sufficient to incentivize development of more condominiums – especially affordable condominiums – in light of the changing income demographics of the city.

II. STATE OF THE CONDOMINIUM MARKET IN SEATTLE

Condominiums are desirable assets in the real estate marketplace, both for buyers and for sellers and builders. They promote dense, urban development, often near transit, and in the past they have generally been affordable for first-time buyers and buyers of average income. Condominiums promote the goals of Washington State's Growth Management Act,[3] and can help accommodate Seattle's continuing population growth.

Population & Income Increase

The City of Seattle has been growing at a rapid pace, both compared to other U.S. cities, and Seattle's own past growth. According to the city's Office of Planning and Community Development, the city's estimated population as of 2015 was approximately 662,400.[4] This is an almost 9% increase in the five years since 2010, when the U.S. Census estimated the city's population at 608,660. By comparison, in the ten years between 2000 and 2010, the city's population increased by only 8%. In other words, the city's population grew at more than twice as fast a rate between 2010 and 2015 as it did between 2000 and 2010. In the 12-month period from July 2012 to July 2013, Seattle was the fastest-growing large city in the United States.[5] From July 2013 to July 2014, Seattle was among the top four fastest-growing cities with populations above 500,000.[6] In addition to an increasing population, Seattle is now one of the top-10 densest cities in the United States.[7] Among the top-10 densest cities, Seattle had the highest increase in density since 2010.

Reasons for the sharp increase in population and density include in-migration of residents in pursuit of in-city information-technology jobs, likely due in large part to growth at Amazon, which has recently located its corporate headquarters in downtown Seattle, where it leases, owns and is building a total of about 10 million square feet of office space. Amazon currently employs over 24,000 people in Washington, and based on estimates of it's office space being constructed, is likely to continue hiring.[8] In addition to Amazon's growth, the trend of San-Francisco area technology firms expanding their offices to locate in Seattle has brought an influx of highly paid residents to the city.[9]

It is not only information technology jobs pushing the demand curve for new housing. Seattle's highly diversified economy includes other major employers in aerospace, retail, telecommunications, healthcare and education, including Boeing, Costco, Starbucks, the University of Washington, and T-Mobile. Unlike in past years, when the local economy was largely dependent on the success of one large company – i.e., Boeing – Seattle's diverse economy today is driving steady growth in housing demand beyond the levels of past markets. In addition, Amazon's decision to locate its headquarters downtown is a shift from years past, when the region's largest employers elected to locate in the suburbs.

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[3] The GMA's stated goals include, among other items, encouraging development in urban areas, reducing sprawl, and encouraging efficient multi-modal transportation. RCW 36.70A et seq.

[4] http://www.seattle.gov/dpd/cityplanning/populationdemographics/aboutseattle/population/

[5] Gene Balk, *Census: Seattle is the Fastest Growing Big City in the U.S.*, Seattle Times (May 22, 2014), accessed via http://blogs.seattletimes.com/fyi-guy/2014/05/22/census-seattle-is-the-fastest-growing-big-city-in-the-u-s/, visited April 8, 2016.

[6] Data available from http://www.census.gov/newsroom/press-releases/2015/cb15-89.html, last visited April 8, 2016. During this time period Seattle experienced population growth of 2.29%. The other cities with equivalent or higher growth were Fort Worth, Texas (2.29%), Denver, Colorado (2.38%), and Austin, Texas (2.89%).

[7] Gene Balk, *Seattle Among Top 10 Most Densely Populated Big Cities in the U.S. for First Time Ever*, Seattle Times (Feb. 7, 2016), accessed via http://www.seattletimes.com/seattle-news/data/seattle-density-doesnt-have-to-be-a-dirty-word/, visited April 21, 2016.

[8] Stephanie Forshee, *Amazon Reveals Washington State Headcount for First Time*, Puget Sound Business Journal (Jul. 23, 2015), accessed via http://www.bizjournals.com/seattle/blog/techflash/2015/07/exclusive-amazon-reveals-washington-state.html?ana=twt, visited April 6, 2016.

[9] Alison Vekshin, *Tech Firms in Pricey San Francisco See Exodus to Seattle*, Seattle Times (Apr. 5, 2016), accessed via http://www.seattletimes.com/nation-world/tech-firms-in-pricey-san-francisco-see-exodus-to-seattle/, visited April 6, 2016; Todd Bishop, *Google to Move to New 4-Building Complex in Amazon's Backyard in Seattle, Developed by Paul Allen's Vulcan, Inc., Geekwire* (Mar. 24, 2016), *accessed via http://www.geekwire.com/2016/paul-allens-vulcan-develop-huge-complex-google-amazons-backyard/, visited April 6, 2016.*

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The net effect is that in the last five years, Seattle has become a wealthier city, although the increases in income are not evenly distributed. Since 2010, the city has experienced increases in very affluent and very poor residents, and decreases in the number of middle-income residents. See figure 1. [10]

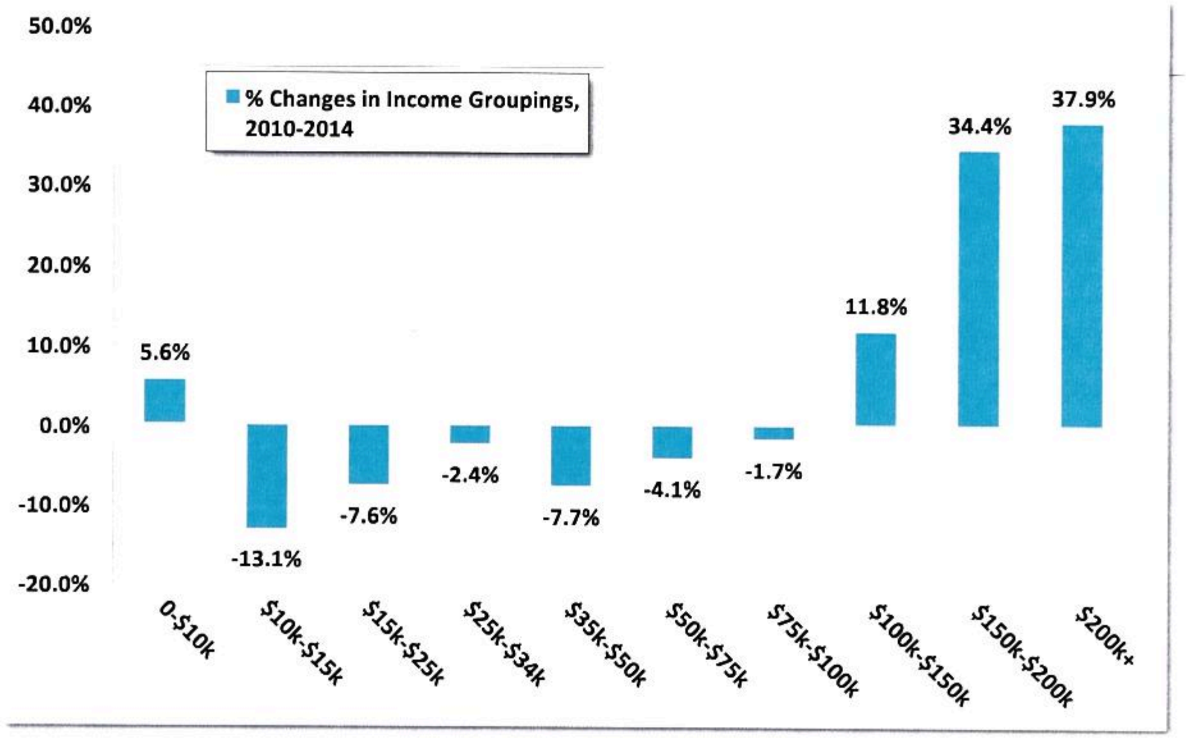

Fig. 1: Changes in Seattle income groupings, 2010-2014. Source: American Community Survey.

Supply

The housing stock in Seattle is mainly older single-family homes, with a secondary layer of homes built in the 1950s and 2000s. In addition, most multi-family buildings are larger than 20 units. There were 311,286 total housing units in Seattle as of 2014.[11] Of these, 44% were single-family detached units. 29% were in buildings of 20 or more units. All other unit types were under 10%. Twenty-nine percent of the housing units in the city were constructed prior to 1939. 14% were built between 2000-2009 and 11% were built between 1950-1959; all other decades were under 10%.

In terms of ownership and financing, the American Community Survey estimates that of all occupied units, 46% are owner-occupied and 54% are renter-occupied. Seventy-five percent of the owner-occupied units have a mortgage.

Between 2010 and 2015, there were approximately 5,524 sales of newly constructed homes in Seattle.[12] Of these sales, 1,395, or 25%, were condominiums. 40% were single-family homes and 35% were townhomes. As of the time of this writing, inventory of homes for sale in the 23-county Northwest Multiple Listing Service region averaged 1.8 months, down from 2.5 in April 2015.[13] A six-month supply is considered by many to be a desirable

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[10] This follows a national trend of a declining middle class. See, e.g., Pew Research Center, *America's Shrinking Middle Class: A Close Look at Changes Within Metropolitan Areas*, available at http://www.pewsocialtrends.org/files/2016/05/Middle-Class-Metro-Areas-FINAL.pdf.

[11] www.census.gov.

[12] Data provided by Redfin; unless otherwise specified, all home pricing information is based on MLS data supplied by Redfin.

[13] Id. The NWMLS region includes the following counties: King, Snohomish, Pierce, Kitsap, Mason, Skagit, Grays Harbor, Lewis, Cowlitz, Grant, Thurston, San Juan, Island, Kittitas, Jefferson, Okanogan, Whatcom, Clark, Pacific, Ferry, Clallam, Chelan, and Douglas.

balance between supply and demand. Both supply and price are up overall since 2010, indicating a response to the strong demand for housing in the city, which is consistent with the figures showing population and income growth. See figure 2. However, the number of condominiums sold in 2015 is actually below the number sold in 2010.

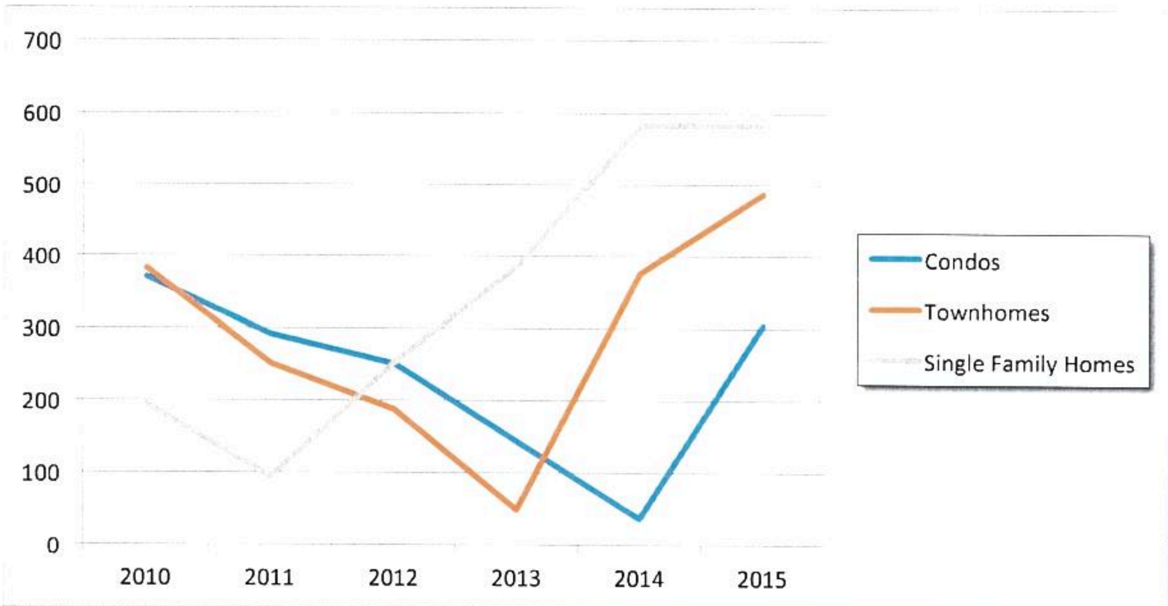

Fig. 2: New home sales in Seattle, 2010-2015 (MLS data courtesy of Redfin).

Affordability

According to data from the Northwest Multiple Listing Service, the median price of a single-family home in March 2016 in Seattle rose by 20% year-over-year, to $640,000.[14] The median price of a new condominium in Seattle in 2015 was $683,590. In 2015, the median household income in Seattle was $67,365.[15] Assuming a buyer with this median income could afford a 20% down payment of $136,718, and could take a 30-year fixed-rate mortgage at 4%, the monthly payments would be $2,611, or about 46% of monthly income.

At this rate, it is unlikely a bank would issue a loan, using the typical threshold where a mortgage payment should equal no more than 30% of income. It would be necessary to increase the down payment to about $340,000 to get to the 30% of income threshold. This suggests that the median priced new condominiums are not affordable to the median income household.

By contrast, the median "family" income in Seattle is $94,559.[16] With the same mortgage assumptions, a family with this median income purchasing a median-priced condominium at $683,590 could put 20%, or $136,718 down, and take a mortgage of $546,872, with monthly payments of $2,611, about 33% of monthly income. This suggests that median-priced condominiums are more affordable for the median-income earning family. The definition of "families", as opposed to "households", means more than one income-earning member.

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[14] Blanca Torres, *Squeeze on Homes for Sale Extends to Several Counties*, Seattle Times (Apr. 4, 2016), accessed via http://www.seattletimes.com/business/economy/squeeze-on-homes-for-sale-extends-to-several-counties/, visited April 6, 2016.

[15] 2010-2014 American Community Survey 5-year estimates, available at www.census.gov. The City of Seattle estimates median household income for 2014 at $67,100. http://www.seattle.gov/dPd/cityplanning/populationdemographics/aboutseattle/prosperity/default.htm, last visited May 10, 2016.

[16] Id.

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This is a big change from only 5 years ago, when the median-income earning household could afford a condominium. The median price of a condominium in Seattle was $372,000 in 2010. Median household income in 2010 was $60,665. With the same mortgage terms as above in 2010, a household with a median income would spend 28% of their monthly income on mortgage payments to purchase a median-priced home at $372,000, with a $74,400 down payment.[17] The 84% increase in the median price of a condominium has far outstripped the 11% increase in median household income.

Another way to look at the decline of the affordable condominium in Seattle is to consider price tranches. Between 2010 and 2015, the number of condominiums selling for under $500,000 fell from 269 to 40. The number of condominiums selling for between $500,000 and $1,000,000 increased from 61 to 102, and the number of condominiums selling for over $1,000,000 increased from 41 to 62. See figures 3 & 4.

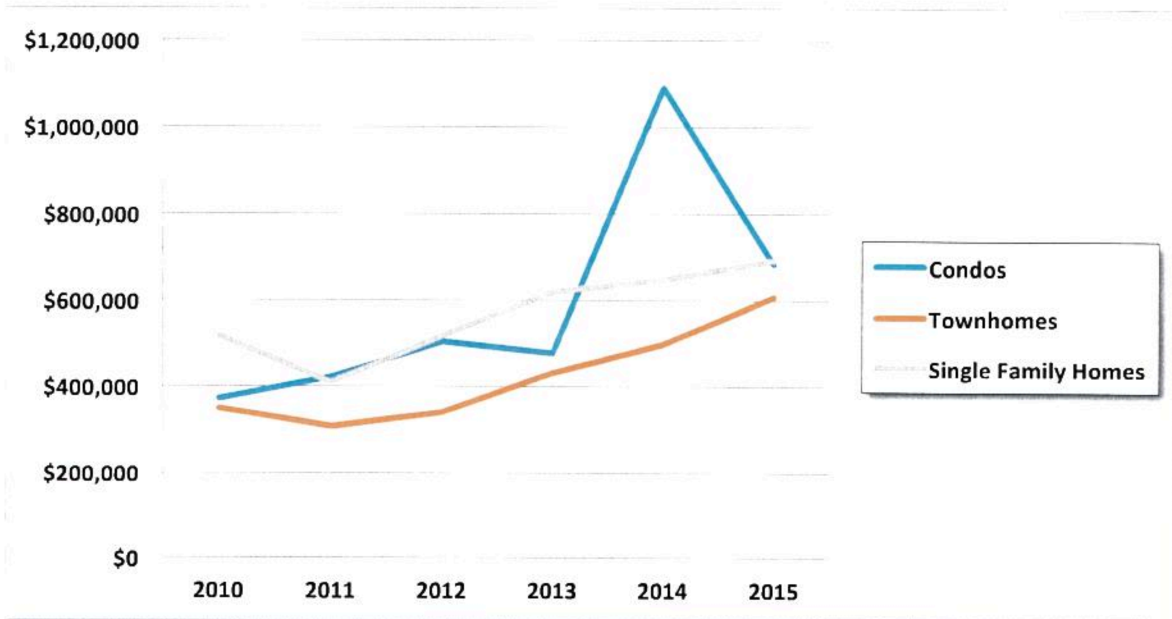

Fig. 3: New home sales median prices in Seattle, 2010-2015 (MLS data courtesy of Redfin).

[17] These estimates do not account for other recent trends that bear on mortgage underwriting, including banks moving toward more stringent lending criteria, or younger borrowers' lower debt payment capacity due to student loan payments.

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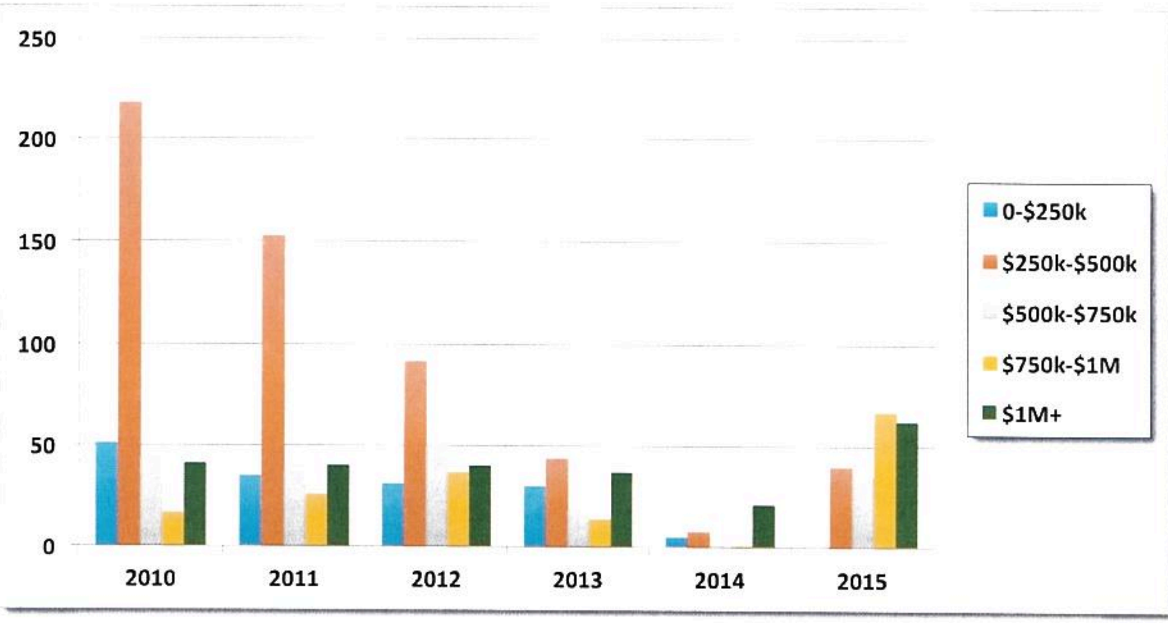

Fig. 4: Sales price tranches for Seattle new condominium sales, 2010-2015.

Comparison to Other Cities

In order to provide more perspective on the state of the condominium market in Seattle, it helps to review the state of the supply and affordability of condominiums and housing generally in other Western cities. For purposes of comparison, we reviewed data for Portland, Oregon; San Francisco; Los Angeles; San Diego; Phoenix; and Las Vegas.

It should be noted that we anticipated a normal variation from city to city in all of these metrics. The unique qualities of each city – factors including their geography, industry mix, resident income, transportation network, and land-use regulation vary, and naturally, so will their demand and price for condominiums.

In general, we found Seattle is on the high end of condominium supply per resident, and despite the large supply of condominiums, Seattle is still high compared to other cities with respect to condominium price compared to single-family home prices. Seattle is middle-of-the-road with respect to price-to-income ratio, and relative supply of condominiums compared to other housing types. Notable as well was that Seattle had the highest median condominium price in 2015, as well as the most new condominiums sold, and the most total new homes sold.[18] See figures 5-9. These figures are further evidence that supply cannot keep up with demand for new condominiums in Seattle.

[18] Condominium sales numbers also included co-ops sales. Figures do not include sales not listed on Multiple Listing Service.

City	New Condominium Sales	Population	Sales per 1000
Seattle	304	662,400	0.46
Las Vegas	95	597,353	0.16
San Francisco	111	829,072	0.13
Portland	56	602,568	0.09
San Diego	61	1,341,510	0.05
Phoenix	38	1,490,758	0.03
LA	25	3,862,210	0.01

Fig. 5: New condominium sales relative to population, 2015

City	Existing Condominium Sales	Population	Sales per 1000
Las Vegas	3,680	597,353	6.16
Seattle	2,677	662,400	4.04
San Diego	5,136	1,341,510	3.83
San Francisco	2,514	829,072	3.03
Portland	1,713	602,568	2.84
Phoenix	2,047	1,490,758	1.37
LA	2,539	3,862,210	0.66

Fig. 6: Existing condominium sales relative to population, 2015

City	Median Price New Condominium	Median Income	Price / Income
San Francisco	$1,130,000	$78,378	14.4
LA	$649,306	$49,682	13.1
Seattle	$683,590	$67,365	10.1
San Diego	$643,591	$65,753	9.8
Las Vegas	$391,500	$50,903	7.7
Phoenix	$328,855	$46,881	7.0
Portland	$311,200	$53,230	5.8

Fig. 7: Median price-to-Income ratios, 2015.[19]

City	New Condominium Sales	Total New Sales	Condominiums / Total Sales
San Francisco	111	34*	3.26
San Diego	61	123	0.50
Seattle	304	1,070	0.28
LA	25	193	0.13
Las Vegas	95	847	0.11
Phoenix	38	397	0.10
Portland	56	910	0.06

Fig. 8: New condominium sales as a share of total new sales, 2015.
** San Francisco new homes sold includes only townhouses, not single-family homes.*

[19] Median Income does not account for differences in state tax codes, e.g., the lack of state income tax in Washington, or the lack of state sales tax in Oregon.

City	New Condominium Median Price	New Single-Family price	Condo / Single-Family Price
Las Vegas	$391,500	$295,000	1.33
Phoenix	$328,855	$287,300	1.14
Seattle	$683,590	$693,600	0.99
Portland	$311,200	$535,000	0.58
San Diego	$643,591	$1,167,500	0.55
LA	$649,306	$1,822,500	0.36

Fig. 9: New condominium prices compared to new single-family prices, 2015.
** San Francisco included no new single-family sales in 2015.*

Although Seattle had a large number of new condominium sales per resident in 2015, many of those sales were likely from one large, high-priced building. The Insignia condominiums, a project with 698 total units in two towers, began closing sales in July 2015. As of March 2016, 302 sales had closed, 290 were in contract, and 106 were available. The average price of a sample of closed sales between October 2015 and February 2016 was $894,300, or $857 per square foot.[20]

Seattle outpaced the other cities studied in total new condominium sales between 2010 and 2015. When the sales volume for each city from 2010-2015 is represented by a linear trend line, Seattle's condo production has actually been decreasing slightly over the last five years. This trend is also generally the case for the other cities, except for Las Vegas, and to a lesser extent, San Diego.[21] See figures 10-11.

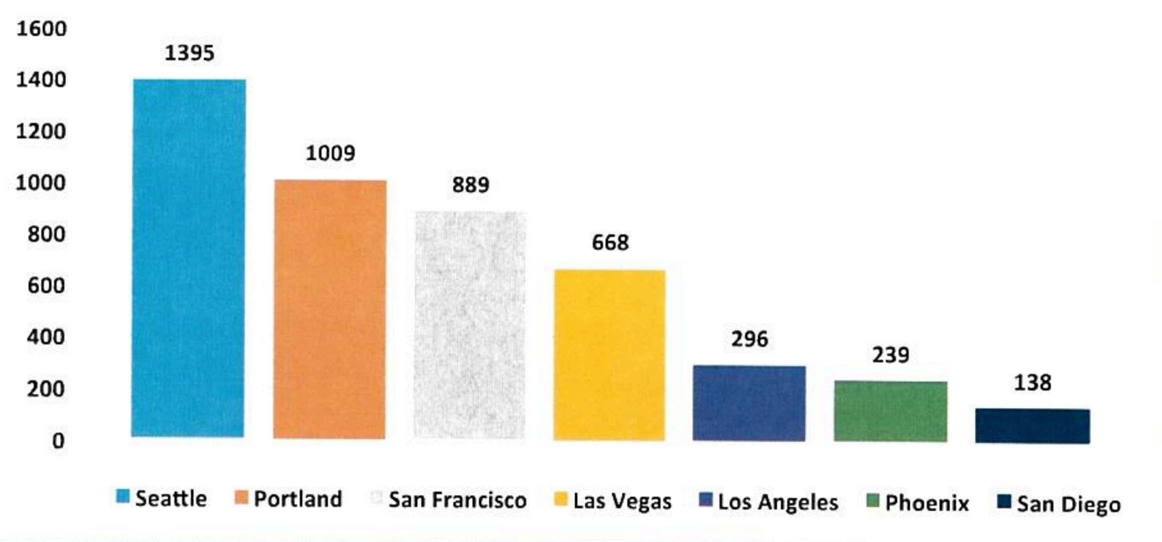

Fig. 10: Total new condominium sales by city, 2010-2015.

[20] The Mark Company Monthly Report, Downtown Seattle (March 2016).
[21] MLS data for San Diego showed no sales of new condominiums in 2011 or 2013, and only one new condominium sale in 2012.

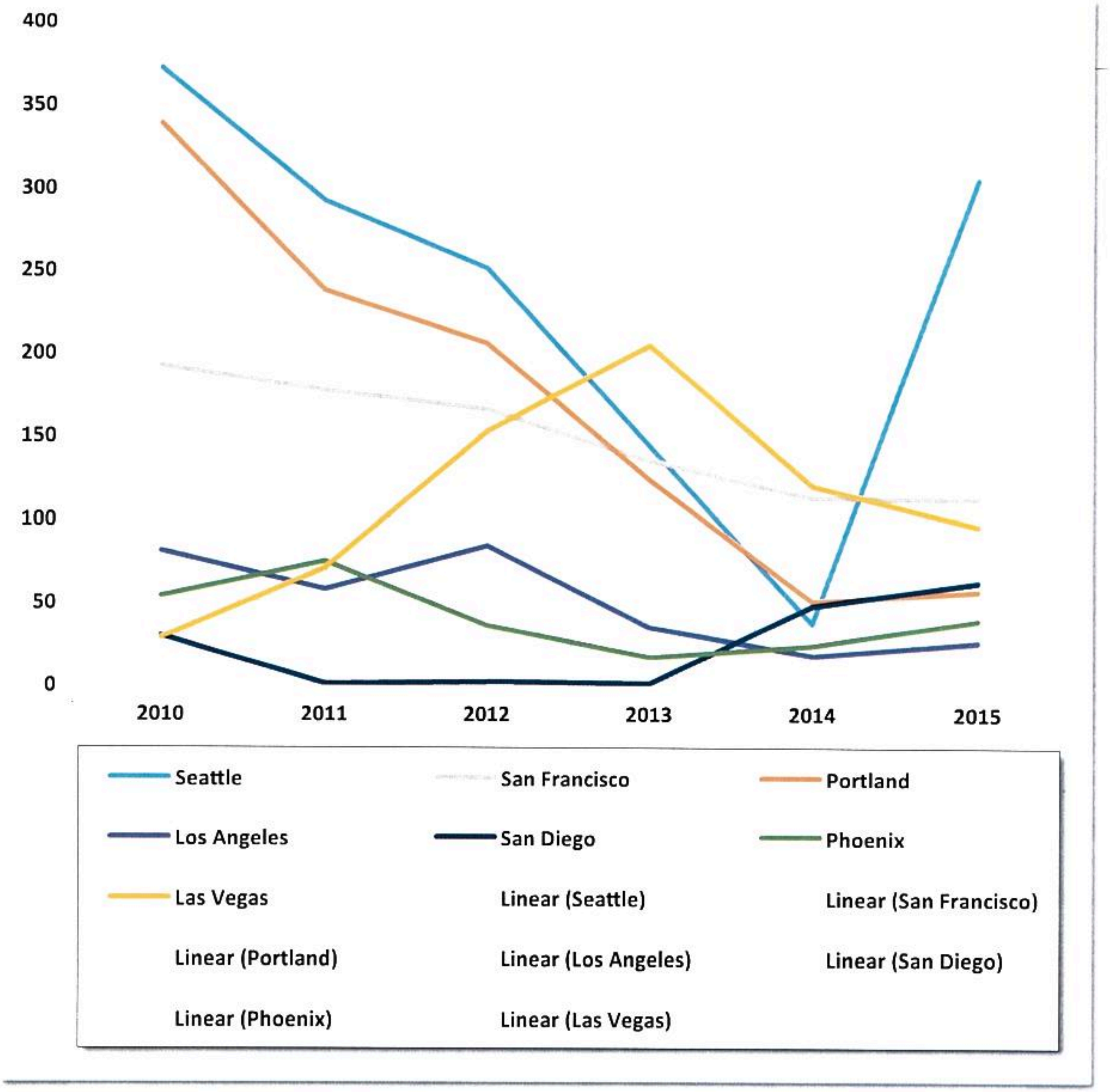

Fig. 11: New condominium sales by city, 2010-2015, with linear trend lines.

III. ANALYSIS

The data indicates that while Seattle is producing a steady stream of new condominiums, the new deliveries are not affordable to the middle market, and overall supply is not meeting demand. As detailed above, the middle market is not growing as fast as the higher end of the income spectrum. People in the middle of the income spectrum are also more likely to face challenges in being approved for mortgages. In addition to these factors, the market currently incentivizes the construction of high-end product to deliver more revenue to cover the risk of building.

There are some additional factors in play that make building condominiums, especially affordable condominiums, more difficult. These include insurance considerations, capital market dynamics, the high bar to entry in the development field, and, finally, legal considerations.

Insurance Considerations

Developers building condominiums currently take an owner-controlled insurance policy – also known as an "OCIP" or "wrap" policy – to cover any potential liability from construction defects. An OCIP policy for condominium construction can cost about 2% of the project's hard costs, and in the Seattle-area market, there may be between two and four carriers that issue such policies.[22]

This is different from other building types, where contractors and subcontractors can take their own insurance policies and build it into their pricing. When contractors include the cost of their policies in their bids, it may add 1%-1.5% to the cost of the job.[23]

In this way, developers are required not only to take the extra step of taking their own insurance policy, but they also are paying a higher premium on the policy – 0.5% to 1% of construction costs – to build condominiums. On a $100 million-dollar project, for example, this would amount to between $500,000 and $1,000,000. The policy would cover costs in the event of litigation, although even with better actuarial experience – i.e., less litigation costs, it is likely that carriers would improve the terms of the policies rather than reduce the costs.[24]

Ultimately, the requirement for developers to take out their own policy is an added step and an added cost. The added cost would seem to move developers toward building higher-priced, higher-volume, lower risk product. However, insurance cost alone is not likely to be the only factor that may limit condominium development.

British Columbia Warranty Insurance Program

The Mayor's HALA committee report suggested that revisions to the current insurance regime may remove barriers to developing affordable condominiums, citing the British Columbia warranty insurance program.[25] The British Columbia Homeowner Protection Act makes third-party home warranty insurance mandatory on new home construction throughout the province.[26] The warranty insurance program is administered by the Homeowner Protection Office, a branch of B.C. Housing. Revenue collected from residential builder license fees provides the funding for the Homeowner Protection Office's programs, including a compliance program.

As of 1999, all residential builders in British Columbia are required to be licensed by the Homeowner Protection Office and arrange for third party home warranty insurance on proposed new homes prior to obtaining a building permit. Home warranty insurance can only be provided by insurance companies that are approved by the provincial Financial Institutions Commission. Minimum coverage and allowable exclusions for third-party home

[22] Interview with Guy Armfield, Brian Hearst & James Waskom, Parker Smith & Feek (May 23, 2016).
[23] Id.
[24] Id.
[25] Seattle Housing Affordability and Livability Agenda, Final Advisory Committee Recommendations to Mayor Edward B. Murray and the Seattle City Council (July 13, 2015), p. 35, recommendation H.3.
[26] SBC 1998, Chapter 31, available at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_98031_01#section22.

warranty insurance are set by legislation.[27] The program applies to all single-family homes, as well as to the Canadian equivalent of condominiums, or "strata" buildings.

At a minimum, home warranty insurance in British Columbia includes a two-year warranty on labor and materials, a five-year warranty on the building envelope and a 10-year warranty on the structure of the home. Repairs and replacements to the building also carry a warranty that extends until the later of one year from their completion or the end of the original warranty period. Repairs to the building envelope on multi-unit buildings built before 1999 are covered by the two-year warranty for materials and labor, and the five-year warranty for the building envelope.

The two-year warranty on materials and labor covers any defect in labor, materials, or violations of the building code for 12 months for all new homes and 15 months for the common property of strata buildings. It also covers defects in materials and labor for the electrical, plumbing, heating, ventilation and air conditioning systems, as well as the exterior cladding, and caulking around windows and doors, for 24 months, including for the common property of strata buildings. Violations of the building code (i.e., "defects") must constitute an unreasonable health or safety risk, or cause (or be likely to cause) material damage to the new home.

The five-year building envelope warranty covers defects in the exterior walls, foundation, roof, windows and doors, that cause or are likely to cause material damage to the home. The 10-year warranty covers the load-bearing parts of the home, and any defects that cause structural damage that materially and adversely affects the use of the new home for residential occupancy. In general, defects are defined as damages resulting from the design, materials and labor that are contrary to the building code, if the non-compliance with the building code constitutes an unreasonable health or safety risk, or if it has resulted in, or is likely to result in, material damage to the home. Defects are also defined to include damages that require repair or replacement due to the negligence of the builder or a person or company working for the builder.

Under the warranty program, the cost of coverage is included in the purchase price of the home. A homeowner has a duty to maintain their home in a reasonable manner and consistent with any guidance a builder provides. In fact, the builder provides a maintenance manual, and the warranty insurance coverage is contingent on the homeowner maintaining the home consistent with the manual.

When a homeowner finds a defect, they have the responsibility to mitigate the damage, and report it to their insurance carrier, as well as the builder. The carrier will then inspect and either repair the defect or explain in writing why it will not repair the alleged defect. The carrier can contract with the original builder for this repair work. The amount of warranty coverage is capped; for strata units, the cap is the lesser of the first owner's purchase price or $100,000. In addition, a separate warranty applies to common property in strata buildings, with a coverage cap of the lesser $100,000 times the number of dwelling units in the building or $2.5 million per building.

If a dispute should arise over a potential defect, any party in a residential construction dispute can compel the other parties to participate in a structured mediated session. All participants pay for mediation costs equally, unless all parties agree to other arrangements. If mediation does not result in a settlement, the dispute can proceed to other alternative dispute resolution, including arbitration, or go to litigation.

The production of new units in strata buildings in British Columbia has been above 10,000 per year every year since 2010, which exceeds the numbers of single-family homes built in those years in B.C., and which far exceeds the combined production of several hundred condominium units per year in the U.S. cities we have studied. In fact, the production in British Columbia in an average month over the last five years exceeds the combined average annual production in all the U.S. cities studied. See figure 12. Although the numbers reported by B.C. Housing are for the entire province, with a population of 4.6 million, when combined, the population of the U.S. cities noted above exceeds the population of British Columbia.

[27] https://hpo.bc.ca/homeowners.

REGISTERED NEW HOMES, 2002 TO 2016 YEAR-TO-DATE				
Calendar Year	**Registered New Single Detached Homes**		**Registered New Homes in Multi-unit Buildings**	**Rentals Exempted**
	Single Detached Homes Enrolled with Home Warranty Insurance	Owner Builder Authorizations		
2002	9,179	3,268	12,075	2,178
2003	11,498	3,508	16,338	2,539
2004	11,747	3,666	19,732	2,654
2005	11,619	3,854	23,211	1,945
2006	10,838	4,124	23,263	1,484
2007	9,993	3,959	25,334	1,688
2008	7,856	3,373	15,017	799
2009	7,167	2,749	6,827	1,783
2010	8,439	3,199	13,980	1,679
2011	7,417	2,596	14,512	1,371
2012	6,926	2,446	16,293	1,948
2013	6,552	2,067	16,431	2,951
2014	8,989	2,335	16,013	2,921
2015	9,155	2,549	18,497	4,319
2015 Jan – May	3,442	1,116	7,889	1,911
2016 Jan – May	4,627	985	7,977	1,826

REGISTERED NEW HOMES, 2015 TO 2016 YEAR-TO-DATE AND 5-YEAR AVERAGE, MONTHLY						
Month	**Registered New Single Detached Homes**			**Registered New Homes in Multi-unit Buildings**		
	2016	2015	5-year Average	2016	2015	5-year Average
Jan	888	676	655	1,789	1,239	1,197
Feb	1,022	841	709	957	1,538	1,301
Mar	1,280	1,024	897	1,702	2,548	1,718
Apr	1,159	1,025	916	2,279	1,004	1,476
May	1,263	992	1,027	1,250	1,570	1,139
Jun		1,199	969		2,023	1,254
Jul		1,089	988		915	1,253
Aug		995	908		2,306	1,579
Sep		1,110	855		2,384	1,682
Oct		913	823		1,217	1,619
Nov		999	751		712	1,192
Dec		841	709		1,041	939

Fig. 12: British Columbia's new home registrations for single-family and multi-family homes, 2002-2016.
Source: https://hpo.bc.ca/statistics.

The higher production of strata units in British Columbia may have many reasons, including cultural, financial, and legal differences. There is an argument, however, that the predictability provided by the warranty insurance program allows builders to produce strata buildings without the risk presented by a less regulated insurance market, as in the U.S.

In addition, the B.C. warranty insurance program's dispute resolution provisions provide for not only predictability, but also for a weeding-out of non-meritorious claims outside of court. See figure 13. For example, in 2015, of the 3,920 claims received, 3,044 were resolved by the builder, and only 27 legal actions were filed. In other words, less than 1% of claims turned into law suits.

WARRANTY INSURANCE CLAIMS 2011-2015					
Type of Claim	2011	2012	2013	2014	2015
Claims Received	3,298	3,640	3,408	3,638	3,920
Claims Covered	1,132	1,893	1,472	1,496	1,984
Claims Not Covered	809	1,209	1,109	1,011	1,167
Claims Resolved by Builder	1,385	1,322	1,099	1,871	3,044
Claims Paid	272	363	442	296	527
Mediations Initiated by Owners	58	27	35	29	51
Legal Actions Commenced by Owners	6	21	9	20	27
Legal Actions Concluded	17	8	68	39	11

Figure 13: B.C. Warranty insurance claims, 2011-2015. Source: https://hpo.bc.ca/statistics [footnotes omitted].

The Washington Condominium Act, discussed in more detail below, does provide for a warranty insurance program, patterned on the legislation adopted in British Columbia. This program is designed to free developers from the warranty provisions of the Act if they provide warranty insurance policies to condominium purchasers that include legislatively prescribed coverage.[28] It is currently unclear why the Washington market has not adopted this option.

Developers' Capabilities

Developers that are currently building condominiums in Seattle's downtown core are building for the higher-end market, with pricing around $800+ per square foot.[29] Two of the developers currently building condominiums – Daniels Real Estate and Bosa Development – manage construction internally, to keep better track of quality, and have self-financed a significant portion of their construction costs.[30] This approach manages the risk of defects for a lender and improves the availability of financing and insuring new condominium construction. However, these ways of managing the risk of building condominiums in the current market are not feasible for all developers.

Capital Markets

Another critical factor is that the capital markets in Seattle currently favor construction of for-rent apartment buildings. Seattle real estate has attracted large amounts of institutional and international capital seeking stable returns, driving cap rates to low levels, which in turn, increases the price for income-producing properties. Apartments, as opposed to condominiums, present lower construction costs, lower legal risks, and lower marketing expense for developers, and a steady income stream for an investor.

A condominium requires multiple sales over time, with attendant marketing costs, and risk from changes in the housing market, like falling prices or increasing interest rates. The condo developer's profit may only come with the last 5%-10% or so of units sold, requiring a greater up-front capital outlay and later returns.

By contrast, a developer who builds a for-rent apartment building can make one sale of the entire building after – or even sometimes before – full lease up occurs. While there is risk in a lease up it is more manageable and over a shorter period; a moderately sized building might expect to lease at 20 units per month. Thus, market incentives for lenders and developers are tilted toward building apartments, not condominiums.[31]

[28] Mark O'Donnell & David Chawes, *Improving the Construction and Litigation Resolution Process: the 2005 Amendments to the Washington Condominium Act are a Win-Win for Homeowners and Developers*, 29 Seattle U. L. Rev. 515 (Spring 2006); RCW 64.35.
[29] The Mark Company Trend Sheet, Downtown Seattle (April 2016), available at http://www.themarkcompany.com/blog/the-mark-company-trend-sheets-april-2016/, last visited May 13, 2016.
[30] Interview with Weitao Zheng & Allan Cornell, Daniels Real Estate (March 16, 2016).
[31] Interviews with Neil Maris & Roger Long, Wells Fargo (Jan. 11, 2016); Matthew Gardner, Windermere (Jan. 7, 2016).

Legal Considerations

In addition to the above considerations, the development of new condominiums is influenced by legal considerations. This section will review Washington's law to see what provisions might influence the under-development of condominiums, especially affordable condominiums.

Growth Management Act

Washington State's Growth Management Act ("GMA") requires local jurisdictions to designate urban growth areas and prepare comprehensive plans to limit growth to within an urban boundary,[32] in order to conserve open space, and protect "the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by the residents of this state."[33] The GMA's stated goals include, among other items, encouraging development in urban areas, reducing sprawl, and encouraging efficient multi-modal transportation.[34]

The City of Seattle, as Washington's most populous and dense urban area, presents the best opportunity for meeting the goals of the GMA. With a concentration of large employers located in an expanding central business district, and a large inventory of aging in-city and suburban single-family housing, there is an opportunity for building in-city multi-family development, many of which could be condominiums.

However, restricting growth to specific zones has the effect of constraining supply and increasing price. There is a policy balance to strike between constraining growth and ensuring affordability. Seattle is located on two narrow peninsulas, with water and mountains on the east and west. This creates a natural geographical constraint that limits housing to a north-south strip of urban density along the Puget Sound. In addition, Seattle's local land use restrictions and building code requirements add cost which in turn leads to increased prices.[35]

Condominium Act and Revisions

Washington State initially passed a statute to govern condominiums called the Horizontal Property Regimes Act, which still applies to condominiums built prior to 1990.[36] The current Washington Condominium Act ("WCA") was passed in 1989, and is based on the Uniform Condominium Act ("UCA"),[37] which was issued in 1980 and was designed to standardize condominium construction and governance standards across the states.[38] The WCA adopted most of the provisions in the UCA, and applies to the financing, construction, sale, and management of all condominiums built after July 1, 1990.[39]

According to the Washington State Supreme Court, "[a] principal purpose of the WCA was to provide protection to condominium purchasers, in part through creation of implied warranties of quality construction."[40] The warranties imposed by the WCA are as follows:

> (1) ... a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

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[32] RCW 36.70A et seq.
[33] RCW 36.70A.010.
[34] RCW 36.70A.020.
[35] Seattle places high on the Wharton Land Use Regulatory Index. See http://www.zillow.com/research/land-use-regulation-12159/.
[36] RCW 64.32.
[37] National Conference of Commissioners on Uniform State Laws, Uniform Condominium Act (1980), http://www.uniformlaws.org/Act.aspx?title=Condominium%20Act, visited April 6, 2016.
[38] O'Donnell & Chawes, *Improving the Construction and Litigation Resolution Process.*
[39] RCW 64.34 et. seq.
[40] *Park Avenue Condominium. Owners Ass'n v. Buchan Devs.*, L.L.C., 117 Wash. App. 369, 374, 71 P.3d 692, 693-94 (2003).

(2) ... a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and ... will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) ... an existing use ... does not violate applicable law....[41]

This warranty has been held to require compliance with building code standards, and does not require defects to render a unit uninhabitable. The warranty extends to subcontractors of the builder, and extends to re-conveyances during the statutory warranty period.[42] The WCA also allows for monetary damages and attorney fees for the prevailing party.[43]

The statutory warranty provisions, however, along with the provision of attorneys' fees in the WCA, gave rise to what has been described as a "groundswell of litigation."[44] According to one observer:

> By the late 1990s, Washington's condominium industry had run into serious problems, with condominium owners alleging loss of value and damage from water penetration. Resulting litigation led to damage awards or settlements that exceeded the insurers' anticipated exposures. In response, insurers narrowed coverage, substantially increased premiums, or simply fled Washington's condominium market. The resulting inability to obtain insurance threatened the legislature's express desire to expand home ownership opportunities for low-income families and to meet the goals of growth management.[45]

In response, the Washington state legislature created legislation that provided some protection for builders. In 2002, the legislature passed laws requiring residential homeowners to give developers notice of and an opportunity to cure construction defects before the homeowner could file a lawsuit.[46] In 2003, the legislature created affirmative defenses that developers could argue to mitigate or avoid liability.[47]

In 2004, the legislature amended the WCA to add a heightened standard of proof for defect claims, as well as the statutory insurance program patterned on the program adopted in British Columbia discussed in the prior section of this paper.[48] Finally, in 2005, the legislature approved a number of additional revisions including requirements for inspection of building enclosures, filing of design documents with local building departments, an alternative dispute resolution ("ADR") procedure including mediation and arbitration, and a further refinement of fee shifting provisions.[49]

Thus, the Washington Condominium Act has provided a statutory remedy and a legal process for resolving construction defect claims by homeowners associations against builders. According to one construction defect attorney, the WCA led to improvements in the quality of construction, especially with regard to building

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[41] RCW 64.34.445.
[42] Id.
[43] Id.
[44] O'Donnell & Chawes, Id.
[45] Id.
[46] RCW 64.50
[47] RCW 4.16.326
[48] Id.; O'Donnell & Chawes.
[49] O'Donnell & Chawes, Id., RCW 64.55 et. seq. Additional revisions to the WCA have been proposed, including Senate Bill 5961 (2015)(regarding notices and inspections), and two bills regarding reserve studies: House Bill 2240 (2013) and Senate Bill 6616 (2016).

envelopes.[50] The WCA, however, continues to cast a shadow over condominium development, at least in the minds of the builder community. There are several provisions in the WCA that may be revised to create more certainty for developers and insurers.

For example, with regard to the ADR provisions, parties are permitted a right of appeal *de novo* to a trial court after an arbitration award.[51] The *de novo* standard allows complete reconsideration of the arbitrator's award and arguably makes arbitration less reliable as a means of reducing the cost and risk of litigation.[52] If the Washington State legislature were to consider revisions to the condominium law to facilitate development of more affordable units, it may wish to address the appeal standard for review of arbitration decisions and revise the standard to be more narrow, such as, for example, the abuse of discretion standard.[53] In addition, the arbitration provisions in the WCA are optional for parties, which diminishes their usefulness. Mandatory, binding arbitration would allow a better chance for parties to resolve disputes prior to litigation.

With regard to attorneys' fees, there continues to be no cap on the amount a developer may have to pay in attorneys' fees for plaintiffs' counsel, although fees are decided by judges within parameters that are well established, although ultimately not very predictable to a builder or insurer in advance of litigation.[54] The WCA, does impose a cap on any fees a homeowners' association may have to pay in an offer of settlement, in the amount of 5% of the assessed value of the building. [55]

Other states are considering or have recently removed the award of attorneys' fees in construction defect claims, in an attempt to avoid litigation and stimulate the building of more condominiums.[56] Nevada's legislation repealing attorneys' fees was passed in 2015, so there has not been much time to see whether the new legislation has had an effect on condominium construction defect lawsuits. Completely eliminating attorneys' fees is an extreme measure, and would likely result in legitimate defect claims not being filed, but it may be worthwhile to discuss capping fees for both parties at, e.g., 5% of the subject property's cost, or alternatively, setting a knowable fee schedule so that developers and their insurers can have more certainty given the potential for defect litigation.

Regarding remedies for defects, it seems there is a strong incentive for homeowners' associations to seek monetary damages rather than specific performance of repairs. There may be, however, an opportunity for homeowners' associations to put any monetary judgments to other uses and not to actually repair the alleged defects. The legislature may wish to consider revising the remedies available under the WCA to be limited to specific performance of repairs. This kind of revision would limit the volume of defect litigation to those parties that are seeking repairs for actual defects, rather than simply money that can be applied to other uses. However, those builders that are required to do such repairs may not be the best qualified to perform the repairs.

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[50] Interview with Jo Flannery, Ryan, Swanson & Cleveland, July 5, 2016.

[51] RCW 64.55.100(4).

[52] The *De Novo* standard allows the court to review all evidence the arbitrator considered and come to different conclusions.

[53] The Washington State Supreme Court has held, "Courts will only review an arbitration decision in certain limited circumstances, such as when an arbitrator has exceeded his or her legal authority. To do otherwise would call into question the finality of arbitration decisions and undermine alternative dispute resolution." *Int'll Union of Operating Engineers Local 286 v. Port of Seattle*, Wa. Sup. Ct. No. 86739-9 (2013), *citation omitted, citing Clark County Pub. Util. Dist. No. 1 v. Int'l Bhd. of Elec. Workers, Local 125*, 150 Wn. 2d 237, 245, 76 P.3d 248 (2003). Arbitration is currently used only rarely, as it duplicates or exceeds the cost of litigation, and provides little certainty with regard to rules. Interview with Jo Flannery, *id*.

[54] "Awards of attorneys' fees are generally calculated using the 'lodestar' method. Under the lodestar approach, a court first determines that counsel expended a reasonable number of hours obtaining the successful result. This involves excluding wasteful or duplicative hours, and time spent on unsuccessful theories or claims. The court then determines the reasonableness of counsel's hourly rate. The billed rate or fee usually charged by the attorney is not necessarily 'reasonable.' The actual hourly rate may be adjusted based on the level of skill required by the litigation, time limitations imposed on the litigation, the amount of the potential recovery, the attorney's reputation, and the undesirability of the case. The 'lodestar award' results from multiplying the reasonable hourly rate by the number of hours reasonably expended. After the lodestar has been calculated, the court may adjust it based on the 'contingent nature of success and the quality of the work performed.'" Allison Peryea, *"The Right to Attorneys' Fees: A Lawyer's Best Frenemy?"*, 25 Litigation News 2 (Spring 2013), *citations omitted*.

[55] RCW 64.55.160.

[56] Kris Hudson, *Nevada, Other States target Construction Defect Lawsuits*, Wall Street Journal (Feb. 25, 2015), available at: http://www.wsj.com/articles/nevada-other-states-target-construction-defect-lawsuits-1424912880, visited July 11, 2016; Nev. Rev. Stat. 40.600. Condominium construction defect cases were so prevalent in Nevada that three judges were appointed in 2006 to hear nothing but these type of cases. In the ensuing nine years, over 828 cases were handled by these judges.

There may also be a need for more clear standards regarding what constitutes a construction defect. The WCA imposes a duty for builders to comply with all provisions of applicable building codes, including defects that "may not be so serious as to render the condominium unsuitable for ordinary purposes."[57] This is a very strict standard, and it requires builders to apply different construction practices in different jurisdictions. The legislature may wish to revise this standard to either reflect definitions of specific kinds of defects, as in California, or narrowing the definition of a defect to be one that causes or is likely to cause actual damage, as in Nevada.

One final option to improve the attractiveness of condominiums as a development choice may be in the way condominium associations are governed. Currently, the homeowners' association board members are delegated the responsibility to make decisions on behalf of the members. They owe a duty of care to the members to manage the building in a responsible way.[58] This may create an incentive to litigate minor defect cases rather than settle on an agreement to repair.

If a board member declines to pursue litigation of construction defects, however minor, he may open himself up to claims of liability because he did not discharge his duty and was not as careful or responsible as he should have been. The solution to this problem may be to allow for a vote of the entire association on major decisions, like whether to initiate litigation. This solution, however, assumes the members, as lay persons, are capable of analyzing complicated construction and financial choices, and would be counter to the basic structure of delegated decision-making responsibility in a homeowners association.

Comparison to Other States

A review of the state condominium laws from the five states in which the cities in Section II are drawn indicates a wide range of approaches to regulating condominium construction defect cases. See figure 14.

California's "Right to Repair" Act, for example, is similar in some ways to the WCA, and was also passed in response to a wave of construction defect litigation in the late 1990's.[59] "At the time, many observers believed the mounting volume and intensity of such litigation caused rampant increases in insurance premiums for contractors and builders, was a deterrent to new home construction, and generally served as a drag on the California economy."[60]

The California law, much like the WCA, addressed many of the concerns among builders, developers, and homeowners – including a process for mandatory ADR, definitions of building defects, and the right to repair, but even with these measures, there has still been a large volume of construction defect litigation, and the California law arguably imposed more expensive and time-consuming processes on parties to construction defect disputes.[61] According to one set of authors,

> [T]hose truly interested in maintaining their homes and correcting legitimate construction deficiencies have the chance to do so without incurring the expense of litigation....
>
> In the end, it does not appear that resolving truly contentious disputes between homeowners and homebuilders has become simpler or faster, but the Act presents an easier alternative for homeowners with legitimate grievances to achieve a resolution from those homebuilders who are genuinely motivated to settle claims.[62]

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[57] O'Donnell & Chawes, Id., quoting *Park Ave. HOA v. Buchan.*
[58] RCW 64.34.308(1)
[59] Cal. Civ. Code, Title 7, Part 2, Div. 2., Miller, Gruen, Smith, Meyers & Schoech, *"The Ten Year Anniversary of SB 800: 'Mission Accomplished or Missed Opportunity,'"* 30 Cal. Real Prop. J. 4 (2012); *Pinnacle Museum Tower Ass'n. v. Pinnacle Market Development*, 55 Cal.4th 223, 282 P.3d 1217 (2012), (holding mandatory arbitration provisions enforceable).
[60] Id., Miller, et. al., "The Ten Year Anniversary of SB 800".
[61] Id.
[62] Id.

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State / Law	Right to Repair prior to litigation	Statute of Repose	Attorney's Fees	ADR	Definition of Defect
Washington, RCW 64.34, RCW 64.55	Yes	4 Years	Yes	Optional, appealable arbitration, mandatory mediation	More than technical, significant to a reasonable person[63]
California, SB 800	Yes	Different for different building elements; up to 10 years	Yes	Yes, and allows declarants to use own process	46 classes of specific defect definitions
Nevada, AB 125, NRC 40.600	Yes	6 years	No	No	Unreasonable risk of damage to person or property, or not completed in workmanlike manner and causes damage to property
Oregon, Or. Rev. Stat. 100	No	2 years	No	No	N/A
Arizona, Az. Rev. Stat. 12-1361 et seq.	Yes	8 years	No	No	Material deficiency caused by code violation, defective materials, or failure to adhere to workmanlike standards

Fig. 14: Comparison of state laws regulating condominium construction defects.

[63] RCW 64.34.445(7) provides: "In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection, an "adverse effect" must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose."

IV. CONCLUSION

Condominium development can provide an affordable in-city option for new housing in Seattle. First time buyers, middle-income buyers, and families benefit. If built in sufficient numbers and at an affordable price, condominiums provide opportunities for many types of buyers and could help to address some of Seattle's problems around affordability, as well as transit and urban density.

Condominium production in Seattle is among the highest in major West Coast cities, although the current price of the condominiums being produced in Seattle makes them unaffordable to most households, and supply does not appear to be meeting demand. Seattle is a city experiencing a tremendous amount of population growth and an increase in wealth. However, the increase in wealth is concentrated at the top of the income spectrum, and the cost of a condominium has far outpaced the increase in household income.

The lack of affordability of condominiums in Seattle is likely due to a combination of real estate and insurance market forces, as well as geography, local land use regulation, and state legislation. It is not possible to say that any one of these factors, taken in isolation, has directly caused the sharp increase in price. The Washington Condominium Act likely has some effect on the high price of condominiums, because it represents potential risk and liability. Comparison to other state laws indicates that although different state laws contain different provisions governing condominium construction defects, there is not a direct correlation of specific types of legal provisions to condominium supply or affordability.

The WCA contains a number of provisions that are intended to protect homebuyers, improve the quality of construction, and reduce the cost of resolving disputes over construction defects. To respond to the growing concerns over housing affordability, it may make sense to remove some of the perception of risk and uncertainty imposed by the WCA by, for example, clarifying the nature of a construction defect, incentivizing repairs rather than money damages as a remedy; making arbitration mandatory and binding; narrowing the standard of appeal from arbitration decisions; and limiting attorneys' fees or adjusting attorneys' fees to a knowable schedule. This would reduce the legal risk, or at least the perception of the legal risk in building condominiums. It might also make sense to revisit the warranty provisions in the WCA and develop an insurance program similar to British Columbia's, through state action, rather than the private market.

Ultimately, the WCA is only one factor influencing the development of condominiums in Washington State. It may be that the WCA – like California's Right to Repair Act – can reduce developers' and insurers' risk only in situations where parties are motivated to resolve disputes through ADR, with the goal of doing repairs, rather than to litigate. Any revisions to the Washington Condominium Act would likely be a necessary, but perhaps not sufficient condition required to improve condominium supply and affordability. It may be that government financial intervention is necessary to meaningfully incentivize the construction of more condominiums in Washington State.

It is clear that there is sufficient economic incentive for developers to build condominiums in Seattle's downtown core. The central location allows larger scale buildings and there is significant demand for the higher price points. Because the potential economic returns of this type of large-scale development offsets the higher costs and any actual or perceived risks, the market has seen a preponderance of this higher end product.

For the market to be equally incentivized to build smaller scale and more affordable condominiums without public subsidy, the opportunity must offset the greater perceived risks and inefficiencies of smaller scale building through lower costs. Lowering the regulatory costs and construction costs are subjects for another study. However, it is clear that insurance costs and the risk of litigation are factors that, if mitigated, can contribute to tipping the scale toward the delivery of more affordable for-sale condominium product, as there is clearly a very strong demand.

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Associate Director for Research
Runstad Center for Real Estate Studies

The Associate Director for Research will plan, organize and administer the financial, operational, and personnel activities for independent, funded research carried on by the Runstad Center for Real Estate Studies through the Washington Center for Real Estate Research. The position reports to the Director of the Runstad Center for Real Estate Studies, but a major goal for the organization is to encourage and facilitate an ethic of interdisciplinarity across the College, including the area of research.

This position is responsible for the research oversight and development for the Center with a wide range of responsibilities including. but not limited to:

- Provide leadership to efforts for increasing the level of funded research activity associated with the Center by engaging with the industry and the larger community to understand the questions of importance that warrant additional research which will bring thoughtful and relevant information for others to use in the pursuit of change.

- Work with the Runstad Center Director to identify Academic research opportunities within the College of Built Environment that might benefit from the Center's industry related research, the data or the relationships. In addition, serve as a conduit to insure the industry is aware of and has access to the work published by the faculty throughout the College. This would include working with the various Research Centers active throughout the College and engaging faculty and/or students, wherever possible, to actively participate in funded research grants and contracts.

- Serve as the spokesperson for all products released through the Center and generally as a technical expert and resource for the media. Proactively reaching out to establish the Center as the objective expert for the real estate community.

- Manage the contracts established through the Washington Center for Real Estate Research. This includes management of the Washington State Department of Licensing contract and deliverables; bi-annual negotiation of the contract; and other reporting as required.

- Support faculty and principal investigators in preparation of grant proposals, assist in budget development as requested.

- Develop and manage staff required to perform funded research including Research Faculty, Post-Doctoral Researchers, student Research Assistants, contract and administrative employees.

- Provide general oversight of grant and contract activities at the Center to ensure compliance with policies and funding agency requirements. Review all proposals to ensure fiscal propriety, completeness, accuracy, and adherence to regulations of University policies and sponsor guidelines.

Requirements:

- Master's degree in a field related to real estate research AND a minimum of five year of experience in conducting and managing research activities at the University level.
- The ability to conduct unsupervised independent research
- Ability to write reports, analyses and evaluations.

- Demonstrated ability to prepare, manage annual research budgets and expenditures.
- Ability to plan both short-term and long-term research strategies.
- Ability to manage personnel within a University HR system
- Demonstrated ability to teach at least one real estate class per academic year

BREXIT and Real Estate Part 1: How did we get here?

The immediate impact of the referendum result in the UK is starting to settle down. However, much uncertainty remains and this will have wide ranging impacts including many on the real estate sector. Whilst the UK market is obviously most exposed there may also be international consequences. However, to begin with; what led to the UK not only having a referendum in the first place but the country voting in favor of exit.

In many respects the UK has always been a reluctant member of the European Union. It joined the then EEC (European Economic Community) in 1973 and so divisive was that decision that only two years later in 1975 the country was given the option of leaving. Indeed 1975 and this year are only times that referendums have ever been held across the entire UK. Part of that reluctance comes from the UK's history and its island status, often keeping it one step removed from the affairs of continental Europe. However a reluctance to engage in partnership with continental Europe following 1945 was also influenced by the UK having to come to terms with the loss of global power as the majority of former colonies gained independence and the British Empire faded.

There has always been a strong Eurosceptic tradition in the Conservative Party, although historically the left wing was just as divided. During the 1975 referendum members of the then Labour Cabinet campaigned to leave, just as Conservative Cabinet members have done this year. In 1983 Labour's General Election Manifesto supported withdrawal. It was only in the nineties that Labour as a party swung more behind the EU. This large Eurosceptic tradition has resulted in numerous opts outs and special deals during the UK's 43 year membership in order to keep the sceptics happy.

1. During the eighties the UK obtained a "rebate" on the UK's contributions to the EU. The rationale at the time was that the UK was being unfairly treated as much of EU's expenditure was, and still is, directed to agriculture. UK farms tend to be larger and more efficient and thus receive a proportionately low share of farming subsidies. The result of the rebate is that the UK is currently reimbursed around £5bn of the £18bn gross annual contribution. As a result the UK actually pays a lower percentage of Gross National Income than any other EU member state. It is the only EU state to have such a rebate.
2. The UK was given an opt-out of joining the single currency, thus allowing the UK to retain the pound as well as an independent monetary policy and not face any restraints on fiscal policy. It has also meant that the UK has been somewhat protected in recent times from the crisis in the Eurozone.
3. The UK initially opted-out of the Social Chapter which covers areas such as employment protection and working conditions.
4. The UK also has an opt-out from the Schengen area which allows for passport free travel across EU states. This provides the UK with additional border controls. Only the Republic of Ireland, due to its relationship (geographically, historically and politically) with the UK, is also outside the Schengen area. Indeed, not only are all other EU states part of the Schengen zone but so are all members of the European Free Trade Association (EFTA) which is made up of non-EU states such as Switzerland, Norway and Iceland.
5. The UK negotiated limits on the ability of the EU courts to rule on issues relating to the Charter of Fundamental Rights. Only Poland has a similar arrangement.

6. An opt-out is also present on legislation relating to "freedom, security and justice". This gives the UK a flexible opt out, allowing it to deal with each piece of EU legislation in this area on a case by case basis. Only Ireland (flexible opt out) and Denmark (full opt out) have a similar provision.

Despite these deals Euroscepticism in the UK has never gone away. The Conservative Party tried its best to rip itself apart during the nineties, whilst in more recent years the UK Independence Party (UKIP) has made impressive electoral showings. This was especially seen at the 2014 European Parliament elections where UKIP obtained more seats than any other party, 24 out of the UK's total of 73. Partly as a response to that election result and fearing the loss of seats in the 2015 General Election, the recently departed Conservative Prime Minister David Cameron made a commitment to holding an "in-out" referendum on EU membership. So that is how the UK got to that point but what factors led to a victory for the leave campaign? On the surface the rationale for staying in the EU was very strong. All major political parties, or at least their leadership, supported remaining. Furthermore, a majority of business leaders, economists, unions and world bodies such as the IMF and OECD were all in favor of remain. Yet in the most ill-tempered UK vote in living memory, with a Member of Parliament killed during it, 52% of the vote was in favor of Brexit. Why?

If we are honest, the *Remain* campaign was awful. It concentrated too much on the negatives of leaving, to the extent that the *Leave* campaign dubbed it "Project Fear", allowing them to side-step some of the key arguments in favor of staying in. Overall there was little sense of what positives came out of being in the union. The Labour party's leadership refused to join in a united *Remain* campaign, instead delivering a half-hearted campaign of their own. The result was a lack of co-ordination and clarity from the *Remain* side, allowing the *Leave* Campaign to set the agenda. This agenda focused on two key issues; immigration and "control".

For those looking in from outside the UK it is important to realize that the economics of remaining or leaving the EU were never really important factors in most people's decision. There are consistent arguments against the EU if you come from either a free-market libertarian viewpoint or from a left-wing socialist perspective. Those perspectives are incredibly different but there are rationales as to why libertarians and socialists may have voted to leave. However, libertarians and socialists do not make up 52% of the UK electorate. What the majority of the 52% voted on, was a combination of wishing to reduce immigration and "taking back control". Much has been said and commented upon both during and since the referendum campaign about the immigration issue and the increase in hate crimes since the referendum. One aspect that the *Remain* campaign never effectively communicated is that 75% of all immigration to the UK since 1991 has been from outside the EU. This is outside the provision of free movement across the EU and has always been entirely in the control of the UK government. If you are being cynical here it was not in the interests of either the Conservative or Labour party to highlight that it was their policies whilst in power, not the EU, which had failed to limit immigration.

Furthermore, many of the options which are now being considered in this post-referendum world would not reduce immigration. The Norwegian model is often cited as an example of what a post Brexit UK could look like. Norway isn't an EU member but has access to the internal single market of the EU through what is known as the European Economic Area (EEA). As part of its deal Norway has to comply with free movement of people. It also is part of the Schengen Zone, unlike the UK. In addition to free movement of people Norway also has to ensure the free movement of goods, services and capital. These are the so called *"four freedoms"*. To gain access to the single market as part of the EEA Norway also has to enact a large proportion of EU legislation. Whilst Norway does makes large contributions to the EU it receives no funding in return. To benefit from schemes such as the *European Regional Development Fund* it must contribute in the same manner as EU members. It is estimated that this year Norway will make gross payments of over €800m, for a population of just over 5 million. Its net contribution per capita is pretty much the same as the UK.

The "getting back control" issue is partly based upon not wishing to have to comply with masses of legislation coming from Europe. Whilst the EU is undoubtedly a quite bureaucratic institution this argument did also play particularly well in a country that, as mentioned earlier, has struggled at times to accept the change in its global status since 1945. There is a Welsh word, ***Hiraeth***, which means "homesickness for a home you cannot return to, or that never was". It is very apt here. The *Leave* campaign played on many Britain's harkening back to an earlier time. This loss of global influence wasn't just in political or military terms but also economically. The post war years were not good for British industry. There was a marked reduction in manufacturing's share of both GDP and employment. In 1948 manufacturing (plus utilities and Oli & Gas) made up 48% of output, a proportion that had fallen to 14% by 2013. In common with most western countries manufacturing, especially in high volume low value goods, has shifted to cheaper markets over the last five decades. The remaining industrial base was saved either by increasing productivity, often therefore still having a major negative on employment, or by emphasizing high value areas such as aerospace, engineering and technology. Whilst all of the western economies have seen similar effects in the post war period no G7 country has seen manufacturing as a share of GDP fall by as much as the UK.

This is where a third factor comes into play and one that is not unique to the UK in 2015. Across the world we are seeing a rise in populist politics. Core to this is an anti-establishment viewpoint, arguing that the political and corporate establishment is out of touch. The key drivers of Populism have been the sluggish economic growth observed in many countries since the financial crisis close to a decade ago as well as heightened concerns over job insecurity. In addition, and key to the UK referendum result, it is often felt that globalization does not positively benefit the entire population. This is added to by concerns over increasing income inequality and the impact that migration may be having. These effects most often coincide and are most evident in areas of economic decline. What is of interest is that the *Leave* vote was often highest in the former industrial heartlands of the UK. These are populations who feel left behind by globalization. It is this that the political establishment in the UK failed to grasp, and arguably still have not fully comprehended. This wasn't just about immigration, tagging the leave voters as racists was always far too simple. It was about a feeling of despair and hopelessness. Those living in former industrial cities that haven't seen the benefits from globalization or more specifically the trade benefits the EU brings. It was quite noticeable how many leave voters were commenting on how the UK used to have a great manufacturing sector "before we joined Europe". People were actually equating joining the EU in 1973 and the decline in the manufacturing and industrial base that was particularly felt during the seventies and eighties. The irony here is that the EU has been the largest provider of regional funding to help de-industrialized areas. Those areas that voted to leave are in many cases the ones who have actually received the most EU funding over the last four decades and in turn will lose out the most in the future.

BREXIT and Real Estate Part 2: What will the Future Bring?

The UK is slowly returning to what is currently passing for normality. The Conservative Party have elected a new leader following David Cameron's resignation and Theresa May has now taken office as Prime Minister. The speed with which that changeover occurred has helped; at least it meant that the UK avoided three months of a lame duck premiership.

To leave the EU the UK has to activate Article 50 of the Lisbon Treaty. This sets in motion a formal period of two years to negotiate withdrawal. There are three key issues here. First, is that the uncertainty will continue to impact UK. Secondly, that will not necessarily just last two years. The two year period is solely concerned with withdrawal. It is not necessarily the case that all of the future relationship between the UK and EU is confirmed by that point. Finally, while the EU will take priority this isn't just about that relationship. The UK will also have to confirm relationships in areas such as trade with countries outside of the union. Some countries may agree to a continuation of the EU negotiated relationships currently in place, some may not. Furthermore, it is highly unlikely that countries will want to confirm trade deal with the UK before the final agreement with the EU is confirmed. Before then it will not be known what access those firms will have to the single market via the UK. That is naturally going to impact upon negotiations. The result is that the uncertainty over the UK's position is not going to go away anytime soon, it is not just a two year horizon we are looking at.

Before we move onto the economic and real estate impacts of Brexit it should be noted that there will be extensive political consequences. It is likely that many of those consequences haven't come onto people's radar at this point; we certainly have all been living through a political soap opera the few weeks and months. One issue that did become apparent immediately was that the future of the UK itself is now up for debate. With the exception of London the rest of England, together with Wales voted to leave. However, the majority of the vote in both Northern Ireland and Scotland was to remain within the EU. Scotland only narrowly voted to remain in the UK in 2014. There is a real possibility that a second Scottish independence referendum will take place and at this point it looks extremely likely that the vote would this time be in favor of an independent Scotland and one that remains part of the EU. The issues in Northern Ireland are far more complex, but the disparity in the vote with the UK as a whole does raise many issues and especially the relationship with the Republic.

The immediate impact of the referendum was a shock on the markets, with Sterling falling to thirty year lows against currencies such as the Dollar. The UK equity markets also took a beating and whilst the FTSE 100 has subsequently recovered the more domestically focused mid-cap firms, proxied by the FTSE250 are still well down on their pre-referendum levels. It is anticipated that at least in the short term there will be a negative economic impact. If nothing else the uncertainty created by the result and the length of time negotiations with the EU and others will take, could lead to a postponement of investment decisions. However, as always there are also some positives. The weaker pound will provide some respite, at least in the short-run, for exporters. It should also be noted that this uncertainty will also impact the EU. As one of its largest members the exit of the UK will have a major impact upon the EU. Furthermore, it increases political risk, and especially that concerning possible further departures from the union. These factors can be seen that the Euro also fell significantly following the vote on June 23rd.

The longer-term economic impact is more debatable. The potential loss of access, if not totally then partially, to the EU single market will undoubtedly have negative impacts, however, there will be no doubt some positives alongside. For example, in the short-run exporting sectors will benefit due to the fall in Sterling. Generally, there will be quite different short-term versus long-term consequences as well differing responses across sectors. With respect to many issues there are numerous off-setting affects. Interest rates are a prime example in this regard. A lower pound may lead to inflationary pressure which on its own may suggest potential higher interest rates in the medium term. In addition, the negative impact on the UK's credit rating will also push market rates higher. This has already been with either actual downgrades or negative outlooks issue by Moody's, S&P and Fitch Ratings. However, it also needs to be considered how the Bank of England will respond. Given weaker economic fundamentals it may be that interest rates are actually reduced, at least in the short-run to provide a monetary stimulus. The recent statements by the Bank of England's Chief Economist, Andy Haldane, would support such a view. Therefore, what happens to interest rates is going to depend on the combination of all of the above factors, plus many more. Generally however, the economic outlook does not look too healthy over the short-run. The uncertainty created by Brexit will, by itself, impact confidence in the UK economy. Whilst Brexit may not by itself lead to the UK entering recession over the next 18 months, it will increase the likelihood of that event and more generally reduce economic growth.

Commercial Real Estate

The big issue at the forefront of the debate in the commercial sector is what will happen to the City of London and the financial services sector. These concerns are centered on whether London based institutions will still receive what is referred to as "passporting" rights, allowing them access across the EU. Whilst it is by no means the main reason why firms base themselves in London it is an added advantage. The likelihood is that some banks may reduce their London operations, but in all likelihood this will be at the margins and most institutions will keep the vast majority of staff in London. The City is by far the largest financial center in Europe and that isn't going to disappear overnight. It also has the advantage in that it can appeal to institutions via its light touch regulatory environment. This will no longer be constrained by EU wide policy, for example on bonuses. The big question mark is with those European institutions, such as BNP Paribas and Deutsche Bank, that have major London operations and if they will be tempted to repatriate large numbers of staff back to Paris and Frankfurt respectively. In the long-term a market that could benefit, depending on the outcome of various negotiations, is Edinburgh. In a scenario, which is not beyond the realms of possibility, where Scotland leaves the UK but remains in the EU, then financial institutions may move some operations north and join the strong fund management and insurance sectors already based in Scotland. Outside of the UK Dublin may also be another beneficiary of any outflow of the financial services sector from London. Given the differences in scale, even if there is outward movement from London it will not be that large from London's perspective, however, the positive impact on cities the size of Edinburgh or Dublin could be substantial.

The provincial markets outside of London are probably those most vulnerable to both any adverse economic affect and in therefore from a property perspective. A number of markets are already seeing weaker letting conditions, which in turn will obviously impact the development sector.

However, any reduction in new supply will obviously have a positive effect as it will mitigate any decline in occupational demand and therefore provide some protection for rental values. The fall in Sterling may have some short-term positives, and this may be especially seen in the industrial and warehouse sectors. However, this needs to be offset against the long-term outlook which is perhaps less positive. In general it will be a common refrain that there may be quite different impacts over the short versus the long term.

Retail Real Estate

Economic uncertainty is not coming at the best time for the retail sector which is already under pressure from a wide variety of issues, including the continued impact of non-store channels and new entrants together with reduced margins. Fashion retailers are in particular suffering and also, due to their reliance on imported products generally invoiced in Dollars, are most exposed to Brexit and the fall in Sterling. Longer-term any rise in inflation due to both a weaker pound and increased tariffs obviously would have a further negative impact. It is going to intriguing to see how consumers are going to respond. If there is a negative impact on consumer confidence and spending it is most likely to impact high value discretionary goods, meaning the likes of electrical, furniture and department stores may see the biggest impact.

From a property perspective the retail sector has had to depend in recent years on the growth in food and beverage to prop up the declining footfall observed. However, even before the referendum was announced many analysts felt that the growth rate in food related outlets was unsustainable. It may have got retail through the immediate aftermath of the financial crisis but it far less encouraging this time around. Overall, the UK retail sector was facing major long-term challenges. The realignment of UK retail was happening anyway. Brexit may merely speed up that process.

More generally though it will be interesting to examine how retail spending patterns do respond to Brexit. It will provide commentators with an indication of the economic sentiment in the UK population; indeed generally retail will be one of the key indicators of the health of post-Brexit Britain.

Residential Real Estate

Whilst there are without question medium and long term economic concerns the housing sector may actually do okay in the short-run. The fall in Sterling does benefit overseas buyers, who especially in markets such as London have been important players in recent years. The London market had been quieter this year anyway due to a combination of concerns over the level of prices, a lot of supply coming onto the market and economic uncertainty. However, early indications are that there is some short term opportunity buying taking place. Whether this is sufficient to prop up a jittery market is still to be determined, but it is not a foregone conclusion that the London market will see major price falls.

The positon outside of London is far less rosy. The share prices of home builders have been particularly affected in recent weeks. In a parallel with the financial crisis of a decade ago it may be that those markets that see the largest negative impact are the former industrial areas. A decade ago this was due to their preceding house price appreciation being less underpinned by strong fundamentals and more by credit and mortgage market conditions. In contrast, in London stronger demographic and economic fundamentals meant a largely flat 2007-2009 rather than any meaningful declines. The irony of course here is that those regions that voted to leave are those most exposed economically and therefore potentially will see the largest fall in house prices.

The Investment Market

As already noted the underlying fundamentals looking forward vary quite significantly across the main property sectors. However, that is only one side of the equation and just as important is how will investors respond and this has already been quite interesting. Irrespective of ones view about Brexit and the underlying economic impact, it is unquestionable that it has caused uncertainty. If there is one thing that investors, irrespective of asset class, hate it is uncertainty. This was evident even before the referendum with investment volume in UK real estate down for the first six months of the year. We've already seen a widening of the yield gap between real estate and government bond yields. This is in part due to the fall in bond yields; however some property sectors are also seeing a softening in yields due to increased risk premiums as well uncertainty concerning future changes in capital values and the exit values that can be achieved.

It has been argued that the fall in Sterling could mean that overseas investment increases. In the core commercial sectors we are looking at a market with potentially prolonged economic and financial uncertainty, weaker fundamentals in a number of sectors and not much upside on capital values coming from yield. Yes a combination of softer yields and a weaker currency may be leading to 15-20% reductions in values in foreign currency terms. However, it effectively becomes a pure currency play and it is going to take a brave investor to increase exposures purely on that, especially as these are unlikely to be short-run positons. Furthermore, it needs to be remembered that given the amount of foreign investors already in the UK, and especially in London and the South East of England, they will need to offset any current opportunities with the fact that their existing UK portfolio has, in their domestic currency, just taken a big hit.

We also don't know at this point how overseas investors will continue to view the UK. The real estate sector especially that in London has frequently been seen as a safe haven. However, we've already have had two Singaporean banks send negative signals in this regard. United Overseas Bank suspended underwriting new loans on UK property, whilst DBS issued an advisory note to clients highlighting the increased sovereign, economic and currency risks present. Generally on financing there is always the concern that if a correction in pricing does occur this will have knock on effects not only on the willingness of institutions to lend but also on the value of existing collateral. This in turn has negative connotations for the banking sector. UK banks were one of the equity sectors most affected in the immediate aftermath, in part due to this potential exposure. This is especially relevant as in some case they have not yet fully dealt with all of the problems arising from the financial crisis a decade ago. However, this in itself makes the views of overseas lenders that much more important. It is estimated that in 2015 overseas lending accounted for 42% of the UK market.

Very shortly after the referendum we saw significant events taking place in the fund sector. Within a couple of weeks a number of open-ended vehicles (managed by Standard Life, Aviva, M&G Real Estate, Columbia, Threadneedle, Canada Life and Henderson Global Investors) announced that they were limiting the withdrawal of funds by investors due to a rise in redemption requests. In itself this is not necessarily a sign of weakness in the underlying real estate market; rather it is a function of open-ended funds in real estate. Such vehicles have always faced the risk of a redemption run. Given real estate's illiquidity it has meant that they are more vulnerable than comparable funds in more liquid sectors such as equities and fixed income. In these cases institutions are able to liquidate assets in a timely manner in order to cover redemption requests. In total we've seen seven funds with assets in excess of £7bn suspend trading. Other fund managers have addressed the issue by discounting the value of the fund, for example TH Real Estate by 5% and Aberdeen Asset Management by 17%. This has effectively made making a redemption request sufficiently unattractive. It may however have negative consequences if the broader market takes this as evidence of falling values. There is some preliminary evidence that these reductions are being used for re-pricing deals. On the positive side the speed of the response overall probably means that we will avoid the scenario seen in 2007 and 2008 when funds were forced to dispose of assets to satisfy liquidity needs. This in turn helped contribute to the major fall seen in UK commercial values.

Despite this in some respects being a technical restriction it does raise concerns. Firstly, the degree of redemption requests was obviously of sufficient magnitude that fund managers felt they had to act and do so quickly. This in itself raises question marks over investor sentiment. Secondly, that negative sentiment may itself be made worse by the actions of the fund managers. It has, if nothing else, reminded investors of the liquidity risk present in real estate, especially with open-ended funds. But let us be honest, this should not come as a surprise to a sophisticated investor. Less than a decade on from the financial crisis, much of which was associated in some shape or form with real estate, investors don't really have any excuse to not be aware that real estate is an illiquid asset class and that this brings certain types of risk to the table. Individuals realize housing is illiquid, why can't professional investors recognize the same issues apply to commercial property.

A medium-term implication of the redemption issue is that it may further encourage a growing trend towards "Blended Portfolios". There has been in recent years a move in the UK for funds to have an adequate amount of liquidity. There has therefore been an increase in funds combining both private real estate market assets with a higher than normal amount of liquid securities. In some cases these are real estate related (e.g. REITs), in some cases cash or bonds. Some instances have been seen of pure replication portfolios. Blackrock, for example, launched an ETF that attempts to replicate the performance of the MSCI/IPD UK index purely with liquid securities. There has in recent weeks also been an increase in interest in funds using the real estate derivative market, in combination with short-term loan facilities, to provide the necessary liquidity.

March 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12 Daylight Savings	13	14	15	16	17 St. Patrick's Day	18
19	20 Spring Begins	21	22	23	24	25
26 Easter	27	28	29	30	31	

June 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11	12	13	14 Flag Day	15	16	17
18 Fathers Day	19	20	21 Summer Begins	22	23	24
25	26	27	28	29	30	

September 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 Labor Day	5	6	7	8	9
10	11 Patriot Day	12	13	14	15	16
17	18	19	20	21	22 Autumn Begins	23
24	25	26	27	28	29	30

Arello Annual Conference September 19-24, 2017

December 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7 Pearl Harbor Remembrance Day	8	9
10	11	12	13	14	15	16
17	18	19	20	21 Winter Begins	22	23
24	25 Christmas	26	27	28	29	30
31 New Year's Eve						

Real Estate Commission - 026

Actual data as of June 30, 2016

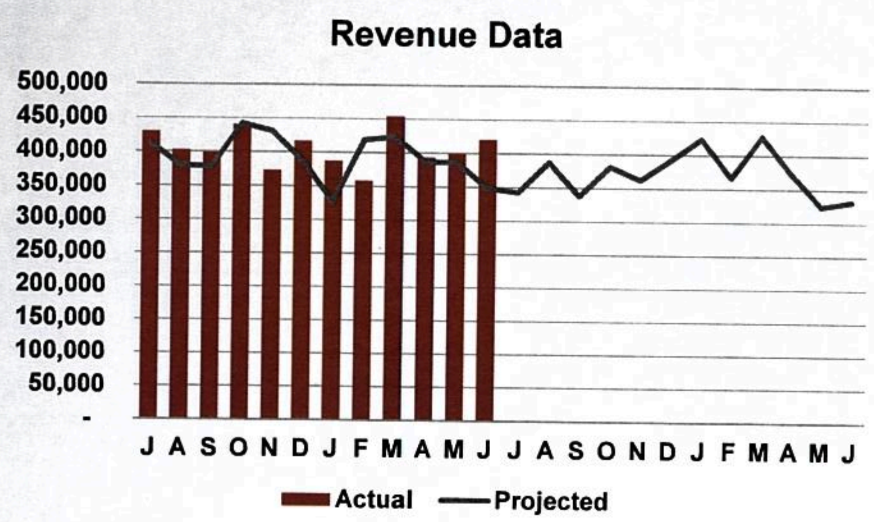
Budget Data

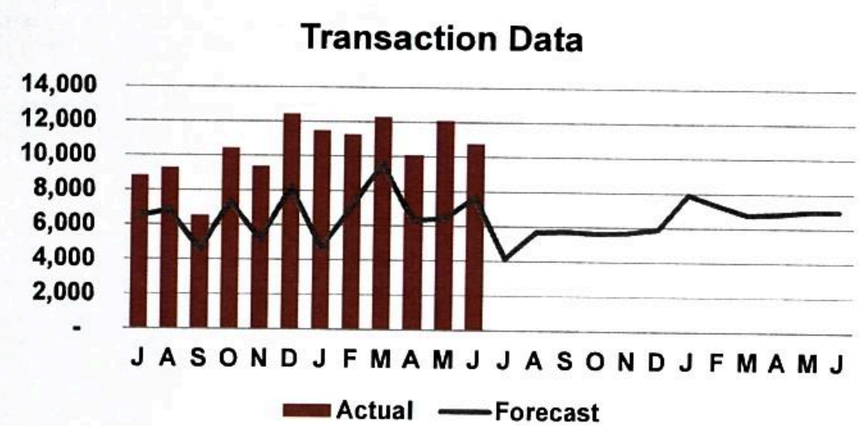
	Actuals to Date	Biennial Estimates
Allotted	$5,367,417	$11,536,000
Expended	4,874,438	10,670,755
Variance	**$492,979**	**$865,245**

Fund Balance Data

Beginning Balance	$4,041,080
Add: Collected to-date	4,870,833
Less: Expended to-date	4,874,438
Less: Legislative Sweep	500,000
Current Fund Balance	**$3,537,475**

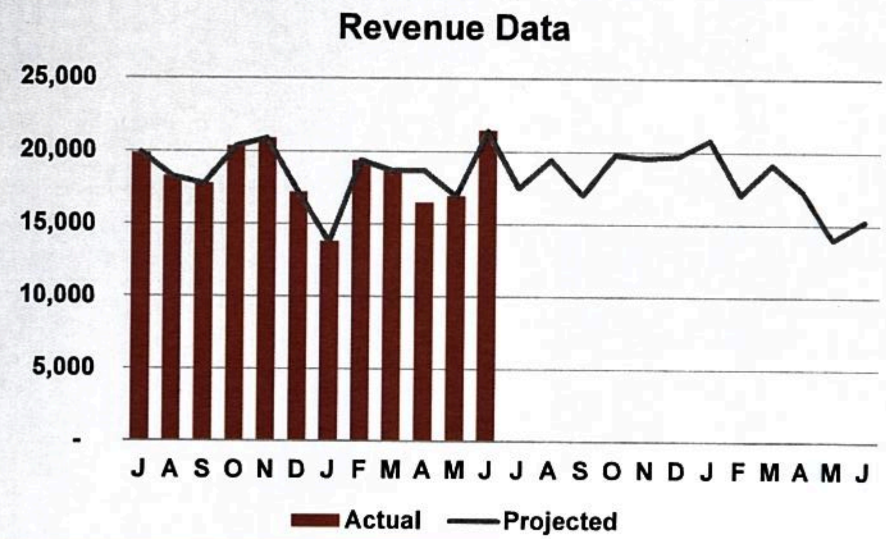
Established by RCW 18.85.220 – This account is the operating or business account for real estate. All licensing fees paid to the department is placed into this account.





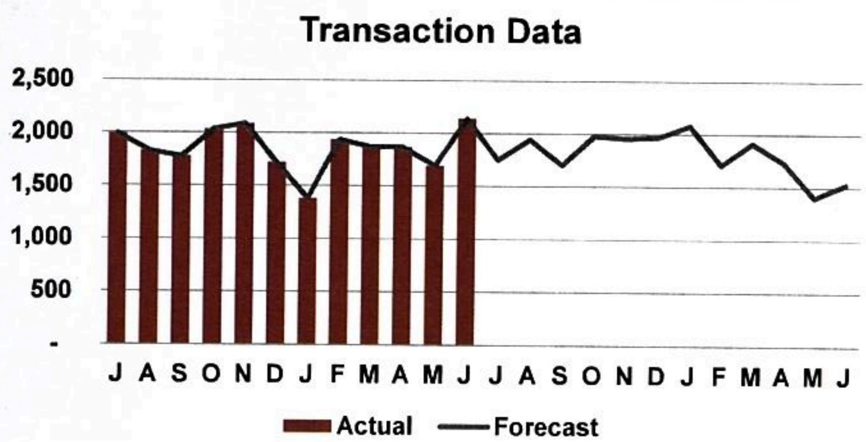
Real Estate Research – 06R

Actual data as of June 30, 2016



Budget Data

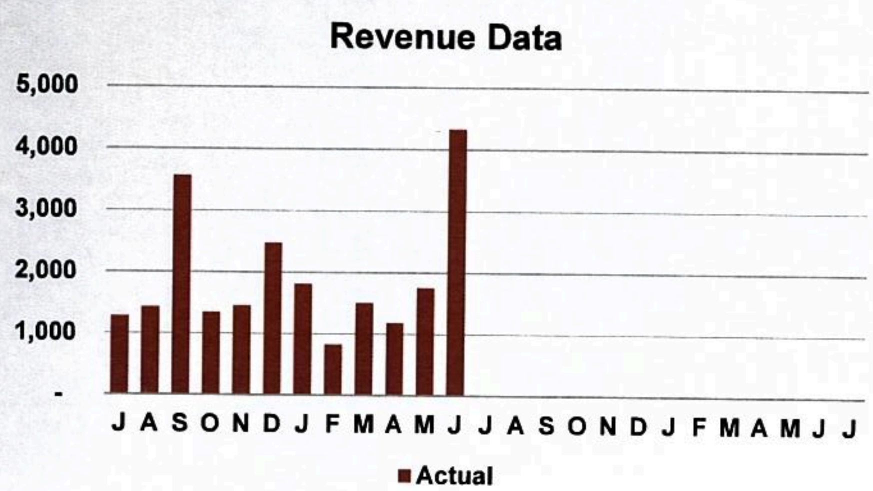
	Actuals to Date	Biennial Estimates
Allotted	$105,573	$415,000
Expended	156,421	415,000
Variance	**($50,832)**	**$0**



Fund Balance Data

Beginning Balance	$968,673
Collected to-date	221,160
Expended to-date	156,405
Less: Legislative Sweep	500,000
Current Fund Balance	**$533,428**

Established by RCW 18.85.461 – This account is for research connected to the practice of real estate. Funding from this account comes from a $10.00 fee attached to each license renewal. The department contracts with Washington Center for Real Estate Research-Washington State University each biennium for their services.



Real Estate Education – 04F

Actual data as of June 30, 2016

Budget Data

	Actuals to Date	Biennial Estimates
Allotted	$12,590	$276,000
Expended	16,849	177,120
Variance	**($4,259)**	**$98,880**

Established by RCW 18.85.317 – The purpose of this account is to carry out the director's education programs. Funds come from interest on trust accounts (25% to RE Education and 75% to Housing Trust Fund) and all fines collected from licensees. Funds are used for training programs such as the distressed property video.

Fund Balance Data

Beginning Balance	$656,196
Collected to-date	22,963
Expended to-date	16,849
Current Fund Balance	**$662,310**

SUMMARY OF CONTRACTS

As of 9/1/2016:

K5430-WCRER University of Washington o Main Contract o Contract amount $410,000.00 o Cost Code 06R 3H0 76200 (WCRER Account - $10 fee) o Signed and filed o Effective 7/1/2015 – 6/30/2017	K5600-WCRER University of Washington o Newsletter o Contract amount 41,866.00 o Cost Code 1M0 04F 76300 (RE Education Account) o Signed and filed o Effective 3/22/2016-6/18/2018
K5670-WCRER University of Washington o Additional Research o Contract amount 43,000.00 o Cost Code 1M0 04F 76300 (RE Education Account) o Signed and filed o Effective 4/15/2016-4/01/2017	K5679-WCRER University of Washington o Condominium Study o Contract Amount $50,000.00 o Cost Code 04F 1M0 76300 (RE Education Account) o Effective Date of Execution-5/31/2016-4/01/2017
K5632 Exam Vendor o Awarded 6/7/2016 – PSI/AMP o Revenue-Producing Contract	K1314 AMP/PSI Amendment #5 o State Simulation Exam o Total for Amendment $55,995.00 o Cost Code 026 1F0 76600 (Real Estate Commission) o Date of Invoice #5 has changed from 05/31/2016 to 12/31/2016
K567_ Catherine Fromme o Education Technical Assistance-Still in its inception o Under $10,000.00 o Cost Code 2/3 from 766 and 1/3 from 76H (Real Estate Commission and Home Inspector) o Waiting for approval/signature	