
ALBERTA
PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – August 27, 2021

IN THE MATTER OF sections 121 and 123, 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 Stephen House with respect to the decision of the Director, Regulatory Assurance Division – North Region, Alberta Environment and Parks, to issue Enforcement Order No. EO-PLA-32221 to Stephen House.

Cite as: *House v. Director, Regulatory Assurance Division – North Region, Alberta Environment and Parks* (27 August 2021), Appeal No. 21-0004-D (A.P.L.A.B.), 2021 ABPLAB 19.

BEFORE:

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

SUBMISSIONS BY:

Appellant: Mr. Stephen House.

Director: Ms. Heather Dent, Director, Regulatory
Assurance Division – North Region, Alberta
Environment and Parks, represented by Ms.
Jodie Hierlmeier and Ms. Meagan Bryson,
Environmental Law Section, Alberta Justice
and Solicitor General.

EXECUTIVE SUMMARY

Mr. Stephen House (the Appellant) appealed the decision of the Director, Regulatory Assurance Division – North Region, Alberta Environment and Parks (the Director), to issue Enforcement Order No. EO-PLA-32221 (the Order) on March 3, 2021. The Director alleged the Appellant unlawfully entered on and occupied public land without authorization. The Director observed a fire pit, a deck, shed, chattels, stairs, and other personal property extending onto the public land. The lands are located at SE 21-86-8-W4M near Fort McMurray, Alberta.

For the Board to accept the Notice of Appeal, it must be served on the Appeals Co-ordinator within the time set out in section 217(1) of the *Public Lands Administration Regulation*, AR 187/2011 (PLAR).

The Appeals Co-ordinator was served with the Appellant's Notice of Appeal on August 6, 2021, which is 156 days after the Director made the decision to issue the Order, and 111 days after the maximum 45-day time limit expired. When the Board acknowledged the appeal, it requested more information from the Appellant because it appeared the Notice of Appeal was served late. The Director provided a letter indicating evidence of the attempts to serve the Appellant the Order and requested the Notice of Appeal be dismissed for being late.

The Appeals Co-ordinator may extend the time for the Appellant to serve their Notice of Appeal if it is not against the public interest. The Appeals Co-ordinator found the Appellant's Notice of Appeal was served after the expiry of the time limits set by legislation, and it would be contrary to the public interest under section 217(2) of PLAR to extend the time for the Appellant to serve the Notice of Appeal. The appeal is dismissed.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
III.	ISSUE	4
	(i) Submissions	4
	(ii) Analysis.....	5
IV.	DECISION.....	9

I. Introduction

[1] This is the decision of the Public Lands Appeal Board (the “Board”) regarding the late service of a Notice of Appeal filed by Mr. Stephen House (the “Appellant”). The Appellant appealed the March 3, 2021 decision by the Director, Regulatory Assurance Division – North Region, Alberta Environment and Parks (the “Director”), to issue Enforcement Order No. EO-PLA-32221 (the “Order”) to Mr. House under the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”). The Director alleged the Appellant unlawfully entered on and occupied public land without authorization. The Director observed a fire pit, a deck, shed, chattels, stairs, and other personal property extending onto the public land. The lands are located at SE 21-86-8-W4M near Fort McMurray, Alberta.

[2] The Appellant served a Notice of Appeal on the Appeals Co-ordinator on August 6, 2021.

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

[4] The Appeal Co-ordinator was served the Appellant’s Notice of Appeal on August 6, 2021, which is 156 days after the decision was made by the Director to issue the Order, and 111 days after the 45-day time limit expired. When the Board acknowledged the appeal, it requested more information from the Appellant because it appeared the Notice of Appeal was served late. In response to the Appellant’s assertion that he was not served properly, the Director provided a letter indicating evidence of the attempts to serve the Order on the Appellant and requested the Notice of Appeal be dismissed for being served late.

¹ Section 217(1) of PLAR provides:

“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.”

[5] The Appeals Co-ordinator may extend the time for the Appellant’s service of their Notice of Appeal if it is not against the public interest. The Appellant requested the Appeals Co-ordinator exercise the discretion granted by section 217(2) of PLAR and extend the time to file the Notice of Appeal.² 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 Notice of Appeal. However, if the Appeals Co-ordinator decides not to extend the time limit, then the appeal must be dismissed.

II. Background

[6] In Alberta, the “Crown Lands” referred to in the Order are “public lands” within the meaning of section 1(p) of the Act and will be referred to as public lands in this decision.³

[7] Section 47.1 of the Act provides that where a person unlawfully occupies public land, the Director may order the person to vacate the public land.⁴

[8] On March 2, 2019, Order to Vacate No. OV-2019/06-LAR was issued to the Appellant. The Order to Vacate required the Appellant to vacate the public lands and immediately remove all personal property, chattels, buildings, and other improvements from the public lands, and submit written notice to the Director of the completion of the requirements of the Order to Vacate on or before April 30, 2019.

[9] It is alleged that an inspection on October 14, 2020, found the Appellant had not complied with the Order to Vacate and continued to occupy public lands without authorization.

[10] At the February 16, 2021 inspection, Alberta Environment and Parks (“AEP”) staff observed unauthorized structures and property on the public lands. Those items included:

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 Section 1(p) of the Act provides: “In this Act, ... ‘public land’ means land of the Crown in right of Alberta....”

⁴ Section 47 of the Act provides:

“A person who occupies public land and

(a) is not the holder of a disposition authorizing the person to do so, or

(b) is not otherwise authorized to do so under this Act or the regulations,

is deemed to be a trespasser and any improvements created by the person are the property of the Crown.”

portion of a deck, a fire pit, a shed, wooden steps, fill material, and other personal property, chattels, and improvements.

[11] On March 3, 2021, the Director issued the Order requiring the Appellant to:

- vacate the public lands;
- remove the unauthorized structures and property;
- submit a Remediation Plan to the Director with a description of work to be completed;
- complete the work no later than July 30, 2021;
- provide the Director written notice of completion of the requirements no later than August 30, 2021; and
- not relocate unauthorized structures and property on any other public lands.

[12] AEP submitted that they attempted to serve the Order on the Appellant on the following dates: February 26, 2021; March 2, 2021; March 3, 2021; June 28-29, 2021.⁵

[13] On August 6, 2021, the Board received a Notice of Appeal from the Appellant, appealing the Director's decision to issue the Order. As per the Board's usual practice, the Board wrote to the Appellant and the Director (collectively the "Parties") on August 10, 2021, stating the Notice of Appeal was filed late and requested the Appellant provide a written explanation regarding the late filing and whether an extension of time would be contrary to the public interest, and requesting the Director provide a copy of the Order.

[14] Section 217(1) of PLAR 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."

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

⁵ Director's Letter to the Board, dated August 12, 2021, at pages 1 and 2.

interest to do so.”

[15] On August 12, 2021, the Board received a letter from the Director providing a copy of the Order and an explanation on how the Order was served in response to the Appellant’s assertion that he was not properly served. The Board provided a copy of the Director’s letter to the Appellant on August 12, 2021.

[16] On August 18, 2021, the Appellant provided the Board with a written explanation on the timing of the filing of the Notice of Appeal and why the Appellant believed an extension of time to file the Notice of Appeal was not contrary to the public interest.

III. ISSUE

[17] The issue the Board must determine is whether the Notice of Appeal was filed late and, if it was filed late, whether it would be contrary to the public interest to extend the time for the Appellant to file the Notice of Appeal.

(i) Submissions

[18] The Board reviewed the Notice of Appeal and correspondence from the Parties and summarized the information below.

[19] The Appellant submitted:

- (a) He received an email dated June 24, 2021, from Mr. Michael Conboy, Environmental Protection Officer, Northern Boreal Region, Alberta Environment and Parks, attaching a copy of the order.
- (b) He emailed Mr. Conboy on June 24, 2021, stating, “I do not accept electronic paperwork and have yet to be given actual paperwork.”⁶
- (c) On June 29, 2021, the Director again emailed an electronic copy of the Order and said a paper copy would be sent via regular mail to the address in the Director’s records.
- (d) Nothing was received from Canada Post on March 9 or 23, 2021. The Appellant stated, “upon review of the address for service, the compliance manager was discovered to have been using the wrong address, using the physical location address instead of a mailing address.”⁷

⁶ House S., Email re: EO-PLA-32221-Notice, to Michael Conboy, dated June 24, 2021 at 10:11 AM.

⁷ Appellant’s Submission, dated August 18, 2021, at page 1.

- (e) He had not been given proper service and due process.

[20] On August 12, 2021, the Director submitted:

- (a) AEP has “tried to serve Mr. House with this [Order] by many different methods and many different times, and he has consistently refused service.”⁸ The Director submitted an outline of the six attempts at service stating,

“Each time AEP attempted to contact Mr. House about the order, there has been associated complaint to the Minister of AEP. Mr. House has not made any attempts to meet with or discuss the order with AEP. As per the information in Mr. House’s Notice of Appeal, he demonstrates awareness of the order and the requirements found within the order.”⁹

- (b) The Board has noted, section 217 of PLAR sets out the timeline in which an appeal must be served the Board, stating:

“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.”¹⁰ [Director’s emphasis]

- (c) “Mr. House became aware or reasonably became aware of the decision to issue the enforcement order on March 3, 2021 after AEP’s fifth attempt of service. In any event, more than 45 days have passed since the decision was made on March 3, 2021 (in fact, 156 days have passed between the date of the enforcement order and the date Mr. House filed his notice of appeal).”¹¹

(ii) *Analysis*

[21] 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

⁸ Director’s Letter to the Board, dated August 12, 2021, at page 2.

⁹ Director’s Letter to the Board, dated August 12, 2021, at page 2.

¹⁰ Director’s Letter to the Board, dated August 12, 2021, at page 2 and 3.

¹¹ Director’s Letter to the Board, dated August 12, 2021, at page 2.

- (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.”

[22] The Order was issued on March 3, 2021, and the Appellant filed the Notice of Appeal on August 6, 2021. If the Board applies the more generous timeframe in section 217(1)(b), the Appellant had 45 days from March 3, 2021, to file the Notice of Appeal, which would be April 17, 2021. Instead, the Appellant filed the Notice of Appeal on August 6, 2021, 111 days after the 45-day time limit had expired. The Appeal Co-ordinator confirms the Appellant’s Notice of Appeal was filed late.

[23] Having determined the Notice of Appeal was filed late, the Appeal Co-ordinator must now 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 Appeal Co-ordinator must determine if it would be against the public interest to extend the time for the Appellant to file the Notice of Appeal.

[24] Neither the Act nor PLAR provides a definition or interpretation of the term “public interest.” The authors of *Practice and Procedure before Administrative Tribunals*¹² 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.¹³

¹² Robert W. Macaulay and James L.H. Sprague, *Practice and Procedure before Administrative Tribunals*, 2017 –Release 1, Canada.

¹³ In its decision in *Warner v. Alberta (Environment and Sustainable Resource Development)*, 2014 APLAB 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

[25] 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.

[26] The nature of the issue in this appeal is an enforcement proceeding. In this case, the Director had determined (and for this decision, the Appeal Co-ordinator does not have to agree or disagree with this assessment) the Appellant contravened the legislation by entering onto and occupying public lands without proper authorization, and was a trespasser and placed personal property, chattels, buildings upon the land, or made other unauthorized improvements. Unauthorized use and access is directly contrary to AEP's ability to manage the land properly. The use of the Order is one of the tools the Director uses to respond to such contraventions.

[27] In *Gionet*,¹⁴ 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 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 person requesting the extension to provide sufficient reasons to grant the extension.

The Appeal Co-ordinator took these principles into consideration in making this decision.

[28] In her August 12, 2021 letter, the Director submitted that the Appellant was aware of the Order and its requirements and has made no attempt to meet or discuss the Order. The Director submitted that AEP attempted to serve the Order on the Appellant by regular mail,

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*, at 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.

¹⁴ *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.), 2018 ABPLAB 27.

registered mail, and email several times. The Appellant consistently refused service. The Appellant submitted that he did not accept service by email and did not attend a meeting arranged by AEP staff as he “was not aware of the compliance manager wanting an in-person meeting during covid out breaks.”¹⁵ The Appellant confirmed in his submission that he refused electronic service and that he had spoken to AEP staff, which would have contributed to his awareness of the Order. However, what the Appellant knew other than a decision had been made and when is not known. Therefore the application of section 217(1)(b) providing a limitation for submitting a Notice of Appeal would apply.

[29] The Appellant has submitted that he has not been given proper service and “due process.” The Appellant has admitted he refused service and has not provided submissions to indicate he has taken any steps to facilitate service. Further, the Appellant has indicated that he was aware of the Order, having refused service of the Order, and spoken by telephone with the Director and AEP staff.

[30] The Director’s submission shows multiple attempts through multiple methods, including electronic means, which the Appellant refused. The Director has submitted that extending the time period for those who actively evade service is not in the public interest. However, the address used by the Director was for the Appellant’s physical address and not the mailing address for the Appellant.

[31] Section 217(1)(b) does not require service to have taken place for the time limitation to be established. An extension of the time for service of a notice of appeal is based on the opinion of the Appeals Co-ordinator that it is not contrary to the public interest to do so. The Appellant has not provided an acceptable explanation as to any extenuating circumstances that would warrant an extension of the time for the service of the Notice of Appeal. Without a full and proper explanation as to extenuating circumstances contributing to filing a Notice of Appeal 111 days after the date the decision was made, when the Appellant was aware of the Order and could have taken steps to obtain the Order, the late Notice of Appeal cannot be accepted.

¹⁵ Appellant’s Submission, dated August 18, 2021, at page 1.

[32] The public interest in this appeal requires weighing the importance of maintaining integrity in the regulatory process and ensuring enforcement orders are addressed in a timely manner against the rights of an appellant to proceed with their appeal. In this case, the Appellant did not provide a reasonable explanation for the delay in submitting the Notice of Appeal.

[33] The Appellant appears to have been actively attempting to evade service. Further, the Appellant's submission has not provided any indication of taking responsibility that would have facilitated service of the Order. The evasion of service when considering the extension of time for filing a Notice of Appeal is not in the public interest.

IV. Decision

[34] The Appeals Co-ordinator finds the Appellant's Notice of Appeal was filed after the expiry of the time limits set by section 217(1)(b) of PLAR. Further, the Appeal Co-ordinator finds it would be contrary to the public interest under section 217(2) of PLAR to extend the time for the Appellant to file the Notice of Appeal. The appeal is dismissed.

Dated on August 27, 2021, at Edmonton, Alberta.

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