Selection of a Comparable Replacement Dwelling that is a Different Style of Home

By Robert N. Merryman, Senior Vice President

This article will discuss whether or not the Agency can offer a comparable replacement dwelling that is a different style of home from the displacement dwelling. Note that various displacing agencies will approach this situation differently, and may have an alternate method for resolving the relocation.

Many times there will not be a similar style of home listed on the market at the time an Agency is computing a replacement housing payment. For example, the subject may be a two-story single family dwelling, and there may be no two-story homes offered for sale (or for rent, in the case of calculating a rental assistance payment) at the present time. This always raises an issue of what is functionally equivalent and substantially the same.

One answer is that we can delay the calculation of the supplement amount to permit us to continue looking. There is always the chance that a new listing will be a more similar home. However, many Agencies are under time constraints and cannot afford the delay. The definition of “comparable” found at 49 CFR 24.2(a)(6) stresses the objective of functional equivalency, but states that “reasonable trade-offs for specific features” can be considered. There is no specific requirement that a proposed comparable be the exact same style of dwelling, although use of a similar style dwelling is usually the best selection. The owner(s) may want a specific layout, but unless they must have that layout (say for mobility reasons) then we are not required to incorporate this preference.
Therefore, if no two-story dwelling were available, but a one-story, similarly sized, dwelling was available with the same general room layout (number of bedrooms, bathrooms, etc.) the Agency could select it as a reasonable comparable to the subject property. There is no obligation for the Agency to incur higher costs to incorporate the displacee’s preference for a particular style or layout of house. For example, if the available one-story dwelling is priced at $250,000 and the only two-story dwelling available is priced at $270,000 because of a superior location, the Agency is not obligated to pay $20,000 more for a price differential payment.

One way to look at this issue is to put yourself in the place of a typical buyer. If you were examining potential homes to buy, would the one-story home and the two-story home both be potential purchase candidates? If you can answer yes, then these meet the trade-off test. Keep in mind that a displacee who does not agree with your Agency’s selection has the right to appeal the matter. Then you must be ready to justify the use of the trade-off and convince an appeals board that your actions were reasonable.

Example: An Agency is acquiring a home with eight rooms, four bedrooms, and three bathrooms. The home has 3,000 square feet of living area. There is no house within a reasonable distance of the subject that is the same size and has three full bathrooms. However, the Agency has located a home that is the same size and also has four bedrooms but, only two and one-half bathrooms. The proposed replacement dwelling has a finished basement area, but the basement area is below grade and is not counted as living area under the prevailing standards in this area. The basement area is generally a desirable amenity.

Here the issue becomes whether the lack of a half bath in the potential replacement is compensated by the finished basement area. If this is a reasonable trade-off and functional utility is not sacrificed, then it could be used as a replacement. Remember, our determination is subject to appeal by the displacee.

Another related aspect to keep in mind is the decent, safe and sanitary criteria, especially §24.2(a)(8)(vii) regarding ingress and use by a disabled person. In this case there is no trade-off permitted, and our comparable would need to be modified to meet the person’s needs. For example, a displaced person who resides in a level entry home, would require another level entry home or the displacing Agency would have to pay for modifications to the selected comparable to provide access and use.

Another consideration may be the age of the occupants. Let’s say that Dave and Emily Miller are both 70 years old and occupy a one-story displacement dwelling. While they are both in generally

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good health, they have made it clear during the interview process that they purchased the one-story house so they would not have to climb stairs to bathe, sleep, clean the house, etc. You have searched for another one-story comparable dwelling, but nothing is available in the area that is similarly sized with the same number of bedrooms and baths. There are three two-story dwellings that are comparable from a size and number of bedroom aspect, but would it be acceptable for the Agency to offer Dave and Emily a two-story comparable replacement dwelling?

Probably not, since there may be mobility issues associated with their occupancy of the two-story house. Again, if you put yourself in the place of Dave and Emily as buyers, they would not consider the two-story house for purchase. In this case, you and the Agency will have to look at some alternatives: possibly expand the search, offer them the option of building a new house and basing the price differential payment on the estimated cost of new construction, or modifying an existing dwelling to address their situation.

Let’s look at one more situation. Terrell and Nicki Carter are being displaced from a one-story house. There are no one-story comparables available in the area and you offer them a two-story that is similarly sized with the same number of bedrooms and baths as the most comparable replacement dwelling. The price differential payment is $15,000. Terrell is 28 and Nicky is 29 and they have no children. When Nicky sees the comparable she explains that there is no way that would ever work out; every year at Christmas her grandmother comes to visit for two weeks. Her grandmother is 72, uses a walker and could not possibly get up the stairs to the bedroom. She says you will have to find them another one-story house. You know from your search that the only one-story houses out there will result in a price differential payment of $35,000. Should you recommend to the Agency that it offer the Carters a one-story house because of Nicky’s grandmother?

Probably not. The Agency is not displacing the grandmother and is not obligated to incur additional expense to accommodate this request. Remember, the Carters are not required to purchase the dwelling offered by the Agency; it establishes the maximum amount of the price differential payment - and they have the right to appeal the decision of the Agency.

For any situations like those described in this article, it is imperative that the agent and the Agency document the search for a dwelling that is most comparable in style and layout to the displacement dwelling to provide evidence that none were available in the area at the time of displacement or to document the price disparity to justify the Agency’s decision.

(This article is from ORC’s Knowledge Base which includes hundreds of technical articles that are available to our employees in a “google” type searchable database.)
National Highway Institute “Instructors of Excellence” Announced

By Lisa Barnes, Vice President of ORC Training, LLC

The National Highway Institute (NHI) recently recognized FIVE instructors from ORC Training as Instructors of Excellence for 2012: Bob Merryman, Ted Pluta, Lisa Barnes, Bob Kleinburd and Carol Myers. Ted Pluta has received this award 6 consecutive years since 2007, Bob Merryman, Lisa Barnes and Bob Kleinburd have been acknowledged in multiple years, and Carol Myers was recognized for the first time after recently being certified as an NHI Instructor.

NHI Instructors of Excellence are selected based on their consistently high participant evaluation scores. Their selection demonstrates a commitment to the adult learning philosophy and the value of “learner-oriented” principles in the classroom. Richard J. Barnaby, NHI’s Director of Training Programs, wrote in a letter to each instructor, “This year you have continuously provided high quality instruction, shared your vast expertise and real world experiences, and have exceeded performance expectations.”

For all of you who have had the opportunity to attend a course with any of these talented instructors, you will agree that this distinction is well-deserved. They are among the top experts in the right-of-way profession and always make the learning experience worthwhile.
Orlando-Sanford International Airport Project Successfully Completed

By Al Nygren, Project Manager

In 2008, O. R. Colan Associates was awarded a contract with the Orlando-Sanford International Airport. Al Nygren assumed responsibility as ORC’s Project Manager for the management of right of way tasks for the ongoing Runway 9R - 27L Expansion and Noise Mitigation projects. In addition to negotiation and relocation activities, ORC was responsible for the contracting and oversight of Environmental & Cultural Assessments, Survey, Title Work, Appraisal, and Appraisal Review. Al was responsible for assuring that these tasks were in conformance with the Uniform Act, FDOT procedures, and State and Local laws. At grant close-out of the original noise project he assisted Sanford Aviation Authority staff in completing the Land Reuse Plan for the FAA.

Al developed the Right of Way cost estimate and assisted SAA staff in applying for, and being awarded, a second Noise Mitigation Grant. As part of that grant, ORC’s responsibilities were expanded to include contracting for and the oversight of demolition and property management functions.

He provided assistance and guidance to SAA staff in developing the grant application for the Runway 9L - 27R extension project and assisted staff in the acquisition of parcels through mediation and eminent domain. He also developed the right of way cost estimate for the Benefit/Cost Analysis for the contemplated extension for Runway 18 - 36. The assignment will come to a successful conclusion later this year.
Introductory Training for Agent Trainees

By Lisa Barnes, Vice President of ORC Training

Bob Merryman and Lisa Barnes of ORC Training presented Introduction to Real Estate for Public Agencies for seven (7) agent trainees for O. R. Colan Associates on September 9-13, 2013 in Cleveland, OH. This training is designed to provide the basic concepts for real property acquisition under the Uniform Act, and consists of nine (9) units.

- History of Right of Way
- Real Property Title and Deeds
- Appraisal and Appraisal Review
- Acquisition
- Relocation Assistance
- Property Management
- Environmental Concerns
- Project Administration

This training gives an agent trainee a comprehensive overview of the right of way process, as well as the Uniform Act requirements. It also includes numerous opportunities for interactive discussions, exercises and case studies. Since the trainees are assigned to several different field offices, they were able to share their own experiences and ask questions relevant to current projects.

The ORC Trainee program aligns with our business strategy and provides a roadmap on how we can support the organization’s goals by developing a workforce with the right set of skills and competencies to meet future needs. Our associates are the foundation of our company and our most valuable assets. We are all aware that the talent pool for top talent in the right-of-way industry is shrinking. Our trainee program ensures we will transfer industry knowledge, prepare our future leaders and add valuable technical skills and production to our offices around the country.

We are pleased to introduce the 2013 Class of Trainees:

Albana Mahilaj (Cleveland Office) – Albana is a graduate of Cleveland State University with a BS degree in Business Administration. He came to ORC with a background in health administration and accounting. Albana came to the United States five years ago from Albania.
Daniel Enke (St. Louis Office) – Dan is a graduate of the University of Missouri with a BA degree in Hospitality Management. Dan is a huge Mizzou Tigers fan.

Trevor Brittingham (Houston Office) – Trevor is a graduate of Southern Methodist University with a BA in Cinema & Television. He comes to ORC with a background in pipeline right of way and videography. Trevor is not considered a trainee, but attended the class because he is new to public agency work. Additionally, Trevor is a licensed pilot.

Jeffery Pesler, a Project Administrator in our Cleveland office (also not a trainee). Jeff has managed a variety of public programs related to economic development but is new to our industry. He holds a BS degree in Natural Resources from Ohio State University and a Master of Urban Planning Design and Development from Cleveland State University. Jeff just completed the Iron Man Competition in Madison, Wisconsin.

Lisa Barnes, ORC’s VP of Training and the class instructor is pictured next. (Not pictured is our other instructor, Bob Merryman.)

Joanna Cooley (Houston Office) – Joanna is a graduate of Baylor University with a Bachelors of Business Administration (BBA) in Economics. Her background is in finance. Joanna is a volunteer with the Junior League and enjoys riding horses.

Jayson Gardner (Cincinnati Office) – Jayson comes to ORC with a background in government relations. Prior to joining ORC, he managed communications for a Chamber of Commerce. He is a graduate of the University of Akron with a BA in Economics. Jayson coached high school basketball for 4 years, and helped form a young professionals group in the South Carolina Lowcountry while serving as Chairman of the public affairs committee and a member of the advisory board.

Joshua Tracy (Roanoke Office) - Josh comes to ORC with a background in insurance claims and customer service. He is a graduate of Old Dominion University with a BA in History & Political Science. In college he was a radio host with his own sports show and also coached basketball.

Kale Suedkamp (Cincinnati Office) – An Ohio native, Kale is a graduate of Kent State University with a BS in Justice Studies. Previously, Kale was employed with Safety Solutions in South Carolina, where he was responsible for assessing the safety needs of manufacturing companies in a multistate area. When not working he is busy keeping up with two little ones!

Benjamin Ridling from our St. Louis office. Ben joined the trainee program after this class was held. Ben is a U. S. Army Veteran with a background in irrigation and commercial landscape design. He is a graduate of the University of Missouri with a BS degree in Business Administration.

We are very pleased to welcome the Trainee Class of 2013 and the others who participated in the Introduction to Real Estate for Public Agencies at our Cleveland office last month.
ORC Managers Gather in Cleveland for the PSMJ Project Management Boot Camp

By Cathy Colan Muth, CEO

On August 23rd and 24th, ORC brought together managers from all parts of the county together in our Cleveland office training center for the Project Management Boot Camp offered by instructors Michael and Julie Ellegood of PSMJ. Twenty one managers attended the training along with the five members of our Leadership Team. The training was part of ORC’s ongoing program to provide training opportunities to enhance the skills of our managers.

The workshop format covered topics from email (aka “evidence”); how to conduct better meetings; tips on client management; proactive communication techniques; management vs. leadership, delegation; interpreting the RFP; making the “Go-No Go” Decision on the RFP; project scheduling; risk management; change management; public meeting techniques; communicating with the client; project budgeting; and project status reporting. Our instructors used their extensive background in working with other types of consulting and engineering firms that serve public agencies to bring the topics to life and shared a number of working tools that can be used in the management of projects.

ORC provided a new Samsung Windows 8 Tablet to the managers who attended as part of our initiative to bring efficiency to our projects through technology.
O. R. Colan Associates (through its affiliate ORC Training) is often asked to provide training for unique project situations or to provide training for agencies that only occasionally acquire property. When this occurs, we structure the training to meet the agency’s specific needs and to include the impact of state law. This targeted training provides knowledge to permit an agency to quickly begin its own work, or if using a contractor, to provide oversight to that contractor.

The Rochester Genesee Regional Transportation Authority plans to expand its bus maintenance facility. Unfortunately, the current facility is located in a dense urban area of Rochester, New York. The Agency does not regularly acquire property and rarely displaces residences. So they asked for targeted training to address their situation. ORC Training provided that training and got to see the hometown of the Eastman Kodak Company, the most famous makers of photographic film.

How long has it been since you heard a restaurant described as “groovy”? It is sort of a 60’s word that wore out. While in Rochester providing the training for the Rochester Genesee Regional Authority, I heard a BBQ “joint” described with that word. And then I heard that the TV show, Good Morning America, described this BBQ joint as the best in the United States – so I had to go.

Yes, Buffalo has its wings and Binghamton has its “spiedie” sandwich, but it turns out that Rochester is the BBQ king.

In downtown Rochester, New York, in the old Lehigh Valley Train station, is the Dinosaur Bar-B-Que Restaurant. What does a dinosaur have to do with the BBQ? Nothing that I could figure out, but the food is good. I am not sure it’s the best in the United States, but it is excellent. I ordered the brisket platter with baked beans and cucumber salad. Those side dishes were recommended by the order taker and she maintained they were a perfect complement to the beef. The cucumbers were tart and tasty, and the beans were outstanding. In fact, I would say the baked beans were the best I have ever had in a restaurant – not sure about the best in the US – but they were very good.
I like beans, but they are not something I seek out. However, I would suggest that if you are not a fan of BBQ, just go for the beans at the Dinosaur. They are homemade, nothing from a can, and in a thick, spicy sauce loaded with chunks of BBQ. They have to be good!

And the Dinosaur is located in a beautiful spot in Rochester. The Genesee River flows to the side of the restaurant and it is a perfect place to eat BBQ on a nice summer day in New York.

Still not a fan of the BBQ or the beans? Then try a unique specialty of Rochester – Nick Tahou Hot’s serves a “Garbage Plate.” While the name is not appetizing, Nick has been selling these since 1918 and they were reportedly a staple during the 1930’s depression in Rochester. The plate lunch is a combination of meats and two other side dishes (I chose double white hots – sort of white hot dogs, home fries and macaroni salad). The whole plate is then covered with a hot meat sauce-sort of a spicy chili. Next, two slices of Italian bread are pressed into the pile. If that is not enough, you can add mustard, onions, or whatever you like on top. And the surprise is that this combination is good. It is very filling and something worth trying if you are in the area. Nick has even trademarked the name.

I discovered the Garbage Plate through a conversation with a person next to me on the flight into Rochester. I mentioned it to our client in Rochester who offered to accompany me for dinner. According to my initial information source and my local host, people in Rochester really like their Garbage Plates. However, my host pointed out they are a high calorie dinner and best saved for special occasions.

ORC Training can customize training for your Agency.
Contact Lisa Barnes at 850-907-0040 or lbarnes@orcolan.com.

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