

ALBERTA
PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – June 7, 2018

IN THE MATTER OF sections 121 and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 213, 228, and 235 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF an appeal filed by Gordon Trost with respect to the decisions by the Director, Provincial Approvals Section, Alberta Environment and Parks, to issue SML 080085 to Tor Land Resource Inc. and SML 100085 to 541466 Alberta Ltd. (JLG Ball Enterprises).

Cite as: *Trost v. Director, Provincial Approvals Section, Alberta Environment and Parks, re: Tor Land Resource Inc. and 541466 Alberta Ltd.* (7 June 2018), Appeal Nos. 17-0038-0039-D (A.P.L.A.B.).

BEFORE: Ms. Marian Fluker, Acting Board Chair and Appeals Co-ordinator.

SUBMISSIONS BY:

Appellant: Mr. Gordon Trost.

Disposition Holders: Mr. Vernon Torstensen, Tor Land Resource Inc.; and 541466 Alberta Ltd. (JLG Ball Enterprises).

Director: Ms. Corrinne Kristensen, Director, Provincial Approvals Section, Alberta Environment and Parks.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued surface material leases to Tor Land Resource Inc. and 541466 Alberta Ltd. (JLG Ball Enterprises) in 2012 and 2016, respectively.

Mr. Gordon Trost appealed the decisions on February 22, 2018.

The Board received and reviewed Mr. Trost's submission on why the appeals were filed after the legislated appeal period and why the Board should extend the appeal period. The appeal period is 20 days after the appellant received, became aware of, or should reasonably have become aware of the decision objected to, or 45 days after the date the decision was made, whichever occurs first.

Based on the submissions provided, the Board found Mr. Trost filed his Notice of Appeal well past the legislated time lines and did not provide any persuasive reasons to extend the appeal period more than five years for the first appeal and more than one year for the second appeal. Allowing appeals well past the end of the appeal period without exceptional circumstances would bring uncertainty into the disposition process as well as the appeal process, which would be contrary to the public interest.

Therefore, the Board dismissed the appeals.

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I. BACKGROUND

[1] On February 22, 2018, Mr. Gordon Trost (the “Appellant”) filed Notices of Appeal with the Public Lands Appeal Board (the “Board”) appealing the issuance of two surface materials leases (“SMLs”) by the Director, Provincial Approvals Section, Alberta Environment and Parks (the “Director”). The first surface materials lease (SML 080085) was issued to Tor Land Resource Inc. (“Tor Land”) on April 26, 2012, and the second surface materials lease (SML 100085) was issued to 541466 Alberta Inc. (JLG Ball Enterprises) (“JLG Ball”) on June 24, 2016. Both surface materials leases were issued under the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”) and the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 (“PLAR”).¹

[2] On February 27, 2018, the Board acknowledged receipt of the Notices of Appeal. The Appellant alleged the Director who made the decision erred in the determination of a material fact on the face of the record, erred in law, exceeded the Director’s or Officer’s jurisdiction of legal authority, did not comply with a regional plan approved under the *Alberta Land Stewardship Act*, or the decision was expressly subject to appeal under section 15 of PLAR or section 59.2(3) of the Act.

[3] In its February 27, 2018 letter, the Board noted the Notices of Appeal were filed after the time limit prescribed in the legislation. The Board asked the Appellant to provide an explanation for the timing of filing his Notices of Appeal and whether an extension of the filing period would be contrary to the public interest.

[4] On February 28, 2018, the Board received the Appellant’s response. No submissions were requested from the Director.

[5] On March 8, 2018, the Board received an email from Tor Land providing clarifying information in response to the Appellant’s Notice of Appeal.

¹ Tor Land and JLG Ball are collectively referred to as the “SML Holders.”

II. ANALYSIS

[5] The issue before the Board is whether the appeals were filed within the legislated timeframes and, if not, whether there are sufficient reasons for the appeals co-ordinator to exercise her discretion and extend the filing time limits.

[6] The time limits for filing a Notice of Appeal are found in section 217(1) of PLAR. This section states:

“A notice of appeal must be served on the appeals co-ordinator within

- (a) 20 days after the appellant received, became aware of or should reasonably have become aware of the decision objected to, or
- (b) 45 days after the date the decision was made,

whichever elapses first.”

[7] Under section 217(2), the appeals co-ordinator may extend the appeal period if it is not contrary to the public interest to do so.²

[8] The Appellant explained he had not received notice of the issuance of the SMLs until February 2018. He stated he became aware of the SMLs when reading an article concerning the SML Holders’ intent to apply for a development permit from the County. The Appellant contacted AEP on February 19, 2018, requesting the dates when the SMLs were issued.

[9] In response to the Appellant’s request, AEP explained:

1. SME 080010 was approved on April 23, 2008 with an expiry date of October 22, 2008, and SML 080085 was approved on April 26, 2012; and
2. SME 090062 was approved on January 6, 2010 with an expiry date of July 5, 2010, and the SML 100085 was approved June 24, 2016.³

² Section 217(2) of PLAR provides:

“The appeals co-ordinator may, either before or after the expiry of a period described in subsection (1)(a) or (b), extend the time for service of a notice of appeal if, in the opinion of the appeals co-ordinator, it is not contrary to the public interest to do so.”

³ SME is a surface material exploration disposition and usually leads to the issuance of an SML or surface materials lease.

[10] The Appellant made a valid effort to find the relevant information regarding the issuance of the SMLs. When he found out the SMLs were issued, he promptly sought further information and filed the Notices of Appeal.

[11] The issue before the Board is whether there were valid reasons for the late filed appeals. The Board notes the appeals were filed more than five years after SML 080085 was issued and more than 19 months after SML 100085 was issued.

[12] It is clear the Notices of Appeal were received well past the 45 day limit under section 217(1)(b) of PLAR. Therefore, section 217(1)(b) of PLAR does not assist the Appellant.

[13] The Appellant explained he only received notice of the issuance of the SMLs in February 2018. Section 217(1)(a) provides for a 20 day time limit after appellants receive notice of the decision or became aware of the decision, or should reasonably have become aware of the decision objected to.

[14] The Board recognizes there is minimal opportunity for nearby landowners to become involved in the disposition application process until the appeal process, and participation can only occur if the landowner is aware a disposition has been granted. The legislation does not require public notice of a disposition application, making it difficult to know when a disposition is granted.

[15] Although the Board sees the limitations in the legislation related to public participation, the Board must make its decision based on the legislation and the rules of natural justice and fairness.

[16] Section 217(1)(a) includes “should reasonably have become aware of the decision objected to.” The Appellant lives in the area, and it seems reasonable that at some time during the past five years, he would have become aware that a sand and gravel operation was approved for the area. The legislators could not have intended to leave the appeal period open-ended in case a person only discovers the decision was made one year or five years later. There needs to be certainty in the process. Given the appeal was filed well past the 20-day time limit, and even if the Appellant was not aware of the proposed development, it is clear the Notices of Appeal were filed well past the legislated timeframe.

[17] The appeals co-ordinator must then consider whether there are sufficient reasons for her to extend the time limit to file an appeal and whether it would not be contrary to the public interest to do so. The appeals co-ordinator's ability to extend an appeal period is discretionary and is used only in exceptional circumstances.

[18] Allowing an appeal to be filed five years or even one and a half years after the decision is made introduces a great deal of uncertainty into the process to issue a disposition and the appeal process. The public interest requires the appeals co-ordinator to balance the interests of the Appellant with those of SML Holders. Given the length of time since the appeal period ended, the appeals co-ordinator would need to be persuaded that exceptional circumstances existed to extend the appeal period. In this case, the Appellant did not meet the onus of demonstrating extenuating circumstances.

[19] Although the Appellant raised a number of concerns with the dispositions, both as a long term resident of the area and as a volunteer steward of the White Earth Natural Area, the concerns did not provide an explanation as to why the appeals were filed so long after the legislated appeal period.

[20] When a disposition is issued, the disposition holder can proceed to use the specific public lands for the stated purpose. Depending on the disposition granted, it may be wise to wait until the appeal period has passed before using the disposition. A disposition holder should, in most cases, be able to rely on the legislated appeal period. The disposition holder should not have to postpone his use of the public lands indefinitely in case an appeal is filed months or years after the appeal period is past. This does not mean the appeals co-ordinator will not use her discretion under section 217(2) of PLAR to extend the appeal period if circumstances warrant.

[21] The concern here for the appeals co-ordinator is the amount of time that has passed between the end of the legislated appeal period and the filing of the Notices of Appeal. The Appellant has not provided a sufficient reason for the Board to extend the appeal period to such an extent. The public interest does not support bringing uncertainty into the appeal process, particularly given the appeals were filed more than one and a half years late, and no exceptional circumstances existed that caused the delay of filing the appeals. Although the public interest

does not warrant extending the appeal period to this degree, this does not diminish the public interest and concern regarding the proposed project.

[22] Under these circumstances, the appeals co-ordinator cannot extend the appeal period and must dismiss the appeals.

[23] Therefore, the appeals are dismissed pursuant to section 123(5)(b) of the Act⁴ and section 219 of PLAR.⁵

III. CONCLUSION

[24] The Board finds the Notices of Appeal were filed outside the legislated time limit, and the public interest does not support the Board extending the appeal period. Therefore, the Board dismisses the appeals.

Dated on June 7, 2018, at Edmonton, Alberta.


Marian Fluker
Acting Board Chair and
Appeals Co-ordinator

⁴

Section 123(5)(b) of PLA states:

“The appeal body may dismiss a notice of appeal if ...”

(b) for any other reason the appeal body considers that the notice of appeal is not properly before it....”

⁵

Section 219 of PLAR states:

(1) The appeals co-ordinator may, in his or her discretion and within 5 days after being served with a notice of appeal, reject the notice of appeal if it was not served in accordance with section 217 or if, in the opinion of the appeals co-ordinator, it does not meet the requirements of section 216.

(2) Where the appeals co-ordinator rejects a notice of appeal, the appeals co-ordinator must provide a notice of a rejection to the appellant and must make the notice available to the public.”