
ALBERTA PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – February 13, 2023

IN THE MATTER OF sections 121, 123, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 98, 211, and 212, of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF an appeal filed by Darilyn Dorosz and Jonas Dorosz, with respect to access to Department Licence of Occupation DLO 800847 issued by Alberta Environment and Protected Areas to Maranatha Water Valley Association.

Cite as: *Doroz v. Maranatha Water Valley Association* (13 February 2023), Appeal No. 22-0009-ID1 (A.P.L.A.B.), 2023 ABPLAB 1.

BEFORE:

Mr. Gordon McClure, Board Chair and Appeals Coordinator.

SUBMISSIONS BY:

Applicants: Ms. Darilyn Dorosz and Mr. Jonas Dorosz. Represented by Ms. Chelsea Scott, Taylor Janis, LLP.

Respondent: Maranatha Water Valley Association.

EXECUTIVE SUMMARY

The Maranatha Water Valley Association (Maranatha) holds a Department Licence of Occupation (DLO) for a road west of the community of Water Valley, in Mountain View County (the Road). Darilyn Dorosz and Jonas Dorosz (the Applicants) signed a road use agreement (Agreement) with Maranatha to use the Road to access their residence. The Applicants and Maranatha disagreed on matters related to maintenance of the Road. The Applicants filed a Notice of Appeal with the Public Lands Appeal Board (the Board) to obtain a Road Use Agreement under section 98 of the *Public Lands Administration Regulation* (PLAR).

The Board received a letter from Maranatha that stated the Agreement was valid and, therefore, there was no basis for the appeal to the Board. The Board determined that Maranatha's letter raised a question fundamental to the Board's jurisdiction to hear the appeal. The Board wrote to the parties and requested they provide written submissions on the following question:

“Does a commercial road use agreement currently exist between the Maranatha Water Valley Association and Jonas and Darilyn Dorosz and their commercial interest...?”

The parties provided their written submissions. The Applicants applied for costs in their submission.

The Board considered the written submissions and determined the Applicants signed the Agreement as individuals, not as commercial users. The legislation sets out criteria for the Board's jurisdiction to hear road use appeals. One of the criteria is there is no road use agreement between a commercial user and a licence holder in effect. As the Agreement was between Maranatha and the Applicants as individuals, and not commercial users, the Agreement is not valid as a road use agreement under the legislation and, therefore, the Board may hear the appeal. The Agreement may be valid between Maranatha and the Applicants as individuals, however, that is not a matter for the Board to determine. The Board finds it has the jurisdiction to hear the appeal.

The Board will consider costs at the end of the hearing.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	SUBMISSIONS	3
A.	Applicants	3
B.	Maranatha	4
C.	Applicants' Rebuttal	5
IV.	ISSUE	5
V.	ANALYSIS.....	6
VI.	COSTS	8
VII.	CONCLUSION.....	8

I. INTRODUCTION

[1] This is the Public Lands Appeal Board's (the "Board") decision regarding whether the Board has jurisdiction to hear the Notice of Appeal filed by Darilyn Dorosz and Jonas Dorosz (the "Applicants"). The Applicants also applied for costs.

II. BACKGROUND

[2] The Maranatha Water Valley Association ("Maranatha") is the holder of Department Licence of Occupation DLO 800847 (the "DLO") for an access road (the "Road") located at SW 30-29-5-W5, west of the community of Water Valley, in Mountain View County. On May 27, 2016, the Applicants and Maranatha signed an agreement to allow the Applicants to use the Road (the "Agreement").

[3] On August 16, 2017, the Applicants emailed Maranatha and stated, "... unfortunately we are unable to enter into a road use agreement. Our lawyer will be in touch with you shortly to discuss next steps."¹ On the same date, the Applicants' legal counsel sent a letter to Maranatha and advised that the Agreement would not add the Applicants to as licensees to the DLO, which is what the Applicants wished to accomplish. The letter also advised that the Applicants would approach the provincial government with a request to be added as licensees to the DLO, or provided with a separate agreement to use the Road. The letter concluded with a request that Maranatha reconsider its position opposing adding the Applicants to the DLO.

[4] On August 25, 2022, the Applicants filed a Notice of Appeal with the Board seeking the following:

1. An order under section 59.1 of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act"),² enforcing the conditions of the DLO, and enforcing the

¹ Applicants' Initial Submission, November 15, 2022, at page 4.

² Section 59.1(1) of the Act states:

"Where, in the director's opinion, a person has contravened a provision of an ALSA regional plan, this Act or the regulations, the director may issue an enforcement order under this section to a person responsible, whether or not the person who contravened the provision has been charged with or convicted of an offence in respect of the contravention."

duties of Maranatha as the DLO holder under sections 95(a) and (c) of the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”);³

2. An amendment to the DLO adding the Applicants as assignees, including terms and conditions related to cost-sharing and road maintenance between the DLO holders;
3. Any other order the Director or Minister deems appropriate to resolve the dispute; and
4. Costs.

[5] On October 17, 2022, Maranatha wrote to the Board and submitted there was a valid Road Use Agreement between the Applicants and Maranatha. Maranatha stated:

“We are of the opinion that there is no basis for an appeal to the Public Lands Appeals Board as no decisions have been rendered, the appellant is simply not pleased with the current set of facts that existed prior to the purchase of their property... Maranatha has a valid Road Use Agreement in place with the appellant. The appellant has not canceled this agreement and has benefited from full use of the road.”⁴

[6] On November 4, 2022, the Board wrote to the Applicants and Maranatha (collectively, the “Parties”) and noted that the Parties appeared to disagree on whether there was a road use agreement in place for commercial use of the road. The Board set a schedule for written submissions to be provided to the Board on the following question:

“Does a commercial road use agreement currently exist between the Maranatha Water Valley Association and Jonas and Darilyn Dorosz and their commercial interest...?”⁵

[7] The Parties provided written submissions between November 15, 2022, and December 8, 2022.

³ Section 95(a) and (c) of PLAR provide:

“If any or all of a licensed area is a road, the holder of the licence must

- (a) keep the road in a reasonable condition...
- (c) subject to sections 97 to 99, permit other persons to travel without charge along and across the road.”

⁴ Maranatha’s letter to the Board, October 17, 2022, at page 1.

⁵ Board’s letter to the Parties, November 4, 2022, at page 2.

III. SUBMISSIONS

[8] The Board has reviewed the Parties' submissions and has summarized the most relevant comments below.

A. Applicants

[9] The Applicants acknowledged that they signed the Agreement, however, the Applicants submitted the Agreement is invalid and unenforceable for the following reasons:

1. The Agreement assigned Maranatha's duties as DLO holder to the Applicants, contrary to section 95(a) of PLAR, which the Applicants noted required the DLO holder to keep the road in a reasonable condition. The Applicants stated Article 4 of the Agreement stated that Maranatha does not give any undertaking on maintaining the Road in a usable condition. The Applicants submitted that by implication, this places the responsibility for road maintenance on the Applicants.
2. The Agreement required the Applicants to pay a \$200.00 annual fee for use of the Road, which the Applicants argued is contrary to section 95(c) of PLAR, which prohibits the DLO holder from charging users to access the Road.

[10] The Applicants stated that even if the Board found the Agreement was enforceable, the Agreement did not "... adequately address issues related to maintenance and cost sharing of the road."⁶ The Applicants submitted maintenance and cost sharing were matters that could be resolved through the Board's appeal process.

[11] The Applicants said they repudiated the Agreement by email on August 16, 2017, and had made it clear to Maranatha that the Applicants did not consider the Agreement valid. The Applicants noted Maranatha never acknowledged the Applicants' repudiation of the Agreement, and did not attempt to enforce its terms and conditions. The Applicants stated Maranatha's actions demonstrated that Maranatha accepted the Applicants' repudiation.

[12] The Applicants argued the Agreement was not intended to be a commercial road use agreement. They noted that the Agreement does not refer to the commercial use of the Road.

⁶ Applicants' Initial Submissions, November 15, 2022, at page 2.

The Applicants also noted Maranatha, in their October 17, 2022 letter, stated that when the Applicants signed the Agreement, they were using the road primarily for residential purposes. The Applicants submitted that, although they were using the road for residential purposes when they initially signed the Agreement, they are now a commercial user and require a road use agreement that ensures the access road is maintained properly to allow them to carry out their hail damage business.

B. Maranatha

[13] Maranatha stated the Agreement was a boilerplate commercial road use agreement they adapted to use with the Applicants.

[14] Maranatha submitted they did not have any evidence of the Applicants' August 16, 2017 email repudiating the Agreement. They acknowledged receiving a letter from the Applicants' legal counsel, but submitted the letter did not cancel the agreement.

[15] Maranatha stated that on April 9, 2018, their legal counsel sent a letter to the Applicants' legal counsel to confirm the Agreement's validity. The letter stated:

“Unless the [Applicants] wish to give 30-day's notice cancelling the Agreement, Maranatha will continue to operate on the basis that the Agreement is in force. Please confirm whether you wish to maintain or cancel the current agreement.”⁷

Maranatha submitted they have not received a signed request to cancel the Agreement.

[16] Maranatha noted that the Applicants have established a commercial operation and use the Road to transport various items for their business. Maranatha stated:

“Such use has placed a greater demand on the road and from time to time caused significant damage to the road.

The [Applicants] have enjoyed full access to the road while forcing Maranatha to maintain the road to a higher standard to accommodate the commercial use by the [Applicants].”⁸

⁷ Letter from Gavin Fitch, McLennan Ross LLP, to Tiro Clarke, Admiral Law, April 9, 2018, at page 3.

⁸ Maranatha's Response Submission, November 25, 2023, at page 1.

[17] Maranatha compared the situation with the Applicants to the PLAB Appeal No. 17-0028-R.⁹ Maranatha stated they had spent money and time developing and maintaining the Road, yet the Applicants feel the Agreement does not meet their needs.

C. Applicants' Rebuttal

[18] The Applicants provided emails to show that Maranatha's former legal counsel indicated Maranatha was developing a new road use agreement, which the Applicants submitted was evidence Maranatha was aware of the deficiencies of the Agreement. The Applicants stated they have not seen a new road use agreement.

[19] The Applicants argued Maranatha's lack of attempts to collect the annual road use fee, "one of the most fundamental terms of the contract," leads to the conclusion "... that the contract has been abandoned, which has the same effect as repudiation."¹⁰ The Applicants referred to the Supreme Court of Canada decision in *Chapman v. Ginter*¹¹ where the Court found both parties to an agreement abandoned it, making the agreement invalid.

[20] The Applicants disputed Maranatha's claims that the Applicants caused damage to the Road, and the Applicants provided documentation of their expenditures to maintain and improve the Road.

[21] The Applicants noted the Board had taken jurisdiction for the appeal on September 6, 2022, and Maranatha did not object to the Board's jurisdiction until two months after the Notice of Appeal was accepted. The Applicants requested the Board award costs "for the ongoing delays" by Maranatha.

IV. ISSUE

[22] The Board defined the issue for the preliminary hearing as:

⁹ *Tim Kalinski v. Director, Provincial Approvals Section, Alberta Environment and Parks, re: Alvin Bancarz* (20 December 2018), Appeal No. 17-0028-R (A.P.L.A.B.).

¹⁰ Applicants' Rebuttal Submission, December 8, 2022, at page 2.

Does a commercial road use agreement currently exist between the Maranatha Water Valley Association and Jonas and Darilyn Dorosz and their commercial interest?

V. ANALYSIS

[23] The Board's jurisdiction to hear road use appeals is found in section 98 of PLAR:

“A commercial user that requires use of a road in a licensed area for the purposes of the commercial user's commercial or business undertaking may use the road only

- (a) by agreement with the holder of the licence, whether reached in mediation under Part 10 or otherwise, or
- (b) in the absence of an agreement with the holder of the licence, in accordance with an order under section 124(3) of the Act on an appeal under Part 10.”

[24] Based on section 98, the following criteria are required for the Board to have jurisdiction:

1. the applicant must be a “commercial user”;
2. access to the road must be for a commercial or business purpose;
3. there must not be an existing road use agreement between the commercial user and the holder of the licence; and
4. there must be a Notice of Appeal filed with the Board.

[25] The Applicants have argued the Agreement is not a valid road use agreement for the following reasons:

1. the Applicants repudiated the Agreement;
2. the Agreement was not a commercial road use agreement as the Applicants were primarily using the road for residential purposes;
3. the Agreement does not address maintenance and cost sharing of the road; and
4. the Agreement breaches Maranatha's duty as the DLO holder to permit use of the road without charge.

¹¹ *Chapman v. Ginter*, 1968 CanLII 72 (SCC), at paragraph 12.

[26] Maranatha argued the Applicants had not properly repudiated the Agreement and, therefore, it was valid and in effect.

[27] To determine if the Agreement is valid for the purposes of section 98 of PLAR, the Board must consider if the circumstances of the appeal meet the legislative criteria. The first two criteria are that the Applicants must be a commercial user accessing the road for a commercial purpose. In its letter dated September 6, 2022, the Board determined the Applicants were commercial users and were accessing the road for a commercial purpose. The Board stated:

“Based upon the information provided in [the Applicants’] August 31, 2022 letter, the Board understands that pursuant to section 98 of the Public Lands Administration Regulation, the applicant has a commercial operation, a hail damage repair business, that may require use of DLO 800847. The Board has therefore accepted the Notice of Appeal.”¹²

[28] The third criteria is that there must not be an existing road use agreement between the commercial user and the holder of the licence. The Board notes that the Applicants and Maranatha agree that the Applicants initially used the road primarily for residential purposes. There is nothing in the Agreement to indicate the Parties contemplated any commercial use of the Road by the Applicants.

[29] The Agreement states it is between Maranatha and “Darilyn and Jonas Dorosz, individuals residing in the County of Mountain View, in the Province of Alberta.” From the use of the word “individuals,” it is clear that the Parties did not consider the Agreement was providing access to the Road for any commercial or business interest.

[30] The Board finds that when the Applicants signed the Agreement they were not commercial users. For a road use agreement to be valid under section 98 of PLAR, it must be between the license holder and a commercial user. As the Agreement was between Maranatha and the Applicants as individuals, the Agreement is not a road use agreement under section 98 of PLAR. As there is not an existing commercial road use agreement, the Applicants may appeal to the Board for access to the Road.

¹² Board’s letter, September 6, 2022, at page 1.

[31] As the Board finds the Agreement is not a valid road use agreement under section 98 of PLAR, there is no reason for the Board to consider the other arguments made by the Parties. The Board notes the Agreement may be valid between Maranatha and Darilyn Dorosz and Jonas Dorosz as individuals, but that is not a matter for the Board to determine.

VI. COSTS

[32] Section 232(7) of PLAR states: “Costs may be dealt with at any stage of an appeal.” As it is very early in the appeal process, the Board will address costs at the conclusion of the appeal.

VII. CONCLUSION

[33] The Board finds there is no valid road use agreement under section 98 of PLAR between Maranatha and the Applicants. Therefore, the Board finds it has jurisdiction to hear the Notice of Appeal filed by the Applicants.

Dated on February 13, 2023, at Edmonton, Alberta.

“original signed by”
Gordon McClure
Board Chair and Appeals Coordinator