



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Whether Land Located in the
Town of Bayfield, Bayfield County, and Owned by
Patrick D. Brown, and under Forest Crop Law
Contract #04-009-1980, Shall Continue as
Forest Cropland

Case No.: IH-08-01

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to due notice, hearing was held at Washburn, Wisconsin, on July 21, 2010. Mr. Brown failed to appear despite having received (and signed for) Notice of the hearing by certified mail on May 27, 2010. Pursuant to NR 2.09(3)(b) and HA 1.07(3)(b), Wisc. Admin. Code, the DNR presented its case to the Division and the following Order was entered.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Attorney Quinn Williams
Department of Natural Resources
P. O. Box 7921
Madison, WI 53707-7921

Patrick Brown
79685 Sioux River Heights
Washburn, WI 54891

FINDINGS OF FACT

1. Upon petition dated November 21, 1979, by owner Martin A. Piehl and pursuant to s. 77.02, Wis. Stats., by Order No. FC-4192, the DNR, in January, 1980, entered 40 Acres comprising the SESE of S34, T52N, R5W Located in the Town of Bayfield, Bayfield County as part of a larger entry under Forest Crop Law ("FCL"). (Exhibits 2 and 3)

2. The Department received a transfer of ownership form and an acceptance of transfer form signed by grantor Martin A. Piehl on October 5, 1997 and by grantee Daniel W. Campbell on October 15, 1997. (Exhibit 5)
3. Accordingly, on October 28, 1997, the Department issued a FCL Transfer Order number T-4976 for a land contract transfer for the 40 acres described above, pursuant to s. 77.10(1)(b), Wis. Stats., and created the new FCL Order No. 04-009-1980. (Exhibit 6)
4. On April 10, 2003 the Department issued an FCL Transfer Order for a complete transfer, pursuant to s. 77.10(1)(b), Wis. Stats., from the grantor Daniel W. Campbell, to the grantee Patrick D. Brown, for the land designated under FCL Order No. 04-009-1980, recorded by the Bayfield County Register of Deeds on June 12, 2003, for 40 acres located in . (Exhibit 8)
5. An updated management schedule was written on December 9, 1997 for Mr. Campbell, and was subsequently modified and sent to Mr. Brown on April 10, 2003. This management plan included requirements for regenerating or replanting stand 1. (Exhibit 9)
6. Mr. Brown was notified via the modified management plan (Exhibit 9) and an accompanying letter from Forest Ranger Hillebrand (Exhibit 10) that he may need to protect seedlings regenerating from a 2 acre strip cut that had been completed in stand 1 in 2002.
7. Two reminder letters to complete the required practice and establish regeneration in stand 1 were sent in February of 2004 and February 2005 to Mr. Brown. (Exhibits 11 and 12)
8. On July 8, 2005, Mr. Brown contacted the office inquiring about the status of the regeneration in stand 1. (Testimony, DNR Forest Ranger Hillebrand)
9. A field check was done in August confirming there was insufficient natural regeneration in stand 1. (Exhibit 13)
10. Mr. Brown was contacted through a letter on August 23, 2005 that he would need to replant that 2 acre area in stand 1, and detailed options available to him regarding the replanting, including a cost sharing application. (Exhibit 14)
11. Mr. Brown signed up for cost sharing for planting in February 2006 and received a grant on August 1, 2006. (Exhibit 15)
12. On January 2, 2007, a letter was written to Mr. Brown informing him that his practice in stand 1 for replanting was overdue and that he must plant the 2 acre area the following spring. (Exhibit 16)

13. DNR Forest Ranger Hillebrand wrote Mr. Brown on August 4, 2007, inquiring if he had completed the practice in stand 1 for replanting. She asked that Brown respond within 2 weeks. (Exhibit 17)
14. There was no response and no planted trees could be found in stand 1 on a field check on August 24, 2007. (Testimony – Hillebrand)
15. A Notice of Investigation letter was sent on August 27, 2007 requiring that the strip in stand 1 be planted by October 15, 2007. (Exhibit 18)
16. No planted trees were found in stand 1 on a site visit on October 25, 2007. (Testimony – Hillebrand)
17. Replanting and restocking is critical to maintaining a productive forest. (Testimony – Hillebrand)
18. Mr. Brown was given ample opportunity, time, advice, and resources to meet the required restocking in stand 1.
19. On May 28, 2008, this matter came for hearing in Bayfield, Wisconsin, Jeffrey D. Boldt, administrative law judge, presiding. Mr. Brown appeared, and voluntarily elected to withdraw the disputed lands from the Forest Crop Law Program. The parties agreed that the matter be remanded to the Department and Mr. Brown signed a “Declaration of Withdrawal – Forest Crop Law,” DNR form 2450-8. On June 3, 2008, an “Order of Remand and of Dismissal of Contested Case” was issued by ALJ Boldt.
20. On June 16, 2008, the Department sent a FCL withdrawal tax request to the Wisconsin Department of Revenue (“DOR”) for the property.
21. On November 19, 2008, the Department received the withdrawal tax calculation from DOR. Since payment would have needed to be received by November 20, 2008 from Mr. Brown for the property to be withdrawn on January 1, 2009, the Department contacted Mr. Brown via phone and agreed to calculate the withdrawal for the 2009 taxes.
22. On March 10, 2009, the Department sent a FCL withdrawal tax request to DOR for the property. On April 20, 2009, the Department received the withdrawal tax calculation from DOR
23. On April 24, 2009, the Department issued an invoice to Mr. Brown for the withdrawal taxes owed for a voluntary withdrawal, required under s. 77.10(2)(a)1., in the amount of \$20,629.22, due on June 23, 2009.
24. Having received no payment by June 23, 2009, or contact from Mr. Brown, on August 6, 2009, the Department issued a letter to Mr. Brown voiding the voluntary withdrawal.

25. On May 17, 2010, a Notice of Investigation, Telephone Prehearing and Hearing was sent to Mr. Brown, indicating that the Department was seeking withdrawal of the property from the program for failure to practice sound forestry on the land. Mr. Brown signed for the Notice sent by certified mail on May 27, 2010.
26. The DNR has established by a preponderance of the credible evidence that withdrawal of the property from the program is required do to Mr. Brown's failure to practice sound forestry on the land as required by Wis. Stat. § 77.10(1).

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary Orders relating to withdrawal of Forest Crop Lands designation pursuant to Wis. Stat. §§ 227.43 and 77.10(1).
2. The purpose of the Forest Crop Lands program is to encourage a policy of reproducing and growing for the future adequate crops through sound forestry practices of forest products so that such lands shall continue to furnish recurring forest crops for commercial use in a manner that shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands. Wis. Stat. § 77.01.
3. The Department may on its own motion investigate and hold a hearing as to whether any Forest Crop Lands shall continue as Forest Crop Lands, and shall cancel the entry of such description and issue an order of withdrawal if it finds that the owner has failed to practice sound forestry on the land. Wis. Stat. § 77.10(1).
4. The Department of Natural Resources is charged by the Legislature with the administration of the Forest Crop Lands program, and its judgment as to what constitutes "sound forestry" is entitled to deference. Mr. Brown has failed to practice sound forestry within the meaning of Wis. Stat. §§ 77.01, 77.02(3), and 77.10(1) and Wis. Admin. Code ss. NR 46.02(6), NR 46.02(12), NR 46.02(17) and NR 46.02(24m)
5. To date Mr. Brown has enjoyed the tax benefits of Forest Crop Lands law but has not attempted to regenerate or replant stand 1 in the property described above. Replanting and/or regeneration in stand 1 are the minimum required practice to meet the requirements of sound forestry under Wis. Stats. s. 77.02(3) and Wis. Admin. Code. ss. NR 46.06(17) and NR 46.06(6), and is necessary to meet the purpose of Wis. Stats. s. 77.01. Accordingly, the land must be withdrawn from designation as Forest Crop Lands pursuant to Wis. Stat. § 77.10(1) and the owner held liable for the tax and penalty under Wis. Stat. § 77.10(2).
6. Since the agreement between the parties on May 28, 2008 was for Mr. Brown to voluntarily withdraw in order to avoid the costs and time involved in further litigating the hearing, and since Mr. Brown has failed to complete the voluntary withdrawal as agreed, this land must be withdrawn from Forest Cropland pursuant to s. 77.10(1), Stats., for failure to practice sound forestry.

7. Any order of the Department relating to the entry of Forest Crop Lands issued on or before November 20 of any year shall take effect on January 1 of the following calendar year pursuant to Wis. Stat. § 77.02(3).

ORDER

WHEREFORE IT IS HEREBY ORDERED, that the property that is the subject of this hearing, the SESE of S34, T52N, R5W Located in the Town of Bayfield, Bayfield County, is hereby withdrawn from designation as Forest Crop Land law effective January 1, 2011.

IT IS FURTHER ORDERED that a Withdrawal Tax to be calculated by the Department of Revenue pursuant to Wis. Stat. §§ 77.10(2) and 77.04(1), is due and payable to the Department of Natural Resources by the last day of January 2011. If unpaid, the taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

Dated at Madison, Wisconsin on July 26, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By _____
JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48, and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30)

days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements