

NO. 35956-1-II ✓

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STATE OF WASHINGTON
BY *du*
DEPT. OF FISH & WILDLIFE

COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON

NEIL TRIEBENBACH,

Appellant,

v.

WASHINGTON STATE

DEPARTMENT OF FISH AND WILDLIFE,

Respondent.

APPELLANT'S

REPLY BRIEF

Neil Triebenbach
191 Hodis Lane
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(360) 681-8194

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I. ASSIGNMENT OF ERRORS.

WDFW erred interpreting WAC 468-100-002(9) identifying a class of families' who dwelt in trailers ineligible for relocation as one hundred eighty-day homeowner occupants of a displaced dwelling WAC 468-100-401(1) within WAC 468-100-505 (Paraphrase of Appellant's Original Brief).

II. ISSUES.

A. Did WDFW identify a replacement decent, safe and sanitary and a comparable replacement family dwelling, RCW 8.26.020(7) and WAC 468-100-002(5)&(7) at Sunshine Mobile Home and RV Park? Did WDFW detail relocation sufficiently for DOT to affirm relocation of family's dwelling to and then from Sunshine Mobile Home and RV park?

B. Did WDFW establish WAC 468-100-002(5)(d) and RCW 8.26.020(7)(f) desirable, comparable and affordable commuting distances to work and essential services for special child care and medical (AR pg. 215)?

III. STATEMENT OF THE CASE

Before Appeals Court is the Administrative Law Judge, ALJ, decision (AR pg. 022-056) as affirmed and modified (AR pg. 003-021) from WDFW issued ninety day notice WAC 468-100-203(3) (AR pg. 510-514) within RCW 8.26.010(3) and WAC 468-100-010(1). The staff creates notices WAC 468-100-203 sufficiently detailed to demonstrate compliance WAC 468-100-009(1). The process and steps are certified WAC 468-100-004(1)&(3) (not available).

WDFW used Triebenbach's final order as benchmark for other appeals. DOT did not dispute WDFW rulings. DOT and WDFW referenced one another paperwork. Agencies rationalized displaced families who dwelt in trailers are relocated as 'site' dwellings-- by latches and public bathroom (Appellant's Original Brief).

WDFW now reasons (WDFW Response) family not displaced from their dwelling. The trailer, the dwelling unit, was displaced.

Unlawful occupancy defined WAC 468-100-002(22) a judicial decision prior to initiation of negotiation WAC 468-100-002(12). Occupancy defines a person's dwelling WAC 468-100-204 and WAC 468-100-002(9) and a comparable replacement decent, safe and sanitary dwelling WAC 468-100-002 (5)&(7). A disqualifying dwelling is not identified within WAC 468-100-204.

A. Displacing agency is to identify to each occupant a decent safe and sanitary and comparable replacement dwelling RCW 8.26.020(7) and WAC 468-100-002(5)&(7).

A.1. Bert Loomis testified before ALJ comparable sites were temporary--thirty day. (Appellant's Original Brief). Alice Beals testified: (Quote AR pg. 299 at line 3) *Neil Triebenbach: 'Did you ask the parks if they were full time or had a transient license'? Alice Beals ; 'No. I didn't ask them what type of licensing they had.' Neil Triebenbach: ' Did they have a 30-day policy? If you move there you have to get out in 30 days?' Beals: 'Didn't...'*

A.2. Ninety day notice (AR pg. 510-514) established a fixed moving payment of \$450.00 for ninety day tenant from ' Residential Relocation Assistance Program' (AR pg. 522) for removing personal property from a room. Payment includes \$300.00 dislocation allowance.

A.3. Agencies' appraisal of actual reasonable moving and relocating expense of the family and their dwelling unit WAC 468-100-301(1) through (9) and as a mobile home WAC 468-100-502 not found.

A.4. WDFW identifies Sequim Bay State Park as a comparable site (AR pg. 534.).

A.5. DOT was considering RCW 8.26.180(9) purchase a strip or entire Sunshine Mobile Home and RV park (AR pg. 556).

B. Using WDFW 50 miles commuting distance and the IRS straight line deduction of 36.5 cents per mile calculated cost \$36.5 per day and \$821.25 per month.(See Appellants Memorandum Superior Court 4/19/04 pg. 36-42.) The additional family's cost for work and services at Sunshine was \$279.45 and Conestoga \$465.75 and Arney \$1,490.40.

B.1 Family's based monthly income \$2,456.00 (AR pg. 013 # 27) and monthly rent \$196.00 (AR pg. 008 # 22) with commuting distances 38 miles and 11 miles approximately \$821.25. Phone service, monthly payment and insurance on trailer, monthly family's medical insurance and baby sitter services for special child were not considered.

B.2 Family's monthly rent at Sunshine Mobile Home and RV park was \$372.50 (AR pg. 016 # 23) and commuting \$1,100.00 for sixty percent of family income. Increased commute and rental cost at Sunshine Mobile Home and RV Park was \$455.00.

IV. ARGUMENT

The court does not defer to the administrative agency's determination of authority. (See Appellants Original Brief.) . The DOT authority WAC 468-100 is limited to the Legislated mandates RCW 8.26.085. WDFW has not explained where Legislatures gave DOT the authority to not relocated, not document relocation of families living in trailers apart from WAC 468-100 002(5)&(6) and WAC 468-100-505, as

a displaced dwelling to a dwelling. Relocation of family's dwelling to a recreational site, requiring them to move in thirty days, creates an undue burden on the family.

V. CONCLUSION

WDFW failed to identify a comparable replacement and decent, safe and sanitary dwelling sufficiently detailed within WAC 468-100-204 and then WAC 468-100-002(5)&(7) and WAC 468-100-002(9) to a recognized party, DOT standard, for the family with a special child. Grant relief as requested in original Brief.

RESPECTFULLY SUBMITTED this 17th day of July 2007.



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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Neil Triebenbach, NO.
Appellant, NO. 35956-1-II ✓
vs. CERTIFICATE OF SERVICE
State of Washington of
Fish and Wildlife, WDFW,
Defendant.

PROOF OF SERVICE:

I certify that I served a copy of the following document; Reply Brief.

On the below-listed party and court:

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On this 17th day of JULY, 2007, by the method stated below:

US Mail Postage Prepaid with delivery confirmation to party.

I certify under penalty of perjury under the law of the State of Washington the foregoing is true and correct.

Dated the 17th day of JULY, 2007, at Sequim Washington.

Neil Triebenbach
Neil Triebenbach