
ALBERTA
PUBLIC LANDS APPEAL BOARD
DECISION

Date of Decision – March 14, 2023

IN THE MATTER OF sections 121, 122, 124, of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, and 217 of the *Public Lands Administration Regulation*, A.R. 187/2011;

-and-

IN THE MATTER OF an appeal filed by Bill Swanson and Milo Swanson, with respect to the decision of the Director, Agriculture, Approvals and Sales Unit, Forestry, Parks and Tourism, to refuse application LRR190002 under the *Public Lands Act* to acquire crown land by sale or by grazing lease disposition.

Cite as: *Swanson v. Director, Agriculture, Approvals and Sales Unit, Forestry, Parks and Tourism* (March 14, 2023), Appeal No. 22-0010-ID1 (A.P.L.A.B.), 2023 ABPLAB 3.

BEFORE:

Mr. Andrew Bachelder, Acting Appeals Co-ordinator.

SUBMISSIONS BY:

Appellants: Mr. Ben Swanson and Mr. Milo Swanson.

Director: Ms. Avaline Thrush, Director, Agriculture, Approvals and Sales Unit, Forestry, Parks and Tourism, represented by Ms. Teresa Holmes, Alberta Justice.

EXECUTIVE SUMMARY

Mr. Ben Swanson and Mr. Milo Swanson (the Appellants) applied to Forestry, Parks and Tourism (FTP) to either purchase or receive a grazing lease for certain public lands. The Appellants' Land Review Request was refused by the Director, Agriculture, Approvals and Sales Unit (the Director). The Appellants served a Notice of Appeal on the Appeals Co-ordinator, Public Lands Appeal Board (the Board), appealing the Director's refusal.

The *Public Lands Administration Regulation* (PLAR) provides for 20 days from the time the Appellants received the decision to serve a Notice of Appeal on the Board's Appeals Co-ordinator. The Appellants served the Notice of Appeal on the Appeals Co-ordinator 21 days after receiving the Director's decision. The Director applied to have the appeal dismissed for being served late.

The Board received written submissions from the Appellants and the Director on the Director's motion to dismiss the appeal. Specifically, the Appellants and the Director were asked to comment on whether it would be contrary to the public interest to extend the time to serve the Notice of Appeal on the Appeals Co-ordinator. In their written submissions, the Appellants stated they were advised by FTP staff they could appeal the decision as the 20 days were considered "working days." The Director did not rebut the Appellants' statement. The Acting Appeals Co-ordinator (the Appeals Co-ordinator) determined the misinformation provided by FTP staff was an extraordinary event that prevented the Appellants' from serving the Notice of Appeal within the legislated timeline. The Appeals Co-ordinator found it was not against the public interest to extend the time to serve the Notice of Appeal.

The Appeals Co-ordinator extended the time for the Appellants to serve the Notice of Appeal and refused the Director's motion to dismiss the appeal.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND	1
III. ISSUE	3
IV. SUBMISSIONS	3
(a) Appellants	3
(b) Director	4
V. ANALYSIS	5
VI. DECISION	9
OBITER	9

I. INTRODUCTION

[1] This is the decision of the Acting Appeals Co-ordinator (the “Appeals Co-ordinator”) on a preliminary motion by the Director, Agriculture, Approvals and Sales Unit, Forestry, Parks and Tourism (the “Director”), to dismiss the Notice of Appeal from Mr. Ben Swanson and Mr. Milo Swanson (the “Appellants”). The Appellants served a Notice of Appeal on the Appeals Co-ordinator, Public Lands Appeal Board (the “Board”), appealing the decision by the Director to refuse the Appellants’ Land Review Request 190002 (“LRR”). The Director filed a preliminary motion with the Board requesting the Appeals Co-ordinator dismiss the Notice of Appeal for being served late under the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”).

[2] The Appeals Co-ordinator determined there were extraordinary circumstances that resulted in the Notice of Appeal being served late, and it was not contrary to the public interest to extend the time for the Appellants to file the Notice of Appeal. The preliminary motion by the Director is refused and the time for the Appellants to file the Notice of Appeal is extended.

II. BACKGROUND

[3] On May 15, 2019, the Appellants submitted the LRR for public land located at SE-27-40-7-W5 (the “Lands”), north of the Town of Rocky Mountain House, in Clearwater County.

[4] On November 28, 2022, the Director sent the Appellants a letter advising the LLR had been refused (the “Decision Letter”). The Decision Letter was emailed and sent by regular mail to Mr. Milo Swanson. The Decision Letter contained the following paragraph:

“Please be advised that in accordance with s. 211 (a) of The Public Lands Act Administration Regulation, Alta Reg 187/201 1, an appeal of the department's decision not to issue a grazing disposition before the Public Land Appeal Board may be available to you. Please note there are strict timelines and the specific criteria that must be satisfied in order to launch an appeal. **An appeal of this decision must be lodged within 20 days of receiving notice of this decision or 40 days from the decision date, which ever lapses first.** For further information, please contact the Alberta Public Lands Appeal Board at: 780-427-6207 or 310-0000 toll free if calling from outside Edmonton but within Alberta, or via email at PLAB@gov.ab.ca. The Board’s address is: 3rd Floor, Peace Hills Trust Tower, 1001 1 -109 Street,

Edmonton, AB T5J 3S8 and its website address is:
<https://aep.sp.alberta.ca/lands/alberta-public-lands-appeal-board/Pages/default.aspx>.”
[Emphasis is in the original.]

[5] The email of the Decision Letter from the Director to Mr. Milo Swanson included a cover email that stated:

“Good Afternoon Mr. Swanson,
Please see the attached letter. Please share the contents of this letter with Mr. Ben Swanson. Thank you. An original copy of the letter will be posted in the mail in due course.”¹

[6] On November 29, 2022, Mr. Milo Swanson responded by email to the Director, acknowledging receipt of the Decision Letter by stating: “I’m very disappointed to hear of the decision of refusal.”²

[7] On December 20, 2022, the Appellants served a Notice of Appeal on the Appeals Co-ordinator.

[8] On December 22, 2022, the Board wrote to the Appellants and the Director (the “Parties”) acknowledging receipt to the Notice of Appeal and requesting the Director provide the Department’s Record for the LRR.³

¹ Director’s File, at Tab 25.

² Director’s File, at Tab 26.

³ The Board requested the Department’s Record. Section 120 of the Act states “[a]n appeal under this Act must be based on the decision and the record of the decision-maker.” To determine what the decision and the record of the decision-maker is the Board looks to the definitions in PLAR. Section 209(f) of PLAR defines “director’s file” as “in respect of a prescribed decision made by the director, means records of the Department that are considered by the director in making the decision...” The Board notes the term “director’s file” does not appear anywhere else in the legislation. Section 209(m) of PLAR states “‘record’ means record as defined in the *Freedom of Information and Protection of Privacy Act*...” Section 1(q) of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, states:

- (a) “‘record’ means a record of information in any form and includes notes, images, audiovisual
- (b) recordings, x rays, books, documents, maps, drawings, photographs, letters, vouchers and papers
- (c) and any other information that is written, photographed, recorded or stored in any manner, but
- (d) does not include software or any mechanism that produces records...”

Based on these definitions, the Board considers the “Department’s Record” to consist of the director’s file, along

[9] On January 5, 2023, the Director wrote to the Board and requested the Appeals Co-ordinator:

- “1. find the Notice of Appeal was filed outside the timeframe prescribed by s. 217(1) of PLAR;
2. not extend the time for service of the Notice of Appeal pursuant to s. 217(2) of PLAR; and
3. dismiss the appeal.”⁴

[10] The Board set a written submission schedule for the Parties to comment on the Director’s preliminary motion and received written submissions between January 24 and February 21, 2023.

III. ISSUE

[11] The Parties were asked to provide written submissions on the following question:

As the Notice of Appeal was filed 20 days after the Appellants received, became aware of or should reasonably have become aware of the decision objected to, would it be contrary to the public interest to extend the expiry period described in section 217(1)(a)?

IV. SUBMISSIONS

[12] The Parties provided the Board with submissions for the written preliminary motion, which the Board has summarized below.

(a) Appellants

[13] The Appellants submitted the period to file the Notice of Appeal should be extended for the following reasons:

1. Mr. Milo Swanson has a very young family and was working 12 hour shifts at the time he received the Decision Letter, which caused him to not understand the Appellants’ right to appeal.

with records of FPT, which is any of the information as defined in section 1(q) of the *Freedom of Information and Protection of Privacy Act*. The Director provided only the Director’s File, which the Director referred to as the “Director’s Record.”

⁴ Director’s Letter, January 5, 2023, at page 3.

2. Mr. Ben Swanson was not included in the Director's email advising of the Decision Letter and did not see the Decision Letter until a few weeks after it was received.
3. Mr. Ben Swanson went to the Public Lands Office in Rocky Mountain House, where he said he was told there "... was still an opportunity to appeal as the 20 days listed were working days..."⁵ Mr. Ben Swanson stated he was now aware that the information he was given at the Public Lands Office was incorrect.
4. The LRR was originally submitted on May 15, 2019, and the Appellants had to wait for three years to get a decision. The Appellants stated:

"Now, after waiting patiently for over 1200 days to get this response/decision, there are only 20 days for us to appeal. The optics seem to be very poor for any appellant to receive a timely response to an application decision, yet are demanded mere days to review and respond to government emails.

Our right to expect a timely response to an application should also be considered when considering our request for an extension to appeal the decision."⁶
5. The public interest would not be impacted as the Lands have "... sat idle for some time with no expressed interest..."⁷

(b) Director

[14] The Director submitted the Appellants served the Appeals Co-ordinator with the Notice of Appeal one day outside the specified period provided under PLAR. The Director acknowledged the Appeals Co-ordinator may extend the time to file the Notice of Appeal, however, the Director noted the Board has found in previous decisions there must be extenuating circumstances, exceptional circumstances, or sufficient reasons to justify extending the time to file the Notice of Appeal.⁸

⁵ Appellants' Initial Submissions, January 23, 2023.

⁶ Appellants' Initial Submission, January 23, 2023.

⁷ Appellants' Initial Submission, January 23, 2023.

⁸ See: *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*, 2018 ABPLAB 27, at paragraphs 29-34; *House v. Director, Regulatory Assurance Division - North Region, Alberta Environment and Parks*, 2021 ABPLAB 19, at paragraphs 24-25 and 27; and *Reda Enterprises Ltd v. Director, Provincial Approvals Section, Alberta Environment and Parks*, 2018 ABPLAB 28 at paragraph 12.

[15] The Director stated the Decision Letter was emailed only to Mr. Milo Swanson as his email address was the only one provided on the LRR form.

[16] The Director submitted the actions of the Appellants did not demonstrate that they were unable to file the Notice of Appeal on time. Specifically, the Director stated:

“Ms. Michelle Swanson (who submitted the Notice of Appeal on behalf of the Appellants) contacted the office of the Minister of Forestry, Parks and Tourism on December 5, 2022, approximately one week after receiving the Director's Letter, in relation to LRR190002. This is not the type of action that suggests the Appellants (or their agent) were too busy to make inquiries to the Director or the Board, or to file a Notice of Appeal.”

[17] The Director noted that despite the Appellants' claim of being provided information from Department staff that the 20-day period to appeal was calculated in calendar days, the Decision Letter provided clear information that an appeal must be served within 20 days of receiving the Decision Letter.

[18] The Director concluded:

“[The] Director submits this is not an appropriate case for the Appeals Co-ordinator to exercise his discretion to extend the appeal period.”⁹

V. ANALYSIS

[19] Section 217 of PLAR provides direction on the service of a Notice of Appeal. Section 217(1) sets the timeline for service:

“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 Appellants received the Decision Letter on November 28, 2023. The Notice of Appeal was served on the Appeals Co-ordinator on December 20, 2023, which is 21 days after

⁹ The Director's Response Submission, February 7, 2023, at page 5.

the Decision Letter was received by the Appellants. Section 217(1)(1) provides for 20 days for the Appellants to serve the Notice of Appeal. The Notice of Appeal was late by one day.

[21] The legislation contemplates situations where it would be in the public interest to extend the deadline for an appellant to serve the Notice of Appeal on the Appeals Co-ordinator. Section 217(2) of PLAR 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.”

[22] To determine if it would be appropriate to exercise the discretion granted under section 217(2) and extend the time to serve the Notice of Appeal, the Appeals Co-ordinator must consider what is the public interest in this matter. As the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”), and PLAR do not provide a definition of the term “public interest” the Board must turn to case law for guidance. The Supreme Court of Canada, in considering an appeal of a decision made by the Public Utilities Commission of British Columbia, held that the public interest:

“... is predominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion. In delegating this administrative discretion to the Commission the Legislature has delegated to that body the responsibility of deciding, in the public interest ... and in reaching that decision the degree of need and of desirability is left to the discretion of the Commission.”

[23] The authors of the respected administrative law text, *Practice and Procedure before Administrative Tribunals*, noted the importance of the pertinent legislation in determining the public interest:

“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.”¹⁰

[24] When the Appeals Co-ordinator determines whether it is contrary to the public interest to extend the time to file a Notice of Appeal, he must consider the interests reflected in the Act and PLAR and exercise the statutory discretion within the parameters of the legislation. The Board finds the purpose of the Act and PLAR is to ensure that public lands are managed responsibly throughout the province. As part of the public lands management the legislation provides for an appeals system for parties to appeal certain decisions made by the provincial government. To provide certainty and order to the appeals system, the legislation requires appeals to be served in a specific manner and in a specific timeline. The discretion granted to the Appeals Co-ordinator to extend the time to serve a Notice of Appeal preserves the public interest in having an appeals system that is not overly strict in its application of the timelines. The Appeals Co-ordinator must apply his discretion on a case-by-case basis and in a manner that is fair to all parties.

[25] The Board has previously established some basic principles the Appeals Co-ordinator considers when determining whether it is appropriate to extend the time to file a Notice of Appeal:

- the time limits for filing an appeal were included in the Act and PLAR in order to provide a level of certainty to the appeal process;
- the authority to extend an appeal period is used only in extraordinary circumstances, as it would render the appeal period meaningless if extensions were routinely granted;
- the Board should not extend the appeal period without a valid reason for doing so; and
- the onus is on an appellant to provide sufficient reasons to grant the extension.¹¹

¹⁰ Lorne Sossin, *Practice and Procedure Before Administrative Tribunals*, Online Edition (Toronto: Thomson Reuters Canada, 2023), at § 1.19.

¹¹ *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*, 2018 ABPLAB 27, at paragraph 34.

[26] In applying these principles, the legislation, and the facts and argument provided by the Parties, the Appeals Co-ordinator finds:

1. The Director's Decision Letter contained very clear information on filing a Notice of Appeal, including contact information for the Board.
2. The Director was correct to send the Decision Letter to the email address on the LRR form.
3. Ms. Michelle Swanson may have used her email address to submit the Notice of Appeal and may have made an inquiry on behalf of the Appellants, but that does not make her the Appellants' agent, and is not indicative of the Appellants' ability to respond to the Decision Letter.
4. Waiting three years for a decision on the LRR is not a sufficient reason to grant leniency to the Appellants.
5. The Appellants' statement that staff in the Public Lands Office in Rocky Mountain House advised the Appellants that the 20 days to file was calculated as workdays was not rebutted by the Director.

[27] The Appeals Co-ordinator finds the misinformation provided by staff at the Rocky Mountain House office qualifies as an extraordinary circumstance that would prevent the Appellants from reasonably serving the Notice of Appeal on the Appeals Co-ordinator within the time specified in the legislation. The Appellants, and the public at large, must be able to rely on information provided by Department staff.

VI. DECISION

[28] The Appeals Co-ordinator considered the legislation, the arguments from the Director and the Appellants, and the relevant case law. In the Appeals Co-ordinator's opinion, it is not contrary to the public interest to extend the time for the Appellants to serve the Notice of Appeal on the Appeals Co-ordinator. Accordingly, the Appeals Co-ordinator extends the time for service of the Notice of Appeal as per section 217(2) of PLAR. The Director's preliminary motion to dismiss the appeal is refused.

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



Andrew Bachelder
Acting Appeals Co-ordinator

Obiter

The Board acknowledges the Director's Decision Letter contained detailed wording on the Appellants' right to appeal and the timeline for doing so. Considering the misinformation the Appellants received from Department staff, the Board notes the Decision Letter could be improved by adding "calendar days" to the description of the timeline for serving a Notice of Appeal. While the legislation does not contain such a descriptor, having it in future decision letters would remove any confusion for those in the public who are not knowledgeable about the computation of days in a service period.