



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

In the Matter of Whether Land Located in the
Town of Barksdale, Bayfield County, Owned by
Martin A. and Paula A. Piehl and Subject to a Land
Contract with Vendees Randall A. and Debra J.
Blomberg Shall be Withdrawn as Forest Crop
Lands

Case No.: IH-99-12

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources on its own motion investigated and requested a hearing to determine whether 47.63 acres owned by Martin and Piehl and Subject to a Land Contract with vendees Randall and Debra Blomberg located in Bayfield County should continue as Forest Cropland under sec. 77.02, Wis. Stats. Pursuant to due notice a hearing was held on March 21, 2000, in Washburn, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

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

Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh
P. O. Box 7921
Madison, WI 53707-7921

Debra Blomberg
W3907 State Road 86
Ogema, WI 54459

FINDINGS OF FACT

1. Effective March 1, 1977, the Department of Natural Resources (Department) entered a 327.63 acre parcel located in Bayfield County owned by Martin A. Piehl as Forest Crop Land. A portion of this property was subsequently sold to Randall and Debra Blomberg by land contract on July 30, 1995.

2. The Blombergs petitioned the Department to continue the land they purchased from Martin Piehl as Forest Crop Land. By Forest Crop Land Transfer Order No. T-4226, two parcels, a 47.63 acre parcel and a 40.00 acre, were transferred to the Blombergs and the Forest Crop Land designation was continued for the parcels. The legal description of the 47.63 acre parcel is the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 19, Township 48 North, Range 5 West, Town of Barksdale, Bayfield County. The legal description of the forty acre parcel is the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 19, Township 48 North, Range 5 West, Town of Barksdale, Bayfield County.

3. A Forest Crop Land Management Schedule was prepared for the land purchased by the Blombergs and mailed to them on December 14, 1995. In the management schedule the land was divided into six separate stands of timber numbered stands 16 through 21. The management schedule required that by the end of 1997, stand 17 be clear-cut, stand 18 be "cleaned up" after a regeneration harvest in 1991, and on stand 19, which was cut in 1991, a supplemental planting be done. Stand 17 is on the 47.63 acre parcel and stand 19 is on the forty acre parcel.

4. Pursuant to sec. 77.06(1), Stats., an owner of land designated as Forest Crop Land is required to file a cutting notice with the Department at least thirty days prior to cutting any timber. During 1996, Rose Hillebrand, the Department's forester for the eastern part of Bayfield County, sent numerous letters to the Blombergs reminding them of the cutting requirement for stand 17 in the management schedule.

5. The Blombergs did not cut the required timber in stand 17 during 1996, 1997, or 1998, despite a total of seven letters sent to them by Ranger Hillebrand. The letter Ranger Hillebrand sent to Randall Blomberg dated October 19, 1998, directed Mr. Blomberg to provide her with evidence by November 30, 1998, that he intended to comply with the management schedule or she would assume he was no longer interested in having the subject parcels continue as Forest Crop Land.

6. The Department did not receive any response from the Blombergs to any of the letters sent by Ranger Hillebrand. By letter dated January 7, 1999, Ranger Hillebrand sent to the Blombergs a "Notice of Investigation" regarding their failure to complete the required timber cutting in stand 17 and the regeneration planting in stand 19. The "Notice of Investigation" gave the Blombergs additional time until February 8, 1999, to provide proof that they intended to comply with the management schedule.

7. The Blombergs did not respond to the "Notice of Investigation" and on July 27, 1999, the Department sent another letter to the Blombergs giving them a new deadline of August 30, 1999, to "begin the process of complying with the forest management plan, or in the alternative to have the property withdrawn from the program." The Department received no response to this letter. Ranger Hillebrand subsequently revisited the Blomberg property. She determined that the scrub oak growing on stand 19 did meet the minimum restocking requirements. Accordingly, the Department is not seeking withdrawal of the forty acre parcel as Forest Crop Land. On November 4, 1999, the Department requested the Division of Hearings and Appeals conduct a hearing pursuant to sec. 77.10(1), Stats., withdrawing the 47.63 acre parcel as Forest Crop Land.

8. A Notice of Hearing was issued on November 17, 1999, informing the parties that a hearing in this matter was scheduled for March 21, 2000. On March 15, 2000, Randall Blomberg filed a cutting notice proposing to "cut all Jack Pine and Aspen, scarifying the soil as much as possible concurrently with harvest to regenerate Jack Pine." In a cover letter sent with the cutting notice Mr. Blomberg indicated he planned to cut this sale within the next year. At the hearing, Debra Blomberg testified that she thought the required cutting could be completed within three months.

9. Owners of land that is designated as Forest Crop Land agree to practice sound forestry management. Sound forestry management requires that mature trees be harvested. If trees are not harvested when they become mature, they will yield lower quality lumber and the land will produce fewer crops of lumber. Producing fewer crops and lower quality lumber fails to maximize the productivity of forest crop land. According to the management schedule, stand 17 should have been harvested by the end of 1997. Despite numerous reminders and extensions of the management schedule deadlines, the Blombergs failed to even commence the required work by the time of the hearing, which was conducted over two years after the initial deadlines. Randall and Debra Blomberg have not practiced sound forest management on the 47.63 acre parcel purchased from Martin Piehl.

Discussion

The Blombergs do not dispute that they failed to comply with the management schedule with respect to stand 17. Ms. Blomberg testified at the hearing that salvaging timber from trees that were blown down during a windstorm in southwestern Wisconsin in 1998 has been their highest priority the past two years. Additionally, Ms. Blomberg testified that her husband felt that harvesting the jack pine on stand 17 in 1997, as required by the management schedule, was premature. However, in the Acknowledgement of Land Contract for Forest Crop Law executed by the Blombergs on August 30, 1995, the Blombergs agreed to manage the property according to the management plan. If the Blombergs were unable to comply with the management schedule because of other priorities they should have contacted the Department. It is likely that the Department would have been willing to modify the schedule. The numerous letters sent by the Department to the Blombergs only asked for evidence that they intended to comply with the management schedule requirements.

Similarly, if the Blombergs disagreed with the harvesting schedule for stand 17 in the management schedule, they should have communicated this to the Department. Rather they ignored the Department's numerous reminders and deadlines. The Blombergs did not file a cutting notice until six days before the scheduled hearing and did not indicate that they felt the deadline for harvesting on stand 17 was a "little premature" until the hearing. The Blombergs' contention that the deadline for harvesting on stand 17 was a "little premature" was not supported by any evidence. The Blombergs have failed to comply with the management schedule with respect to stand 17. The explanations for the failure presented at the hearing are not persuasive in light of the fact that the Blombergs made no effort to discuss them with the Department until after the Department expended the time and resources to initiate and prepare for the withdrawal hearing.

CONCLUSIONS OF LAW

1. Pursuant to sec. NR 46.02(17), Wis. Adm. Code, "Practice forestry", "sound forestry practices" and "sound forestry" mean sound and commonly accepted timber cutting, transporting and forest cultural methods recommended or approved by a qualified forester of the department for most effective propagation and improvement of the various timber types common to Wisconsin. Based on the evidence presented by the Department, Randall and Debra Blomberg have not practiced sound forest management with respect to the 47.63 acre parcel they are purchasing by land contract from Martin Piehl.

2. Pursuant to sec. 77.10(1), Stats., failure to practice sound forest management is grounds for withdrawal of the land from the forest cropland program.

3. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary orders relating to the withdrawal of forest croplands pursuant to secs. 227.43(1)(b) and 77.02, Stats.

ORDER

IT IS HEREBY ORDERED that pursuant to the foregoing Findings of Fact and Conclusions of Law, the 47.63 acre parcel described above is withdrawn from entry under the Forest Crop Law.

IT IS FURTHER ORDERED that the tax due by the owner (as determined by the Wisconsin Department of Revenue) and interest thereon shall be paid to the Department of Natural Resources pursuant to sec. 77.10(1)(a), Stats.

IT IS FURTHER ORDERED that a copy of this order be transmitted by the Department of Natural Resources to the Wisconsin Department of Revenue, to the Clerk of the Town of Barksdale, to the Register of Deeds of Bayfield County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on May 9, 2000.

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By _____

MARK J. KAISER
ADMINISTRATIVE LAW JUDGE