

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF RICHFIELD
HOUSING AND REDEVELOPMENT AUTHORITY

In the Matter of the Business Relocation
Claims by WAG Buick/Isuzu (WBI and
Motorwerks, Inc. (BMW).

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck, serving as a hearing officer for the Richfield Housing and Redevelopment Authority, on November 20, 21, and 25, 2003 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, in Minneapolis, Minnesota. The Claimants, WAG Buick/Isuzu ("WBI") and Motorwerks BMW ("BMW"), filed a post-hearing memorandum on December 16, 2003. The Respondent, Richfield Housing and Redevelopment Authority ("HRA"), filed a reply memorandum on January 6, 2004. The Claimants filed a response on January 15, 2004 and the record closed on that date.

Kirk A. Schnitker, Esq. of the firm of Schnitker & Associates, P.A., 2300 Central Avenue Northeast, Minneapolis, Minnesota 55418, appeared on behalf of the Claimants. Robert J.V. Vose, Esq. of the firm of Kennedy & Graven, 470 Pillsbury Center, 200 South Sixth Street, Minneapolis, Minnesota 55402, represented the Respondent.

This Order is the final administrative decision.^[1] Judicial review of this decision may be had by certiorari to the Minnesota Court of Appeals.^[2]

STATEMENT OF ISSUE

The issue in this case is the amount of relocation benefits due to the Claimants.

The Administrative Law Judge concludes that Claimants are entitled to the following benefits:

WBI-	\$ 22,188.93
BMW-	\$ 6,915.39

Based upon all of the proceedings and record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

BACKGROUND

1. In August 2000, the HRA petitioned to acquire approximately seven acres of improved property located in the northeast quadrant of I-494 and Penn Avenue in Richfield, Minnesota using “quick take” condemnation under Minn. Stat. § 117.042. The Claimants received notice of relocation eligibility by letter dated September 13, 2000.^[3] The Claimants also received a “90-day” notice.^[4]

2. In December, 2000, an evidentiary hearing regarding the condemnation matter was held in Hennepin County District Court. The District Court’s Order was appealed and sustained. The district court order was summarized by the Minnesota Court of Appeals as follows:

Respondent Housing and Redevelopment Authority for the City of Richfield (the HRA) commenced this condemnation action to acquire real property belonging to appellants Walser Auto Sales, Inc., Motorwerks, Inc., R.J. Walser, Paul Walser, and Andrew Walser (Walsers). Appellants objected to the condemnation petition. The district court held an evidentiary hearing on respondent’s motion for condemnation.

By order dated January 19, 2001, the district court concluded:

(1) That the HRA’s petition is granted and the HRA is authorized by law to acquire the real estate described in its petition herein, as amended, under the procedures specified in Minn. Stat. Chapter 117 (1998) and other law.

(2) That the HRA has shown that the taking is for a public use and purpose, is necessary and convenient in furtherance of a redevelopment project within the City of Richfield, and that the acquisition is required prior to the filing of an award of commissioners.

(3) That the HRA has complied with all the legal requirements for obtaining title and possession pursuant to Minn. Stat. § 117.042 (1998) subject to Walsers’ right to remain on the property pursuant to a lease (approved by the Court if the parties cannot agree or other arrangements agreed to by the parties) until 12:00 midnight on June 15, 2001.

Respondent subsequently obtained title to the property by depositing the appraised value of the property with the district court and by recording the required instruments. On February 16, 2001, appellants filed their notice of appeal. Appellants did not seek a stay or post a supersedeas bond to prevent respondent from obtaining title. On March 16, 2001, respondent conveyed title to Best Buy Co., Inc.^[5]

3. At the time of the condemnation, the property was owned by R.J. Walser, Paul Walser and Andrew Walser (the “Walsers”). WBI and BMW each operated car dealerships on the property at adjacent sites leased from the Walsers.^[6]

4. Among other issues, the parties contested the date by which WBI and BMW would be required to vacate the property.^[7] The District Court Order was amended to allow the Claimants until June 20, 2001, to vacate the property.^[8] The Claimants vacated the property on or about June 19, 2001.^[9]

5. In addition to the condemnation proceeding, other legal disputes arose out of the HRA’s condemnation of the Walser’s property. On or about March 5, 2003, the parties reached a settlement concerning all outstanding issues except for relocation benefit claim issues. The settlement was subsequently approved by the District Court.^[10]

6. As a result of the condemnation, the Claimants were displaced from the property. WBI and BMW each filed three relocation claims with the HRA. The Walsers did not file a relocation claim and are not parties to this administrative appeal.

7. WBI moved to the southwest quadrant of the intersection of Interstate Highway 494 and France Avenue in Bloomington, Minnesota (the former site of the Lincoln Del restaurant). BMW moved to a site in Bloomington several blocks west of the WBI site. Both businesses made substantial modifications and improvements to the new sites.^[11] These moves were completed in conjunction with relocation of other WAG-affiliated car dealerships.^[12]

8. WBI and BMW are affiliated business entities. Walser Automotive Group (“WAG”) is the parent entity for both. Barbara Jerich is vice president and general counsel for WAG.^[13] Kirk Kleckner is vice president and chief financial officer for WAG.^[14] Don Schilling is operations manager for WAG.^[15]

9. Each Claimant had a general manager. Peter Hasselquist is BMW’s general manager.^[16] Dale Schneider is WBI’s general manager.^[17] Each was primarily responsible for preparing the dealerships to relocate.

10. Ms. Jerich was originally responsible for documentation and preparation of relocation claims. Sometime after the move was completed, Mr. Kleckner became responsible for relocation matters. Mr. Schilling was involved throughout the claim process. Mr. Schilling was responsible for compiling claim documentation for review by Mr. Kleckner.

11. The HRA retained Conworth, Inc. (“Conworth”) to provide relocation assistance and services to the Claimants. On September 13, 2000, Conworth, Inc., sent a letter to the Claimants explaining that a Petition for Condemnation had been filed and describing the notice of relocation eligibility.^[18] Prior to the move date, the Claimants also retained Kirk Schnitker, Esq. of the firm of Schnitker & Associates, P.A., to assist them with relocation matters.^[19]

12. John Stark is the assistant director of development for both the City of Richfield and the HRA.^[20] Mr. Stark’s responsibilities include oversight of zoning,

planning and redevelopment functions and management of all relocation matters for the City and HRA. Mr. Stark was responsible for review of the Claimants' relocation claims and was the ultimate decision-maker with respect to all claims on appeal.^[21] Mr. Stark previously acted as a relocation advisor while employed by the City of South Bend, Indiana.

13. Since at least 1991 the City and HRA have used Conworth to provide relocation assistance and advice to displaced businesses and homeowners. The City and HRA evaluate Conworth's performance after each redevelopment project via written satisfaction surveys provided to all displaced persons. The responses reflect that less than 5% of respondents were dissatisfied with Conworth's services.^[22]

14. Mr. Stark directed Conworth to prepare claim forms that included all items, issues and claim documentation presented by the Claimants. The claim forms also contained Conworth's recommendations regarding proper interpretation of the regulations and reimbursability of claims.^[23] Conworth further included the arguments or interpretations presented by the Claimants, if they differed from Conworth's position. Mr. Stark took Conworth's recommendations and the Claimants' positions into account, but made independent claim determinations.

15. Six relocation claims were submitted, three by WBI and three by BMW. Each set of claims was submitted contemporaneously. The claims contain a claim form employed by MnDOT which includes a provision certifying that the documentation represents expenses actually incurred, that there is no duplication of claims, and that falsification of claims may result in denial. All claim forms were signed and certified by the Claimants. The first and second sets of claims were certified by Ms. Jerich.^[24] The third and final claims were certified by Mr. Kleckner.^[25]

16. The Claimants organized and submitted claim documentation based the type of personal property at issue, not based on the organization of the relocation regulations.^[26] Among other things, Conworth re-organized the claims and claim forms to correspond with the provisions of the relocation regulations.

17. The Claimants held a car sale prior to the date of the move.^[27] The Claimants also held an auction shortly prior to the final move date to sell certain furniture, equipment and other personal property.^[28] The Claimants submitted no documentation itemizing the number of cars and amount of personal property sold or the amount of property remaining that was actually moved from the old site to the new sites.

18. Although the claims do not contain identical claim documentation or claim amounts, they were reviewed and considered by the HRA contemporaneously. The HRA provided a written determination with respect to each claim filing. The determination letters included an explanation of the bases for claim denials.^[29]

19. Based upon the three sets of claims submitted, the HRA has paid \$424,155.65 in relocation benefits to WBI and \$277,509.37 to BMW. The HRA has paid a total of \$701,665.02 in relocation benefits to the Claimants.^[30]

PROFESSIONAL SERVICES CLAIM

20. WBI seeks payment of \$274,004.52 and BMW seeks payment of \$129,433.25 in relation to “professional services necessary for planning the move.”^[31] The amounts claimed consist of several different items.

A. Employee Move Planning Activities

21. In mid- to late 2000, managers for the WBI and BMW dealerships became aware of the possibility of a taking by the HRA of the WBI and BMW property.^[32]

22. BMW began planning for the move one year prior to the move date.^[33] Discussions during managers’ meetings concerned preparation and move planning in order to minimize any potential hardships on the customers and ensure a smooth transition.^[34] BMW staff continued pre-move planning until the move date.^[35]

23. WBI began planning for the move in May 2000.^[36] The WBI dealership tried to make a plan for moving each piece of equipment.^[37] WBI staff continued pre-move planning until the move date.^[38]

24. Mr. Schneider initially spent ten to fifteen percent of his time on planning activities and almost one hundred percent of his time on planning activities near the move date.^[39] Mr. Hasselquist had meetings with BMW managers to discuss the move and he directed BMW managers to form teams to plan for the move. Mr. Hasselquist indicated that he prepared lists of move-related responsibilities for the teams.^[40]

25. Both WBI and BMW staff and management are professionals in the automotive industry and helped to plan the move of the dealerships regarding areas about which they were knowledgeable.^[41]

26. The Claimants’ seek payment for their pre-move employee planning activities. The claim is based on a report from Norberg Management Services (“Norberg”) rather than upon a log of employee time spent in planning for the move. Norberg was retained by WAG to provide relocation planning a report in order to assist WAG in preparing its relocation claim.^[42] In December 2002, Norberg provided a report detailing the amount of time and persons necessary from the dealerships staff for pre-move planning as well as an estimate of the costs for management services Norberg would provide if it had been involved in the move.^[43]

27. The report indicates that Norberg would have spent 825 hours planning the Claimants’ move and would have charged \$85,650 in fees.^[44] Norberg’s fee quote was allocated \$47,116.17 to WBI and \$23,558 to BMW.^[45]

28. The Norberg bid is the basis of WAG’s claim for professional services for pre-move planning.^[46] WAG then prepared an exhibit that attributed the number of hours and persons provided by the Norberg estimate to WAG personnel positions and salary in order to determine an estimate for staff time spent on pre-move planning services.^[47] WAG reduced the Norberg estimate by the amount WAG personnel felt overlapped with previously paid claims.^[48]

29. The WAG exhibit translates the number of hours recommended by Ms. Norberg for certain activities into an expense amount based on the Claimants' employee pay rates. The exhibit multiplied Norberg's recommended number of employees and hours for various identified activities to produce total hours for each activity. Because the Norberg report does not distinguish between WBI and BMW, the report divided the total hours equally between each business. The total hours for each claimed activity were then multiplied by a "blended rate" consisting of the average of certain employee's hourly pay rates (including certain highly paid, salaried employees). The exhibit selected certain categories of employees to include in the blended pay rate depending on the type of activity at issue.^[49]

30. Ms. Judy Norberg is Norberg's owner and principal. She is a "professional move planner."^[50] Ms. Norberg indicated that a business that moves without her assistance may complete the move with fewer "amenities" and may spend less time preparing than she would recommend.^[51]

31. None of the WAG employees involved in pre-move activities were "professional move planners." Msrs. Hasselquest and Schneider are car dealership professionals. No specific evidence concerning the qualifications of other employees was introduced at the hearing.

32. The Norberg report does not reconstruct the planning activities that were actually conducted or reflect the expenses actually incurred. Ms. Norberg was not sure how many employee hours had actually been spent planning the moves.^[52] Some of Norberg's recommendations were not actually completed by the dealerships during the actual move process. For example, BMW's planning activities "touched on" activities in the Norberg report but BMW was not as organized or thorough as Norberg.^[53]

33. The Norberg report contemplates a 12 month move planning process that would have begun in June, 2000 and continued through July, 2001.^[54] BMW's move planning was primarily completed during the six months prior to the move, with the most activities conducted in the last three months.^[55]

34. The Claimants did not retain Norberg to actually provide planning services, and the Claimants did not pay the quoted professional fee for these services.

35. In the first claim submissions, WBI claimed \$124,028.64 and BMW claimed \$108,941.82 for cartage (moving expenses).^[56] These claims were based on moving bids obtained by Conworth. The HRA paid these claims in full.^[57]

36. The specifications for the cartage bids included services in addition to the actual transportation or move of personal property.^[58] For example, the specifications required the bidder "to provide all necessary management, supervision, labor, insurance, vehicles, equipment and other services to properly conduct services required." The specifications also included parts labeling and pre-move planning for the parts move.^[59]

37. In addition, the specifications specifically required pre-move planning and coordination between the mover and Claimants' staff in relation to the parts move.^[60] The specifications indicate:

All parts will be moved to the replacement site, arranged, boxed and marked in an organized fashion... As the contractor under this specification your are (sic) to provide all necessary management, supervision, labor, insurance, vehicles, equipment and other services to properly conduct services required. Note that the Parts Department will provide some supervisory staff for purposes of providing parts placement information only.^[61]

38. The specifications also contemplated the Claimants' purchase of a new, computerized parts inventory system, stating that "you will be responsible to... Use and input into the new inventory system the bin numbers as appropriate for each new part placement (input bin locations); Run inventory reports for purposes of testing this new system and making final adjustments so parts can be located."^[62]

39. Berger Transport submitted the low bid. The Berger bid explicitly covers "[a]ll necessary supervision and labor to ensure a proper move."^[63] With respect to moving parts, Berger's bid is itemized and reflects \$61,120.88 and \$52,897.98 respectively for WBI and BMW.^[64] Berger allocates an additional \$12,840.00 each for labeling and downloading parts.^[65] Berger was prepared to perform in accordance with the bid specifications and bid.^[66]

40. The Claimants helped prepare the bid specifications and reviewed the bids that were received. Ms. Jerich subsequently wrote to Conworth confirming Claimants' election to base their claims on these bids.^[67] Thereafter, Ms. Jerich executed the first claim forms certifying these claims.^[68]

41. In the second set of claims, WBI claimed an additional \$15,020.68 for "supervision of move."^[69] BMW claimed an additional \$ 14,327.90.^[70] The Claimants documented these claims with information concerning the specific employee involved, pay-rate and hours.^[71] The HRA initially paid a portion of these claims but requested "further documentation consisting of the names of ... employees performing the tasks identified as unnamed employees ..."^[72]

42. In response, the Claimants provided some of the requested documentation.^[73] In February, 2002, the HRA made additional payments.^[74] The payments were for employee activities related to planning and supervision of the move based on submission of documentation identifying specific employees, hours and pay rates associated with the performance of specific tasks.

43. During the fall of 2002, representatives for the HRA and the Claimants met several times to discuss outstanding and/or remaining claim issues. At these meetings, drafts of the third claim forms were discussed.^[75] The draft claims included further claims and documentation of employee move planning activities.^[76] This documentation was prepared by the Claimants and submitted to Conworth for inclusion in claims. The documentation reflects employee move planning expenses totaling \$ 15,137.00 for WBI and \$3,798.61 for BMW.^[77]

44. In the third set of claims submitted in March, 2003, the Claimants recalculated their claims for move planning and supervision based on the report prepared by Norberg Management Services. Based on the report, WBI claimed \$124,684.00 for "Supervision & planning" and \$57,100.00 for "move planning."^[78] BMW claimed \$28,000 for "Professional move planning," \$12,900.00 for "Space planning," and \$99,328.00 for "Supervision & planning."^[79] Conworth provided an explanatory narrative regarding this portion of the third claim indicating that:

WAG has consolidated their employee's time for planning the move into a new claim inclusive of both moving supervision and time spent planning the move. They submitted additional documentation increasing their costs claimed for employee planning of the move of personal property of [\$15,137.00- WBI; \$3,798.61- BMW] and costs for supervision of the move of [\$21,135.00- WBI; \$14,327.90-BMW] for cartage supervision.^[80]

Conworth reported that the new total claimed for "supervision and planning" was \$124,684.00 for WBI and \$99,328.00 for BMW.

45. In their pre-hearing submission identifying claims on appeal, the Claimants identified the following: WBI--Supervision \$98,869.60; Move Planning \$57,100.00; BMW—Supervision \$80,398.08; Move Planning \$ 28,500.00; Space Planning \$12,900.00.

46. The BMW dealership had just moved the year before the move at issue. In 2000, BMW moved its operation from a location at 494/35W to the WAG property at 494/Penn Avenue. The site had been occupied by a WAG Mazda dealership that moved to another site on the south side of 494. BMW had moved most or all of its personal property during the 2000 move. BMW had more time to plan the earlier move and there was less pressure because it was not a "forced move."^[81] Ms. Jerich testified at the condemnation hearing that the 2000 move by BMW cost approximately \$140,000.

47. The issue of move planning expense was first discussed in March, 2001, at the initial meeting between Conworth's representative, Tom Donahue, and representatives for the Claimants including Ms. Jerich, Mr. Schilling, and Mr. Schnitker. At this meeting, pre-move planning costs were discussed for the first time with the HRA.^[82] Claimants requested a position from the HRA regarding the eligibility of staff time incurred for pre-move planning because a significant amount of staff time was being expended for this purpose.^[83] Mr. Donahue stated at the meeting that a written request for a decision on this issue would be necessary.^[84] At this meeting, Mr. Donahue provided an informational brochure concerning relocation claims and documentation entitled "A Guide For Preparing A Business Relocation Claim."^[85] Mr. Donahue discussed this information with the Claimants at the initial meeting.

48. At the March 2001 meeting, Mr. Donahue indicated that Conworth's opinion was that the relocation regulations do not provide for reimbursement of planning activities conducted by the employees of a displaced business, but do provide for reimbursement of planning activities conducted by a professional move planner. Mr.

Donahue advised the Claimants that they could retain a professional move planner. Mr. Donahue stated that he was not aware of any specific service providers.^[86]

49. At the meeting, Mr. Schnitker indicated that he disagreed with Mr. Donahue and believed that some employee planning activities should be reimbursed. Mr. Schnitker indicated that the Claimants would make a claim for reimbursement of employee hours associated with move planning, and would log time associated with these activities. Mr. Donahue did not discourage the Claimants from making a claim for planning activities and indicated that the HRA would make the final determination regarding whether such expenses are reimbursable.^[87] Claimants were not directed by the HRA to maintain a log reflecting the hours of staff time spent on pre-move planning services.^[88]

50. Mr. Schnitker confirmed the March 2001 meeting in a letter to Mr. Donahue dated March 28, 2001. Ms. Schnitker sent copies of the letter to Mr. Schilling, Ms. Jerich, and Mr. Kleckner. In the letter, Mr. Schnitker indicated that “we intend to log our hours and claim costs for that [planning] time at the appropriate time.” The letter also requested that Mr. Donahue determine whether the HRA would approve claims for internal employee move planning time once made.^[89]

51. On or around June 6, 2001, Tom Donahue informed Kirk Schnitker, “I can’t get an answer from the attorneys” regarding the request. On or around June 8, 2001, Kirk Schnitker submitted an affidavit to the Hennepin County District Court that in part stated the HRA had not provided a response to the request for a determination as to the payment for staff move planning time. On June 8, 2001, Kirk Schnitker sent another request to Tom Donahue regarding the issue of staff move planning costs. On July 10, 2001, Tom Donahue stated that the HRA’s attorneys were looking into the request.

52. On January 4, 2002, Kirk Schnitker again sent a request to the HRA regarding the move planning costs.^[90] In February, 2002, the HRA’s legal counsel addressed move planning expenses in a letter to Mr. Schnitker. The letter indicates that the HRA’s interpretation is generally consistent with Conworth’s position. The letter also indicates that the HRA cannot pre-judge claims in the abstract.^[91]

53. Employee planning hours were not logged as contemplated by Mr. Schnitker. Claimants’ employees indicated that if they would have done so if directed to but that these activities could not be reconstructed.^[92]

B. Architectural Design and Engineering Fees

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54. WBI seeks reimbursement of certain architectural, engineering and design fees based on invoices from Phillips Architects^[93] and BDH & Young.^[94] The total claimed, as professional planning services, is \$77,662.00. Phillips Architects designed the parking lot, lighting, display layout, and building design in relation to certain equipment and property while BBH and Young provided interior design services.^[95]

55. Claimants’ counsel provided a memorandum directing architects to prepare invoices distinguishing real estate improvements “relating to personal property” from other real estate improvement or modifications.^[96] The memo states that architectural

services such as “building design relating to personal property, parking lot layout for automobile parking” are reimbursable.^[97]

56. David Phillips is a certified architect, and owner and principal for Phillips Architects. Mr. Phillips indicated that he revised his original invoice based on the legal memo.^[98] The revised invoice includes fees for design of the work areas, parts areas, conveyor or lift systems, exhaust systems, hoists, HVAC systems, various types of heavy equipment, car washes, and the display of the car inventory and other inventory. The total for services provided relating to personal property planning and issues provided by Mr. Phillips amounted to \$70,812.00.^[99]

57. Mr. Phillips acknowledged that the invoiced architectural and engineering fees are for real estate improvements. The revised invoice distinguishes fees for general building and site design from fees for building design related to specific types of equipment, inventory or property. For example, Mr. Phillips did not include “shell building design” but included “redesign related to the addition of service bays for additional hoists and equipment.”^[100]

58. BDH & Young Space Design was hired by WAG to provide space planning and design services in order to assist WBI in receiving personal property at the new site.^[101] The fee for these services was \$6,850.00.^[102]

C. Legal and Real Estate Service Fees and Search Expenses

59. The Claimants seek reimbursement of certain legal and real estate fees as professional planning expenses.^[103] The total claimed is \$51,356.25.^[104] They also seek reimbursement for Ms. Jerich’s 1998 search activities as a search cost.

60. In 1997, WAG first learned of plans to redevelop the area located near the intersection of Penn Avenue and 494, where the WBI and BMW dealerships were located.^[105] At that time, the potential redeveloper was CSM Corporation.

61. In May 1998, with the possibility of a relocation of the dealerships in mind, Ms. Jerich began searching for replacement sites for the WAG dealerships. Her search continued during June and July of 1998.^[106] Ms. Jerich’s site searching activities occurred based on negotiations with CSM in 1998. Ms. Jerich’s search activities in 1998 were not related to the Best Buy redevelopment.

62. There were difficulties in finding replacement sites for the dealerships because of statutory and franchise restrictions.^[107] An option on the former Lincoln Del site in Bloomington was obtained, however. The City of Bloomington then adopted a moratorium on new automobile sites.

63. Leonard, Street & Deinard, a law firm, was retained by WAG to assist in securing approvals for conditional use permits at possible replacement sites.^[108] These permits were necessary for the sale of vehicles.^[109] Fees for these services from January to April 1999 were \$13,125.00.^[110]

64. Peterson Commercial Real Estate Services was retained in order to assist in acquiring approval of the conditional use permits and provided services from October 1998 through May 1999, for a total of \$23,031.25.^[111]

65. Barbara Jerich spent 152 hours assisting in acquiring conditional use permits for WAG.^[112]

66. The claimed fees all relate to purchase of the Lincoln Del site, repeal of the moratorium, and zoning approvals for the site.^[113] The invoices indicate that all fees claimed were incurred in 1998 through April of 1999.

67. WBI and BMW each incurred in excess of \$1,000 for expenses in searching for a replacement site as a result of Ms. Jerich's site search activities in 1998.^[114]

REESTABLISHMENT COSTS CLAIM

68. WBI seeks reimbursement of \$10,000.00 for advertising (radio spots) that aired for approximately one month leading up to the date the business relocated.^[115] From May 9, 2001 to June 13, 2001, WAG ran a series of radio advertisements announcing the liquidation sale in preparation for the move as well as the move and consolidation of two WAG dealerships.^[116] The radio spots advised listeners that the City of Richfield was forcing Walser out and that the two dealerships would need to fit in one new facility. But the ads did not specifically mention the location of the replacement sites.

69. WBI alternatively identifies certain building construction costs as a reestablishment expense. The costs were paid to R.J. Ryan Construction in an amount exceeding \$10,000 for construction at the new WBI site at 4401 West 80th Street in Bloomington.^[117]

CAR WASH CLAIM

70. WBI claims \$25,959.23 for costs associated with a car wash.^[118] BMW claims \$18,424.15.^[119] Modifications to the new replacement facilities of both dealerships were necessary in order to receive a car wash.^[120] The related construction costs, less the amount paid, totals \$25,958.94 for WBI and \$18,424.15 for BMW.^[121]

71. The claims derive from "costs for construction modification."^[122] The Claimants constructed new buildings or structures to house the car washes moved to the replacement locations.

72. The HRA previously paid a total of \$56,456.60 (\$26,842.31 to BMW and \$29,615.26 to WBI) based on the costs to remove, reconnect and reinstall car washes, including electrical and plumbing reconnection costs.^[123]

AUTO MOVE CLAIM

73. The Claimants moved their car inventory to the new sites on June 15, 2001. The HRA and Claimants agreed that this activity would be reimbursed at a rate of \$45 per vehicle.

74. The parties could not agree on the number of vehicles actually moved. No one counted the number of cars as they were moved.^[124] A liquidation sale was conducted leading up to the move date. The ads for the sale ran from May 9 through June 13, 2001.^[125] The number of cars on-site fluctuated. The number left to be moved after the sale was not documented.

75. Mr. Donahue of Conworth counted and certified 464 WBI vehicles and 150 BMW vehicles on-site on Friday, June 8, 2001.^[126] Sometime during the week of June 8, 2001, Mr. Schilling performed a vehicle count at both dealerships and counted a total of 626 vehicles at the WBI dealership and 190 vehicles at BMW.^[127] Based on the resulting differences, WBI seeks further reimbursement of \$4,815.00 and BMW seeks further reimbursement of \$1,800.00.

76. On June 14 and 15, 2001, following a June 11th hail storm, an insurance company counted the vehicles at the WBI dealership and found a total of 941 vehicles.^[128] When reduced by the number of vehicles held in storage at the time of the count (300), the number of vehicles at the dealership that would require moving totaled 641 vehicles.^[129]

77. The HRA based its initial payment on Mr. Donahue's count but notified the Claimants' that they could submit an inventory identifying the cars actually moved by VIN number.^[130] The Claimants did not submit such documentation. The Claimants' instead supported Mr. Schilling's car count with the insurance company count that was provided due to the hail storm near the time of the move.^[131]

78. The City had issued a conditional use permit to the dealerships limiting the number of cars legally permitted on the sites. Mr. Schilling's count exceeded the legally authorized number. Mr. Stark reviewed an aerial photograph of the site to determine whether Mr. Schilling's count was physically possible and concluded it was not.^[132]

STATIONARY CLAIM

79. WBI claims an additional \$6,594.46 for stationary reprinting.^[133] The HRA paid the Claimants \$5,248.54 for reprinting costs based on a table prepared by Conworth showing the number and type of print items at the old site, the items claimed for reimbursement, and amounts deemed eligible for reimbursement.^[134] Mr. Donahue and Mr. Schilling did an inventory and compiled a list of stationary items that required replacement due to the relocation of the WAG dealerships.^[135]

80. A bid from MHC companies estimates the costs required to replace the obsolete stationary materials for WBI to be \$11,843.00.^[136] There was no documentation indicating that the bid was accepted or paid. Conworth had received and accounted for this bid in preparing its table.^[137]

COMPUTER CLAIM

81. WBI claims \$2,738 in relation to its purchase of a new computer system.^[138] The amount claimed represents WBI’s estimate of the cost to have an employee supervise reinstallation of its old computer system and a Quest fee. WAG obtained estimates of what the cost would have been to move the existing computer system at the WBI location, including cabling services, service transfer, moving the equipment and supervision, and requested compensation for these costs as they were less than the cost of the new computer system.^[139]

82. The HRA paid the estimated cost to move the old system and the estimated cabling charges.^[140] WBI was previously paid \$32,772.37. The claim was made for “substitute equipment” under 49 CFR 24.303(a)(12). The payment represents the lower of the quoted cost to move and reinstall the old system, or the cost to purchase the new system.^[141] WBI decided to replace its existing computer equipment with an updated system at the replacement location rather than move the existing computer.^[142]

ALIGNER (RACK) CLAIM

83. WBI claims \$808.12 in relation to the move of a vehicle alignment rack from a replacement site. The HRA has paid \$2,872.62 to-date for moving the alignment rack from the old to the new location.^[143]

84. In order to relocate the BMW alignment rack to the new location, the existing rack at the replacement site needed to be moved to storage as it was not approved for work on BMW vehicles.^[144] The cost associated with moving the existing rack at the replacement site is \$808.12.^[145]

INTEREST CLAIM

85. The Claimants seek interest awards.^[146] The interest claims are divided between interest on “claims paid” and “unpaid claims.” In both cases, the claims are based on “unreasonable delays” in processing the claims. The delay in relation to claims paid presumes that the HRA was required to process payments within 45 days.

86. The demand for interest on unpaid claims is calculated from a “reasonable claim payment date.” This date (7/29/01) is 45 days from the date that the Claimants’ moved from the property. The amounts on appeal derive largely from the third set of claims submitted in March, 2003. Accordingly, as to unpaid claims the Claimants seek some interest calculated from 2001 on amounts that were not claimed until March, 2003.

87. The WBI and BMW claims were submitted to Conworth and paid by the HRA, and the number of days before payment, are as follows:^[147]

- a. submitted 6/14/01 paid 10/03/01 111 days
- b. submitted 6/14/01 paid 11/28/01 167 days

c. submitted 9/5/01	paid 12/06/01	92 days
d. submitted 9/5/01	paid 2/19/02	167 days
e. submitted 6/7/02	paid 4/21/03	318 days

88. Sixty days is a reasonable amount of time in which to allow for payment of claims in this case once they were submitted by WAG.^[148]

89. The current rate of interest used in condemnation awards is four percent (4%).^[149]

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

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction to hear and decide this matter.^[150] The Claimant received timely and appropriate notice of the hearing.^[151]

2. The Claimants bear the burden of proving any facts at issue by a preponderance of evidence.^[152]

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”), as amended,^[153] and associated federal regulations provide that a business displaced as a direct result of a federally-assisted project is entitled to payment for certain actual reasonable moving and related expenses.^[154]

4. The URA provides at 42 U.S.C. § 4622(a) that:

Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

...

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$10,000.

5. WAG Buick/Isuzu and Motorwerks BMW each qualify as a “displaced business” and “displaced person” under the URA.

6. The Minnesota Uniform Relocation Act (“MURA”),^[155] adopts the Federal URA and associated federal relocation requirements in certain cases where relocation

assistance, services, payments and benefits would not be available under the URA due to the lack of federal financial participation. ^[156]

7. The purpose of the URA is, in part, to insure that persons displaced as a direct result of federally assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. ^[157]

8. The URA regulation at 49 C.F.R. § 24.205(c)(2)(iii) requires an agency to:

Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

9. The URA regulation at 49 C.F.R. § 24.207(a) states:

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

10. The URA regulation at 49 C.F.R. § 24.303(a) specifies that:

Any business or farm operation which qualifies as a displaced person is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary...

11. The URA regulation at 49 C.F.R. § 24.303(a)(8) includes expenses for:

Professional services necessary for:

(i) Planning the move of the personal property,...

12. WBI and BMW staff spent time in pre-move planning of personal property that was necessary for the relocation of the dealerships. However, the regulation only allows reimbursement for professional services necessary for the move of personal property. The Claimants did not use any professional services.

13. WBI incurred architectural and design expenses for modification of the replacement site. They are not services for planning the move of personal property but rather payments for modifications to replacement property under § 24.304(a)(2), that has a \$10,000 cap.

14. WAG incurred legal expenses and expenses for professional real estate services in 1998-99 in securing conditional use permits for possible replacement sites. These expenses are not services for planning the move of personal property in 2001 but rather relate to modifications necessary for the replacement property that are capped under § 24.304(a)(2) at \$10,000.

15. The URA regulation at 49 C.F.R. § 24.303(a)(13) specifies that time spent searching for a replacement location is an eligible expense:

Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000.00, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

- (i) Transportation.
- (ii) Meals and lodging away from home.
- (iii) Time spent searching, based on reasonable salary or earnings.
- (iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

16. The search time incurred by Barbara Jerich is eligible for reimbursement as it was necessary time spent searching for a replacement location and was reasonable. Claimants are entitled to \$1,000.00 for each dealership in search costs.

17. The URA regulation at 49 C.F.R. § 24.304(a) specifies that "Reestablishment expenses must be reasonable and necessary" and includes, but is not limited to, expenses for the "advertisement of replacement location," [49 C.F.R. § 24.304(a)(8)] "repairs or improvements to the replacement real property as required by Federal, State or Local law, code or ordinance" [49 C.F.R. § 24.304(a)(1)], "modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business." [49 C.F.R. § 24.304(a)(2)] and "other items that the Agency considers essential to the reestablishment of the business. [49 C.F.R. § 304(a)(12)].

18. The radio advertisements ran by WAG announcing the liquidation sale and relocation were reasonable and necessary reestablishment expenses to inform WAG customers of the dealership's relocation.

19. The construction costs paid to RJ Ryan Construction were necessary modifications to the replacement property in order to support a car dealership.

20. The costs for the car wash modification and the architects and design fees are also eligible as reestablishment expenses for each claimant.

21. Claimant WBI is entitled to recover \$10,000 for reestablishment expenses. [\[158\]](#)

22. The URA regulation at 49 C.F.R. § 24.303(a)(1) specifies that “[t]ransportation of personal property” is an eligible expense.

23. The vehicles located at the former sites of both the WBI and BMW dealerships were personal property that needed to be moved to the replacement location.

24. The Claimants are not entitled to an additional recovery for the expense of transporting 626 vehicles from the WBI dealership or for the transportation of 190 vehicles from BMW, as determined by the Schilling count, since they have failed to prove that that number of vehicles were transported or that Mr. Donahue’s count was not accurate.

25. The alignment rack located at the replacement BMW site was personal property that required transportation from the site in order to allow for the replacement rack to be received. Moving the existing replacement site rack was both reasonable and necessary. Claimants are entitled to recover \$808.12 for the unpaid portion of the claim.

26. The URA regulation at 49 C.F.R. § 24.303(a)(9) specifies that “[r]elettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move” is an eligible expense.

27. The claimants have failed to sustain their burden of proof to show that they are entitled to further benefits for replacing stationary.

28. 49 C.F.R. § 24.305(j) provides that no payment may be made for physical changes to the real property at the replacement location except as provided in § 24.303(a)(3) and § 24.304(a).

29. The URA regulation at 49 C.F.R. § 24.303(a)(3) specifies that the following are eligible expenses:

Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property . . . It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property.

30. 49 C.F.R. § 24.304(a)(2) allows payment for modifications to replacement property but only to a cap of \$10,000.

31. Each car wash was the personal property of the displaced dealership. The claimed construction costs relating to the car wash at each dealership were modifications to the replacement site which were necessary in order to receive the car wash at the new facilities. But they were not modifications to the personal property as contemplated by § 24.303(a)(3). They fall under the § 24.304(a)(2) allowance for such modifications that applies a cap of \$10,000 on the benefit.

32. The URA regulation at 49 C.F.R. § 24.303(a)(12) allows payment for:

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

- (i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
- (ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

33. The expenses that would have been associated with the moving and reinstallation of the existing computer system would have included the costs of the supervision of the move by WAG's Director of Technology and the Quest reconnect fee. This is a reasonable component of moving and reinstalling the computers, along with the computer system move bids already paid by the HRA. Claimant is therefore entitled to these costs in the amount of \$2,738.00.

34. The URA regulation at 49 C.F.R. § 24.207(b) states:

Expeditious payments. The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

35. Payments made by the HRA could have been made within 60 days, taking into consideration the complicated nature of the claims submitted.

36. Minn. Stat. § 117.195 provides "[a]ll damages allowed under this chapter... shall bear interest" pursuant to Minn. Stat. § 549.09. The URA has been adopted pursuant to Minn. Stat. § 117.52.

37. Claimants are entitled to an award of interest at 4% on payments made beyond a reasonable time by the HRA and unpaid claims in the total of \$8,450.93 for WBI and \$5,107.27 for BMW.

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

ORDER

IT IS HEREBY ORDERED: that the Richfield Housing and Redevelopment HRA shall forthwith pay relocation benefits to WBI and to Motorwerks BMW as itemized below:

The Claimants are entitled to the following relocation benefits:

1. WALSER BUICK/ISUZU

Search Costs	\$1,000.00
Reestablishment Expense	\$10,000.00
New Computer	\$2,738.00
Interest	\$8,450.93

TOTAL: \$22,188.93

2. MOTORWERKS BMW

Search Costs	\$1,000.00
Move Alignment Rack	\$808.12
Interest	\$5,107.27

TOTAL: \$6,915.39

Dated this 17th day of March, 2004

/s/ George A. Beck

GEORGE A. BECK
Administrative Law Judge

Reported: Taped: Thirteen tapes, no transcript prepared.

MEMORANDUM

The Claimants are entitled to recover relocation benefits from the HRA under state and federal law for their actual moving and related expenses. The Claimants have submitted three sets of claims to the HRA and have received substantial payments--\$424,155.34 for WBI and \$277,509.37 to BMW. In this proceeding they seek to recover additional claims that were denied by the HRA.

The Claimants bear the burden of proof to show that they are entitled to reimbursement under the applicable regulations and that the amounts claimed are reasonable and necessary. The applicable regulation requires a claim to be supported by such documentation as may be reasonably required to support expenses incurred. It

also requires, however, that the agency provide a claimant with reasonable assistance necessary to complete and file a claim for payment.^[159] The Claimants are entitled to the benefit of the federal directive that they be treated fairly and equitably so that they will not suffer disproportionate injury as a result of the Best Buy project.^[160]

Generally, the URA requires an Agency to pay three types of expenses incurred by a displaced business:

- (1) actual moving expenses that are necessary and reasonable
- (2) reasonable search expenses up to \$1,000
- (3) reasonable and necessary reestablishment expenses up to \$10,000.^[161]

The Claimants seek reimbursement for employee planning activities as an actual moving expense undertaken prior to the move date. 49 CFR 24.303(a) provides for:

payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for: ***
(8) Professional services necessary for:*** (i) Planning the move of the personal property.

The Norberg fee quote is not reimbursable as professional planning services itself because it was not an actual expense incurred. The parties disagree as to the proper interpretation of 49 CFR 24.303(a), that allows fees for professional services. The HRA concluded that the regulation contemplates reimbursement of fees paid to a professional planner, apart from the displaced business, hired to assist with planning a move. The HRA further concluded that no reimbursement is due because none of the Claimants' employees are professional move planners and the Claimants did not retain Ms. Norberg to assist in actual move planning. The Claimants argue that activities undertaken by "professional" employees are reimbursable if the employee is qualified to perform the service or activity for which an expense is claimed.

The Claimants failed to introduce sufficient evidence to support reimbursement under their interpretation. The Claimants submitted no evidence to support a conclusion that all of their move planning employees were "professionals." In addition, the Claimants submitted no evidence that all employees, or any specific group of employees, was qualified to engage in every activity recommended in the Norberg report. For example, the Norberg report recommended that all employees engage in a collective total of 1,800 hours of pre-move cleaning but there was no evidence that all employees are professional cleaners. Similarly, the record reflects that Norberg recommended 2000 employee hours to develop and manage a "move team" of 20 "move coordinators," each that would be responsible for planning portions of the move. None of the Claimants' employees appear to be qualified to professionally plan a business relocation.

But in the final analysis the regulation is properly interpreted to allow reimbursement only for professional move planners, i.e. those persons whose business is business relocations. 49 CFR § 24.303(a)(8) refers to professional services for move planning, moving, and installing relocated property as being reimbursable. A professional is one who engages in a given activity as a source of livelihood or as a career, or one who has great skill or is an expert.^[162] WAG's employees simply do not meet this definition even though their efforts were necessary to completing the relocation. The legislative intent may well have been to exclude employee time spent on move planning when a professional move planner was not used or needed. That seems to be the plain meaning of the regulation. No precedent was submitted by the Claimants to support their interpretation. Although the Claimants submitted an affidavit of a paralegal relaying information received from an employee of the Federal Highway Administration concerning pre-move planning services,^[163] this double hearsay cannot be deemed reliable in light of Mr. Vose's affidavit raising questions about its contents.^[164]

Even if employee planning time was reimbursable, the Claimants have also failed to meet the requirement in 49 CFR. § 24.207(a) to submit documentation "reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses." Generally, expenses related to employee time should be documented with a log or other evidence showing who did the work, how much time was spent and what was done.^[165] The Norberg report does not document the planning activities actually undertaken by the Claimants. The report does not document who actually did work, how much time was spent or what was done. The report instead contains Ms. Norberg's recommendations for a hypothetical move.

Moreover, recommended activities that were not actually completed cannot be deemed "necessary to plan the move of personal property." The Claimants did not complete some of the activities recommended in the Norberg report. For example, the Norberg report recommends a large number of hours for pre-move cleaning, extensive employee communications, and production of a relocation database. These activities were completed in fewer hours than recommended or were not completed at all. Additionally, the Norberg report covers a 12 month period but the Claimants actually prepared for the move over a much shorter period. The Claimants' testimony that the Norberg report understates expenses incurred confirms that the report does not document actual activities.

The Norberg report also includes activities such as cartage planning, parts labeling, employee supervision, and move supervision that were, at least in part, previously claimed. Mr. Schilling testified that he eliminated overlap between Ms. Norberg's recommendations and earlier claims. However, the record reflects that the Claimants have made several claims for various activities and expenses that have been characterized as planning, supervision or both.

The Claimants suggest that the Norberg report may be accepted as a bid-based (non-documented self-move) claim under 49 C.F.R. § 24.303(c). The regulation provides:

If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff.

The regulation provides for use of bids or estimates for reimbursement of “the person’s moving expenses.” The regulation is inapplicable, however, because the expenses claimed are for planning and supervision, not cartage or moving expenses. The regulation further requires that reimbursement be based on “the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff.” The Norberg report does not meet these requirements because the report was obtained by the Claimant, not the HRA or Conworth,^[166] and only one report was obtained.

The Claimants suggest that the documentation requirements should be viewed in light of the fact that Conworth provided inadequate claim assistance. The record reflects that Conworth is experienced in providing relocation assistance and advice. The City of Richfield and the HRA have retained Conworth to provide relocation assistance for more than 10 years. Furthermore, in this case, Conworth assisted in the preparation of voluminous relocation claims. Conworth included all claim items and claim documentation as requested by the Claimants. It did recommend denial of some claims based upon its interpretation of the regulations.

There is no specific basis in the regulations to waive the documentation requirement based on the contention of inadequate claim assistance. While the Claimants are entitled to be treated fairly and equitably, benefits cannot be awarded without authorization in the statutes and regulations. Administrative agencies generally lack equitable powers and their authority does not extend beyond the statutory authority under which they operate. Although the URA is liberally interpreted by the courts to effectuate its purposes, the Minnesota Court of Appeals rejected the argument that expenses that are not prohibited by the URA should be paid in order to minimize the hardship to displaced persons.^[167]

And the Claimants have not established a link between what they believe was inadequate claim assistance and the claim for employee move planning time. The record reflects that the Claimants notified Conworth prior to the move that they would log employee planning time and would claim expenses based on such logs. A log of employee planning activities would constitute appropriate documentation if the activity was reimbursable. Although Conworth didn’t think it was compensable, the HRA did not discourage submission of the documentation. It was not submitted, however and the failure to log hours as suggested by Claimants’ counsel is unexplained. Additionally, the possibility of a professional move planner was apparently mentioned to the claimants in March 2001. Claimants did not pursue this either.

It is not clear that an HRA is required to render a fixed legal interpretation on a regulation whose meaning is not certain. Conworth had expressed its opinion that the employee planning time was not reimbursable. The lack of a formal opinion did not prevent the Claimants from pursuing their claim. The Claimants are not entitled to reimbursement of Norberg's professional fee, nor the employee expense calculated based on the recommendations in the Norberg report.

At the hearing, WBI offered an invoice for \$70,812.00 from Phillips Architects as a part of its claim for professional planning services.^[168] The exhibit was introduced over the HRA's objection based on the Order in Limine. The Order in Limine permitted introduction of new or additional claim documentation but prohibited introduction of new claims based on the 18 month claim deadline established by the relocation regulations.^[169] The HRA suggests that the Order in Limine be interpreted to prohibit the introduction of new claim amounts or new rationale for previously submitted claims. The revised Phillips invoice contains both an increased claim amount and new rationale identified in a memo from Claimants' counsel. However, the Order in Limine recognized that the relocation regulations direct the ALJ to consider "all available information."^[170] Accordingly, the invoice is admitted pursuant to the Order in Limine.

49 CFR 24.304(b)(1) provides that expenses for the purchase of capital assets are not reimbursable relocation expenses. 49 CFR 24.305(j) provides that a business is not entitled to payment for "physical changes to the real property at the replacement location ... except as provided in Secs. 24.303(a)(3) and Sec. 24.304(a)." There are two exceptions. Under 49 CFR 24.303(a)(3) a business may be reimbursed for "[d]isconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property." The Claimants made separate claims under this exception in relation to equipment installed at the new sites such as car washes, and do not assert that this exception applies to fees for the engineering and design of the car dealerships.

In addition, under 49 CFR 24.304(a) a small business^[171] may be entitled to a reestablishment payment "not to exceed \$10,000 for expenses actually incurred in relocating and reestablishing such small business ... at a replacement site." Particularly, the regulation provides:

(a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

* * *

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

* * *

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

* * *

(12) Other items that the Agency considers essential to the reestablishment of the business.

An agency must pay fair value for the real estate and improvements acquired by eminent domain. But the regulations distinguish actual reasonable and necessary costs of moving personal property from the costs for real estate improvements or modifications at the replacement site. The latter are only reimbursable as reestablishment expenses and capped at \$10,000.

The claimed Phillips Architects fees and design fees were incurred for “modifications to the replacement property” such as design of the parking lot, design of lighting, display layout and building modifications to accommodate certain equipment and property. Similarly, BBH and Young provided interior design services. The claimed fees are for real property improvements or modifications under 49 CFR 24.305(j) (“physical changes to the ... replacement location”) and 49 CFR 24.304(a) (“modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business”). Such fees are only reimbursable as reestablishment expenses capped at \$10,000.

The Claimants seek reimbursement of certain legal and real estate service fees “necessary for planning the move of personal property” under 49 CFR 24.303(a). The fees relate to services rendered 2-3 years before the move in June 2001. 49 CFR § 24.304(a)(9) provides for a reestablishment payment for “[p]rofessional services in connection with the purchase or lease of a replacement site.” 49 CFR 24.304(a)(6) provides for a reestablishment payment for “[l]icenses, fees and permits when not paid as part of moving expenses.” Reestablishment payments are collectively capped at \$10,000.00. The legal and real estate fees claimed relate to professional services rendered in direct connection with the purchase of the Lincoln Del site, repeal of the moratorium, and receipt of a zoning permit. The fees might qualify for payment under the specific, applicable provisions in 49 CFR 24.304(a)(6) and (9).

49 CFR § 24.303(a)(13) provides in relevant part that a business “is entitled to reimbursement for actual expenses, not to exceed \$1,000.00, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including”. The Claimants seek to recover Ms. Jerich’s time spent in looking for new sites under this regulation. The HRA argues that a replacement location is not needed until a person is displaced by agency action. It asserts that status as a “displaced person” is determined based on whether person occupies the site on the date of the “initiation of negotiations.”^[172] Accordingly, the HRA contends that the regulation provides for reimbursement of site searching expenses incurred after the agency initiates negotiations to acquire the property (at which time the claimant became a “displaced person”).

In this case, the date of the “initiation of negotiations” was July 28, 2000.^[173] The claimed search expenses were incurred in 1998 when Ms. Jerich was searching for new sites in response to another proposed project suggested by the HRA. The regulation

cited by the HRA does not prohibit reimbursement for search expenses incurred prior to the initiation of negotiations. It only specifies that a business becomes a displaced person when it moves as a result of a notice of intent to acquire, the initiation of negotiations or the acquisition of real property. In this case Ms. Jerich spent 152 hours in a search for a replacement site and securing conditional use permits for the site which was eventually needed due to the HRA's condemnation in 2001. A replacement site was required due to the 2001 condemnation. The fact that it was acquired earlier does not disqualify the claim. The search efforts were necessitated by an earlier project, but were no less necessary for the Best Buy project.

Eligible reestablishment expenses under § 24.304 include “[a]dvertisement of replacement location.”^[174] WBI seeks reimbursement for advertising (radio spots). None of the radio spots specifically mentioned the new location. The HRA argues that these expenses do not meet the plain language of the regulation. However, the ads clearly advised listeners of the move and the regulation does authorize the agency to pay other items essential to reestablishment. WBI alternatively identifies certain building construction costs as a reestablishment expense.^[175] These costs are reimbursable under 49 CFR 24.303(a)(2) as “modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.” WBI is entitled to reimbursement up to the \$10,000 cap. BMW has already been awarded \$10,000 in reestablishment costs.

The Claimants seek reimbursement for modifications of the replacement sites to receive the car washes. 49 CFR § 24.305(j) prohibits payment for “physical changes” to real estate. The Claimants seek payment under the exception in 49 CFR 24.303(a)(3). The exception specifically contemplates payment for “modifications to the personal property” to adapt it to the replacement structure or site. The expenses claimed on appeal are modifications to the structure or site (new buildings) to accommodate the personal property (car washes). This is the opposite of what is contemplated by the cited exception. Modifications to the replacement property is specifically mentioned in 49 C.F.R. § 24.304(a)(2), but is subject to a \$10,000 cap. Under the statutory construction maxim “*expressio unius est exclusio alterius*,” exceptions expressed in a law are construed to exclude all others.^[176] This maxim applies to the relocation regulations.^[177] The claimed “construction modifications” are subject to the prohibition against payments for “physical changes” to real estate. These construction costs do not fall in the cited exception. Since the Claimants have already claimed benefits to the \$10,000 cap in § 24.304, the claimed costs for the car washes are not reimbursable.

The number of vehicles actually moved is in dispute. The HRA requested documentation of the number of vehicles remaining on-site to be moved after the car sale. Given that cars are valuable and have VIN numbers and might be expected to be inventoried by a car dealer during a liquidation sale, a vehicle inventory would seem to be “reasonably required” under 49 CFR 24.207(a). The Claimants did not submit the requested inventory. The HRA relied on Conworth's count. It is more likely than not that Mr. Donahue's count is accurate. Conworth has no financial interest in the count, while the Claimants do. Additionally, since Mr. Donahue's count was on a Friday (June

8th) and Mr. Schilling's count was only specified as "during the week of June 8th," Mr. Schilling's count may have preceded Mr. Donahue's. At the time the dealerships were in the middle of a liquidation sale. The insurance company count does not lend strong support since no documentation from the insurance company was submitted to support the claim. In addition, the number of cars counted by Mr. Schilling was not legally permitted under its conditional use permit. The additional costs claimed for moving vehicles is not reimbursable.

49 CFR 24.303(a)(9) provides for reimbursement of expenses for "replacing stationary on hand at the time of displacement that are made obsolete as a result of the move." The HRA relied upon a comprehensive review and recommendation by Conworth in making its payment. WBI has not met its burden of proof in regard to the additional amount claimed. At one time it sought \$23,862 and then reduced its claim to \$11,843 based on a bid from MHC. No evidence was submitted showing that this amount was paid. WBI has not shown that the amount on appeal is for stationary items that were at the old site, were made obsolete by the move, and were replaced. It is more likely than not that Mr. Donahue's analysis is accurate. The claim for reimbursement of stationary costs must be denied.

It is undisputed that the old computer system was not moved and the claimed supervisory cost was not incurred. However, the Claimants argue that since the HRA paid the bid for moving and installing the old computer system (that was not actually done either), that it should also pay the supervisory expense that would have been incurred if the old system had been moved. The claim is appropriately considered under 49 CFR § 303(a)(12) that allows a payment for substitute equipment or, if less, the estimated cost of moving and reinstalling the replaced item. The claimants have documented the time a supervisor would have spent to move the equipment. In order to make the Claimant's whole they are entitled to the supervising time since it is a legitimate part of the "estimated cost of moving."

The aligner (rack) claim is made under 49 CFR 24.303(a)(1) which provides for reimbursement of the cost to transport personal property up to 50 miles. The HRA argues that the regulation applies to the cost to move personal property from the displacement site to a new location or into storage. It suggests that the relocation regulations do not provide for reimbursement of costs incurred by a displaced business for moving personal property other than property located at the displacement site. The HRA reads the regulation too narrowly since it provides for reimbursement of actual moving expenses for the transportation of personal property, if reasonable and necessary. This move was necessary because WBI could not use the existing rack and the cost was actually incurred. It was a direct result of the condemnation and is compensable.

The Claimants request interest awards under Minnesota Statutes, Sections 117.195 and 549.09. At the hearing, the Claimants offered Exhibits 11 and 12 seeking the amounts of \$40,034.81 for WBI and \$21,092.38 for BMW. The Exhibits were introduced over the HRA's objection based on the Order in Limine. The revised interest

calculations merely contain new amounts, not new claims. The Exhibits are admitted pursuant to the Order in Limine.

Minnesota Statutes, Section 549.09 addresses pre- and post-judgment interest. Specifically, Section 549.09, subd. 1(b) directs a district court to allow prejudgment interest to a prevailing party from the time the lawsuit was commenced until the time of judgment. Minnesota Statutes, Chapter 117 addresses procedures and substantive rights in condemnation actions. Section 117.195 provides for the payment of interest on “damages allowed under this chapter, whether by the commissioners or upon appeal.” Section 117.195 explicitly references Section 549.09.

Section 117.195 specifically authorizes a district court to award interest in a condemnation matter. It provides statutory authority for interest in relation to district court judgments or awards. The cited statutes do not specifically authorize this tribunal to award interest in an administrative relocation benefits appeal. They do generally indicate a legislative recognition that pre-judgment interest is appropriate in certain cases, including matters related to eminent domain.

However, the federal regulations at 49 C.F.R. § 24.207(b) provide the following direction to an HRA:

Expeditious payments. The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

The HRA is required to review expeditiously and to pay a claim as soon as feasible. The intent is made clear by another requirement that the Agency make “advance payments” where possible to “avoid or reduce a hardship.” The legislative intent is that claims be promptly paid so that displaced persons “will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.”

The Claimants have offered precedent for the payment of interest on relocation claims in the form of a September 2, 2003 hearing officer decision involving the City of Chaska that awarded relocation assistance benefits to a displaced construction and trucking business.^[178] In that case interest of \$16,376 was awarded when the City’s payments were delayed. The award of “prejudgment” interest in administrative cases has been recognized in case law, including cases where the government has improperly denied benefits.^[179]

Clearly an agency cannot delay payment unreasonably. Although the regulations require prompt payment, they do not set a deadline. A deadline is appropriately set on a case-by-case basis, depending on the nature of the claims. In this case the HRA and its consultant were faced with several complicated sets of claims. Based upon this record it is reasonable that the consultant would make a recommendation or payment of

a claim within 30 days and that the HRA make payment within another 30 days. The interest award for previously paid claims is calculated as follows.

WBI PAID CLAIMS

<u>Date Submitted to Conworth</u>	<u>Days Over 60 Days to Payment</u>	<u>Payment</u>	<u>Interest on Excess Days</u>
06/14/01	51	\$111,430.74	\$ 622.79
06/14/01	107	12,597.90	147.72
09/05/01	32	46,178.50	161.94
09/05/01	107	10,576.84	124.02
06/07/02	258	243,371.67	<u>6,881.08</u>
			<u>\$7,937.55</u>

BMW PAID CLAIMS

06/14/01	51	\$104,676.82	\$ 584.82
06/14/01	107	4,305.00	50.48
09/05/01	32	9,070.00	31.81
09/05/01	107	10,256.00	120.26
06/07/02	260	149,240.71	<u>4,252.34</u>
			<u>\$ 5,039.71</u>

The interest award on the unpaid claims awarded in this decision is based upon a 60-day payment requirement, but is calculated from the date of submission of those claims or March 12, 2003, to the date of this decision. The resulting calculation, at 4% interest, totals \$580.94 for both dealerships.

G.A.B.

^[1] In re Application for Relocation Benefits of James Brothers Furniture, Inc., 642 N.W.2d 91, 97 (Minn. Ct. App. 2002).

^[2] Id.

^[3] Hous. and Redev. Auth. in and for the City of Richfield v. Walser Auto Sales, Inc., 630 N.W.2d 662, 668 (Minn. Ct. App. 2001), aff'd by an equally divided court, Hous. and Redev. Auth. ex rel. City of Richfield v. WAG Auto Sales, Inc., 641 N.W.2d 885 (Minn. 2002), and cert. denied, 537 U.S. 974 (2002). The Claimants' general counsel, Ms. Jerich, testified in this matter that she received and reviewed this notice letter.

^[4] Ex. B, pp. 8-9; Ex. C, pp. 8-9.

^[5] Hous. and Redev. Auth. in and for the City of Richfield v. Walser Auto Sales, Inc., 630 N.W.2d at 665.

^[6] See, Order in Limine, p. 3.

^[7] T. Jerich, (Tape 5/13).

^[8] Id.

^[9] Id.

- [10] Id.; T. Kleckner, (Tape 7/13).
- [11] T. Kleckner and Schilling.
- [12] T. Kleckner. Initially, a Pontiac GMC dealership (Peterson Pontiac) moved to the Lincoln Del site. The WBI (Buick/Isuzu) dealership merged into the site but Isuzu sales were thereafter discontinued.
- [13] T. Jerich, (Tapes 4 and 5).
- [14] T. Kleckner, (Tapes 5-7).
- [15] T. Schilling, (Tapes 7, 8 and 9).
- [16] T. Hasselquist, (Tapes 3 and 4).
- [17] T. Schneider, (Tape 4).
- [18] Ex. 15.
- [19] T. Jerich.
- [20] T. Stark, (Tapes 11, 12, and 13).
- [21] T. Stark.
- [22] T. Stark (Tape 11).
- [23] T. Stark (Tape 12).
- [24] Ex. B, p. 6; Ex. C. p. 6; Ex. E, p. 6; Ex. F, p. 7.
- [25] Ex. L, p. 9; Ex. M, p. 8.
- [26] T. Schilling (Tape 8).
- [27] Ex. 1; Ex. 13, pgs. 3-9. (radio ads); T. Schilling.
- [28] Exs. 1 and 2.
- [29] T. Stark (Tape 12).
- [30] See e.g, Ex. L, p. 7; Ex. M, p. 6.
- [31] Ex. 13, pgs. 39 and 86.
- [32] T. Hasselquist and Dale Schneider.
- [33] T. Hasselquist.
- [34] T. Hasselquist.
- [35] T. Hasselquist.
- [36] T. Schneider.
- [37] T. Schneider.
- [38] T. Schneider.
- [39] T. Schneider, (Tape 4).
- [40] T. Hasselquist (Tape 4).
- [41] T. Schneider and Hasselquist.
- [42] Ex. 5.
- [43] Ex. 5.
- [44] Ex. 5; T. Norberg (Tape 2).
- [45] T. Schilling; Ex. 13, p. 39 and p. 86.
- [46] T. Schilling.
- [47] Ex. 10.
- [48] Ex. 13, p. 40.
- [49] Ex. 10; T. Kleckner; T. Schilling;
- [50] T. Norberg, (Tape 2 and 3).
- [51] T. Norberg (Tape 3).
- [52] T. Norberg (Tape 3).
- [53] T. Hasselquist (Tape 4).
- [54] T. Norberg (Tape 2).
- [55] T. Hasselquist (Tape 3).
- [56] Ex. B, p. 4; Ex. C, p. 4.
- [57] Exs. D and G.
- [58] Ex. B, pgs. 78-88; Ex. C, pgs. 56-66.
- [59] Ex. B, pgs. 84-87; Ex C, pgs. 61-65.
- [60] Ex. B, p. 87; Ex. C, p. 65.
- [61] Id.
- [62] Ex. B, p. 88; Ex. C, p. 66.
- [63] Ex. B, p. 90; Ex. C, p. 68.
- [64] Ex. B, p. 94; Ex. C, p. 82.

[\[65\]](#) Id.
[\[66\]](#) T. Donahue, (Tape 11).
[\[67\]](#) Ex. B, p. 106; Ex. C, p. 84.
[\[68\]](#) Ex. B, p. 6; Ex. C, p. 6.
[\[69\]](#) Ex. E, pgs. 17-19.
[\[70\]](#) Ex. F, pgs. 13-16.
[\[71\]](#) Ex. E, p. 42; Ex. F, p. 30.
[\[72\]](#) Ex. H, pgs. 2-3; Ex. I pgs. 2-3.
[\[73\]](#) Ex. J, pgs. 1 and 3.
[\[74\]](#) Ex. K, pgs. 1 and 3.
[\[75\]](#) T. Kleckner (Tapes 6 and 7); T. Stark, (Tape 11).
[\[76\]](#) Exs. A and P.
[\[77\]](#) Id.
[\[78\]](#) Ex. L, p. 6.
[\[79\]](#) Ex. M, p. 6.
[\[80\]](#) Ex. L, p. 47; Ex. M, p. 42.
[\[81\]](#) T. Hasselquist, (Tape 4).
[\[82\]](#) T. Jerich.
[\[83\]](#) T. Jerich.
[\[84\]](#) Ex. 3.
[\[85\]](#) Ex. Q.
[\[86\]](#) T. Donahue, (Tape 10).
[\[87\]](#) Id.
[\[88\]](#) T. Hasselquist and Schneider.
[\[89\]](#) Ex. 3, App. 1 and Ex. 16.
[\[90\]](#) Ex. 3.
[\[91\]](#) Ex. K, p. 4.
[\[92\]](#) Ex. 3, App. 1 and Ex. 16 (Schnitker letter of March 28, 2001).
[\[93\]](#) Ex. 14.
[\[94\]](#) Ex. 13, p. 4.
[\[95\]](#) Ex. 13, p. 43.
[\[96\]](#) Ex. 14, pgs. 7-8.
[\[97\]](#) Ex. 14, p. 7.
[\[98\]](#) Ex. 14 (August 25, 2003 letter, p. 2).
[\[99\]](#) Ex. 14.
[\[100\]](#) Id.
[\[101\]](#) Ex. 13, p. 43-44.
[\[102\]](#) Ex. 13, p. 44.
[\[103\]](#) Exs. 7-9.
[\[104\]](#) Ex. 13, p. 39.
[\[105\]](#) T. Jerich.
[\[106\]](#) Ex. 7
[\[107\]](#) T. Jerich.
[\[108\]](#) T. Jerich.
[\[109\]](#) T. Jerich.
[\[110\]](#) Ex. 13, p. 43. Ex. 9.
[\[111\]](#) Ex. 8. Ex. 13, p. 43.
[\[112\]](#) Ex. 13, p. 43. Ex. 7.
[\[113\]](#) Cl. Memo, p. 16.
[\[114\]](#) Ex. 7
[\[115\]](#) Ex. 13, pgs. 5-9.
[\[116\]](#) Ex. 13, p. 5-9.
[\[117\]](#) Ex. 13, pps. 10-13
[\[118\]](#) Ex. 13, p. 65.
[\[119\]](#) Ex. 13, p. 93.
[\[120\]](#) T. Schilling.

[121] Ex. 13, p. 65-80.
[122] Cl. Memo, p. 23.
[123] Ex. N, p. 6 and Ex. O, pps. 4-5
[124] T. Schilling.
[125] Ex. 1; Ex. 2; Ex. 13, pp. 3-9 (radio ads).
[126] Ex. E, p. 38; Ex. F, p. 26; Ex. 13, pp. 15, 84.
[127] Ex. 13, p. 16, 85.
[128] Ex. 13, p. 18-38.
[129] Ex. 13, p. 15, 17-18.
[130] Ex. H, pps. 1-2; Ex. I, p. 1-2
[131] Ex. 13, pp. 19-38.
[132] T. Stark, (Tape 12).
[133] Ex. 13, p. 45.
[134] Ex. L, pp. 275-276.
[135] Ex. 20.
[136] Ex. 13, p. 47.
[137] Compare, Ex. 13, p. 42 and Ex. L, p. 283.
[138] Ex. 13, p. 61.
[139] Ex. 13, p. 63, 64.
[140] Ex. 13, p. 62.
[141] Ex. N, p. 5.
[142] Ex. 13, p. 63, 64.
[143] Ex. 13, p. 88.
[144] Ex. 13, p. 89.
[145] Ex. 13, p. 90-92.
[146] Exs. 11 and 12.
[147] Ex. 11, 12.
[148] Ex. 11, 12.
[149] Ex. 11, 12.
[150] 49 CFR § 24.10; Minn. Stat. § 117.52.
[151] 49 CFR § 24.10; Minn. Stat. § 117.52; James Brothers, supra, 642 N.W.2d at 103-04.
[152] Minn. Rules 1400.7300, Subp. 5. In Re City of White Bear Lake, 247 N.W.2d 901, 904 (Minn. 1976).
[153] 42 U.S.C. § 4601 et seq.
[154] 42 USC § 4622; 49 CFR § 24.303(a); See also, 49 CFR § 24.2.
[155] Minn. Stat. §§ 117.50-56
[156] Minn. Stat. § 117.52, Subd. 1.
[157] See, 49 CFR § 24.1(b)
[158] The HRA conceded that the Claimant was entitled to this award in its post-hearing brief.
[159] 49 CFR § 24.207(a).
[160] See also, In Re Wiseway Motor Freight, Inc., CX-99-648, (Minn. Ct. App. Sept. 28, 1999) (unreported)).
[161] Id.
[162] American Heritage College Dictionary (4th Ed. 2002).
[163] Ex. 4.
[164] Letter and Affidavit of Robert J.V. Vose, January 7, 2004.
[165] See, e.g., Dealers Choice Auto Clean, Inc. v. City of Osseo Economic Development Authority, 2002 WL 172702 (Minn. Ct. App., Feb. 5, 2002)(unreported).
[166] Under the regulation, the bid or estimate acts as a proxy for undocumented expenses. The requirement that the Agency obtain the bids or estimates ensures that the claimant cannot increase its reimbursement by obtaining a non-competitive or artificially inflated price quote.
[167] In Re Wiseway Motor Freight, Inc., supra.
[168] Ex. 14.
[169] 49 CFR 24.207(d).
[170] Order in Limine, p. 3.

[171] A “small business” is defined as having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. 49 CFR 24.2

[172] 49 CFR 24.2(g)(1)(i).

[173] See, Ex. L, p. 18.

[174] 49 CFR § 24.304(a)(8).

[175] Ex. 13, pps. 10-13.

[176] Minn. Stat. § 645.19.

[177] Minn. Stat. § 645.001; See, The M/V Cape Ann v. U.S., 199 F.3d 61, 67 (1st Cir. 1999) (“[t]he obvious distinction between moving and reestablishment expenses is whether modifications are made to personal property or to the replacement real property.”); Dealers Choice Auto Clean, Inc. v. City of Osseo Economic Development Authority, 2002 WL 172702 (Mn Ct. App., Feb. 5, 2002)(unreported).

[178] Ex. 3, Appen. G.

[179] Henry v. Metropolitan Waste Control Commission, 401 N.W.2d 401, 407 (Minn. Ct. App. 1987). State v. Mower Co. Social Services, 434 N.W.2d 494, 500-01 (Minn. Ct. App. 1989). Dear v. Mpls. Fire Dept. Relief Assoc., 481 N.W.2d 69, 73-4 (Minn. Ct. App. 1992), modified, 485 N.W.2d 145 (Minn. 1992).