

**A Utah Community Action Partnership Association Report**

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# **Redevelopment Agencies and Housing in Utah**

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# Redevelopment Agencies and Housing in Utah

## Overview

Redevelopment agencies (RDAs), known more recently in Utah Code as “community development and renewal agencies,” found their start in Utah in 1965 with the Utah Community Development Act. One of the stated purposes of RDAs is to positively affect “blighted” urban areas. One of the ways they do this is through financing provided by something called a “tax increment.” Of this tax increment, 20 percent must be spent on low-income housing. The rationale for this focus on low-income housing is that the blighted area likely contained residences for low-income individuals that may have become displaced upon the RDA led economic upturn in the area.

This paper examines the use of tax increment on low-income housing. It first looks at RDAs in general, then turns to the housing portion of RDA legislation and how tax increment is utilized, and finally provides several ideas on how the tax increment might be used more effectively.

The purpose of this paper is to provide some impetus for further study into the housing development initiated by RDA activities. The ideas at the end of the paper are not comprehensive, but are there for use as a stepping-off point for delving deeper into the ideas’ possible utility and feasibility.

## A Brief Introduction to RDAs

Title 17C of Utah Code provides the structure and mandate for RDAs. The community’s legislative body, such as a city council, is designated as the governing body of the agency. The agency creates a project area, forms a planning commission, develops a general plan, enters into contracts for development in the area, and raises money to assist in funding projects.

The public has a voice in the general plan. If an RDA chooses a redevelopment project, the designated area must qualify as “blighted,” and the public can provide input into that assessment. Further, property owners can provide input into the project area plan and the public can provide comment on the plan.

At this point, the RDA has the ability to help relocate residential or commercial occupants, begin collecting tax increment and receive bonds on future tax increment, and has, in the past, been able to purchase properties through eminent domain.

RDAs provide three activities: urban renewal (formerly “redevelopment”), economic development, and community development. The following is taken from Utah Code:

"Urban renewal" means the development activities under a project area plan within an urban renewal project area, including:

- (i) planning, design, development, demolition, clearance, construction, rehabilitation, or any combination of these, of part or all of a project area;
- (ii) the provision of residential, commercial, industrial, public, or other structures or spaces, including recreational and other facilities incidental or appurtenant to them;
- (iii) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating, or any combination of these, existing structures in a project area;
- (iv) providing open space, including streets and other public grounds and space around buildings;
- (v) providing public or private buildings, infrastructure, structures, and improvements; and
- (vi) providing improvements of public or private recreation areas and other public grounds.

"Economic development" means to promote the creation or retention of public or private jobs within the state through:

- (a) planning, design, development, construction, rehabilitation, business relocation, or any combination of these, within a community; and
- (b) the provision of office, industrial, manufacturing, warehousing, distribution, parking, public, or other facilities, or other improvements that benefit the state or a community.

"Community development" means development activities within a community, including the encouragement, promotion, or provision of development.<sup>i</sup>

Utah has a total of 76 "active" RDAs and over 200 urban renewal and economic development projects producing millions of dollars in tax increment. Community development was first introduced in 2006.

## **What Tools do RDAs Use?**

### **Tax Increment**

The main tool for RDAs is the "tax increment." RDAs provide assistance for urban renewal, economic development, and community development from revenues provided by the tax increment incurred from developed projects. This tax increment amount is calculated by subtracting the "base taxable value of the property" from the "amount of property tax revenues generated... within the project area."<sup>ii</sup> In other words, the county assessed value of the property is frozen for the life of the project, the taxing entities collect the new value of the property after improvement, and then the taxing entities pass any amount above the frozen value to the RDA.

A taxing entity committee is set up to manage the tax increment. This body is made up of two members from the local town or city government, two members from the county, two from the local school district, one from the Utah State Office of Education, and one representing all other taxing entities that are affected by the increment. This committee determines the length of time which the RDA may collect the increment (up to 25 years but more often around 15 years). The taxing entity committee also determines the amount of tax to be collected by the agency and for what uses.

Of the increment, 80 percent is then used for improvements within the project area and 20 percent is used for housing in the community. In 2006, Utah's redevelopment agencies took in \$87 million in tax increment.<sup>iii</sup> "Anticipated future tax increment funds often are leveraged to bond for funds that can be used soon after a reuse district is established. Bonding enables a city to establish positive momentum in a district by making significant up-front improvements."<sup>iv</sup>

## **Blight**

Another important tool for RDAs is the designation of "blight," which is used for renewal or redevelopment projects. When the RDA chooses a redevelopment area, it must first consider an area blighted. To be considered blighted, the RDA board must make certain findings and hold a hearing on the issue. There are regulations around blight regarding the maximum percentage of greenspace and agricultural land in the area. Mainly, however, a blighted area must "impair the sound growth of the municipality, retard the provision of housing accommodations, or constitute an economic liability or is detrimental to the public health, safety, or welfare" in a much of the project area.<sup>v</sup>

## **Eminent Domain**

Eminent domain is the power of a legislative body to take private property and appropriate it for public use. The body first tries to negotiate for the purchase of the property, but if the private entity refuses to sell, the body may set up a public hearing whereby they will petition to take the private property in exchange for fair compensation. The 2005 Supreme Court decision in the *Kelo v. New London* case, while allowing eminent domain to win out in the case, found that it is contrary to the 5<sup>th</sup> Amendment to take a person's property, even for fair compensation, and sell it to another person unless there are significant public benefits to the takeaway.

In Utah, state and local jurisdictions may use eminent domain for strictly public projects. RDAs had the power to use eminent domain within the first five years of a projects inception. However, the use of eminent domain by RDAs was effectively<sup>vi</sup> removed by Senator Curtis Bramble's 2005 *Senate Bill 184*.

Will the loss of eminent domain decrease the number of redevelopment projects? It has already affected the plans of several projects. However, the use of eminent domain is expected to return to RDAs with future legislation.

## What do RDAs have to do with Housing?

### History of Housing

Utah's history of RDAs began in 1965 with the Utah Community Development Act. While the name changed and major revisions were passed in the meantime, the first amendment to overtly affect housing came in 1998. State Code was revised so that an RDA could avoid using taxing agency committees for budget approval if a 2/3 majority of the RDA board approved the project and 20 percent of the tax increment was given to the State's housing fund (the Olene Walker Housing Loan Fund). This was repealed in 2000. However, at that time, the Legislature began requiring that RDAs, for all projects which generate over \$100,000 annually, spend 20 percent on "income targeted housing" and produce an affordable housing plan.

### Income Targeted Housing

"Income targeted housing" means housing to be owned or occupied by a family whose annual income is at or below 80 percent of the median annual income for the county in which the housing is located.

An RDA may:

- "pay part or all of the cost of...:
  - land or construction... if practicable in a mixed income development or area,
  - rehabilitation... within the community,
  - land... construction, or rehabilitation... related to housing located in a project area where blight has been found to exist, [or]
- replace housing units lost as a result of the urban renewal, economic development, or community development."<sup>vii</sup>

Alternatively, the RDA may provide the housing portion of the tax increment to the "community," a housing authority, or the Olene Walker Housing Loan Fund for the purpose of providing income targeted housing. The RDA may also issue bonds for income targeted housing.

### Affordable Housing

Utah Code also mentions "affordable housing." The term refers to "housing to be owned or occupied by persons and families of low or moderate income" as determined by the RDA.<sup>viii</sup>

Most tax increment must be used in the project area where it was collected. However, “an agency may use up to 20 percent of tax increment outside of project areas for the purpose of replacing housing units lost by urban renewal, economic development, or community development, or increasing, improving, and preserving generally the *affordable housing* supply of the community that created the agency.” Further, “an agency may lend, grant, or contribute funds from the housing fund to a person, public entity, housing authority, private entity or business, or nonprofit corporation for *affordable housing*.”<sup>xix</sup>

### **A Bit More RDA Housing History**

A third category of development was added in 2000: Education Housing Development. This provided an incentive for high density housing near colleges and universities. It was repealed in 2006.

### **The Olene Walker Housing Loan Fund**

RDAs are directed to provide the Olene Walker Housing Loan Fund (OWHLF) with a housing plan. The OWHLF is also given the power to force RDAs to use their tax increment for housing in appropriate ways. “If an agency fails to provide housing funds in accordance with the project area budget and... the housing plan..., the Olene Walker Housing Loan Fund board may bring legal action to compel the agency to provide the housing funds.”<sup>xx</sup>

RDAs need not contribute to affordable housing if the annual tax increment is under \$100,000. The RDA can also apply for a waiver for a portion or all of the housing contribution if both the taxing entity committee and the OWHLF “determine that 20 percent of tax increment is more than is needed to address the community's need for income targeted housing.”<sup>xxi</sup> A waiver is also provided for economic development projects (since May 2002) in counties with fewer than 11,000 residents if the project area contains no housing.

A RDA can apply for a waiver by providing the OWHLF with a complete info package and questionnaire. OWHLF rates and ranks responses and then sends the information to the OWHLF board for a presentation and possible approval.<sup>xxii</sup>

Further, the OWHLF is provided in Utah Code as a possible destination for the housing increment, “though no one has yet given money to OWHLF.”<sup>xxiii</sup>

### **What about the Housing “Controversy”?**

The very existence of RDAs and their powers are controversial to many affected parties. This has been especially true with regard to eminent domain. However, the list extends beyond this issue; some of the controversy is directed at housing in relation to the tax increment.

In response to a report produced by the Office of the Utah Legislative Auditor General, A. Paul Glauser, former President of the Utah Redevelopment Association, brought up some of the key oppositional points to the housing portion of the increment. First he said that the 20 percent housing requirement “has little policy relationship to resolving blight.” However, he goes on to say, “it has all the revenue impacts on taxing entities for which blight-related tax increment is sometimes criticized,” in that it “dilute[s] the redevelopment effort and extend[s] by up to 25 percent the tax increment to be diverted from taxing entities.” Though, he says, “we are not suggesting that tax increment for housing is not a valid public policy,” just that it should be studied.

Some criticism that Mr. Glauser spoke of comes from groups opposed to the funds that RDAs take from public schooling. Local taxes account for over 20 percent of public education funding in Utah. The main source of this funding is from property taxes. As such, tax increment impacts public education by diverting funds to the RDAs. The amount of tax increment diverted is approaching \$50 million annually (based upon FY 2005-6 data).<sup>xiv</sup> Thus, approximately \$10 million is taken from schools and directed toward housing each year.

### **Where does RDA Housing Money Go?**

RDAs may focus upon the development of housing within their projects from inception or may include a project within the plan for future housing. Often, the housing portion of the increment is put at the back end of the project.<sup>xv</sup> Thus, a 15-year project might not start generating revenue until the beginning of the 13<sup>th</sup> year. As such, a significant portion of RDA housing funding will begin showing itself in the next decade.

The two largest RDAs in the state are the Redevelopment Agency of Salt Lake City and the Ogden City Redevelopment Agency.

The Salt Lake RDA operates within eight project areas, many of which have numerous housing projects. The Salt Lake RDA also provides funding to the Salt Lake City Housing Trust Fund, which fund was created in 2000. Within these project areas and the greater Salt Lake community, the Salt Lake RDA has provided nearly \$9 million toward housing, creating 2,122 housing units, 834 of which are affordable to low-income individuals (as of 2006). The Salt Lake RDA has issued an additional \$8 in low-interest loans.<sup>xvi</sup> The Salt Lake RDA’s annual tax increment in 2005 totaled over \$37 million, greater than 41 percent of the state’s total.

One example of a housing project financed by the Salt Lake RDA is the Northgate Apartments. This development, located at the Gateway shopping center, created 330 apartment units and 150 condo units. 156 of the apartments were designated as affordable housing and are income restricted at a maximum household income of \$25,740.

Rental Rates at the Northgate Apartments		
	Affordable units	Market rate units
1 bedroom	\$667	\$850-950
2 bedrooms	\$798	\$900-1100

The Ogden City RDA has 17 project areas and created the Ogden City Housing Fund in 1997. The Ogden City RDA had a 2005 tax increment of nearly \$6.7 million dollars.

Some RDAs have very specific goal for which to use their tax increment. An example of which is the South Ogden City RDA that has used tax increment for a housing loan program. They loan up to \$20,000 for roofing, heating and cooling, plumbing, electrical, and accessibility projects.

Throughout the city they provide:

- grants to very low-income persons,
- loans at 50 percent of the prime interest rate for low-income borrowers, and
- loans at the prime interest rate for moderate-income borrowers below 110 percent of the area median income.

Within their target area they provide:

- grants to very low-income persons,
- loans at 0 percent interest for low-income borrowers, and
- loans at 50 percent of the prime interest rate for moderate-income borrowers.

Brigham City has created a similar type of trust fund.

However, “it is clear very few cities have a specific plan for the use of the housing tax increment proceeds.”<sup>xvii</sup> One example is West Valley City. “West Valley has no specific plans for their housing increment.” While the RDA took in nearly \$4.8 million in 2005, much of those funds are from projects that pre-date the housing portion of the increment. “The funds may be given to the [West Valley] Housing Authority or to the Olene Walker Housing Loan Fund. The City Center project was going to use their housing increment for housing... [but] they may now focus on housing along the TRAX line.” Additionally, the “Jordan and Gateway [projects] have fallen short of projected. The slow-down in development or shrinking of plans leave you with less increment.”<sup>xviii</sup>

## Issues and Remedies

### Advisory Panel

In the Performance Audit of Redevelopment Agency Practices provided to the Legislature in February 2006, it is suggested that independent advisory panels for taxing entity committees should be created. It may be prudent to create similar advisory panels for RDA boards to assist in developing housing plans and assist with plan implementation. “Where there is a danger is if an advisory panel is not independent... then a panel would probably not serve well, even with expertise on the panel.”<sup>xix</sup>

An advisor could educate those RDAs with ineffectual housing plans and provide technical assistance to the drafting of new plans. Alternately, the advisor could simply provide RDAs models with which to work. Currently, there is no place to access other RDA’s plans.

### OWHLF Tracking

The OWHLF would be well served to have a copy of all affordable housing plans on hand, as required by Utah Code. Currently, the OWHLF solely keeps track of whether or not they have provided waivers to RDAs’ housing increment and a summary budget for the 20 percent tax increment. The RDAs should be providing, and the OWHLF should keep on file, a complete record of all the plans. With this information the OWHLF can determine if the plans need further development. Unfortunately, there are several RDAs which have not provided even the summary budgetary information. The author of this report will be working with the OWHLF in an effort to reveal these missing pieces of information.

### Reporting

Another potential problem with the housing portion of the tax increment is that there is no accountability for spending these funds. There is no further reporting required beyond the local RDA board.

In the state of California, RDAs are required to provide a report of their housing related accomplishments to the State Controller’s Office and to the California Department of Housing and Community Development. Even with this reporting “there are still many criticisms that have been raised about the practices of redevelopment agencies that include misuse of housing funds, gentrification and the failure to provide affordable housing for low-income people.”<sup>xx</sup>

It is the author’s impression that RDAs may not have enough oversight. This issue should be further explored. An oversight board could review plans and give a vote of approval to the detailed budgets previously passed by the taxing entity committees. In the very least, the OWHLF could provide audits of RDAs to determine whether they are following their affordable housing plans.

## **Pooling**

Some RDA have insufficient funds to provide any real impact on low-income housing in their communities. County trust funds could aggregate funding “to allow smaller redevelopment agencies to pool resources of multiple redevelopment agencies and give them certain powers with respect to a specified joint project area and joint redevelopment plan.”<sup>xxi</sup>

A pooling of RDA resources into local housing trust funds may be a way to maximize expertise with the use of the funds, as well as create leveraging power for larger projects. Counties with large populations and/or numerous RDAs could form county housing trust funds to aggregate the funds of the smaller RDAs within the county (like Cache, Davis, Weber, and Tooele Counties).

A similar pooling could be formed over counties lines for counties with small populations and/or few RDAs. While Carbon, Iron, and Milliard Counties may not be contiguous, they could form a fund which might be advantageous to them all. Alternately, the tax increment from the RDAs in these counties could be provided to the OWHLF as a set-aside for use in the originating counties as projects become available.

## **Bonding**

Since such a significant portion of RDA funds from housing will be generated at the backend of RDA’s period, bonding legislation to access these funds now might be a useful strategy. Bonding is currently used to help finance projects in larger RDAs with heavier coffers, but could be used in smaller RDAs to expedite the development of low-income housing at a time when it is desperately needed.

## **Summary**

Issues surrounding RDAs are complex and constantly changing as legislation changes. One thing that has arisen from these changes is a focus on low-income housing as an integral part of RDA activity. RDAs are poised to have a major impact on the development of low-income housing within Utah. What the low-income community needs is a champion to make sure that RDA activities follow the intent of the law and provide affordable housing that is critically need throughout the state.

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- <sup>i</sup> Utah Code 17C-1-102 (16), (46)(a), and (15).
- <sup>ii</sup> Utah Code 17C-1-102 (42)(a).
- <sup>iii</sup> Utah State Office of Education, Redevelopment and Economic Development (pdf available on their website) January 29, 2007.
- <sup>iv</sup> Envision Utah, [http://www.envisionutah.org/toolbox\\_pdf/Chapter\\_4.pdf](http://www.envisionutah.org/toolbox_pdf/Chapter_4.pdf).
- <sup>v</sup> Utah Code 17C-2-303.
- <sup>vi</sup> “An agency may use eminent domain to acquire any interest in property that is owned by an agency board member or officer and located within a project area, if the board member or officer consents” (Utah Code 17C-1-206 (2)).
- <sup>vii</sup> Utah Code 17C-1-412 (1).
- <sup>viii</sup> Utah Code 17C-1-102 (2).
- <sup>ix</sup> Utah Code 17C-1-411.
- <sup>x</sup> Utah Code 17C-1-412 (5)(a).
- <sup>xi</sup> Utah Code 17C-2-203 (1)(b).
- <sup>xii</sup> Shelli Goble, August 22, OWHLF.
- <sup>xiii</sup> Shelli Goble, August 22, OWHLF.
- <sup>xiv</sup> Utah State Office of Education [http://www.usoe.k12.ut.us/FINANCE/tax/redevelopment/Economic\\_development.htm](http://www.usoe.k12.ut.us/FINANCE/tax/redevelopment/Economic_development.htm).
- <sup>xv</sup> RDA report produced by Richard Walker while he was with the Utah Division of Housing and Community Development.
- <sup>xvi</sup> League of Women Voters Redevelopment Agency Study, August 2006.
- <sup>xvii</sup> RDA report produced by Richard Walker while he was with the Utah Division of Housing and Community Development.
- <sup>xviii</sup> Doris Larson, August 22, West Valley RDA.
- <sup>xix</sup> Wayne Kidd, June 13, Office of the Legislative Auditor General.
- <sup>xx</sup> The Impact of Redevelopment on the Low-Income People, page iv. Dr. Adrian Fleissig and Dr. William Gayk, October 2002.
- <sup>xxi</sup> The Impact of Redevelopment on the Low-Income People, page vi. Dr. Adrian Fleissig and Dr. William Gayk, October 2002.