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THE APPRAISAL: YOUR PROPERTY RIGHTS UPDATE

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EXECUTIVE INSIGHTS

“We must all hang together, or, most assuredly, we shall all hang separately.”

- Benjamin Franklin.

I often recall Benjamin Franklin’s quote during the legislative session for two reasons. Firstly, all real estate interests must collaborate to protect property rights in Washington state. A prime example of this is our recent major defeat of six rent control bills and our opposition to an increase in the Real Estate Excise Taxes (REET) in HB 1628. By having a united front we managed to kill all six bills at the first cutoff. We worked together and we were successful.

Secondly, the reason I point to Franklin’s quote is that individual property owners must work together. Imagine a scenario where every property owner is either represented in Olympia by their own lobbyist (at their own expense) or not represented at all. Few companies can afford to hire their own lobbyists. By pooling resources with WBPA, we can represent property owners and have our voices heard. Take our current legal efforts for instance, either a single company has to foot the bill for an entire lawsuit or alternatively they can donate to WBPA’s Legal Defense Fund.

Pre-pandemic, there was an informal meeting once a year of all real estate associations to discuss the upcoming legislative session. The Washington Real Estate Coalition (WREC) meeting was run by Rod Kauffman of BOMA and we wish to thank Rod for his yeoman effort over the years.

Going forward, the Washington Business Properties Association will be the convener to the WREC meetings and starting this year, we will be having a mid-year meeting to discuss the prior session and how all real estate associations can work together. Another example of this collaboration is the WBPA’s Jevons case in the Ninth Circuit, challenging the state’s eviction moratorium. We made a request to numerous real estate organizations and public interest law firms and were delighted to see amicus briefs from the Building Industry Association of Washington,

the Rental Housing Association of Washington, and the Pacific Legal Foundation, all supporting our case. Together we are stronger and have wider influence.

We are pleased to welcome a new team member to the WBPA, Amy Harris. We’ve known Amy for several years and she has a strong fundraising background. After working in D.C. for several lawmakers and a large real estate PAC, she returned to her home state and since has worked on many campaigns and for several business organizations. Amy is a valuable addition to the team.

Lastly, we make one simple request for members. We are grateful for all the financial support our members give the WBPA, but we need more members. By far the most effective way to recruit new members is a simple introduction from somebody you know. We can double our membership if just one of your colleagues joins. I’m asking all members to introduce WBPA to three other real estate owners because, paraphrasing Franklin, if we don’t stick together we will assuredly be defeated separately.

William Shadbolt,
Managing Director



DEAR MEMBERS AND PROSPECTIVE MEMBERS,

The Washington Business Properties Association is committed to promoting and protecting the interests of our commercial, retail, and residential housing members. If you have not yet joined our association, now is the time to take a leading role in our efforts to defend property rights in our state.

Membership in the WBPA offers tailored benefits to meet the needs of our diverse real estate industry. Here are the core values that guide our efforts in fighting for your interests.

ACTIVATE: WBPA is the broadest coalition of business associations and property owners with a focus on commercial, residential, industrial, and retail real estate property rights issues in Washington State. We work together to amplify our voices in elections, legislative advocacy, and regulatory policy by coordinating efforts across the commercial, residential, and retail real estate industries.

EDUCATE: We keep members informed about concerns and opportunities relating to the real estate industry in Washington. We recently launched and continue to expand our educational podcast. In addition, we hold industry events and collaborations alongside other real estate associations throughout the year.

LEGISLATE: As an association, we have a record of success advocating on behalf of our members with policymakers, it's what we do! Working closely with state agencies and other stakeholders, we shape policies and regulations. Our actions demonstrate that we can be a thoughtful partner to address real estate industry needs and stop bad policies when they arise.

LITIGATE: Yes, there are times when legal action is necessary to protect the interests of our members. Our association has a strong track record of legal representation as both plaintiff and friends of the court, advocating on behalf of our members.

By joining the WBPA, you will become part of a supportive and engaged community of industry professionals who are all working to protect our industry's future. Your membership helps support industry-wide collaboration and strengthens our work as a unique voice to push back against harmful policies and regulation at both the state and local levels.

We look forward to welcoming you to the Washington Business Properties Association!

WHAT'S IN A STREET LIGHT?: HOW LOCAL REGULATIONS DRIVE-UP COSTS



Working with the Bellevue Chamber of Commerce, the WBPA **garnered a win** for one of our members related to one of their projects facing unscrupulous city planners. Mid-project, they were informed they had to pay **exorbitant costs for 5G compatible street lights**. Thanks to our **collaboration**, we found a reasonable compromise, **saving tens of thousands** of dollars for this development.

RETAIL THEFT: WHAT'S THE SOLUTION?

Retail stores nationwide have been hit hard by a significant increase in organized theft over the past year. These types of crimes are often carried out by organized rings who steal large quantities of goods from businesses of all sizes with the intention of reselling them.

Unlike typical shoplifters who steal small amounts for personal use, these criminal groups are driven by greed and employ violent tactics to steal as much as possible for a bigger payoff. They take advantage of outdated state laws that offer little to no consequences for their actions, operating without fear of prosecution.

Organizers often recruit individuals struggling with substance abuse and exploit their vulnerabilities by offering drugs for stealing goods. These groups operate across county and state lines, moving from store to store and accumulating vast amounts of stolen goods. These goods are then sold in large quantities on various online platforms, often disguised as legitimate merchandise.

Organized Retail Crime (ORC) incidents were on the rise prior to 2020, but the pandemic seemed to exacerbate the trend. Washington state experienced over \$2.7 billion in retail theft in 2021, the second highest in the nation per capita, according to the Retail Industry Leaders Association (RILA).

Increase in theft incidents presents a challenge for retailers resulting in lost profits and a threat to the safety of their employees and customers. Thieves have become emboldened by restrictions on police pursuits passed by the state Legislature. As a result, many retailers have been forced to close their stores in areas with high incidences of repeat crimes, while others have closed due to concerns about the safety of their employees.

A robust loss prevention plan is a good first step when dealing with retail crime. Businesses should implement countermeasures to discourage criminals and prepare their workers for such incidents by adopting best practices to help keep their employees and property safe.



Alesha Shemwell
WBPA Board Member
Director of Retail
Kemper Development Company

The Washington Retail Association is addressing ORC with a multi-pronged approach:

- Implementing the online marketplace transparency bill, known as the INFORM Act.
- Coordination with the Washington State Organized Retail Crime Association (WAORCA) to increase communication among national, state, and local law enforcement agencies and loss prevention officers.
- Engaging with and supporting the efforts of the Washington State Organized Retail Crime Task Force.
- Passing laws to support and fund law enforcement, enabling officers to do their jobs effectively by providing the tools to deter and apprehend criminals.
- Telling the story of how retail theft impacts retail employees, customers, and retailers of all types and sizes.
- Providing resources for small and mid-sized retailers on how to prepare, prevent, protect, and navigate post-crime.

UNDER THE DOME: RENT CONTROL, REAL ESTATE TAXES & MORE

Rent control is the holy grail for special interests in Olympia. They've been desperately trying to impose this bad policy for years, with incremental steps, rebranding and more. At the beginning of the 2023 legislative session, we were immediately confronted with 6 different pieces of legislation that all proposed implementing rent control in one form or another. Working with our Board, we knew defeating this policy was our highest priority.

In the beginning of March, the WBPA brought together a POWERFUL COALITION of lobbyists and other real estate-related associations and defeated all 6 rent control proposals! Similar legislation has failed across the country and because of the WBPA and our partners, Washington remains rent-control-free, for now. One critical issue facing our industry however is still on the table. Budget writers are still looking to implement a significant increase in the Real Estate Excise Tax (REET). House Bill 1628 would create a new tier in the already excessive tax, making Washington's REET the highest in the nation. By imposing a 4 percent tax on sales over \$5 million is an extreme burden on an already struggling real estate market and the fiscal note is insane!

If approved, that would cost nearly \$1.4 BILLION between now and 2029. In addition, it grants local jurisdictions the authority to enact local REET for "affordable housing." You don't make housing more affordable by taxing housing.

Part of Washington's affordability problem stems from massive layers of regulations, fees and taxes imposed on our industry. Those directly impact consumers. The WBPA believes in doing everything we can to be good stewards of the environment. However, most of the policies coming from Olympia are focused on extracting resources from you to pay for pet projects that may have negligible benefits for the environment while raising the price tag to build anything.

The natural gas ban is no exception. Just a few months ago the concept of ban on natural gas was a conspiracy and now House Bill 1589 would make that a reality by targeting energy providers themselves from providing the service. Not only is this a practical problem for our electrical grid, it will add thousands of dollars to the cost of housing units, even more to commercial projects and drive up costs for everyday goods. We're working with our partners to stop this unreasonable approach to addressing our state's climate goals.

EVICTION RESOLUTION RESOLVED?

The Washington Business Properties Association works to protect your property rights in the Washington State Legislature. The year began with the WBPA challenging the Eviction Resolution Pilot Program (ERPP) that was approved in 2022. This law prohibited housing providers from removing a tenant without first seeking the approval of a non-judicial administrative agency. The program was a failure across the state and ended up costing time and money for owners with no results.

The Superior Court ruled in favor of the state in our initial suit, but with your help, the WBPA appealed the lower court decision to the state Supreme Court.

Our litigation effort played a role in forcing the legislature to abandon renewing the program this year. In fact, the Attorney General in his response to the WBPA appeal stated "... there is no indication the Legislature will enact such a statute...".

To date, no legislation has made it through the process to extend the ERPP. That's a big win for housing providers across Washington still trying to recover from pandemic-related losses. As we argued, access to the courts is a fundamental right and the ERPP requirements of obtaining a permission slip to remove problem tenants is fundamentally wrong.

TAKING IT TO THE COURTS

The Washington Business Properties Association is proud to work collaboratively finding reasonable solutions to the various challenges facing our industry. When all else fails, we aren't shy about seeking relief in the courts. To that end, we have initiated or weighed-in on impactful litigation to uphold our member's property rights.

State Eviction Moratorium

The Washington Supreme Court heard oral arguments on February 23, 2023. The justices seemed to have significant interest in our claim that the executive orders blocked access to the courts. We are waiting for their ruling.

Federal Eviction Moratorium

The Ninth Circuit will hear oral argument on April 10, 2023 along with the Federal challenge to Seattle's eviction moratorium at the William K. Nakamura Courthouse in Seattle.

Burien

On February 21, 2023 the City of Burien amended its eviction ordinance after losing a lawsuit and appeal. Of note, the vote was 4-3 in favor of bringing the city ordinance into compliance with state law. It seems that three city council members need to be reminded that under the Washington Constitution, city ordinances cannot conflict with state law; a point explained by both the trial court and the Court of Appeals.

The WBPA is tracking several cases around the country including those involving rent control in New York state. We couldn't protect your property rights without your generous support. Thank you to all the members that have recently contributed to the Legal Defense Fund. Remember that contributions are anonymous and are treated as an ordinary business expense.

9TH CIRCUIT VICTORY

Our win in the Ninth Circuit case against Seattle's blanket ban on the use of criminal records was significant. The three judge panel ruled that it violated the First Amendment's free speech clause. Of note, the judges didn't even analyze if the speech was commercial or non-commercial as neither would meet the requirements under immediate scrutiny. The adverse action part of the law was remanded back to the lower court for further proceedings.

Oddly, the ruling indicated that the right to exclude was not a fundamental property right because the U.S. Supreme Court had ruled that it was a fundamental property right for takings. This logical fallacy flies in the face of the recent ruling in Cedar Point Nurseries, where Chief Justice Roberts wrote "The right to exclude is "one of the most treasured" rights of property ownership. Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 435 (1982)".

We will be appealing this part of the ruling and expect Seattle to ask the Ninth Circuit for an en banc review.

Note: Expect to see more case filings in our upcoming issues.



PLEASE JOIN US



The Washington Business Properties Association is planning to hold a series of events across the state to update members on what happened this 2023 Legislative Session. These events provide members an opportunity to meet personally with Chester Baldwin, CEO and Chief Lobbyist for the WBPA, and get insights on how the legislature fared with respect to the needs of property owners, developers, and operators of retail, and commercial properties in our state. We want to hear from you! Tell us your story so we can advocate on your behalf.

We are very thankful to Chris Gurdjian for hosting our first, upcoming evening reception on May 15, 2023 at the Legacy Group offices at 11 Capital in Kirkland. This get-together will include light refreshments, hors d'oeuvres, and chance to network with other WBPA members. Save the date and look for your invite soon. If you cannot attend the eastside reception, we're planning additional events in the Seattle and Spokane in late May and early June.

While still a young organization, the WBPA is proud to have been a leader advocating, educating, legislating and litigating for your interests.

The WBPA is truly a statewide force to be reckoned with and we love what we do! Being effective in Olympia requires building relationships, and understanding the motivations of lawmakers and the people they represent. Did you know that the state Senate Majority Leader, Andy Billig, represents parts of Spokane? To be effective, we're working across the aisle to educate legislators on our issues to stop bad policies like rent control, real estate taxes and more regulations that hurt our industry and the people we serve.

Thank you for your support of the WBPA. We ask that you please share our work with your colleagues and join us at one of the receptions we have planned. Growing our impact and footprint starts with you. If you have any questions, please contact Karla Johnson at the WBPA office.

You can reach Karla at (360) 205-2345 or by email at support@thewbpa.org.

I look forward to seeing you soon!

Sincerely,

Peter Lukevich

Peter Lukevich, JD
Director of Operations
Washington Business Properties Association