CHALLENGING
AN OCCUPANCY DETERMINATION

Understanding the appeals process for relocation assistance program benefits

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Relocation assistance program (RAP) appeals are an important part of the legislatively established legal process for right of way administration of relocation assistance benefit programs. The most commonly-heard adjectives to describe the RAP appeal process are foreign, arbitrary and mysterious. The actual appeals process, however, is neither foreign nor arbitrary, although it is mysterious to most right of way practitioners.

There are three prongs to the RAP appeal process: claim preparation, administrative hearing and judicial review of the administrative hearing decision. Since these appeals often present unique and unexpected issues, no task is more important than preserving the record of the administrative hearing. Keeping proper records of the relocation program appeals hearing is a necessity, especially when challenging the RAP appeal hearing officer's decision.

Entitlement Appeal

One recent RAP appeals case involved the Sanchez family, which at the time of displacement consisted of a mother, Betty (age 44), and her children Myrna (age 23), Lorna (age 20), Jesse (age 14) and a four-month old infant. The family lived in a rented one-bedroom apartment unit in the path of a county construction project. As a result of the project, the family was required to permanently relocate, and therefore qualified for relocation assistance benefits.

The Sanchez family was eligible for rental differential payment benefits, which are determined by establishing the "decent safe and sanitary" bedroom size for the displaced family. The Sanchez appeal challenged the county's entitlement decision to award the family a three-bedroom replacement unit instead of a four-bedroom replacement unit.

The county's relocation consultant had initially recommended a four-bedroom replacement unit. The replacement room configuration was decided with Betty Sanchez and the four-month old infant in one bedroom; teenager Jesse in a second room; Lorna in a third bedroom; and Myrna, who was in the first trimester of her pregnancy, in a fourth bedroom. The rationale given by the relocation consultants on the proposed room division allocation was that Betty could share a room with her infant and the 14-year old male required a separate room as he was the only male occupant. Daughter Lorna required a separate room because she worked full-time and kept very different schedules from her college student sister Myrna, who was pregnant and would eventually require a separate room for herself and the expected baby.

The county agreed with the consultant's evaluation of the room division assessment, except as it related to the additional bedroom for Myrna. In the county's opinion, it was reasonable for Lorna and Myrna to share a room in the new replacement unit because they shared living quarters in the displacement unit. Myrna was attending school before and after the relocation, Lorna was working before and after the relocation, so the situation was not any different before or after the relocation, except for Myrna's recent pregnancy.

Basis for Rules and Regulations

Public agencies are required to comply with the applicable state and federal laws. In certain situations, public agencies are prompted to promulgate rules and regulations to implement and

comply with the law. In this situation, the county was responsible for setting forth policy and procedures regarding relocation assistance for permanent displacees forced to move because of county projects. Public agencies are also charged with the responsibility of complying with their own policy and procedures. Appellant Sanchez contended that the county did not comply with their own policies and procedures as set forth in the state regulations regarding residential occupancy standards. The county contended that they fulfilled their obligation according to the language of the regulations and their own policies and procedures.

The county's policies and procedures state, "Generally, not more than two people should occupy the one bedroom...." The language of the county's occupancy standards set out minimum standards for the county to follow. In this case, the county had the discretion, through its own policy and procedures, to approve a claim for benefits at or above the minimum standards. Under the county's regulations, a displaced family unit becomes fixed on the date the family relocates from the displacement unit. When the appellants vacated the displacement unit, Myrna had not yet given birth, so the number of persons displaced was fixed at five. The county chose not to include Myrna's unborn child as a factor in calculating relocation assistance benefits because they deemed the uncertainty and speculation of her pregnancy as an inappropriate basis for establishing permanent entitlement. The final written decision of the RAP appeals hearing officer agreed that the county could exercise its discretion to award the Sanchez family a three-bedroom entitlement, the minimum standard.

What stands out about this case is that it included exemplary case preparation and presentation from all parties involved. The testimony and documents presented at the hearing were transcribed, recorded and later certified by a licensed court reporter. The final written decision of the RAP appeal hearing officer included specific references to the certified transcript of the law presented and arguments made, and the relevant testimony and documents introduced at the hearing. Either party would have had an adequate record of the hearing if they sought further judicial review.

Maintaining the Record

The judicial procedure for reviewing RAP appeal administrative hearing decisions is called an application for writ of administrative mandamus. In plain speak, this is a request asking the court to issue an order changing or vacating the administrative hearing decision. The official record is preserved by a court reporter's certified transcript of testimony along with the documents introduced at the hearing. Typically, the court will not change the administrative hearing decision unless there was an obvious mistake in law or fact or an abuse of decision-making discretion by the hearing officer. Further, the court will not issue a writ of mandamus changing the RAP appeal decision without proper citation to an official record. The ethical, constitutional and moral issues intertwined within this RAP appeal might have been lost without the steps taken to preserve the record of the administrative hearing. The importance of carefully making and preserving the record of the administrative hearing cannot be overstated. ✪

References:

49 Code of Federal Regulations 24.2 and the California Government Code § 7260 et seq.

The standards and criteria used by the County for determining the number of bedrooms required in the replacement unit was derived from the standards set forth by the State of California, Department of Transportation (Caltrans Right of Way Manual § 10.01.09.05).

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