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ALBERTA  
PUBLIC LANDS APPEAL BOARD  
  
Decision

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Date of Decision: July 14, 2023

**IN THE MATTER OF** sections 122, and 123 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 82, 225, and 232 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

**IN THE MATTER OF** an appeal filed by Everett Normandeau, with respect to the decision of the Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, to refuse to withdraw land from grazing lease GRL 35454 held by Stanley Jensen.

Cite as: Costs Decision: *Normandeau v. Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, re: Stanley Jensen* (14 July 2023), Appeal No. 21-0008-CD (A.P.L.A.B.), 2023 ABPLAB 11.

**BEFORE:**

Mr. Chris Powter, Acting Panel Chair; and  
Dr. Brenda Ballachey, Board Member;

**SUBMISSIONS BY:**

**Applicant:** Mr. Stanley Jensen.

**Respondent:** Mr. Everett Normandeau, represented by  
Mr. Alex Kennedy, Worobec Law Offices

**Director:** Mr. Stephen Shenfield, Director, Lands  
Delivery & Coordination South Branch, Lands  
Division, Alberta Environment and Parks,  
represented by Mr. Paul Maas, Alberta Justice.

## EXECUTIVE SUMMARY

Mr. Everett Normandeau applied to the Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, to have a portion of land withdrawn from Grazing Lease 35454 held by Mr. Stanley Jensen to enable access to his land adjacent to the grazing lease. The Director refused the application and Mr. Normandeau filed a Notice of Appeal with the Public Lands Appeal Board (the Board).

A written hearing was held and written submissions were filed with the Board by the parties before the hearing. The Board Panel convened on September 22, 2022, to prepare its Report and Recommendations to the Minister. The Board recommended the Minister of Environment and Parks (the Minister) uphold the Director's decision. The Minister accepted the Board's recommendations.

After the Minister's decision was released, Mr. Jensen applied to the Board for costs in the amount of \$3,198.82, for legal fees and disbursements.

The Board considered the costs application from Mr. Jensen and the submissions of Mr. Normandeau and the Director. The Board noted that Mr. Jensen had been successful in the appeal and had presented evidence and contributed arguments that assisted the Board in making its recommendations to the Minister. However, the Board determined he had not presented sufficient reasons why the Board should move from its starting point that parties should bear their own costs in the appeal process. Therefore, no costs were awarded to Mr. Jensen.

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## I. INTRODUCTION

[1] This is the Public Lands Appeal Board's (the "Board") decision and reasons for its decision regarding the costs application arising from a hearing held by the Board of an appeal filed by Mr. Everett Normandeau (the "Respondent") of the December 8, 2021 decision of the Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks (the "Director") to withdraw land from Grazing Lease 35454 (the "GRL") held by Mr. Stanley Jensen (the "Applicant") (collectively, the "Parties").

[2] The Parties provided written submissions to the Board between August 12 and September 12, 2022. The Panel appointed by the Board to hear the appeal met on September 22, 2022, to consider the submissions, the Director's File, and the relevant legislation. Following the hearing, the Board recommended the Minister uphold the Director's decision to reject Mr. Normandeau's application to remove land from the GRL. The Minister accepted the Board's recommendations and issued Ministerial Order 64/2022 on December 6, 2022<sup>1</sup>.

[3] Following the issuance of the Ministerial Order, Mr. Jensen filed a costs application for \$3,198.82, for legal fees and disbursements. Mr. Normandeau did not file an application for costs.

[4] After reviewing the submissions, the Board determined it would not award costs to Mr. Jensen.

## II. BACKGROUND

[5] The Applicant is the holder of Grazing Lease 35454 (the "GRL"), located on public lands west of the Town of Didsbury in the Municipal District of Bighorn, Alberta.

[6] The Respondent owns land located at SW-35-30-7 W5M (the "Lands"), west of the Town of Didsbury in the Municipal District of Bighorn which he purchased on August 20, 2021.

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<sup>1</sup> See *Normandeau v. Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, re: Stanley Jensen* (19 October 2022), Appeal No. 21-0008-R (A.P.L.A.B.), 2022 ABPLAB 10.

There are undeveloped municipal road allowances but no existing constructed road access to the Lands.

[7] On August 23, 2021, and September 24, 2021, the Respondent wrote to the Director to request removal of a portion of the GRL so that he could access the Lands (the “Application”). The Respondent indicated that if the Director granted the Application, the Respondent would follow up with an additional application for a disposition regarding the withdrawn portion of the GRL that would allow him to access the Lands.

[8] On December 8, 2021, the Director advised the Appellant that he refused to grant the Application and provided six reasons for his decision (“Director’s Decision”).

[9] On December 8, 2021, the Respondent filed a Notice of Appeal with the Board, appealing the Director’s Decision. The Parties participated in a mediation meeting on June 10, 2022 but did not reach an agreement. A written hearing was held and written submissions were filed with the Board by the Parties before the hearing. The Board Panel convened on September 22, 2022, to prepare its Report and Recommendations to the Minister.

[10] Following the hearing, the Board submitted its Report and Recommendations to the Minister, recommending the Director’s decision be upheld. The Minister accepted the Board’s recommendations by way of a Ministerial Order dated December 6, 2022.

[11] On December 13, 2022, the Respondent filed a costs application with the Board, and at the request of the Board provided further details on January 12 and 19, 2023. The Board received responses to the costs application from the Respondent and Director on February 8, 2023.

### **III. SUBMISSIONS**

#### **A. Applicant’s Submission**

[12] The Applicant requested the Board award him costs of \$3,198.82 for legal fees and disbursements he incurred in respect of the appeal, and provided an invoice detailing the time spent by counsel and itemized what the time was spent doing.

[13] The Applicant submitted that, while the appeal was primarily an issue between the Respondent and the Director, he had retained legal counsel to provide arguments as to why allowing permanent access across native habitat would permanently damage not only the road access area but probably the entire disposition. The Applicant noted that he initially submitted his comments personally but retained counsel “to follow the [Board] process.”

## **B. Respondent’s Response**

[14] The Respondent acknowledged the Applicant was successful on all issues for the appeal but noted that he was successful in the preliminary question of the appealability of the Director’s decision at first instance, as discussed in *Normandeau v Director*.<sup>2</sup>

[15] The Respondent addressed the matters which the Board may consider in deciding whether to award costs which are detailed in section 232(4) of the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”):<sup>3</sup>

1. The outcome of the matters before the Board was extremely important to determining the law related to overlapping interests in public land. As such, it was important that this case be brought forward, and it would be inappropriate to chill future appeals [by awarding costs] which may bring equally important questions before the Board.

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<sup>2</sup> *Normandeau v Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks*, re: *Stanley Jensen*, 2021 ABPLAB 3.

<sup>3</sup> Section 232(4) of PLAR states:

“In deciding whether to award costs, the amount of any costs and the party by whom costs are to be paid, the panel may consider

- (a) the extent, if any, to which the appeal succeeded,
- (b) the value of the statutory interest, right or privilege at issue in the appeal,
- (c) the importance of the issues,
- (d) the complexity of the appeal,
- (e) the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding,
- (f) a party’s denial of or refusal to admit anything that should have been admitted,
- (g) whether any step or stage in the proceedings was
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution,
- (h) whether a party commenced separate proceedings in a court or a tribunal under another enactment respecting matters that should have been dealt with in one proceeding, and
- (i) any other matter the panel considers relevant to the question of costs.”

2. Although the appeal in question was of moderate complexity, Mr. Jensen's submissions on the matter were not complex; they consisted of three pages and three points of argument.
3. Neither his nor Mr. Jensen's conduct shortened or unnecessarily lengthened the proceedings.
4. The facts in this matter were largely agreed upon, and there were no significant questions of pure fact on which the Board's decision turned (although there were substantial questions of mixed fact and law).
5. No step or stage in the proceedings has been found to be improper, vexatious or unnecessary, and the Board made no such finding, and no party asserted the same.
6. No separate proceedings in a court or a tribunal under another enactment were commenced.

[16] The Respondent submitted that an award of costs to the Applicant in this matter would be inappropriate and unjustified.

### **C. Director's Response**

[17] The Director noted that section 232 (3) of PLAR precluded any costs award against the Director. The Director took no position on the Applicant's cost application.<sup>4</sup>

## **IV. THE LEGAL BASIS OF COSTS**

[18] The Board's authority to award costs is found in section 123(11) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act"), which provides:

"The [Board] may award costs of and incidental to any proceedings before it on a final or interim basis and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid."

This section gives the Board broad discretion in awarding costs.

[19] In *Cabre Exploration Ltd. v. Alberta (Environmental Appeal Board)*,<sup>5</sup> the Court commented on the authority of the Environmental Appeals Board ("EAB") (an independent board reporting to the Minister, similar to the Board) to grant costs under the *Environmental Protection*

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<sup>4</sup> Director's Costs Submission, February 8, 2023.

<sup>5</sup> *Cabre Exploration Ltd. v. Alberta (Environmental Appeal Board)*, 2001 ABQB 293 (CanLII).



*and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”). The Court referred to what is now section 96 of EPEA,<sup>6</sup> which is very similar to section 123(11) of the Act:

“Under s. 88 [(now section 96)] of [EPEA], however, the [EAB] has final jurisdiction to order costs ‘of and incidental to any proceedings before it...’. The legislation gives the [EAB] broad discretion in deciding whether and how to award costs.”<sup>7</sup>

[20] Further, the Court stated:

“I note that the legislation does not limit the factors that may be considered by the [EAB] in awarding costs. Section 88 [(now section 96)] of the Act states that the [EAB] ‘*may award costs ... and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid....*’” (*Emphasis in the original.*)<sup>8</sup>

[21] The factors to be considered by the Board in determining whether to award costs are set out in section 232(4) of PLAR as follows:

“In deciding whether to award costs, the amount of any costs and the party by whom costs are to be paid, the panel may consider

- (a) the extent, if any, to which the appeal succeeded,
- (b) the value of the statutory interest, right or privilege at issue in the appeal,
- (c) the importance of the issues,
- (d) the complexity of the appeal,
- (e) the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding,
- (f) a party’s denial of or refusal to admit anything that should have been admitted,
- (g) whether any step or stage in the proceedings was
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution,

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<sup>6</sup> Section 96 of EPEA provides: “The [EAB] may award costs of and incidental to any proceedings before it on a final or interim basis and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid.”

<sup>7</sup> *Cabre Exploration Ltd. v. Alberta (Environmental Appeal Board)*, 2001 ABQB 293 (CanLII), at paragraph 23.

<sup>8</sup> *Cabre Exploration Ltd. v. Alberta (Environmental Appeal Board)*, 2001 ABQB 293 (CanLII), at paragraphs 31 and 32.

- (h) whether a party commenced separate proceedings in a court or a tribunal under another enactment respecting matters that should have been dealt with in one proceeding, and
- (i) any other matter the panel considers relevant to the question of costs.”

[22] As part of its determination of a costs application, the Board considers the following to be matters “relevant to the question of costs” as per section 232(4)(i):

- (a) whether the parties presented valuable evidence, arguments, witnesses, or experts, that substantially contributed to the hearing on issues directly related to the matters contained in the Notice of Appeal;
- (b) whether the party’s overall participation in the appeal process assisted the Board in providing the best recommendations possible to the Minister; and
- (c) whether the awarding of costs would be consistent with the purposes of the Act and PLAR, which Alberta Environment and Parks describes in the document *History of Public Lands in Alberta*, as “the governing legislation for public land in Alberta” allowing “government to ensure the activities happening on public land are sustainable.”<sup>9</sup>

[23] Additionally, Rule 25 of the Board’s Interim Appeals Procedure Rules for Complex Appeals lists factors a panel will consider when determining costs. Rule 25 includes the factors listed in section 232(4) of PLAR, in addition to whether a person in the appeal abused the Board’s process and acted contrary to an agreed-upon Board process.<sup>10</sup>

[24] The Board has the discretion to determine which of the criteria listed in section 232(4) of PLAR are relevant to a particular costs application. The Board will assess the relative weight to be given each criterion, depending on the specific circumstances of each appeal.

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<sup>9</sup> See *History of Public Lands in Alberta*, Government of Alberta, 2017, at page 2:  
“The *Public Lands Act* is the governing legislation for public land in Alberta. The associated Public Lands Administration Regulation (PLAR) allows government to better manage our increasingly busy landscape to ensure the activities happening on public land are sustainable. ... The Government of Alberta is responsible for managing public land for the benefit of all Albertans, both now and in the future. Public land management focuses on establishing and sustaining an optimum balance of use, conservation and development of resources, in harmony with the values and needs of Albertans. This stewardship responsibility requires public land managers to ensure that the quantity and quality of public land resources are maintained or enhanced.... Administration and management of public lands involve determining the best and most appropriate use for the land, using the most appropriate instrument for authorizing land use and ensuring that the land is used in a proper manner.”

<sup>10</sup> Interim Appeals Procedure Rules for Complex Appeals, at pages 19-20.

[25] The Board will consider awarding costs when the amounts claimed are directly and primarily related to the preparation and presentation of the party's submission for the hearing. A costs application must contain a thorough breakdown of the amount claimed including, if relevant, the number of hours spent in preparation and presentation of the party's submission and the hourly rate of any legal representation or expert witnesses involved. Copies of receipts for other expenses must also be included in a costs application. In most cases, the Board will not award costs related to travel and accommodation or disbursements. Depending on the circumstances, the Board may award costs for reasonable and relevant expenses such as out-of-pocket expenses or lost time from work.

[26] Section 232(5) of PLAR grants the Board the discretion to determine how to allocate the costs. It reads:

“In awarding costs, the panel may

- (a) award all, part, or none of the costs to a party, or
- (b) award costs to a party respecting a particular matter or part of an appeal while refusing to award costs to that party, or awarding costs to another party, respecting another matter or part of the appeal,

and may direct whether or not any costs are to be set off against other amounts owing by or to a party.”

[27] The Board generally accepts as a starting point that costs incurred in an appeal are the responsibility of the individual parties.

## **V. ANALYSIS**

[28] The issue before the Board is whether costs should be awarded to the Applicant.

[29] The Board has the authority to award final costs after the completion of the hearing, when the Board considers it appropriate, based on the evidence and arguments presented at the hearing and the factors and principles outlined above.

[30] Costs are not awarded to provide a financial benefit to a party, and costs are not assessed against a party as a penalty unless that party acted in a vexatious manner during the appeal process.

[31] Not every criterion in section 232(4) of PLAR is relevant to every costs application. The Board reviewed each of the criteria and considered the most relevant, considering the facts of the appeal.

[32] The Applicant applied for costs of \$3,198.82, including legal fees determined on a solicitor and client basis. The Applicant included an itemized list of disbursements he sought to recover and a description of how each amount was calculated.

[33] The Applicant's costs submission did not address the factors listed in section 232(4) of PLAR, however, the Board acknowledged the Respondent's summary of the factors assisted it in evaluating the costs application.

[34] The Board finds the Applicant presented valuable evidence and arguments that contributed to the hearing on the issues, and his overall participation was helpful to the Board in providing the best recommendations possible to the Minister. The Board finds the Applicant was successful on all issues in the Appeal.

[35] However, the Applicant has not presented sufficient reasons why the Board should move from its starting point that parties should bear their own costs in the appeal process.

[36] Therefore, the Board will not award costs to the Applicant.

## **VI. DECISION**

[37] The Board finds it would not be appropriate to award costs to the Applicant.

[38] Therefore, the Board denies the costs application of the Applicant.

Dated on July 14, 2023, at Edmonton, Alberta.

"original signed by"

Chris Powter  
Acting Panel Chair

"original signed by"

Dr. Brenda Ballachey  
Board Member