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Minn. Stat. § 480A.08, subd. 3 (2002).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A03-821**

In re the Application for Relocation Benefits of:  
Richard and Janice Pickering,  
Relators,

vs.

The City of Plymouth,  
Respondent.

**Filed April 6, 2004  
Affirmed  
Lansing, Judge**

City of Plymouth

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Considered and decided by Lansing, Presiding Judge, Peterson, Judge, and  
Forsberg, Judge.\*

## **UNPUBLISHED OPINION**

**LANSING**, Judge

This certiorari appeal arises out of a dispute between Richard and Janice Pickering and the City of Plymouth over relocation-assistance benefits. The Pickerings appeal from a hearing officer's order denying their request for a housing-replacement differential. By notice of review, the city challenges the hearing officer's initial determination that the Pickerings were eligible for relocation-assistance benefits. Because we conclude that the hearing officer's decision was neither arbitrary nor based on an error of law, we affirm.

### **F A C T S**

In 1999, the City of Plymouth began a road-improvement project on County Road 101 to convert the existing road into a four-lane road. The project involved no federal funds. To proceed with the project, the city needed to acquire a strip easement across several properties adjacent to the road, including Richard and Janice Pickering's property. Although the city did not need to acquire the houses on the properties to proceed, it decided to offer homeowners affected by the project the option of selling their properties.

The director of public works wrote the homeowners a letter in January 2000, explaining that the city would need to acquire an easement on their property to build the new road, and that he would recommend to the Plymouth City Council that it give homeowners an opportunity to sell their properties voluntarily. The director noted that if a homeowner did not wish to sell his or her house, the city would nonetheless acquire the

necessary easement adjacent to and parallel with the roadway. The plan contemplated that the properties would be purchased and then resold with an easement.

The city council approved the recommended plan in February 2000. The following December, the city offered to buy the Pickerings' property for \$225,000 and sent the Pickerings a purchase agreement that included a waiver of relocation costs. The Pickerings did not sign the agreement. Instead, they submitted an alternative agreement that did not include a waiver of relocation costs. The city approved the agreement in January 2001 and entered into a contract for deed. The Pickerings conveyed title to the property in June 2001 but were allowed to remain in the house until September 2001. The city then resold the property, subject to the easement, for \$228,700.

The city did not provide the Pickerings relocation-assistance services in their search for a replacement house. Nor did it provide information about relocation-assistance services or eligibility for benefits. The Pickerings on their own searched for a replacement house but were unable to find a walkout rambler with a park-like yard, located on a large lot within the city. As a result, they decided to build a new house on a lot they owned in Big Lake Township. The Pickerings moved into their new house in September 2001.

In October 2001, the Pickerings applied for relocation benefits under the Minnesota Uniform Relocation Act (MURA), Minn. Stat. §§ 117.50-.56 (2002). The Pickerings sought to obtain a housing-replacement differential equivalent to the difference between the acquisition cost of their Plymouth house and either the cost of their new house (\$553,547.40) or the listing price of a comparable replacement house in the available Plymouth market.

The city denied the Pickerings' application, reasoning that the sale had been voluntary within the meaning of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act (URA), 42 U.S.C. §§ 4601-55 (2000), and that the Pickerings were therefore ineligible for relocation benefits. The Pickerings appealed the denial, and an administrative appeal hearing on the issue of eligibility took place in January 2003.

In February 2003, a hearing officer reversed the city's eligibility determination, reasoning that the Pickerings were eligible for relocation benefits because they were "displaced persons" within the meaning of Minn. Stat. § 117.50, subd. 3. The hearing officer concluded that the state's definition of "displaced person" was broader than its federal counterpart and encompassed the Pickerings despite the voluntary nature of their conveyance. The hearing officer also concluded that the Pickerings were entitled to relocation benefits because they did not waive those benefits in the purchase agreement.

In June 2003, following a hearing on the amount of benefits to which the Pickerings were entitled, the hearing officer awarded the Pickerings \$1,500 for reasonable moving expenses for nine rooms, and \$5,761.50 for necessary and reasonable expenses paid as closing costs for the purchase of their replacement house. The hearing officer denied the Pickerings closing costs on their construction financing, reasoning that those costs are not customarily paid by the buyer and merely reduced the construction cost of the new house. He also denied the Pickerings a housing-replacement differential, reasoning that the most closely comparable replacement dwelling available within a reasonable time of the city's offer sold for \$220,000 and that other reasonably comparable replacement housing was available in the Plymouth market at or below \$225,000, the amount the city paid for the Pickerings' house.

The Pickerings appeal from the denial of a housing-replacement differential. By notice of review, the city appeals from the determination of eligibility.

## D E C I S I O N

A reviewing court may reverse or modify an administrative agency's decision if the decision is arbitrary and capricious or unsupported by substantial evidence in view of the entire record. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). But in providing administrative review, the court must exercise judicial restraint to avoid substituting its judgment for that of the agency. *In re Denial of Eller Media Co. Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003). In our review, we “defer to [the] agency’s conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *Blue Cross & Blue Shield*, 624 N.W.2d at 278. We review independently, however, the agency’s conclusions on questions of law. *St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989).

## I

The city argues that the hearing officer erred in concluding that the Pickerings were eligible for relocation benefits under the Minnesota Uniform Relocation Act (MURA), Minn. Stat. §§ 117.50-.56 (2002). Specifically, the city argues that the MURA entitles a property owner only to relocation benefits *required* by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act (URA), 42 U.S.C. §§ 4601-55 (2000), and that in this case benefits are not required under the URA because the Pickerings voluntarily sold their house to the city.

As a preliminary matter, the Pickerings argue that this court lacks jurisdiction under Minn. R. Civ. App. P. 106 to consider the eligibility issue because the city did not appeal from the hearing officer's initial order determining eligibility. We have expressly held, however, that the parties' rights in a relocation matter are not finally determined until after the order determining benefits is issued, and that the parties may therefore challenge a hearing officer's initial eligibility determination on appeal from the order determining benefits. *In re Application for Relocation Benefits of James Bros. Furniture, Inc.*, 642 N.W.2d 91, 96-97 (Minn. App. 2002), *review denied* (Minn. June 18, 2002); *see also State ex. rel. Mosloski v. County of Martin.*, 248 Minn. 503, 506, 80 N.W.2d 637, 639 (1957) (stating that certiorari will not ordinarily lie unless there is a final determination of rights). Accordingly, the city's claim that the hearing officer erred in concluding that the Pickerings were eligible for relocation-assistance benefits is properly raised for review.

The MURA provides that “[i]n all acquisitions undertaken by any acquiring authority . . . in which . . . [no federal funding is involved], the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments, and benefits required by [the URA] . . . and those regulations adopted pursuant thereto.” Minn. Stat. § 117.52, subd. 1.

This court, in an earlier relocation-benefits appeal, read the term “displaced person” into Minn. Stat. § 117.52, subd. 1, and interpreted the MURA to require payment of relocation benefits to any person determined to be a “displaced person” within the meaning of the MURA. *See James Bros.*, 642 N.W.2d at 98. The MURA defines “displaced person” as including “any person who moves from real property . . . as a result

of acquisition undertaken by an acquiring authority.” Minn. Stat. § 117.50, subd. 3. The term “acquisition” includes acquisitions by eminent domain and acquisitions by negotiation. Minn. Stat. § 117.50, subd. 4(a), (b).

The URA has a higher eligibility threshold that requires payment of relocation benefits when the acquisition of real property for a program or project *directly* results in the displacement of any person. 42 U.S.C. § 4622. URA defines “displaced person” as “any person who moves from real property . . . as a *direct result* of . . . the acquisition of such real property in whole or in part *for a program or project.*” 42 U.S.C. § 4601(6)(A)(i) (emphasis added). Persons are not displaced under the URA if they voluntarily convey their property after being informed in writing that, if a mutually satisfactory agreement on the terms of the conveyance cannot be reached, the agency will not acquire the property. 49 C.F.R. § 24.2 (2003). A conveyance is voluntary if the property does not have to be acquired, the property is not part of a designated project area where all or substantially all of the property within the area is to be acquired, the agency notifies the owner in writing that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and the agency informs the owner of the fair market value of the property. 49 C.F.R. § 24.101(a)(1) (2003).

In a recent amendment to the MURA, the Minnesota legislature adopted the URA’s definition of displaced person. *See* Minn. Stat. § 117.50, subd. 3 (Supp. 2003) (“[d]isplaced person’ means any person who, notwithstanding the lack of federal financial participation, meets the definition of a displaced person under United States Code, title 42, sections 4601 to 4655, and regulations adopted under those sections”). This legislative

amendment supersedes and limits the holding of *James Bros.*, but the amendment was not in effect at the time the Pickerings became eligible for relocation benefits.

*James Bros.* rejected a construction of the MURA that would mirror the federal act and specifically concluded that the MURA definition of “displaced person” was broader than its federal counterpart. *James Bros.*, 642 N.W.2d at 99. Under the rationale of *James Bros.*, a person is displaced under the MURA if the person moves from real property as a result of an acquisition by an acquiring authority. See Minn. Stat. § 117.50, subd. 3. The acquisition may be by negotiation or by eminent domain, Minn. Stat. § 117.50, subd. 4, and need not be causally connected to a state-funded project or program, *James Bros.*, 642 N.W.2d at 99. Because the Pickerings moved from their house as a result of the city’s acquisition of their property by negotiation, they are “displaced persons” under the *James Bros.* construction of the MURA.

We conclude that the hearing officer correctly applied the term “displaced person” within the meaning of the MURA as construed by *James Bros.* and properly determined that the Pickerings were eligible for relocation benefits notwithstanding the voluntary nature of the conveyance.

## II

The Pickerings argue that the hearing officer’s refusal to award them a housing-replacement differential was arbitrary, capricious, and based on an erroneous theory of law. We do not agree.

Under the URA, eligible displaced persons are entitled, among other things, to actual, reasonable moving expenses and actual direct losses of tangible personal property resulting from moving. 42 U.S.C. §§ 4622(a)(1), (2). Eligible homeowners are also

entitled to “an additional payment not in excess of \$22,500.” *Id.* § 4623(a)(1). The additional payment must include, among other things, “[t]he amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling.” 49 C.F.R. § 24.401(b)(1) (2003). The price differential to be paid is

the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to *the lesser of*:

- (i) [t]he reasonable cost of a comparable replacement dwelling . . . ; or
- (ii) [t]he purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

*Id.* § 24.401(c)(1) (2003) (emphasis added). A comparable replacement dwelling is one that is “functionally equivalent to the displacement dwelling.” *Id.* § 24.2.

In addition to monetary benefits, eligible displaced persons are entitled to relocation-assistance advisory services. *Id.* § 24.205(c) (2003). The required advisory services include a personal interview with each displaced person to “[d]etermine the[ir] relocation needs and preferences” and to “explain the relocation payments and other assistance for which [they might] be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.” *Id.* § 24.205(c)(2)(i). As the process continues, the acquiring agency must also provide “current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available.” *Id.* § 24.205(c)(2)(ii). Before requiring a person to move from his or her dwelling, the acquiring authority must also make

available to the person about to be displaced at least one comparable replacement dwelling and, where possible, three or more. *Id.* § 24.204(a) (2003).

The Pickerings first argue that they are entitled to a \$328,547.40 price differential, which is the difference between the cost of the house they actually built and occupied and the acquisition cost of their Plymouth house. The Pickerings' argument ignores the express language of the applicable regulation, however, which entitles the homeowner to a price differential equal to *the lesser of* the reasonable cost of a comparable replacement dwelling or the cost of the house the homeowner actually buys and occupies. *See id.* § 24.401(c). The \$328,547.40 price differential the Pickerings sought to obtain is considerably higher than the price differential based on the cost of a comparable replacement dwelling (at most, \$44,900). Accordingly, the hearing officer properly determined that the Pickerings were not entitled to their claimed price differential.

Notwithstanding the regulation's clear and unambiguous language, the Pickerings argue that they are entitled to a price differential based on the cost of the house they actually built and occupied because the city breached its duty to make a comparable replacement dwelling available to them before they moved. Although an acquiring authority must make a comparable replacement dwelling available to a homeowner before requiring the homeowner to move, the MURA does not make the amount of the price differential contingent on the acquiring authority's duty to provide a comparable replacement dwelling. *See id.* § 24.401(c) (describing the price differential to be paid to an eligible homeowner). Only the authority to require a homeowner to move is contingent on such a duty. *See id.* § 24.204(a).

In this case, the city determined in good faith that the Pickerings were not entitled to relocation-assistance services because they conveyed their property voluntarily. The Pickerings did not request relocation-assistance services or retain a realtor. Instead, they independently concluded that there were no comparable replacement dwellings in the city of Plymouth and opted to build a house on a lot they owned in Big Lake Township. The city should not be required to pay for the option the Pickerings chose, notwithstanding its failure to make a comparable replacement dwelling available to them before they moved.

Next, the Pickerings argue that the hearing officer acted arbitrarily and capriciously in selecting the comparable replacement dwelling on which he based his determination that the Pickerings were not eligible for a housing-replacement differential. The Pickerings make three arguments in support of their claim. First, the Pickerings argue that the hearing officer shifted the burden of finding a comparable replacement dwelling from the acquiring authority to the displaced person by selecting a dwelling from a list of 129 available houses that the Pickerings submitted to demonstrate that the houses they identified as comparable replacements were not the most expensive houses available on the market within the relevant time period. But even if the MURA imposed on the acquiring authority a burden of finding a comparable replacement dwelling *for price differential purposes*, the city met its alleged burden by identifying three comparable replacement dwellings on which the hearing officer could have relied in determining the housing-replacement differential. We fail to see how the hearing officer's selection of a comparable replacement dwelling from the list the Pickerings put into evidence affected the parties' respective burdens.

Second, the Pickerings argue that the hearing officer acted arbitrarily and capriciously by disregarding the Pickerings' realtor's testimony that, of the 129 houses available on the Plymouth market at the relevant time, only three qualified as comparable replacement dwellings, and that the hearing officer exceeded his authority by relying, instead, on quarter-page listings he was not qualified to evaluate independently. The hearing officer, however, was charged with the responsibility of evaluating the evidence independently and was not required to accept the Pickerings' realtor's testimony. By carefully considering the realtor's proposed replacement dwellings and then independently evaluating the quarter-page listings the Pickerings submitted into evidence, the hearing officer did precisely what he was required to do as part of the administrative appeal.

Finally, the Pickerings argue that the hearing officer's selection of a comparable replacement dwelling was arbitrary and capricious because the house he selected was not "comparable."

A "comparable replacement dwelling" is one that is "functionally equivalent to the displacement dwelling." *Id.* § 24.2. A replacement dwelling is "functionally equivalent" to the displacement dwelling if it "performs the same function, provides the same utility, and is capable of contributing to a comparable style of living." *Id.* To be "functionally equivalent," a comparable replacement dwelling need not possess every feature of the displacement dwelling. *Id.* Instead, only the "principal features must be present." *Id.* In determining whether a displacement dwelling is functionally equivalent to the displacement dwelling, an agency may consider "reasonable trade-offs for specific features." *Id.*

The Pickerings and the city identified several houses each considered to be comparable to the Pickerings' Plymouth house. The hearing officer carefully considered the houses the city and the Pickerings identified and reasonably rejected them. He concluded that the four houses the city identified were not in fact "functionally equivalent" to the displacement dwelling because they either had smaller lots, less square footage, lacked wooded lots, or were listed long after the Pickerings became eligible for relocation benefits. The hearing officer also concluded that the three houses the Pickerings identified were not comparable because they either were larger in terms of finished square footage, had amenities the Pickerings' Plymouth house did not have, were situated on a cul-de-sac, or were newer than the Pickerings' Plymouth house. The hearing officer then selected a house from the list of 129 houses the Pickerings put into evidence and issued detailed findings in support of his decision.

A determination is arbitrary and capricious if it is "so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *White v. Minn. Dep't of Natural Resources*, 567 N.W.2d 724, 730 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Oct. 31, 1997). By contrast, a determination is not arbitrary or capricious if "a rational connection between the facts found and the choice made" is articulated. *Blue Cross & Blue Shield*, 624 N.W.2d at 277 (quotation omitted). The hearing officer articulated a rational connection between the facts and the choice he made, and his decision is not implausible.

The Pickerings' house was built in 1970 and provided approximately 2,500 square feet of space. It was an L-shaped, four-bedroom walkout rambler with two-and-one-half bathrooms, a two-car attached garage, two fireplaces, a deck, a patio, and a small apartment, and it was located on a wooded lot. One city appraiser valued the Pickerings' house at \$190,000, while another valued it at \$207,000. The Pickerings' appraiser valued the house at \$225,000.

The house the hearing officer selected as "functionally equivalent" was located seven blocks from the Pickerings' Plymouth house and provided 2,717 square feet of space. The house had a split-entry with five bedrooms, three bathrooms, a deck, and a large fenced and wooded backyard. The house was available in the Plymouth market within a reasonable time of the city's offer and sold for \$220,000.

Keeping in mind the deference to which the hearing officer's decision is entitled, we conclude that the hearing officer's choice of a comparable replacement dwelling was not arbitrary and capricious. Because the house the hearing officer selected sold for less than the acquisition cost of the Pickerings' Plymouth house, and other reasonably comparable replacement dwellings were available on the Plymouth market at or below the \$225,000 the city paid for the Pickerings' house, we also conclude that the hearing officer correctly determined that the Pickerings were not entitled to a housing-replacement differential.

**Affirmed.**

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.