

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of Park of Four Seasons
Concerning: (1) Noncompliance With the
Combination Administrative Penalty Order
Issued to PFS MHC, LLC for Violations of
a Statute and Rules Governing
Manufactured Home Parks; (2) Denial of
Request for a Variance from Minn. Stat.
§ 327.20 (2014) and Minn. R. 4630.0400
(2013); and (3) the Proposed Revocation
of Manufactured Home Park License No.
MHP-11910-30434 Issued to PFS MHC,
LLC

**ORDER DENYING
ATTORNEYS' FEES**

On November 17, 2014, the Administrative Law Judge issued Findings of Fact, Conclusions of Law, and Recommendations in this matter. On August 4, 2015, Park of Four Seasons (PoFS) petitioned the Administrative Law Judge for attorneys' fees and expenses.¹ On September 3, 2015, the Department of Health (Department) objected to PoFS's petition for fees and expenses.² On September 15, 2015, PoFS sought the Administrative Law Judge's permission to submit additional information pertaining to its status as a "party" under the attorneys' fees statute.³ On September 21, 2015, the Department responded to PoFS's request for additional submissions.⁴ The Administrative Law Judge accepts the parties September 15 and September 21 submissions. The record closed on September 21, 2015.

Cody Zustiak, Assistant Attorney General, appeared on behalf of the Department. John F. Bonner, III, The Law Office of John F. Bonner III, PLLC, appeared on behalf of PoFS.

Based on the parties' submissions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

¹ Park of Four Seasons' Petition for Fees and Expenses (July 31, 2015) (Petition).

² Minnesota Department of Health's Objection to Application for Attorneys' Fees and Expenses (Sept. 2, 2015) (Objection).

³ Park of Four Seasons' Memorandum in Support of Motion to Permit Additional Submissions (Sept. 10, 2015) (PoFS Supplemental Memo).

⁴ Minnesota Department of Health's Response to Petitioner's Motion to Permit Additional Submissions (Sept. 21, 2015) (Department Response). The 14-day time for filing an objection provided by Minn. R. 1400.8401 (2015) was extended by agreement of the parties.

ORDER

1. PoFS's application for attorneys' fees and expenses is **DENIED**.
2. This decision shall be made part of the record containing the Department's final decision.⁵

Dated: October 15, 2015

s/LauraSue Schlatter

LAURASUE SCHLATTER
Administrative Law Judge

Based on the evidence in the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. PoFS is a manufactured home park in Blaine, Minnesota.⁶
2. PoFS has 572 manufactured home sites, approximately 340 of which were occupied at the time of the contested case proceeding.⁷ Some adjacent manufactured homes in PoFS are separated by a double parking pad.⁸ In those locations, the parking pads are wide enough to accommodate the simultaneous side-by-side parking of two standard-sized vehicles, allowing sufficient room to open the adjacent doors of each vehicle.⁹
3. PoFS allows residents to park vehicles next to each other on the double parking pads.¹⁰ PoFS has not limited parking for the purpose of maintaining any amount of open space between adjacent homes.¹¹ PoFS has operated in its present configuration since its construction in the early 1970s.¹²

⁵ See Minn. Stat. § 15.472(c) (2014).

⁶ Testimony (Test.) of Matthew (Crystal) Theis, Tr. 1 at 38-39; Exhibit (Ex.) 30. PFS MHC, LLC owns, and is licensed by the Department to operate, Park of Four Seasons. For simplicity's sake, both PFS MHC, LLC and Park of Four Seasons will be referenced interchangeably as PoFS. Unless otherwise specified, references to the record are to the contested case hearing record.

⁷ Testimony of Eyal Karsh, Tr. 1 at 264.

⁸ Department of Health's Memorandum of Law in Opposition to Respondent's Motion for Summary Disposition (July 7, 2014) (Department's Memorandum in Opposition), Aff. of Matthew (Crystal) Theis at 6.

⁹ Theis Aff.; Ex. 15 at 4, 7, 10-13; Test. of E. Karsh, Tr. 2 at 271.

¹⁰ Theis Aff.

¹¹ *Id.*

¹² Test. of E. Karsh, Tr. 2 at 273-74.

4. Department staff inspected PoFS several times in 2010 and 2011 and issued citations for numerous rule and statutory violations.¹³ On November 16, 2011, the Department issued a Combination Administrative Penalty Order (APO) to PoFS.¹⁴ The APO alleged violations of nine Minnesota rules and one statute.¹⁵ Included among the violations were citations to Minn. Stat. § 327.20(3) (2010) and Minn. R. 4630.0400 (2009), the statute and rule the Department stated PoFS violated by allowing two cars to be parked on the double parking pads between homes, thus leaving less than ten feet of open space between the homes.¹⁶

5. The APO also listed the corrective actions required to address all of the violations.¹⁷ The Department assessed PoFS a \$300 nonforgivable fine and a \$2,700 forgivable fine.¹⁸ On December 20, 2011, PoFS paid the \$300 nonforgivable fine to the Department.¹⁹ PoFS's agent also sent a letter to the Department responding to each of the 10 violations alleged in the APO.²⁰

6. PoFS informed the Department on May 9, 2012, that it would be unable to correct the vehicle spacing violations.²¹ Despite a series of promises made by PoFS to correct all but the vehicle spacing violations, the Department sent a letter to PoFS on August 14, 2012, stating that corrective actions required by the APO had not been completed, the \$2,700 nonforgivable portion of the fine was due and payable, and that the license for Park of Four Seasons would be revoked.²² The Department also informed PoFS that it had the right to request a contested case hearing.²³

7. On August 17, 2012, PoFS paid the \$2,700 fine to the Department.²⁴

8. On August 29, 2012, Department staff conducted a follow-up inspection of PoFS.²⁵ The inspector noted that two violations from the APO still had not been corrected, namely vehicle spacing and sewage disposal.²⁶

9. On August 31, 2012, PoFS requested a contested case hearing regarding the Department's proposed license revocation and its determination of noncompliance with the APO.²⁷

¹³ Exs. 2-5.

¹⁴ Ex. 6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Exs. 6, 8.

¹⁹ Ex. 9.

²⁰ *Id.*

²¹ Ex. 13.

²² Ex. 18.

²³ *Id.*

²⁴ Ex. 19.

²⁵ Ex. 20 at 1.

²⁶ *Id.*

²⁷ Ex. 21.

10. On September 7, 2012, the Department conducted a final follow-up inspection of PoFS.²⁸ The inspector noted that the only violation remaining from the APO was the vehicle-spacing violation.²⁹ The inspector did not cite PoFS for any new violations.³⁰

11. On September 14, 2012, the Department sent PoFS a letter acknowledging that PoFS had corrected nine of the ten violations cited in the APO.³¹ The Department therefore extended the effective date of the revocation of PoFS' license to December 31, 2012, and stated that "[i]f the remaining violation [vehicle spacing] has not been corrected by that date, your license will be revoked."³²

Variance Request

12. On December 13, 2012, PoFS submitted a Variance Request Application to the Department, seeking a variance from the vehicle spacing requirements.³³ PoFS sought a perpetual variance and stated that it could not comply with the statute and rule without either: 1) completely reconfiguring the park at a cost exceeding \$500,000; or 2) requiring some park residents to give up off-street parking entirely and installing barriers to prevent them from parking on driveways.³⁴

13. The Department denied PoFS's request for a variance, stating that "[g]ranted the variance as proposed would have a potential adverse effect on public safety" and that PoFS "did not propose alternative measures equivalent to or superior to those prescribed in the rule to assure there would be no harm to the public."³⁵

14. On January 28, 2013, PoFS requested a contested case hearing on the Department's denial of its request for a variance.³⁶

15. The Department "has consistently interpreted Minn. Stat. § 327.20, subd.1(3) and Minn. R. 4630.0400 to mean that when there is a vehicle or other property located in the space between two adjacent manufactured homes, there must nevertheless be 10 feet of open, unobstructed space between adjacent manufactured homes."³⁷ The Department's reasons for this interpretation are to prevent the spread of fire and to provide access for emergency personnel if needed.³⁸

²⁸ Ex. 20 at 3.

²⁹ *Id.*

³⁰ *Id.*

³¹ Ex. 22.

³² *Id.*

³³ Department's Ex. 23. Although the citations in the APO and Inspection Reports were to Minn. R. 4630.0400, the rule language is essentially the same as the statutory language at Minn. Stat. § 327.20(3) on which the rule is based.

³⁴ *Id.*

³⁵ Department's Ex. 25.

³⁶ Department's Ex. 26.

³⁷ Department's Memorandum in Opposition, Aff. of Mark Peloquin, ¶ 25.

³⁸ *Id.*

16. In considering PoFS's request for a variance from the vehicle spacing requirements, Department staff determined that granting the requested variance to PoFS could have a potential adverse effect on public health, safety, or the environment.³⁹

17. Generally speaking, if an alternative to compliance is available to an applicant for a variance, Department staff does not consider financial implications when it evaluates whether strict compliance with a rule would create an undue burden.⁴⁰ Therefore, Department staff did not consider the approximately \$500,000 that PoFS stated it would cost to reconfigure the Park to bring the properties cited for parking issues into compliance with the Department's interpretation of the statute and rule.⁴¹ Moreover, because PoFS had the option of reconfiguring the Park, Department staff did not view as an undue burden PoFS's statement that PoFS could face litigation from the Park's residents if it began to require on-street parking.⁴²

18. The reasons the Department gave for denying the variance were:

- a. Granting the variance would have a potential adverse effect on public safety; and
- b. PoFS failed to propose alternative measures to assure that there would be no harm to the public.⁴³

19. The working group within the Department that considered PoFS' variance request has no background or training in fire safety.⁴⁴ The Department did not consult with the State Fire Marshal regarding its concerns about vehicle spacing at PoFS.⁴⁵

20. On March 14, 2014, the Department filed a Notice and Order for Hearing and Prehearing Conference (NOH) with the Office of Administrative Hearings. The NOH specified that the contested case hearing was to determine:

- (1) whether [PoFS] failed to correct violations of a statute and rules cited in a Combined Administrative Order . . . concerning the operation of Park of Four Seasons . . . within the time allowed for correction;
- (2) whether the Department properly denied [PoFS's] request for a variance from Minn. Stat. § 327.20 and Minn. R. 4630.0400; and

³⁹ Test. of M. Peloquin, Tr. 1 at 196.

⁴⁰ *Id.* at 197.

⁴¹ *Id.* at 196-97.

⁴² *Id.* at 197.

⁴³ *Id.* at 198; Ex. 25 at 2.

⁴⁴ Test. of M. Peloquin, Tr. 2 at 221-22, 225.

⁴⁵ *Id.* at 227.

(3) whether the Department should revoke [the] Manufactured Home Park License . . . for the Park of Four Seasons.⁴⁶

21. On or about June 23, 2014, PoFS moved for summary disposition.⁴⁷ The Administrative Law Judge denied PoFS's motion on July 30, 2014.⁴⁸

22. Robert Fiske testified at the contested case hearing on behalf of PoFS. Mr. Fiske is the Fire Marshal and the Community Standards Director for the city of Blaine. Mr. Fiske is in charge of housing and rental inspections, and code enforcement.⁴⁹ He has been a member of the Spring Lake Park, Blaine, Mounds View Fire Department since 1987, and has been battalion chief for the department since 1997.⁵⁰

23. Mr. Fiske has extensive firefighting training and training regarding fire codes and enforcement. He is a certified fire inspector and has taught fire inspection courses. In addition, Mr. Fiske sits on, and is the current chair of, the State Fire Chief's Code Committee, which helps to write the state fire code.⁵¹

24. Mr. Fiske is very familiar with PoFS.⁵² Mr. Fiske has no concerns with the layout of PoFS as it relates to parking. He is not concerned about the proximity of vehicles to one another or to the manufactured homes when two cars are allowed to park between homes on the double parking pads.⁵³ According to Mr. Fiske, the proximity of the vehicles parked next to one another does not create a fire hazard.⁵⁴ Empty space provides additional time before any type of fire spreads because space minimizes radiant heat.⁵⁵ Nonetheless, the parking pattern at PoFS, as shown in the Department's Exhibit 15, is not a matter of concern to Mr. Fiske.⁵⁶

25. Mr. Fiske stated that the location of the parked vehicles at PoFS does not create an accessibility problem to either the homes or the vehicles for the fire department, should a fire occur.⁵⁷ Mr. Fiske explained that having the parked cars off the street allows the fire department to pull up right in front of the homes. Furthermore, there is enough room between the cars, and between the cars and the homes, to pull a hose in to extinguish a fire. If a car were blocking access on one side of a home, the firefighters would simply gain access through the opposite side.⁵⁸

⁴⁶ Department's Ex. 1 at 1.

⁴⁷ See Park of Four Seasons' Memorandum in Support of Summary Disposition (June 23, 2014).

⁴⁸ Order Denying Motion for Summary Disposition (July 30, 2014).

⁴⁹ Test. of Robert Fiske, Tr. 1 at 109.

⁵⁰ *Id.*

⁵¹ *Id.* at 110.

⁵² *Id.*

⁵³ *Id.* at 111-112; Ex. 15 at 4.

⁵⁴ Test. of R. Fiske, Tr. 1 at 112.

⁵⁵ *Id.* at 116.

⁵⁶ *Id.* at 111-12.

⁵⁷ *Id.* at 112

⁵⁸ *Id.* at 112-13.

26. Mr. Fiske distinguished between manufactured homes built before approximately 1976 from those built more recently. While manufactured homes built before about 1976 raise fire-safety concerns due to fires caused by wiring, manufactured homes built since that time are built to the same standards as a standard home and do not raise any special concerns.⁵⁹ Mr. Fiske had no greater concern about the dangers of fire spreading from older manufactured homes than from newer homes, or from standard homes.⁶⁰

27. Following the contested case hearing, the Administrative Law Judge concluded that PoFS' "current parking configuration violates the plain language of Minn. Stat. § 327.20, subd. 1(3) and Minn. R. 4630.0400."⁶¹ The Commissioner of Health (Commissioner) similarly concluded that POFS's "parking spacing violates the requirements under statute and rule."⁶²

28. The Commissioner also affirmed the Department's determination that PoFS failed to correct all violations cited in the APO.⁶³ PoFS concedes that it "lost" on this issue.⁶⁴

29. The Administrative Law Judge nonetheless recommended that the Department grant PoFS' request for a variance, noting that "[t]he Department did not have the benefit of the Blaine Fire Marshal's hearing testimony when it denied the variance request."⁶⁵

30. In its exceptions addressed to the Commissioner following the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendations, the Department "reversed its position and accepted the ALJ's recommendation that the Commissioner grant [PoFS'] variance request instead of revoking [PoFS'] license."⁶⁶

31. The Commissioner determined that the Blaine Fire Marshal "presented *new* evidence that [PoFS'] current parking configuration does not have a potential adverse effect on public safety, especially as it relates to fire safety and the ability of emergency personnel to access a fire."⁶⁷

32. PoFS filed a petition for certiorari to the Minnesota Court of Appeals contesting the Department's unchanged interpretation of Minn. Stat. § 327.20 and Minn. R. 4630.0400 governing parking of vehicles between manufactured homes.⁶⁸

⁵⁹ *Id.* at 113-14.

⁶⁰ *Id.* at 117-19.

⁶¹ Findings of Fact, Conclusions of Law, and Recommendations at 12 (Nov. 17, 2014) (ALJ Order).

⁶² Commissioner's Order at 6 (Mar. 19, 2015).

⁶³ *Id.* at 4.

⁶⁴ Petition at 6.

⁶⁵ ALJ Order at 23.

⁶⁶ Petition at 5.

⁶⁷ Commissioner's Order at 6 (emphasis added).

⁶⁸ Petition at 3.

The petition was granted, but the legislature amended the statute during the 2015 legislative session⁶⁹ and PoFS voluntarily dismissed the appeal. The Court of Appeals' final order in the matter was dated July 9, 2015.⁷⁰

46. On August 4, 2015, PoFS petitioned the Administrative Law Judge for attorneys' fees and expenses.⁷¹

47. On September 3, 2015, the Department objected to PoFS' petition in part, because PoFS "makes no claim and presents no evidence that it is a small business that meets the definition of 'party'" under the attorneys' fees statute.⁷²

48. In its September 15, 2015 Supplemental Memorandum, PoFS submitted affidavit evidence and argued that, based on its annual revenue and number of employees, it "easily meets the definition of a 'party.'"⁷³

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Equal Access to Justice Act provides, in relevant part, that "[i]f a prevailing party other than the state, in a . . . contested case proceeding . . . brought by or against the state, shows that the position of the state was not substantially justified, the . . . administrative law judge shall award fees and other expenses to the party unless special circumstances make an award unjust."⁷⁴

2. The party seeking attorneys' fees and expenses must show that it "is a prevailing party and is eligible to receive an award, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the state was not substantially justified."⁷⁵

3. For purposes of the Equal Access to Justice Act, a corporate "party" is limited to a corporation with not more than 500 employees and not more than \$7,000,000 in annual revenues at the time the contested case proceeding was initiated.⁷⁶

4. PoFS is a "party" as defined at Minn. Stat. § 15.471, subd. 6.

⁶⁹ See 2015 Minn. Laws 1st Spec. Sess. ch. 1, art. 4, § 1, at 65.

⁷⁰ See Petition at 3.

⁷¹ *Id.*

⁷² Objection at 4.

⁷³ PoFS Supplemental Memo, Aff. of John F. Bonner, III.

⁷⁴ Minn. Stat. § 15.472(a) (2014).

⁷⁵ *Id.*(b) (2014).

⁷⁶ Minn. Stat. § 15.471, subd. 6 (2014).

5. “The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered.”⁷⁷

6. When neither party succeeds overall, a court may reasonably find that there is no prevailing party.⁷⁸

7. PoFS was not the prevailing party in this matter because PoFS did not prevail on its legal arguments regarding the proper interpretation of Minn. Stat. § 327.20. The Commissioner’s discretionary decision to grant PoFS the variance did not render PoFS the prevailing party for purposes of Minn. Stat. § 15.472 (2014).

8. “‘Substantially justified’ means that the state’s position had a reasonable basis in law and fact, based on the totality of the circumstances before and during the . . . contested case proceeding.”⁷⁹

9. Even if PoFS was the prevailing party pursuant to Minn. Stat. § 15.472 (2014), the Department’s position was substantially justified because it had a reasonable basis in law and fact before and during the contested case proceeding for its position that granting a variance would have a potential adverse impact on public health and safety, based on the totality of the circumstances.

NOTICE

Pursuant to Minn. Stat. § 15.474 (2014), any party dissatisfied with the fee determination may petition for leave to appeal to the court having jurisdiction to review the merits of the underlying decision of the contested case. If the court denies the petition for leave to appeal, no appeal may be taken from the denial.

MEMORANDUM

PoFS argues that its petition for attorneys’ fees should be granted because it was the prevailing party in this contested case proceeding, it is eligible to receive the award sought, it presents an itemized statement of the fees, and the Department’s position was not substantially justified.⁸⁰ The Department contends that PoFS is not the prevailing party, the Department’s position was substantially justified, and PoFS is seeking fees for work outside the contested case proceeding.⁸¹

The Minnesota Equal Access to Justice Act provides, in relevant part, that “[i]f a prevailing party other than the state, in a . . . contested case proceeding . . ., brought by

⁷⁷ *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998).

⁷⁸ See *Wilson v. Comm’r. of Revenue*, 707 N.W.2d 695, 698-99 (Minn. 2006).

⁷⁹ Minn. Stat. § 15.471, subd. 8 (2014).

⁸⁰ Petition at 1.

⁸¹ Objection at 1.

or against the state, shows that the position of the state was not substantially justified, the . . . administrative law judge shall award fees and other expenses to the party unless special circumstances make an award unjust.”⁸² The party⁸³ seeking attorneys’ fees and expenses must show that it “is a prevailing party and is eligible to receive an award, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the state was not substantially justified.”⁸⁴ “‘Substantially justified’ means that the state’s position had a reasonable basis in law and fact, based on the totality of the circumstances before and during the . . . contested case proceeding.”⁸⁵

The Commissioner affirmed the Department’s determination that PoFS failed to correct all violations cited in the APO and concluded that PoFS’s “parking spacing violates the requirements under statute and rule.”⁸⁶ The Commissioner further concluded, however, that the Blaine Fire Marshal “presented *new* evidence that [PoFS’s] current parking configuration does not have a potential adverse effect on public safety, especially as it relates to fire safety and the ability of emergency personnel to access a fire.”⁸⁷ Based on this new evidence, and the Administrative Law Judge’s recommendation, the Department “reversed its position and accepted the ALJ’s recommendation that the Commissioner grant [PoFS’s] variance request instead of revoking [PoFS’] license.”⁸⁸ The Commissioner granted PoFS’ variance request.⁸⁹

It does not follow, however, that PoFS was the prevailing party or that the Department’s position was not “substantially justified.” PoFS did not prevail on its legal arguments regarding the interpretation of the vehicle spacing statute or rule. While the Commissioner did ultimately decide to grant the variance request, that decision was at the Commissioner’s discretion. Minnesota Rules part 4717.7010, subpart 1 (2015) states “[t]he commissioner *may* grant a variance request if” certain conditions are met (emphasis added). The Commissioner was not required to grant the variance request, and the Administrative Law Judge did not find that the Department abused its discretion in refusing to grant the request initially. PoFS provided sufficient new information during the contested case hearing so that the Administrative Law Judge, and then the Department, could recommend that the Commissioner grant the variance request based on a finding that the variance would not have a “potential adverse effect on public

⁸² Minn. Stat. § 15.472(a).

⁸³ The Department initially argued in its Objection that PoFS had not made the requisite showing that it qualified as a “party” under the definition at Minn. Stat. § 15.471, subd. 6. PoFS then submitted its Supplemental Memo, including affidavit evidence to show that it does qualify as a party. The Department, in its Response, did not object to or otherwise address PoFS’ showing that it qualifies as a party. Therefore, the Administrative Law Judge accepts PoFS statements establishing its qualifications as a party pursuant to Minn. Stat. § 15.471, subd. 6 for purposes of this proceeding.

⁸⁴ Minn. Stat. § 15.472(b).

⁸⁵ Minn. Stat. § 15.471, subd. 8.

⁸⁶ Commissioner’s Order at 4, 6.

⁸⁷ *Id.* at 6 (emphasis added).

⁸⁸ *Id.* at 5.

⁸⁹ *Id.*

health, safety or the environment” but even so, the Commissioner had the authority to deny the variance request.⁹⁰ Under these circumstances, where PoFS did not prevail on its legal arguments and the Commissioner granted the variance using his discretionary authority, PoFS is not the “prevailing party.”

Even if PoFS were the prevailing party, it would not be entitled to its attorneys’ fees and costs because a state agency’s failure to prevail on the merits “is an insufficient basis upon which to determine that [its] position was not substantially justified.”⁹¹ PoFS must demonstrate that the Department’s position lacked a reasonable basis in law and fact, which it has failed to do. The Administrative Law Judge and the Commissioner both concluded that PoFS’s parking configuration violated the applicable statute and rule.⁹² PoFS bore the burden of demonstrating it was entitled to a variance to avoid license revocation.⁹³ PoFS failed to carry that burden until the contested case proceeding, at which time it submitted evidence that its parking configuration did not present a risk to public safety. The Administrative Law Judge specifically noted: “The Department did not have the benefit of the Blaine Fire Marshal’s hearing testimony when it denied the variance request.”⁹⁴ Therefore, although the Department agreed to grant the variance, it did so only after the Blaine Fire Marshal offered his opinion regarding public safety. The Department’s original determination that PoFS’s license should be revoked based on its continued violation of the statutory parking requirements, and the Department’s subsequent denial of PoFS’s variance request, had a reasonable basis in law and fact based on the totality of the circumstances.

The Administrative Law Judge denies PoFS’s application for attorneys’ fees and expenses because PoFS was not the prevailing party and, even if it was, the Department’s position was substantially justified. It is therefore unnecessary to consider the parties’ other arguments.

L.S.

⁹⁰ See Minn. R. 4717.7010, subp. 1 (2015).

⁹¹ *Donovan Contracting v. Minn. Dep’t of Transp.*, 469 N.W.2d 718, 720 (Minn. Ct. App. 1991), review denied (Minn. Aug. 2, 1991).

⁹² ALJ Order at 12; Commissioner’s Order at 6.

⁹³ See Minn. R. 1400.7300, subp. 5 (2015) (stating that “[t]he party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.”).

⁹⁴ ALJ Order at 23.