

# ALBERTA PUBLIC LANDS APPEAL BOARD

## Decision

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Date of Decision – May 10, 2018

**IN THE MATTER OF** sections 119, 120, 121, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, 213, and 235 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

**-and-**

**IN THE MATTER OF** an appeal filed by Henry Vos, with respect to the decision by the Director, Provincial Approvals Section, Alberta Environment and Parks, to reject land disposition request, LDR 140022.

Cite as: *Vos v. Director, Provincial Approvals Section, Alberta Environment and Parks* (10 May 2018), Appeal No. 17-0012-ID1 (A.P.L.A.B.).

**BEFORE:**

Ms. Marian Fluker, Acting Board Chair and Appeals Coordinator.

**SUBMISSIONS BY:**

**Appellant:** Mr. Henry Vos.

**Director:** Ms. Lennea Oseen, Manager, Approvals and Dispositions Services, Alberta Environment and Parks, represented by Ms. Lisa Semenchuk, Alberta Justice and Solicitor General.

## EXECUTIVE SUMMARY

Mr. Henry Vos (the Appellant) submitted a Land Disposition Request (LDR) to Alberta Environment and Parks (AEP), for public land located between the Shaftesbury Settlement River Lot 3 and the Peace River. The Director rejected the LDR and the Appellant filed a Notice of Appeal with the Public Lands Appeal Board (the Board).

AEP filed a preliminary motion with the Board requesting the Board dismiss the Appellant's Notice of Appeal as the Board did not have the jurisdiction to hear appeals of decisions regarding the sale of public land.

The Board received submissions from the parties on the issue of whether the Board had jurisdiction to hear this appeal. The Board found no evidence the Appellant was applying to purchase public land. The Board also found AEP's rejection letter contemplated an application by the Appellant for a disposition. The Board concluded the Appellant was appealing the refusal of the Director to issue a disposition, which is appealable under section 211 of the Public Lands Administration Regulation. As the appeal before the Board is valid, the Director's application to dismiss the appeal is dismissed.

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## I. INTRODUCTION

[1] This is the decision and the reasons of the Public Lands Appeal Board (the “Board”) on the application by the Manager, Approvals and Dispositions Services, Alberta Environment and Parks (the “Director”), to dismiss a Notice of Appeal filed by Mr. Henry Vos (the “Appellant”). The Appellant filed a Notice of Appeal with respect to the June 29, 2017 decision of the Director to reject a land disposition request LDR 140022 (the “LDR”).<sup>1</sup> The Director asked the Board to dismiss the Notice of Appeal, arguing the Board does not have jurisdiction to hear an appeal of the rejection of an LDR.

## II. BACKGROUND

[2] The Board received a Notice of Appeal from the Appellant on July 31, 2017, appealing the Director’s decision to refuse to issue a disposition for public land located between the Shaftesburg Settlement River Lot 3 and the Peace River. The Director stated the reasons for the rejection were as follows:

- (a) Alberta Transportation opposed the LDR as the land may be required for future infrastructure needs;
- (b) the land is vulnerable to flooding; and
- (c) the land is located within a Key Wildlife Biodiversity Zone.

[3] The Board wrote to the Appellant and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and requesting the Director provide the record and policies (the “Director’s Record”) on which the decision was based. On September 6, 2017, the Director stated she would not be providing the Director’s Record as she was of opinion the Board did not have jurisdiction to hear an appeal of the decision.

[4] The Board requested the Director’s Record from the Director again on October 12, 2017, and advised the Parties that once the Director’s Record had been received and distributed, the Board would set dates for submissions regarding the issue of the Board’s

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<sup>1</sup> “The Land Disposition Request (LDR) allows the public to apply for agricultural use or sale of public land. When an application is received, [Alberta Environment and Parks] evaluates the land to determine the appropriate land use and tenure. If the review results in a recommendation to sell or allow agricultural use, a land auction or tender generally occurs. This process usually applies to vacant (unallocated) public land.” Application and Processing Procedure for Agricultural Land Disposition Requests - Lands Division - Staff Directive No. 2011.01 Rangeland Management Branch, April 1, 2011.

jurisdiction to hear the appeal. In a letter dated October 16, 2017, the Director stated the Board only had jurisdiction if the appeal is of a decision listed in section 211 of the *Public Lands Administration Regulation* (“PLAR”),<sup>2</sup> and the Director was of the view the Appellant was appealing a decision not prescribed under section 211. The Director submitted the Board should make its decision based on the Notice of Appeal. The Director stated no further records from the Alberta Environment and Parks (“AEP”) were necessary for the Board to make its decision regarding jurisdiction to hear the appeal.

[5] The Board responded to the Director’s correspondence on October 16, 2017, stating that, based only on the documents before it, specifically the Notice of Appeal and the Director’s decision letter dated June 29, 2017, the Board found the Appellant had applied for a disposition which had been refused by the Director. The Board noted section 211(b) of PLAR stated “the rejection of an application under the Act for a disposition” is a prescribed decision from which an appeal is available, and therefore, the Appellant’s Notice of Appeal was properly before the Board. The Board again requested the Director to advise when the Director’s Record would be provided. The Board also requested available dates from the Parties for a mediation meeting or hearing.

[6] The Director provided the Director’s Record on November 17, 2017, and noted the Director’s Record showed the Appellant had requested a sale of public land, which was not an appealable matter under PLAR. The Board received a preliminary motion from the Director on December 7, 2017, requesting the Board “confirm that it does not have jurisdiction to hear an appeal of [AEP’s] decision to not sell the former island and former channel of the Peace River to Mr. Vos.” In this preliminary motion, the Director asked the Board to reject the Notice of Appeal.

[7] The Board received written submissions from the Parties on whether the Board has the jurisdiction to accept the Appellant’s Notice of Appeal.

### **III. ISSUE**

[8] The Board received submissions on the following issue:

Does the Board have jurisdiction to hear the appeal?

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<sup>2</sup> A.R. 187/2011.

## IV. SUBMISSIONS

### A. Appellant's Submission

[9] The Appellant submitted his LDR application was for the disposition of public land. The Appellant quoted from the decision letter in which the Director stated, "In view of the above, [AEP] has concluded that the land will not be considered for sale or disposition and your land review request application has been discontinued."<sup>3</sup>

[10] The Appellant submitted section 211 of PLAR provides for an appeal of a rejection of an application under the *Public Lands Act*<sup>4</sup> (the "Act").

[11] The Appellant noted section 14 of the Act provides for the Minister to restrict the disposition of public land or to place timing and conditions on dispositions for public land. The Appellant stated the rejection letter did not contain reference to the Minister, section 14 of the Act, or any restricting or withdrawing of the land for disposition.

[12] Based on the above sections and the wording of the rejection letter, the Appellant submitted the Board had jurisdiction to hear the appeal.

### B. Director's Submission

[13] The Director submitted the decision not to sell public land is not a decision appealable to the Board under section 211 of PLAR.

[14] The Director noted the Board, in *Wiebe v. Director (Environment and Parks)*,<sup>5</sup> confirmed land sales were not appealable to the Board.

[15] The Director stated it was clear from the Director's Record the Appellant, at all times, was requesting the public land be sold by AEP. The Director submitted that no other type of disposition or authorization was requested or discussed by the Appellant.

[16] The Director stated the Appellant has the burden to prove the Board has jurisdiction to hear an appeal of a decision not to sell the subject land, and he had not met that burden.

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<sup>3</sup> Decision Letter, Director's Record, Tab 14.

<sup>4</sup> *Public Lands Act*, R.S.A. 2000, c.-40.

<sup>5</sup> *Wiebe v. Director (Environment and Parks)*, (22 July 2016) APLAB 15-0020-R ("*Wiebe*").

[17] The Director requested the Board consider her motion and confirm the Board does not have jurisdiction to hear an appeal of the decision not to sell the public land to the Appellant, and dismiss the Appellant's Notice of Appeal.

### **C. Appellant's Rebuttal Submission**

[18] The Appellant submitted the Director had misconstrued the Board's decision in *Wiebe*. The Appellant stated the panel hearing the *Wiebe* appeal only intended to dismiss a specific portion of the appeal, and the Board heard the *Wiebe* appeal on the matter of the refusal to issue a disposition.

[19] The Appellant noted the Director's Record included an "Application for Disposition" and included comments from staff regarding a "sale," but it did not include correspondence or documents regarding the type of disposition being requested by the Appellant. The Appellant submitted the Director "mistakenly assumed the only type of disposition acceptable to the applicant was a sale."<sup>6</sup>

[20] The Appellant submitted there are other options for the use of the subject land, such as a recreation agreement, lease, rental, or co-development.

[21] The Appellant submitted the burden of proof has been met by clearly identifying which sections of the legislation are relevant in this appeal. The Appellant stated the Director's assumption that the only acceptable disposition for the Appellant was a land sale, cannot be used as a basis for a decision regarding jurisdiction.

### **V. ANALYSIS**

[22] In making its decision on the Director's preliminary motion, the Board reviewed the Parties' submissions, the Director's Record, and the relevant legislation. The Board notes the Director's Record was particularly helpful in the circumstances of this appeal where the Director was stating the Appellant requested the sale of public land at issue and the Appellant was arguing he made no such request, but was only seeking a disposition.

[23] Section 1(e) of the Act states a "disposition" means:

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<sup>6</sup> Appellant's Rebuttal Submission, April 11, 2018, at paragraph 6.



“any instrument executed pursuant to this Act, the former Act, *The Provincial Lands Act*, RSA 1942 c62, or the *Dominion Lands Act* (Canada), RSC 1927 c113, whereby

- (i) any estate or interest in land of the Crown, or
- (ii) any other right or privilege in respect of land of the Crown that is not an estate or interest in land,

is or has been granted or conveyed by the Crown to any person, but does not include a grant; ....” (Emphasis added.)

[24] Section 1(h) of the Act defines a grant as “letters patent under the Great Seal of Canada or a notification pursuant to *The Provincial Lands Act*, RSA 1942 c62, the former Act or this Act.”

[25] A grant of public land requires letters patent and is the method by which the Province affects a sale of public land. As the definition of a “disposition” expressly excludes a “grant,” and as section 211 of PLAR does not list sale of land as a decision for which an appeal right is available to the Board, the Board has no jurisdiction to hear appeals of the Director’s decision to sell or not sell public land. Therefore, the Board must determine whether the Director’s decision in question was a decision not to sell the land, for which there is no right of appeal, or whether it was a refusal to grant a disposition, which is appealable.

[26] The Appellant claims his application was for a disposition of land. The Board, upon reviewing the Director’s Record, can find no evidence where a sale of land was requested by the Appellant, although AEP staff clearly believed that was the Appellant’s intention.

[27] The Land Disposition Request Form (“LDR Form”)<sup>7</sup> lists the Appellant’s contact information, the location of the area requested, and personal information about the Appellant, but nowhere on the form does it indicate whether the request is for a disposition or a sale of land. The Board finds the LDR Form to be inadequate for the purposes of determining the Appellant’s intent, and it does not provide any information to assist the Board in deciding whether the Director is correct in stating the Appellant was, in fact, applying for a sale of land.

[28] The Director’s letter rejecting the Appellant’s LDR request states AEP “... has concluded that the land will not be considered for sale or disposition and your land review

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<sup>7</sup> Director’s Record, Tab 1.

request application has been discontinued.”<sup>8</sup> (Emphasis added.) This letter clearly shows the Director considered both whether the land should be sold and whether the land should be made available for a disposition. The Director clearly stated in the letter she was rejecting a disposition request. Therefore, as section 211(b) of PLAR lists “the rejection of an application under the Act for a disposition” as an appealable decision, the Board has jurisdiction to hear the appeal.

## **VI. CONCLUSION**

[29] The Board finds there is no indication in the Director’s Record that the Appellant is seeking a sale of the land. The Director’s letter, notifying the Appellant his application was rejected, referred not only to a sale of land but also to a disposition.

[30] Therefore, the Board concludes the Appellant is appealing the rejection of an application for a disposition of the land, which is appealable to the Board under section 211(b) of PLAR. The Appellant’s Notice of Appeal is properly before the Board and the Board has jurisdiction to hear the appeal.

[31] The Board dismisses the Director’s motion to dismiss the Appellant’s Notice of Appeal.

Dated on May 10, 2018, at Edmonton, Alberta.



Marian Fluker  
Acting Board Chair and  
Appeals Coordinator

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<sup>8</sup> Director’s Record, Tab 14.