

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0939**

In the Matter of Don and Beverly Goerisch
Replacement Housing Payment Claim.

**Filed April 19, 2021
Affirmed
Slieter, Judge**

Office of Administrative Hearings
File No. 5-8034-36744

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Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

This is an appeal from a decision of an administrative-law judge (ALJ) favoring respondent City of Brooklyn Park regarding a condemnation-related real estate transaction. Relators Don and Beverly Goerisch argue that the ALJ erred by concluding that relators were not eligible for a “replacement housing payment” following the sale of their property to respondent. Because the record supports the ALJ’s conclusions and relators demonstrate

no mistake of either law or fact so as to overcome the ALJ's presumption of correctness, we affirm.

FACTS

The parties submitted a statement of undisputed facts to the ALJ. According to those stipulated facts, respondent began plans for the construction of an interchange along U.S. Highway 169 at 101st Avenue North in Brooklyn Park in 2014. As part of this project, respondent was required to acquire a portion of property belonging to relators. Relators' entire property consisted of 271,658 square feet (6.24 acres), of which 32,316 square feet (0.74 acres) would be required to facilitate construction of the interchange (the "necessary property"). Of the "necessary property," 26,600 square feet (0.61 acres) consists of "a residential dwelling and related site improvements" (the "displacement dwelling").

Respondent notified relators of the planned condemnation of their property in July 2019. Respondent subsequently arranged for an appraisal of the property—the "necessary property" was assessed at a value of \$236,700 and the remainder of the property was valued at \$836,000, for a total market value of \$1,073,000.

Respondent initially offered to purchase the "necessary property" for \$249,998. Respondent informed relators that they would be eligible for a "replacement housing payment" in the amount of \$75,002 if they accepted this offer. This amount was calculated by subtracting the proposed sale price (\$249,998) from the cost of a "comparable dwelling," stipulated by the parties to equal \$325,000. Relators declined this offer.

Respondent subsequently submitted a second purchase offer of \$349,998 for the "necessary property" or, alternatively, \$1,520,820 for the entire property. Relators

declined both offers. Finally, respondent extended a third offer, without an allocation attributable to the “necessary property,” to purchase the entire property for \$1,620,000. This offer was accepted by relators. Respondent then recalculated relators’ potential eligibility for a “replacement housing payment” based on this purchase price and determined the relators to be ineligible. Relators appealed this decision to the ALJ.

Based upon the undisputed facts before the ALJ, the parties sought summary disposition.¹ Ultimately, the ALJ concluded that relators were not entitled to a “replacement housing payment.” The ALJ granted respondent’s motion for summary disposition and denied relators’ motion for summary disposition. This appeal follows.

DECISION

“On appeal, we presume the [Office of Administrative Hearings’s (OAH’s)] decision is correct.” *Lewison v. Hutchinson*, 929 N.W.2d 444, 447 (Minn. App. 2019) (citing *Fine v. Bernstein*, 726 N.W.2d 137, 142 (Minn. App. 2007) (holding that agency decision-maker presumption of correctness extends to OAH administrative judges), *review denied* (Minn. Apr. 17, 2007)). However, this court may reverse an ALJ’s decision

if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inference, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or

¹ “Summary disposition is the administrative [law] equivalent of summary judgment.” *Pietsch v. Minn. B. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004).

- (e) unsupported by substantial evidence in view of the record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2020). Review of a grant of summary disposition is *de novo*, and “consists of determining whether there are any genuine issues of material fact and whether there was an error in applying the law to the facts.” *Pietsch*, 683 N.W.2d at 307.

Resolution of this matter involves analysis and application of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), which requires authorities to accommodate individuals who are displaced from their homes for federally-funded public projects. 42 U.S.C. §§ 4601-4655 (2018).² One such accommodation at issue is known as a “replacement housing payment,” which is a payment made to former homeowners equal to the difference between the “acquisition cost of a displacement dwelling” and the cost of a “comparable replacement dwelling.” 49 C.F.R. § 24.401(c)(1)(i)-(ii) (2020). Additionally, 49 C.F.R. § 24.403(a)(7) (2020) states the general rule that if a property is:

part of a property that contained another . . . space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

² Pursuant to the Minnesota Uniform Relocation Act, “[i]n all acquisitions undertaken by any acquiring authority . . . the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by the [URA].” Minn. Stat. § 117.52, subd. 1 (2018).

As such, only the acquisition cost of the actual “displacement dwelling” should be considered, rather than the purchase price of the entire property.

The crux of the parties’ dispute, therefore, is the portion of the total purchase price that should be allocated to the acquisition cost of the “displacement dwelling.”³ This dispute derives from the absence in the sale agreement of an express allocation of the total purchase price, combined with silence in the URA and related regulations regarding how to calculate the acquisition cost of the “displacement dwelling” when the total price paid by the governmental entity includes more than the price of the “displacement dwelling.”

The parties stipulated that a “comparable dwelling” was reasonably valued at \$325,000. In arriving at its conclusion that no “replacement housing payment” was owed to the relators, the ALJ examined the prior offers made by respondent to relators—specifically, their prior offers to pay either \$349,998 for the “necessary property” or \$1,520,820 for the entire property. The ALJ concluded that, “because the amount paid to [relators] for the Displacement Dwelling site – at least \$349,998 – exceeds the amount necessary to acquire the comparable property – \$325,000 – [relators] are not entitled to a differential replacement housing payment.”

Relators believe this approach is improper and that when the correct method of valuation is used they are entitled to a “replacement housing payment” in the amount of \$132,397. They argue that the ALJ should have calculated the purchase price of the

³ Both the ALJ and parties on appeal appear to conflate the price offered for the “necessary property” with the price that was paid for the “displacement dwelling.” However, because the parties presented the ALJ with stipulated facts, this discrepancy does not affect our analysis.

“necessary property” by dividing the total purchase price (\$1,620,000) by the total number of square feet (271,658), then multiplying that dollar amount (\$5.96 per square foot) by the square footage of the “necessary property” (32,316). By this approach, the price paid for the “necessary property” would be calculated at \$192,603—\$132,397 less than the price of the \$325,000 “replacement dwelling.”

Relators rely upon an unpublished decision of this court, *In re Estate of Fischbach*, No. A16-1223, 2017 WL 1833248 (Minn. App. May 8, 2017), as support for the square-foot method of valuation for the “necessary property.” However, unlike in this matter, the court in *Fischbach* considered a “displacement dwelling” which “had no independent value because the property's best use had changed from residential to commercial.” *Id.*, at *3. This is a critical distinction, which makes the reasoning of *Fischbach* unpersuasive—in the present case, the property’s best use following the sale was described in the appraisal:

It is our opinion that the existing improvements add value to the site as though vacant, dictating a continuation of its current use. It is our opinion that the Highest and Best Use of the subject property is to split the allocated homesite area of the site and *continue the existing residential dwelling use*, and then utilize the remainder of the land for *mixed-use* related development in an assemblage scenario.

(Emphasis added). Therefore, the record demonstrates that the best use of the entire property in this case after the sale is *mixed-use*, involving both commercial development as well as the existing residential dwelling. This supports the ALJ’s finding that the “displacement dwelling” should be valued differently than the remaining property. Though a per-square-foot calculation may be appropriate for properties having a single best use, the record supports the ALJ’s decision to decline use of this methodology.

The stipulated facts of this case and the relevant federal statutes provided the ALJ with no roadmap for calculation of the acquisition cost of the “displacement dwelling.” We are satisfied the record supports the calculation of the ALJ, which resulted in denial of a “replacement housing payment.” As noted above, “we presume the OAH’s decision is correct.” *Lewison*, 929 N.W.2d at 447.

Additional support for the ALJ’s ultimate conclusion is shown by the appraised value of the “necessary property” in proportion to the overall purchase price. The appraised value of the “necessary property,” \$236,700, equals 22% of the total appraised value of the property, \$1,073,000. Twenty-two percent of the final price paid for the entire property, \$1,620,000, is \$357,000—an amount greater than the \$325,000 “replacement dwelling.” This method of valuation confirms the ALJ’s conclusion to deny relator a “replacement housing payment.”

The parties stipulated to the facts and submitted this matter to the ALJ via competing motions for summary disposition, thereby “tacitly agree[ing] that there exist no genuine issues of material fact.” *Am. Family Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790 (Minn. 1993). Relators have cited to no authority which requires us to reverse for error of fact or law. We conclude that relators have failed to overcome the presumption of correctness given to the ALJ. *Lewison*, 929 N.W.2d at 447.

Affirmed.