

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

In the Matter of the Denial
of Relocation Benefits to
John F. Patnode

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Allen E. Giles, Administrative Law Judge, on October 12, 1995 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota.

The parties to this proceeding are Mr. John F. Patnode and the Minnesota Department of Transportation, Right of Way Division (hereinafter also referred to as the "Division" or the "Right of Way Division").

Kerri Stahlecker Hermann, Assistant Attorney General, Office of Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Right of Way Division of the Department of Transportation; and John F. Patnode, Turf Mobile Manor, 15601 - 19th Avenue North, Lot 161, Phoenix, Arizona 85023, appeared on his own behalf.

The Right of Way Division submitted a memorandum on October 30, 1995 and the Judge gave Mr. Patnode an opportunity to respond. In a telephone call on November 29, 1995, Mr. Patnode indicated that he would not be responding to the Division's memorandum. However, Mr. Patnode submitted a letter response that was received on December 4, 1995. The record in this case was closed by the Judge on December 4, 1995.

This Report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact James N. Denn, Commissioner of Transportation, 411 Transportation Building, St. Paul, Minnesota 55155, (612) 296-3000, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

Whether the Right of Way Division's decision to deny certain relocation benefits to John and Sylvia Patnode because they chose to purchase a motorhome/travel trailer instead of a permanent residence is reasonable and consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, *et seq.*, as implemented in 49 C.F.R. Part 24 (1994) and Minn. Stat. §§ 117.50 - 117.56 (1994).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. John F. Patnode and his wife Sylvia resided for approximately 25 years at 14020 Main Street, Rogers, Minnesota. The property is approximately .42 acres located along Highway 101 in Hennepin County approximately 30 miles northwest of the Twin City metro area. The Patnodes' dwelling consisted of a one-level ranch style home encompassing 1,094 square feet, including a living room, kitchen, den, three bedrooms, one full bath, an attached ground-level deck and a small sauna. The original structure was a Quonset building that over the years has been added to, updated and remodeled. The house has a stucco exterior, new conventional windows and insulation. Exhibit 13

2. On November 9, 1994, the State of Minnesota Department of Transportation (MnDOT) acquired title and possession of the Patnodes' property for the purpose of expanding Highway 101. The Patnodes negotiated a final purchase price of \$75,000 for their property and received a check for that amount within 30 days after a purchase agreement was signed.

3. Right of Way Division employees set about to determine whether or not the Patnodes were entitled to Relocation Assistance Benefits. A study was conducted of comparable properties within the area. Three properties were located and determined to be comparable to the Patnodes' real estate. Each of them were single-level homes situated on comparable lots. Based on the study, the Right of Way Division determined that the most functionally equivalent property had an adjusted price of \$86,000.

4. On October 26, 1994, the Patnodes were sent a letter from the Right of Way Division advising them that they may be entitled to a replacement housing supplemental payment. The payment would be based on the difference between the price of comparable replacement housing available on the market (\$86,000) and the acquisition price of the Patnodes' property (\$75,000).

5. Mr. Patnode is 66 years old and for many years worked as a security guard for Honeywell. Beginning in February 1993, he started a long-term disability leave from Honeywell due to a series of medical ailments. Because of his health problems, which include carpal tunnel, tendonitis, heart disease and lower back problems, Mr. Patnode was unable to maintain the upkeep of a house. Whenever household repair problems arose such as with plumbing, sewer or electricity, he would hire someone to make the repairs

because he was unable to do it. After concluding that they were unable to take care of a house, the Patnodes looked into townhouses, but decided that the taxes were much too high. After these considerations, the Patnodes decided to purchase a travel trailer.

6.The Patnodes determined that a travel trailer was “completely self-contained”. They did not have to worry about the water, sewer, or electricity problems that had been associated with their former house. They purchased a 37-foot travel trailer in 1993 at the price of \$72,000. The Patnodes intend to use the supplemental payment to purchase a larger and newer travel trailer at the cost of approximately \$90,000.

7.The Patnodes intend to live for approximately six months in Minnesota and six months in Arizona or some other state with a warm winter climate. The Patnodes have committed themselves to not having a permanent residence and intend to make their travel trailer their home for the foreseeable future.

8.The Right of Way Division has refused to pay the Patnodes the replacement housing supplement determined to be owing to them (\$11,000) because the Patnodes have chosen to make the travel trailer their home instead of purchasing a permanent residence.

9.While the Patnode’s are in Minnesota they intend to park their travel trailer at a park for recreational vehicles located in Sherburne County. Although the Patnode’s may park their travel trailer for six months in Sherburne County, they will not be issued an occupancy permit because a travel trailer is not considered a permanent residence. Exs. 17 and 18.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

10. The Administrative Law Judge and the Commissioner of the Department of Transportation has jurisdiction over the subject matter of the hearing pursuant to Minn. Stat. §§ 14.50, 117.52 and 161.36 (1994) and 49 C.F.R. pt. 24 (1994).

11.Proper notice of the hearing was timely given and all relevant and substantive procedural requirements of law or rule have been met.

12.John and Sylvia Patnode are “displaced persons” within the definitions contained in 49 C.F.R. § 24.2(g) in that they lawfully owned and occupied the real property prior to its acquisition for highway purposes.

13.Under the federal regulations, a displaced person is eligible for a “replacement housing payment” if the person “purchases and occupies a decent, safe, and sanitary replacement dwelling”. 49 C.F.R. § 24.401(a)(2) (1994).

14.49 C.F.R. § 24.2(h) defines “dwelling” as follows:

The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit and a two-family, multi-family or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

15. Because travel trailers are self-propelled on public streets or highways they are included in the definition of "motor vehicles" under Minn. Stat. § 168.011, subd. 4 (1994). Because of the nature of their intended use, travel trailers are not intended to have a permanent situs.

16. Pursuant to Minn. Stat. § 168.011 subd. 8 (c) a travel trailer is "a trailer, mounted on wheels, that: (1) is designed to provide temporary living quarters during recreation, camping or travel."

17. As a result of Conclusions 6 and 7, travel trailers do not come within the definition of a "dwelling" as that term is defined in Conclusion 5 above.

18. Because the Patnodes have failed to purchase and occupy a "dwelling" as required by 49 C.F.R. § 24.401(a)(2) (1994), they are not entitled to a replacement housing payment.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

That the Commissioner of Transportation issue an Order denying Replacement Housing Benefits to John and Silvia Patnode.

Dated this 4th of January, 1996.

ALLEN E. GILES
Administrative Law Judge

Reported: Taped.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The Patnodes are entitled to Replacement Housing Benefits if they purchase and occupy a “decent, safe, and sanitary replacement dwelling”. The only question in this case is whether the Patnodes’ travel trailer is a “dwelling” as that term is defined by 49 C.F.R. § 24.2(h). Because a travel trailer is a motor vehicle and would not be eligible for occupancy or building permits, a travel trailer is not a “dwelling”. The Patnodes are not entitled to supplemental housing benefits because they have failed to purchase and occupy a “dwelling”.

AEG