

[Link to Final Agency Decision](#)

February 27, 2007

Mark Holsten, Commissioner  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4040

Re: *In the Matter of the Trespass Citation Issued to Scott Herman Farrell, Citation No. 49701;*  
OAH Docket No. 3-2000-17860-2

Dear Commissioner Holsten:

The above-entitled matter came on for a prehearing telephone conference call at 10:00 a.m. on February 27, 2007. The Administrative Law Judge, Carver County Deputy Jim Gamlin, and Scott Farrell participated in the telephone conference. All participants agreed that no formal hearing would be needed and that the ALJ could decide the matter based on the record created during the telephone conference.

The facts are as follows. Mr. Farrell lives at 2243 Boulder Road in Chanhassen. His back yard (and the back yards of several other homeowners on Boulder Road) faces a wedge-shaped parcel of property that is bounded at the top by the southern portion of the back yards and at the bottom by the intersection of Lyman Boulevard and a set of railroad tracks running from the southwest to the northeast. The wedge-shaped property is currently owned or leased by Verizon Wireless, which has there constructed a cell tower and a small building containing electronic equipment. The tower and building are fenced and posted with no trespassing signs; the perimeter of the property is not fenced or posted, but Verizon Wireless has not consented to others entering the property for any purpose. There is an access road from Lyman Boulevard onto the property.

Approximately one year ago, Deputy Jim Gamlin observed from the access road that a teenage boy was riding an all-terrain vehicle (ATV) in circles around the tower. The boy drove the ATV to a home that Deputy Gamlin identified as Mr. Farrell's home, and the boy was identified as Mr. Farrell's son.

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Deputy Gamlin issued a civil trespass citation to Mr. Farrell's wife after advising her that Verizon did not consent to this use of the property.

On December 22, 2006, Deputy Gamlin had pulled onto the access road off of Lyman Boulevard to make a telephone call. He observed ATV tracks in freshly fallen snow, indicating that someone had driven an ATV in circles several times around the tower. He followed the tracks to the back of the Farrell home, where an ATV was parked. He again spoke to Mrs. Farrell, and then issued a civil trespass citation to Mr. Farrell as the registered owner of the ATV. Mr. Farrell appealed the citation.

Minn. Stat. § 84.90, subd. 2 (2006), provides that within the seven-county metropolitan area, no person shall enter and operate a recreational motor vehicle on lands not owned by the person, except where otherwise allowed by law, without the written or oral permission of the owner, occupant, or lessee of such lands. The law therefore requires no posting, but puts the burden on an ATV driver to know where the boundaries are and to obtain permission before entering.

During the prehearing conference, Mr. Farrell described the difficulty his son had of identifying the precise boundaries of Verizon's property; he acknowledged, however, that he was familiar with the boundaries of his own property. Mr. Farrell maintained that, at some point prior to Verizon's construction of the cell tower, he had obtained permission from the previous land owner to enter the property. He also indicated that his ATVs are not normally kept at his home, but are kept at his cabin unless they are being serviced. He further indicated that he had prohibited his son from riding ATVs except at the cabin.

Deputy Gamlin then offered to dismiss the civil trespass citation, with the understanding that if such an occurrence happens again, he will issue a criminal citation. Mr. Farrell stated he understood the condition and agreed to this resolution. The Administrative Law Judge believes that the discussion in the prehearing conference was useful to Mr. Farrell and that he understands the importance of avoiding future violations, not just for his son but for ATV riders in general. The Administrative Law Judge accordingly recommends that the Commissioner concur with this agreement and dismiss civil trespass citation no. 49701. I am closing our file in this matter and returning the record to you.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of this recommendation before making a final

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decision. Within those five days, the person to whom the order is issued may comment on this recommendation. The Commissioner must send a copy of the final decision to Mr. Farrell. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.

Sincerely,  
s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Encl.

cc: Deputy Jim Gamlin  
Scott Farrell