
**ALBERTA
PUBLIC LANDS APPEAL BOARD**

Decision

Date of Decision – August 5, 2021

IN THE MATTER OF sections 121, 123, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, 216, and 217 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF an appeal filed by Jim Johansen and Johansen Farms Ltd. with respect to the decision of the Director, Regulatory Assurance Division–South Region, Alberta Environment and Parks, to issue Notice of Administrative Penalty and Proceeds Assessment No. PLA-20/09-AP-SR-20/09, to Jim Johansen and Johansen Farms Ltd.

Cite as: *Johansen and Johansen Farms Ltd. v. Director, Regulatory Assurance Division–South Region, Alberta Environment and Parks* (5 August 2021), Appeal No. 21-0002-D (A.P.L.A.B.), 2021 ABPLAB 15.

BEFORE:

Mr. Gordon McClure, Appeals Co-ordinator
and Board Chair.

SUBMISSIONS BY:

Appellants: Mr. Jim Johansen and Johansen Farms Ltd.

Director: Ms. Coreen Bates, Director, Regulatory
Assurance Division – South Region, Alberta
Environment and Parks, represented by Ms.
Nicole Hartman, Alberta Justice and Solicitor
General.

EXECUTIVE SUMMARY

Mr. Jim Johansen and Johansen Farms Ltd. (the Appellants) leased public lands in Cardston County. Alberta Environment and Parks (AEP) investigated allegations that the Appellants (1) received payments for allowing access to and use of the public lands, and (2) entered onto and occupied public land to cut hay without authorization.

AEP learned from Mr. Johansen's wife that he was in the United States. Ms. Johansen provided an email address and phone number where Mr. Johansen could be contacted.

AEP sent documents to the Appellants related to the investigation, including the Preliminary Assessment of the Administrative Penalty. The documents were sent by email, and regular and registered mail to the Appellants' post office box in Cardston.

In December 2020, the Director and Mr. Johansen spoke by phone and Mr. Johansen confirmed he received the documents by email. One week later, the Director and Mr. Johansen met by videoconference to discuss the Preliminary Assessment. During the videoconference, Mr. Johansen provided the Director with an address in Utah, where he could be reached.

In February, 2021, the Director issued the Administrative Penalty and Proceeds Assessment (the Administrative Penalty), consisting of a penalty of \$5,000.00 and a proceeds assessment of \$6,800.00, for a total of \$11,800.00. The Director sent the Administrative Penalty to the Appellants by email, and regular and registered mail to the Cardston post office box. Mr. Johansen's son picked up and signed for the registered mail. However, in accordance with his father's instructions, Mr. Johansen's son did not open the mail.

In May, 2021, the Director sent the Appellants a Last Opportunity Letter indicating they had a final opportunity to pay the Administrative Penalty before it was forwarded to Crown Debt Services. The Director sent this letter by email, regular and registered mail to the Cardston post office box, and by regular mail to the Utah address provided earlier by Mr. Johansen.

The Appellants filed a Notice of Appeal with the Public Lands Appeal Board (the Board) on June 8, 2021. The Board noted the Notice of Appeal was filed after the time provided by the legislation, and requested submissions from the Appellants and the Director on why the Notice of Appeal was filed late and if would be contrary to the public interest for the Appeals Coordinator to extend the time for the Appellants to file the Notice of Appeal.

While the Board was concerned the Director sent the Last Opportunity Letter to the Utah address but only sent the Administrative Penalty to the Cardston address, the Board found the Appellants received service by registered mail and email. The Appellants' reasons for filing the Notice of Appeal late were within the Appellants' control or irrelevant to the late filing. The public interest in the appeal required weighing the importance of maintaining integrity in the regulatory process and ensuring administrative penalties are addressed in a timely manner against the rights of appellants to proceed with their appeals. In this case, the Appellants did not provide a reasonable explanation for the delay in submitting the Notice of Appeal.

The Board dismissed the Appellants' Notice of Appeal for being filed late and found it would be contrary to the public interest to extend the time to file.

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I. Introduction

[1] This is the decision of the Public Lands Appeal Board (the “Board”) regarding the late filing of the Notice of Appeal from Mr. Jim Johansen and Johansen Farms Ltd. (collectively, the “Appellants”). The Appellants appealed the decision by the Director, Regulatory Assurance Division – South Region, Alberta Environment and Parks (the “Director”), to issue Notice of Administrative Penalty and Proceeds Assessment No. PLA-20/09-AP-SR-20/09 (the “Administrative Penalty”) to the Appellants. The Director alleged the Appellants received payments for allowing access and use of public lands, and entered onto the public land to cut hay without authorization. The Administrative Penalty was assessed at a total of \$11,800.00, which included a penalty of \$5,000.00 and a proceeds assessment of \$6,800.00, which is the amount the Director said was paid to the Appellants for allowing access to the public lands.

[2] Appeals before the Board are initiated by the Board’s receipt of the Notice of Appeal form from an appellant. For the Board to accept the Notice of Appeal it must be received by the Board within the time set out in section 217(1) of the *Public Lands Administration Regulation*, AR 187/2011 (“PLAR”), which 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.”

[3] The Board received the Appellants’ Notice of Appeal on June 8, 2021, which is 117 days after the 45-day time limit expired. The Director applied to have the Notice of Appeal dismissed for being filed late. The Board’s Appeals Co-ordinator may extend the time for the Appellants to file their Notice of Appeal if it is not against the public interest. The Appellants requested the Appeals Co-ordinator exercise the discretion granted by section 217(2) of PLAR¹ and extend the time to file the Notice of Appeal. The appeal may proceed if the Appeals Co-ordinator determines it would not be against the public interest to extend the time to file the

¹ 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.”

Notice of Appeal, but if the Appeals Co-ordinator decides not to extend the time limit, then the appeal must be dismissed.

II. Background

[4] The Appellants leased public land from Alberta Environment and Parks (“AEP”) located at NE 26-3-25-W4M, in Cardston County, Alberta. The Director alleged that on August 13, 2019 and September 16, 2019, the Appellants received payments totaling \$6,800.00 for allowing access to and use of public lands, contrary to section 54.01(5) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”),² and entered onto and occupied public land to cut hay without authorization, contrary to section 20(1)(e) of the Act (the “Alleged Contraventions”).³

[5] On November 24, 2020, during the Director’s investigation into the Alleged Contraventions, the Director phoned Mr. Johansen to inform him that AEP had made a Preliminary Administrative Penalty recommendation related to the Alleged Contraventions. The Director spoke to Mr. Johansen’s wife, who advised the Director that Mr. Johansen was in the United States. Mr. Johansen’s wife provided an email address and phone number where he could be contacted.

[6] On November 27, 2020, the Director sent the Appellants a Preliminary Assessment of Administrative Penalty Letter, an Administrative Penalty Assessment Form, and a copy of PLAR, to the email address Ms. Johansen provided to the Director, and by regular mail and registered mail to the Appellants’ post office box in Cardston. The post office box was listed on AEP files as the mailing address for Johansen Farms Ltd.

² Section 54.01(5) of the *Act* states:
“No person shall provide or receive money or other consideration for the purpose of gaining or allowing access to, passage on or over or use of public land unless
(a) the person receiving the money or other consideration is the holder of a disposition or authorization under section 20 and is entitled at law to receive money or other consideration for that purpose, and
(b) the access, passage or use is in respect of public land that is the subject of the disposition or authorization.”

³ Section 20(1)(e) of the *Act* provides:
“No person shall enter on and occupy public land for any purpose unless ...
(e) the person is expressly authorized to enter on and occupy the public land for that purpose by the director or an officer.”

[7] On December 2, 2020, the Director spoke with Mr. Johansen by telephone, who confirmed he received the documents by email. The Director and Mr. Johansen agreed to a meeting by videoconference on December 9, 2020, to discuss the preliminary assessment. During the video conference, Mr. Johansen provided an address in Utah where he could be reached.

[8] On February 11, 2021, the Director issued the Administrative Penalty, alleging the Appellants:

- (a) received payments totaling \$6,800.00 for allowing access to and use of public lands, contrary to section 54.01(5) of the Act; and
- (b) entered onto and occupying public land for the purpose of cutting hay without authorization, contrary to section 20(1)(e) of the Act.

The Administrative Penalty consisted of a penalty of \$5,000.00 and a proceeds assessment of \$6,800.00, for a total of \$11,800.00.

[9] The Director sent copies of the administrative penalty, the Director's decision document, and the appeal provisions in PLAR (the "Decision Documents") to the Appellants at the email address provided by Ms. Johansen, and by registered mail and regular mail to the Appellants' post office box in Cardston. The Director received confirmation from Canada Post that the registered mail was picked up and signed for on February 18, 2021.

[10] On May 17, 2021, the Director sent the Appellants a Last Opportunity Letter, which indicated the Appellants had a final opportunity to pay the Administrative Penalty before it was forwarded to Crown Debt Collections. The Director sent the Last Opportunity Letter and the Decision Documents by email, regular and registered mail to the Appellants' Cardston address, and by regular mail to the Utah address.

[11] On June 8, 2021, the Board received a Notice of Appeal from the Appellants appealing the Director's decision to issue the Administrative Penalty. As per the Board's usual practice, the Board noted in a letter dated June 10, 2021, that the Notice of Appeal was filed late and requested the Appellants provide a written explanation regarding the late filing and whether an extension of time would be contrary to the public interest.

[12] On June 11, 2021, the Appellants provided the Board with a written explanation as to why the Notice of Appeal was filed late with and why the Appellants believed an extension of time to file the Notice of Appeal was not contrary to the public interest. The Board set a schedule for the Director and the Appellants to provide written submissions on whether the Appeals Co-ordinator should extend the time for the Appellants to file the Notice of Appeal. The Board received written submissions from the Director and the Appellants between June 24 and July 2, 2021.

III. ISSUE

[13] The issue the Board must determine is whether it would be contrary to the public interest to extend the time for the Appellants to serve the Notice of Appeal on the Board.

(i) Submissions

[14] The Board reviewed all the submissions from the Appellants and the Director on the issue and summarized the submissions below.

[15] Mr. Johansen submitted the following:

- (a) before leaving for the U.S. in November, 2020, he informed the Director he would be out of the country and unreachable at his Canadian address and did not know when he would return;
- (b) he provided his U.S. address to the Director in December, 2020;
- (c) his son was instructed to pick up his mail and leave it unopened at Mr. Johansen's home;
- (d) the first knowledge Mr. Johansen had of being assessed a penalty was when he received a letter demanding payment at his U.S. address in May 2021;
- (e) he filed the appeal late because he did not know the Administrative Penalty had been issued until on or about May 21, 2021;
- (f) he promptly returned to Canada to deal with the Administrative Penalty, but COVID-19 protocols and his difficulty with technology added to the time to file the Notice of Appeal; and
- (g) Mr. Johansen updated his contact information to his Utah address with the Director on December 9, 2020, yet the Director still chose to mail the

time-sensitive Administrative Penalty to the wrong address (Cardston address) on February 11, 2021.

[16] The Appellants submitted Mr. Johansen was not provided with adequate notice of the Administrative Penalty and, therefore, it is in the public interest to grant an extension to file the Notice of Appeal.

[17] The Director submitted the following:

- (a) section 59.4 of the Act requires service of a Notice of Administrative Penalty by personal service or registered mail, but neither the Act nor PLAR specified when service is effected if sent by registered mail;
- (b) the Alberta Rules of Court, AR 124/2010, provide guidance on service by registered mail;
- (c) Rule 11.5 states that service by registered mail is effected on the date mail is signed for;
- (d) extending the time for the Appellants to serve the Notice of Appeal “would compromise the integrity of the legislation, and the regulatory certainty that is the cornerstone of appeals;”⁴
- (e) the Board found in *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*,⁵ that the importance of protecting the public interest lies in ensuring the integrity of the legislation in extending the time for submitting a notice of appeal against the explanation for delay;
- (f) in *Gionet*, the Board said it:
“... did not accept the appellant's evidence that because he was travelling he could not deal with the notices of administrative penalty that were served at his corporate offices. The Board indicated Mr. Gionet could have asked his wife who accepted the administrative penalty documents to forward them to his legal counsel, or he could have asked his legal counsel to obtain copies of the documents from AEP.”⁶
- (g) there are were similarities between *Gionet* and the Appellants’ late filing of the Notice of Appeal, including:

⁴ Director’s Response Submissions, June 24, 2021, at page 3.

⁵ *Gionet Holdings Corporation v. Director, Provincial Approvals Section, Alberta Environment and Parks* (13 April 2018), Appeal No. 17-0001-ID1 (A.P.L.A.B.).

⁶ Director’s Response Submission, June 24, 2021, at page 4.

- (i) the Appellants knew from the Preliminary Assessment of Administrative Penalty that the Director was considering issuing an Administrative Penalty in the amount of \$12,800.00,
 - (ii) the Appellants should have been expecting a decision from the Director which could have a significant impact on the Appellants, and
 - (iii) Mr. Johansen had his son pick up his mail while he was out of the country for an unknown amount of time;
- (h) it was unreasonable for Mr. Johansen to not ensure he was made aware of important mail while he was away and the Appellants cannot avoid legislated timelines by leaving mail unopened.⁷

[18] The Director submitted the Appellants have an onus to demonstrate extenuating circumstances and have not provided sufficient grounds for extending the legislated time to file a notice of appeal.

(ii) Analysis

[19] The timeframe for filing a Notice of Appeal is found in section 217 of PLAR:

“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.”

[20] The Administrative Penalty was issued on February 11, 2021, and the Appellants filed the Notice of Appeal on June 8, 2021. If the Board applies the more generous timeframe in section 217(1)(b), the Appellants had 45 days from February 11, 2020, to file the Notice of Appeal, which would be March 29, 2021. Instead, the Appellants filed the Notice of Appeal on June 8, 2021, 117 days after the 45-day time limit had expired. The Board confirms the Appellants’ Notice of Appeal was filed late.

⁷ Director’s Response Submission, June 24, 2021, at page 5.

[21] Having determined the Notice of Appeal was filed late, the Board may determine if the time to file the Notice of Appeal should be extended. Under section 217(2), the Appeals Co-ordinator may extend the time for service of the Notice of Appeal. Section 217(2) states:

“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.”

The Board must determine if it would be against the public interest to extend the time for the Appellants to file the Notice of Appeal.

[22] The Board notes neither the Act nor PLAR provide a definition or interpretation of the term “public interest.” The authors of *Practice and Procedure before Administrative Tribunals*⁸ stated that where discretion is to be exercised based on what is in, or harms, the public interest, the public interest must be assessed taking into account the interests reflected in the particular legislation and the nature of the issue that would end up in dispute should the matter proceed.⁹

[23] The intent of the Act and PLAR is to ensure public lands are managed in a responsible manner throughout Alberta. Balancing the various competing interests of people wanting to use the land for different purposes, along with ensuring the land is available for use by future generations is essential in the effective management of public lands.

[24] The nature of the issue in this appeal is an enforcement proceeding. In this case, the Director had determined (and for this decision, the Board does not have to agree or disagree

8 Robert W. Macaulay and James L.H. Sprague, *Practice and Procedure Before Administrative Tribunals*, 2017 –Release 1, Canada.

9 In its decision in *Warner v. Alberta (Environment and Sustainable Resource Development)*, 2014 ABPLAB 14-0010, the Board considered the comment from *Practice and Procedure before Administrative Tribunals*:

“The concept of doing something in the ‘public interest’ refers to actions or decisions which are seen in the context of the spirit and intent of the legislation granting the authority as resulting in the good, or the benefit, or the well-being, of the public (to use different words to convey essentially the same meaning). Beyond that, the term does not have a specific meaning but takes its parameters from the legislative context in which it is found. The application of the phrase involves the value judgment, or discretion, of the decision-maker that the thing being done will be, in the context of the relevant legislation, to the benefit of the public.” Macaulay and Sprague, *Practice and Procedure Before Administrative Tribunals*, page 8.2.

See: *Memorial Gardens Association (Canada) Limited v. Colwood Cemetery Company*, [1958] S.C.R. 353 at page 357, 1958 SCC 82 at paragraph 7.

with this assessment) the Appellants contravened the legislation by entering onto public lands and removed hay without proper authorization, and received money in exchange for allowing access to public land. Unauthorized use and access is directly contrary to AEP's ability to properly manage the land, and the use of administrative penalties is one of the tools the Director uses to respond to such contraventions.

[25] In *Gionet*¹⁰ the Board reviewed some basic principles the Board considers when determining whether to extend the time to file a Notice of Appeal:

- (a) the time limits for filing an appeal was included in the Act and PLAR in order to provide a level of certainty to the appeal process;
- (b) the authority to extend an appeal period is used only in extenuating circumstances, as it would render the appeal period meaningless if extensions were routinely granted;
- (c) the Board should not extend the appeal period without a valid reason for doing so; and
- (d) the onus is on the appellant to provide sufficient reasons to grant the extension.

The Board took these principles into consideration in making this decision.

[26] The Director submitted the Appellants were aware of the pending decision based upon the preliminary assessment meeting held December 9, 2020. The Director served the Decision Documents for the Administrative Penalty on the Appellants by regular mail, registered mail, and email. Mr. Johansen submitted his son collected and signed for the registered mail with Mr. Johansen's authorization. Mr. Johansen stated he provided his son instructions not to open any of Mr. Johansen's mail and place it in Mr. Johansen's residence. The instructions provided by Mr. Johansen to someone acting on his behalf were of his own choosing and may have led to the Appellants not being informed of the decision and the Administrative Penalty. The act of signing for a registered letter connotes a degree of importance to the correspondence that Mr. Johansen's son, as Mr. Johansen's agent, should have noted and informed Mr. Johansen. However, the instructions given to the son by Mr. Johansen may have prevented action from being taken to notify Mr. Johansen.

¹⁰ *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks* (4 September 2018), Appeal Nos. 17-0014-0016-D (A.P.L.A.B.).

[27] The Director did not send the Decision Documents for the Administrative Penalty to the Utah address provided by Mr. Johansen, but did follow up at a later date on May 17, 2021, using the Utah address to inform the Appellants of the last opportunity to make payment. The Board wonders why the Director did not send the Decision Documents for the Administrative Penalty to Mr. Johansen in Utah, but did send later correspondence to the Utah address. However, as Mr. Johansen had indicated to the Director that email was an acceptable form for sending documents, and Mr. Johansen's son had signed for the documents sent as registered mail, the Board finds the Appellants were adequately served. Had the registered mail not been signed for, the Director's failure to use the Utah address may have had greater weight in determining this matter. Further, if Mr. Johansen had informed the Director that the Utah address was the only address he was to be reached at, the Board may have reached a different decision.

[28] While the Board is sympathetic to the Appellants' situation, the reasons provided by the Appellants for filing the Notice of Appeal late are either matters that were within the Appellants' control, or irrelevant to the late filing. The public interest in this appeal requires weighing the importance of maintaining integrity in the regulatory process and ensuring administrative penalties are addressed in a timely manner against the rights of appellants to proceed with their appeals. In this case, the Appellants did not provide a reasonable explanation for the delay in submitting the Notice of Appeal.

IV. Decision

[29] The Board finds the Appellants' Notice of Appeal was filed after the expiry of the time limits set by section 217(1) of PLAR.¹¹ Based on the Appellants' and Director's submissions, the legislation, and relevant caselaw, the Appeals Co-ordinator finds it would be

¹¹ Section 217(1) of PLAR states:

“(1) 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.”

contrary to the public interest under section 217(2) of PLAR,¹² to extend the time for the Appellants to file the Notice of Appeal.

[30] The Board dismisses the Appellants' Notice of Appeal for being filed late and found it would be contrary to the public interest to extend the time to file.

Dated on August 5, 2021, at Edmonton, Alberta.

-original signed-
Gordon McClure
Board Chair and
Appeals Co-ordinator

¹² Section 217(2) of PLAR provides:

“(2) 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.”