

May 20, 1999

Robert Berthelsen, Chair
Freeborn County
Board of Commissioners
P.O. Box 1147
Albert Lea, MN 56007

RE: In the Matter of the Trespass Citation Issued to Merlin S. Peterson; OAH
Docket No. 6-2000-12012-2

Dear Chair Berthelsen:

On May 18, 1999, I conducted an in-person hearing on this citation. The landowner, Beverly Oyer, appeared in person, as did the alleged trespassor, Merlin Peterson. Also present was Freeborn County Sheriff's Investigator Charles Malepsy, as well as some members of Mr. Peterson's family. The hearing concluded in less than an hour, after both sides had been given an opportunity to say everything they wanted to about the matter. Based on all of the evidence and testimony, I recommend that the citation be dismissed. This recommendation is provided to the Freeborn County Board pursuant to Minn. Stat. §§ 97B.002 and 116.072, subd. 6(c).

This citation arose out of an incident which occurred on Thanksgiving Day of 1998, which was November 26. On that day, at approximately 11:00 a.m., Beverly Oyer stepped outside of her home in Section 25 of Riceland Township. She heard voices. She saw two or three hunters, with a hunting dog, on her property near the house. She got in her car, and drove to where a pickup truck was parked on the road. She did this in order to get the license number of the pickup. The hunters approached her, and a cordial conversation ensued. Ms. Oyer believed that she recognized one of the hunters as Merlin Peterson, a landowner at the other end of Section 25. She told the hunters that she did not want them hunting on her property, and they left. Mrs. Oyer did not get the license number of the pickup truck, nor did she ask for the names of any of the hunters. She returned to her house, and telephoned the County Sheriff, and provided the Sheriff's office with Mr. Peterson's name. The Sheriff's office wrote out a civil citation, and Investigator Malepsy hand-delivered it to Mr. Peterson the following Monday, November 30.

Mr. Peterson testified that he was nowhere near the Oyers' property on Thanksgiving Day of 1998. He testified that he was hunting ducks at Sugar Lake with Brady, his grandson, early in the morning of Thanksgiving Day, but that Brady had to be home before 11:00 in the morning in order to get ready to go to the Twin Cities for Thanksgiving Dinner with other relatives. Mr. Peterson stated that he and Brady got home about 10:30 in the morning, Brady went to the Cities, while Mr. Peterson went to work doing some window work on his house. Mr. Peterson did not leave his property for

the rest of the day. He stated he does not own a pickup, does not have a hunting dog, and was not hunting anywhere near the Oyers' property on that day.

Officer Malepsy testified that when he took the citation out to Mr. Peterson on the 30th, Mr. Peterson denied being on the Oyer property that day. Mr. Peterson readily admitted that a year earlier, in 1997, he had been hunting on other land owned by the Oyers, had been confronted by Mrs. Oyer back in 1997, and had left. This earlier incident was confirmed by Mrs. Oyer and Mr. Peterson.

Both Mrs. Oyer and Mr. Peterson agreed that the 1997 conversation was the only conversation they had ever had together. Despite their living near each other, they have not had any contact with each other except for that single 1997 conversation.

In cases such as this, the burden of proof is upon the landowner, or the deputy sheriff issuing the citation at the request of the landowner. Although the burden is by a simple preponderance of the evidence, I do not believe that the burden has been met in this case. I believe that Mrs. Oyer mistakenly identified one of the hunters as Mr. Peterson, but failed to verify her assumption by getting any sort of identification from the hunter or the license number of the truck. Mr. Peterson's denial is the same story that he gave to Investigator Malepsy back in November, and was confirmed by the testimony of his grandson, Brady.

For the foregoing reasons, I recommend that the citation issued to Merlin Peterson on November 30, 1998, be DISMISSED, and that no charges or fees be assessed against any party in this case. Both parties acted in good faith, and there is no reason to penalize either of them.

This Recommendation is just that – a recommendation. The final decision in this matter is made by the Freeborn County Board, which may affirm, modify, or reject this Recommendation. The County Board must wait at least five days after receipt of this letter before taking any final decision in the matter, and either party may, within those five days, comment to the County Board on the Recommendation. After the County Board makes its final decision, a copy of the final decision will be mailed to Mrs. Oyer and Mr. Peterson. The County Board's final decision may be appealed as provided in Minn. Stat. §§ 14.63 to 14.69.

Sincerely,

ALLAN W. KLEIN
Administrative Law Judge

Telephone: 612/341-7609

AWK:lr

cc: Beverly Oyer
Deputy Neal Pedersen

Merlin S. Peterson
Pat Watts, DNR Enforcement