

file

**BEFORE THE
STATE OF WISCONSIN
Division Of Hearings And Appeals**

In the Matter of an Appeal of a Department
Decision Granting Deer Farm Licenses to Wild
Rivers Whitetails, Inc., Fence, Wisconsin

Case No. IH-97-02

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to due notice hearing was held on April 29, 1997, Jeffrey D. Boldt,
administrative law judge (the ALJ) presiding.

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

Michael A. Lutz, Attorney
P. O. Box 7921
Madison, Wisconsin 53707-7921

Wild Rivers Whitetails, Inc., by

Thomas M. Olejniczak, Attorney
Liebmann, Conway, Olejniczak & Jerry, S.C.
P. O. Box 23200
Green Bay, Wisconsin 54305-3200

Eric D. Huotari
HC 1 Box 384-B
Fence, Wisconsin 54120

Margaret Dziewiontkoski
HC 1 Box 366
Fence, Wisconsin 54120

Anthony Dziewiontkoski
Route 1 Box 366
Fence, Wisconsin 54120

Gene Dziewiontkoski
Route 1 Box 366
Fence, Wisconsin 54120

Anton Dziewiontkoski
N18952 Franks Road
Goodman, Wisconsin 54125

Guyland Evan Asten
9245 Medina Jct. Rd.
Larsen, Wisconsin 54947

FINDINGS OF FACT

1. On October 1, 1996, Wild Rivers Whitetails, Inc. (Wild Rivers) , c/o Mr. James E. LaChappel, N 20549 LeFave Drive, Fence, Wisconsin 54120, submitted Game Farm License Applications to the Department of Natural Resources pursuant to sec. 29.578, Stats., for deer farms located in the Town of Fence, Florence County and the Town of Goodman, Marinette County. On December 13, 1996, the Department issued License #1086 to conduct and operate a deer farm in Florence County and License #1085 for a deer farm in Marinette County.

2. The Department received appeals of its decision to grant the licenses from Ms. Joanie Biller, P. O. Box 25, Fence, WI 54120 and from Mr. Anthony J. Dziewiontkoski, Route 1, Box 366, Fence, WI 54120, pursuant to sec. 227.42, Stats. On February 18, 1997, the Department filed a request for hearing with the Division of Hearings and Appeals.

3. There is no serious factual dispute that above-described lands are suitable for the breeding and propagating of deer. Each of the two licensed areas consists of 27 acres within the natural range of white tail deer and provides suitable deer habitat. The only disputed issue relates to whether the Florence County site has an acceptable drainage runoff pattern. This issue is largely outside of the statutory requirements as set forth in sec. 29.578, Stats. However, there was nothing in the record which indicated that the deer farm would cause environmental pollution from surface water runoff of deer waste.

4. There is no question that the deer fence installed by Wild Rivers exceeds the general standards required by statute, that the area be "completely inclosed" by fence. Nor is there any dispute that the fence far exceeds the specific requirements found at sec.

NR 16.01, Wis. Admin. Code. The fence consists of "high tensile" deer fencing wire. The steel posts were properly spaced, and the height of 7 feet, 10 inches, exceeded minimum code requirements. (Lindsley)

5. The objectors made much of the fact that two of the principals involved in Wild Rivers Whitetails, Inc. have long-standing ties to the Department of Natural Resources (the DNR). Before retiring, Gary Nelson worked for the DNR for 14 years, most recently as Southeast District Environmental Coordinator. Jim LaChappel, another Wild Rivers investor, continues to work for the DNR as a forestry technician. Mr. Tony Dziejwiontkoski argued forcefully that the applicants should not receive special considerations, or another set of standards, than what non-Department members of the public would receive. He is right. However, the record was clear that this application received either the same or more scrutiny than any other deer farm license application.

The central complaint of Mr. Dziejwiontkoski was that the Department allowed the farms to accept deer prior to final receipt of their licenses. The record indicated that the deer arrived at the Fence site on October 26, 1996. The license was approved on November 8, 1996. However, all of the testimony was that this was not an uncommon practice in deer farm licensing to accommodate the scheduling of transport of farm-raised deer. (Lindsley) *The DNR policy demonstrates administrative flexibility that well serves the users of Department services.* All of the deer at the farm came from other DNR licensed deer farms and had all required records as of November, 1996.

DISCUSSION

Most of the objections raised initially by Mr. Dziejwiontkoski and others were not pursued at hearing. The objectors withdrew any objections based upon health care and prevention of disease in the deer farm population. In any event, the applicants presented a state-of-the-art disease control plan. Other objections were premised on the idea that licensed deer farms were a bad idea. However, that is an issue for the legislature and not the Administrative Law Judge to decide.

The two issues for this hearing were 1) whether the application met the standards under the statute and code; and 2) whether there was favoritism in the processing of the licenses given the DNR connection of Wild Rivers Whitetail's principals. While the objectors bore the burden of proof, the applicants affirmatively proved that the statutory and code standards have been met. Further, the DNR witnesses were convincing that there was no favoritism shown the applicants. Accordingly, the licenses shall stand as granted.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases relating to deer farm licenses pursuant to secs. 227.43 and 29.578, Stats.
2. The application has met the requirements of sec. 29.578, Stats. The subject parcels are "suitable for the breeding and propagation of deer" and the deer farm will be "completely enclosed by a fence."
3. The deer farm fence exceeds the required specifications as set forth in sec. NR 16.01, Wis. Admin. Code, including height, posting material and spacing, and fence materials.
4. The Town of Fence and the Town of Goodman have not adopted a municipal ordinance regulating deer farms pursuant to sec. 29.425, Stats.

ORDER

WHEREFORE, IT IS HEREBY ORDERED, that the issuance of the licenses as previously granted by the Department be AFFIRMED, and the same shall remain in full force and effect;

IT IS FURTHER ORDERED that the petition for review be DISMISSED, with prejudice.

Dated at Madison, Wisconsin on June 4, 1997.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 267-2744

By Jeffrey D. Boldt
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 sec. 227.48, Stats., 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 secs. 227.52 and 227.53, Stats.
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 sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
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 sec. 227.52 and 227.53, Stats. 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 secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.