City of Minot

TO: Mayor Shaun Sipma
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

DATE: October 20, 2018

SUBJECT: **Amend Involuntary Acquisition Polices & Procedures to End Appeals Committee Role**

I. RECOMMENDED ACTION

Approval of amendment to Involuntary Acquisition Policies and Procedures to cease use of the Appeals Committee role in the acquisition process both relocation and purchase

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Grant Program Manager & Chief Resilience Officer, 423-4528

III. DESCRIPTION

A. Background

The federal Uniform Relocation Assistance and Real Property Acquisition Act commonly known as the URA governs the city's use of CDBG and CDBG-DR funds for property acquisitions. There is no provision or requirement in the URA for a Grantee to have an Appeals Committee and, in fact, Grantees throughout the US with similar acquisition programs do not have Appeals Committees. It is reported that when the city first began undertaking acquisitions, it was felt by city personnel that an Appeals Committee process inserted into the acquisition and relocation negotiation procedure might mitigate property owners concerns regarding the entire process and the need to proceed to Eminent Domain. During the years since acquisition commenced, there has been extensive communication on the part of the city to affected property owners to familiarize them with the process and their rights. Also, as the volume of acquisitions has grown the familiarity among remaining affected property owners has also significantly improved. As the program has progressed, it has also become evident that even with the best of intentions at the beginning in creating the Appeals Committee process, this added layer of bureaucracy has increasingly become misunderstood by affected property owners and has increased rather than diminished difficulties in negotiating a purchase price to avoid Eminent Domain. Key misunderstandings and/or misinterpretations of the Appeals Committee role have included:

- It is a quasi-judicial body which it is not
- The Committee can overrule the two separate independent appraisers' value determination used by the city to set a price absent similar independent verifiable independent appraiser data provided by the property owner, which it cannot
- The Committee can supersede the requirements imposed by the city by the URA which it cannot

As a result of these misunderstandings and/or misinterpretations of the Appeals Committee role, several trends have been noticed in the past 12 months:

- Property owners are now retaining attorneys to appear before the Appeals Committee… at present, there are 16 properties now represented by attorneys versus a year ago when there were 2 properties represented by attorneys
- Caused by misunderstanding and misinformation about the scope and role of the Appeals Committee, there has been increasingly unjustified acrimonious views expressed by property owners not happy with Committee Outcomes even when a modest increase in the offer was recommend

Since January, 2017, there have been 21 property owners who have gone to the Appeals Committee. There was no change in the offer by the city with 11 of the property owners, and with the other 10 property owners none of the proposed increased offer amounts by the Appeals Committee were the amounts requested by the property owners with 9 of the 10 proposed increased amounts being less than 10% of city initial offer. The city has not yet been able to reach a purchase conclusion with 7 of these property owners which went through the Appeals Committee process.

A reality of the URA requirements which highlights the rationale for ceasing to use the Appeals Committee process is that since it is not recognized in the federal law as a part of the acquisition process the city, being the DR Grant Program Manager, is put in the position of rejecting Appeals Committee recommendations if they fall outside the parameters of the URA stipulations. I have not yet faced such a circumstance but this reality does expose the frailty and weakness of inserting the Appeals Committee in the purchase negotiation process.

The applicable provision of the URA states, "The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as reasonable. When federal funds pay for or participate in acquisition costs, a written justification shall be prepared which states what available information, including trial risks, supports such a settlement." This is in the city's Policies and Procedures and the DR Grant Program Manager is designated as the "Agency official."

The two acceptable justifications to go above the city offer price which are comfortably defensible if such to an audit is an estimate of legal costs if an Eminent Domain case went through trial (I have received that estimate from our outside counsel) and/or a separate independent appraiser engaged by a property owner using the same basis and data as the city's two appraisers presented a higher value.

B. Proposed Project
The removal of the Appeals Committee from the Policies and Procedures acquisition process does not alter the city's continued compliance with HUD rules or the requirements of the federal Uniform Relocation Act, and eliminates any risk of being place in a position of not being compliant with the necessary and reasonable standards of acquisition prices.

IV. IMPACT:

A. Strategic Impact:
Eliminates confusion and misunderstanding by property owners which has become evident with the insertion of the Appeals Committee in the acquisition process which is not a provision or requirement of the federal Uniform Relocation Act.

B. Service/Delivery Impact:
Streamline and minimize timelines and bureaucracy in working with property owners to reach agreement on purchase price.

C. Fiscal Impact:
N/A

V. ALTERNATIVES

N/A

VI. TIME CONSTRAINTS

N/A

VII. LIST OF ATTACHMENTS

None