

**ALBERTA
PUBLIC LANDS APPEAL BOARD**

DECISION

Decision Date: April 13, 2018

IN THE MATTER OF sections 119(d), 121, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 15, 211(c), 213, 228, and 235 of the *Public Lands Administration Regulation*, A.R. 187/2011;

- and -

IN THE MATTER OF an appeal filed by Gionet Holdings Corporation under section 211 of the *Public Lands Administration Regulation* with respect to Miscellaneous Permit No. MLP 060011.

Cite as: *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.).

BEFORE:

Mr. Gordon McClure, Board Chair.

PARTIES:

Appellant: Gerald Gionet on behalf of Gionet Holdings Corporation, represented by Mr. Matthew Farrell, Guardian Law Group.

Director: Ms. Shelly Currie, Provincial Approvals Section, Alberta Environment and Parks, represented by Ms. Vivienne Ball and Ms. Lisa Semenchuk, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Gionet Holdings Corporation (“Gionet”) filed a Notice of Appeal with the Board after the Director, Provincial Approvals Section, Alberta Environment and Parks (the “Director”) terminated Gionet’s overholding month-to-month tenancy on public lands near Fort McMurray, Alberta.

The Director applied to have the Board review its jurisdiction to hear the appeal. The Board established a process to receive submissions from Gionet and the Director. Gionet requested a one month extension to file its rebuttal submission. The Director opposed the time extension.

The Board granted the extension to provide submissions given: (a) the extension would not impact the one year time requirement in the *Public Lands Act* for the issuance of a decision; (b) no significant prejudice would result to any party; (c) the reasons for the extension request and the additional time being sought were reasonable; and (d) the request did not undermine the Board’s previous direction.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PROCEDURAL HISTORY.....	1
	A. The Extension Request	2
	B. The Decision.....	3
	C. Subsequent Correspondence	3
III.	REASONS FOR DECISION	5
	A. General Approach.....	5
	B. Factors to consider in determining an Extension Request	5
	1. Overall objective of civil proceedings.....	6
	2. Prejudice.....	8
	3. Costs	9
	4. Length of the adjournment	9
	5. Reasons why litigants are not ready	9
	6. The need to enforce orders	10
	C. General Comments on Requests for Extensions	11
IV.	CONCLUSION.....	11

I. INTRODUCTION

[1] These are the Board's reasons for granting the extension requested by counsel for Mr. Gerry Gionet of Gionet Holdings Corporation ("the Appellant") and objected to by counsel for the Director, Approval and Disposition Services, Alberta Environment and Parks ("the Director").

II. PROCEDURAL HISTORY

[2] On April 18, 2017, the Board received a Notice of Appeal on behalf of Mr. Gerry Gionet of Gionet Holdings Corporation.

[3] The Notice of Appeal references a decision made on March 13, 2017, which is appended to the Notice of Appeal. The decision was made by the Director. The decision terminated the Appellant's month-to-month tenancy.

[4] The Board, in keeping with its practice, acknowledged receipt of the Notice of Appeal and requested the Director provide the records relating to this decision be forwarded to the Board (the "Director's Record").

[5] On May 15, 2017, the Board received an application to determine jurisdiction from counsel for the Director (the "Director's Application"). In the covering letter, the Director indicated the Board should determine jurisdiction based on the face of the Notice of Appeal and, as a result, the Director would not be providing the Director's Record.

[6] In response to the Director's Application, the Board issued a procedural letter on May 16, 2017, to the Appellant and the Director (collectively, the "Parties"). The letter requested submissions on the following issue:

"Does the Board have jurisdiction to hear an appeal of the Department's decision to terminate the Appellant's month-to-month overholding tenancy and make a recommendation to the Minister?"

[7] The Board set times for filing submissions and the Parties provided their written submissions in accordance with the schedule.

[8] On June 15, 2017, the Board requested a copy of the Director's Record in order to determine jurisdiction to hear the appeal properly.

[9] On June 28, 2017, the Director's Record was received and provided to the Appellant on July 14, 2017.

[10] On July 14, 2017, the Board invited the parties to provide any further written submissions, given the receipt of the Director's Record, in accordance with the following schedule:

1. the Appellant's initial submission by August 3, 2017;
2. the Director's response submission by August 24, 2017; and
3. the Appellant's rebuttal submission by August 31, 2017.

A. The Extension Request

[11] On July 25, 2017, the Appellant requested an extension until September 6, 2017 to file its submissions. In a telephone call to counsel for the Board, the reason for the extension request was identified as a scheduling issue for the Appellant's counsel.

[12] On August 1, 2017, the Director sent a letter to the Board opposing the request for an extension. The Director submitted the matter is a "straight forward, threshold matter concerning the Board's jurisdiction." The Director further submitted there had been a protracted process to date with respect to the issue and the delay caused by an extension would result in prejudice and regulatory uncertainty to Alberta Environment and Park's ("the Department's") ability to regulate public land.

[13] As a result, the Director requested the Board:

1. deny the Appellant's request for an extension;
2. close submissions after the Department's response, if any, to the Appellant's supplemental additional submissions; and
3. set a date to consider this preliminary jurisdictional matter.

B. The Decision

[14] The Board decided to grant the extension and communicated that decision by letter to the Parties on August 1, 2017 (the “Decision Letter”).

[15] As a result of the extension, the deadlines for submissions outlined in the Board’s letter of July 14, 2017 were revised as follows:

1. Appellant’s initial submission was due by September 6, 2017;
2. Director’s response submission was due by September 27, 2017; and
3. Appellant’s rebuttal submission was due by October 11, 2017.

C. Subsequent Correspondence

[16] On August 1, 2017, the Board responded specifically to the Director’s letter opposing the adjournment and indicated:

1. the Board had not made any decisions in this appeal other than to request the Director’s Record;
2. the Board disagreed with the characterization that the matter before it is “unambiguous.” As a result, the Board explained it had requested the Director’s Record and, given new evidence was before the Board in the form of the Record, all Parties should be permitted an opportunity to comment on it; and
3. extensions are often granted by tribunals, such as the Board, as a matter of courtesy when appropriate. An example was given of extensions given by the Environmental Appeals Board to the Director in appeals before that tribunal.

[17] In response to both the Decision Letter and the Board’s August 1, 2017 letter responding to the Director’s submission, a further letter dated August 3, 2017 was received from the Director raising several points:

1. whether the Board had reviewed and considered the submissions of the Director with respect to the extension as the Director’s submissions were not referenced in the Decision Letter;
2. a concern arising from the Board’s August 1, 2017 letter that the Board had not only predetermined the jurisdiction question, but also decided the merits of any underlying appeal. The Director submitted the only matter before the Board was the jurisdiction of the Board to hear the appeal, and

not any question of the jurisdiction of the Director to exercise her authorities;

3. an extension granted by another board was unrelated to this matter and ought not to have been considered. The Director noted the Board grants extensions to parties on all sides of an issue from time to time due to scheduling issues. It was, in the Director's view, "inappropriate to focus only on our colleagues;" and
4. the Environmental Appeals Board is not required to hear matters within one year, unlike the obligation imposed by statute on the Public Lands Appeal Board.

[18] External counsel for the Board wrote to all parties on September 19, 2017, in response to the Director's August 3, 2017 letter. This letter:

1. confirmed the Board did consider the Director's submission of August 1, 2017, in reaching its decision, and the omission of reference to correspondence on behalf of the Director was unintentional;
2. confirmed the Board had not reached any decision regarding its jurisdiction or the merits of the matter, and the Board would consider all of the submissions of the Parties in due course;
3. commented that while the Director viewed the termination decision taken by the Director as "unambiguous" and straight forward, other Parties may have differing views. The Board would need to consider all of those perspectives in reaching a decision; and
4. observed that time extensions are routinely granted to all parties due to scheduling issues, and the Board is always mindful of its jurisdiction, the intent of the *Public Lands Act*, R.S.A. 2000, c. P-40 ("the Act"), and the jurisdiction of the superior courts.

[19] Another letter from the Director was sent to the Board on September 27, 2017. In this letter, the Director outlined why she felt **constrained** to comment on the letter sent by the Board on August 1, 2017. The Director reaffirmed her view that this was a straight forward matter and should be capable of simple resolution. The Director also suggested the Board was creating ambiguity where none existed. The Director submitted that a review in court would not find the Board considered the Director's submissions without those reasons being included in the Board's Decision Letter.

[20] A final letter was sent to the Parties by external counsel for the Board on October 4, 2017, indicating the Board would provide reasons for its decision to grant the extension at the conclusion of this matter.

III. Reasons for Decision

[21] These are the Board's reasons for granting the extension requested by the Appellant on July 25, 2017.

A. General Approach

[22] The Board is empowered by section 123(9) of the Act to establish its own rules and procedures for dealing with matters before it. To date, the Board has not published any such rules although it does have interim rules which it follows and makes available to the public.

[23] In the conduct of its processes, the Board will be guided by the Act and the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 ("PLAR"), its interim rules, and the Board's desire to provide a fair process for the Parties.

[24] Much has been made by the Director in this matter of the need for expediency. The Board understands the Act and PLAR reflect an intent that matters before the Board should be dealt with and determined efficiently.

[25] While expediency is important, so too are the requirements of procedural fairness. Neither timeliness nor fairness can triumph over the other. The Board is required to achieve a practical and effective balance between these objectives.

[26] This balance between timelessness and fairness must be considered in each case.

B. Factors to Consider in Determining an Extension Request

[27] Applications for extensions and adjournments are discretionary. Nonetheless, the Board's discretion must be applied judicially.

[28] Neither of the Parties cited any decisions of the courts in their submissions and, as there is no direction contained in either the Act or PLAR about extensions of time, the Board has sought guidance from applicable jurisprudence.

[29] In *Alberta Teachers Association v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 599, Madam Justice J.B. Veit of the Alberta Court of Queen's Bench outlined a series of factors to be considered in adjournment requests. While not precisely on point to the issue before the Board, these factors are worthy of note:

- (a) overall objective of civil proceedings, i.e. a just determination of the real matters in dispute;
- (b) prejudice;
- (c) costs;
- (d) length of the Adjournment;
- (e) reasons why litigants are not ready; and
- (f) the need to enforce court orders.

[30] In considering the Appellant's extension request, the Board was guided by the factors identified by Madame Justice Veit.

1. Overall objective of civil proceedings

[31] The issue in this particular application is to determine whether the Board has jurisdiction to deal with the Notice of Appeal. This is a highly technical matter. It does not immediately affect any other party, although one can imagine that others will be interested. The events which give rise to this matter have already taken place. There is no added urgency to this matter beyond the time frame imposed by the legislative scheme.

[32] While the Director views this matter as straightforward, questions of jurisdiction are important issues and are considered by the Board in a thoughtful fashion.

[33] The Director argued that determining jurisdiction should be efficient and timely. In the Director's view, it was clear on the face of the Notice of Appeal that it related to a matter outside the Board's jurisdiction. In the Director's submission, there was no ambiguity as to the nature of the underlying decision made in the March 13, 2017 letter.

[34] The Director reviewed the time frame set out by the Board and indicated the Director had to invest time and resources to bring the Director's Application. The Director then tacitly chastised the Board for not having made a decision on the preliminary matter after receiving the initial submissions. In the Director's view, as a result of this extension, a total of eight weeks would have been provided to counsel for the Appellant to put together "these unnecessary submissions."

[35] The Board is always mindful of the time required to reach a decision, not only because there is an ultimate time limit established by the Act and PLAR, but because it does not look to inconvenience any of the parties before it, including the Director.

[36] At the same time, the Board believes it must ensure that a fair process is undertaken.

[37] With respect to the Director's concern with the time and resources expended on this preliminary matter, the Board notes this matter was initiated by the Director, and the Director chose to initially withhold the Director's Record. The Director could have provided the Director's Record at the outset, eliminating the need for a second round of written submissions.

[38] The Director also argued the purpose of timely resolution is to provide the Department and the Director with certainty for similar circumstances across the province. In this, the Director is not entirely correct.

[39] The Board's process does not exist for the sole benefit of the Director. The Board has a role with respect to informing the Director on the application of the Act and PLAR, yet its principal purpose is to ensure that Albertans who are directly impacted by certain decisions of the Director have an appropriate avenue of recourse. In this case, the Director's decision is significant because it is arguably taking away the Appellant's interest in the land.

[40] The process outlined in the Act and PLAR does establish time limits for appeals. Section 236(1) of PLAR sets out a one year time limit beginning on the day after a Notice of Appeal is served on the Appeals Coordinator.

[41] In this case, the Notice of Appeal was received by the Board on April 18, 2017. The statutory one-year period will expire on April 19, 2018. The extension of the submission schedule does not imperil the one-year deadline.

[42] Granting an extension in this matter will not adversely affect either the purpose of the proceedings or the specific requirements of the Act and PLAR to conclude this matter within one year.

2. Prejudice

[43] In response to the Appellant's request, the Director made the following submissions respecting prejudice.

[44] The Director asserted the further delay requested by the Appellant would negatively impact regulatory certainty and cause prejudice to the Department's ability to regulate public land.

[45] No explanation was provided of how any delay would affect any other matter or how the issues in this appeal are broadly applicable elsewhere.

[46] The Board appreciates that every decision has the potential to have some impact on the overall system, but the Board does not see how a delay of four weeks in this matter would negatively impact on regulatory certainty. The Director has also not explained how any prejudice would accrue to the Department from such a delay.

[47] The Director suggested that a timely resolution of this preliminary jurisdictional matter would confirm that additional enforcement actions could proceed unimpeded by an appeal "that has no legal basis." The Director failed to explain what other matters would be directly impacted by the decision in this appeal or how a delay would prejudice those matters.

[48] The Board is always mindful of actual prejudice that could be occasioned to any party, including the Director. However, in order for the Board to consider those effects appropriately, parties need to provide evidence of the harm rather than simply making bald assertions.

[49] The remainder of the Director's submissions did not speak to harm or prejudice. On the whole, the Director's submissions were a summary of the arguments made on the merits of the application. These submissions were not helpful to the Board in determining whether an extension should be granted.

[50] The Board finds there will be no prejudice occasioned to any Party by a further four-week extension to the schedule for filing written submissions.

3. Costs

[51] Unlike an adjournment of a civil action, the issue of costs is not relevant here.

4. Length of the adjournment

[52] In considering an application for an extension or adjournment, the length of time being sought will be a relevant consideration. The Board must take into account the effect that the proposed adjournment will have on all the parties and to the overall proceeding.

[53] In this case, the extension request of four weeks is not excessive given summer holidays.

5. Reasons why litigants are not ready

[54] The request in this case was for an extension of time due to a scheduling issue encountered by counsel for the Appellant. There is very little detail given respecting the scheduling issue.

[55] The extent of the delay is not substantial. The Board appreciates that all parties, including counsel, will occasionally run into scheduling challenges.

[56] The Board expects that all parties will make their best efforts to cooperate and arrange their schedules such that matters before the Board are dealt with in an appropriate fashion in keeping with the regulatory intent and procedural fairness.

[57] If, a party had repeatedly made requests for extensions, or if there was a discernable pattern of requests that suggested improper purposes, the Board would give those matters consideration and likely be less inclined to grant extensions.

[58] In this case, given the relative short nature of the extension and given it occurs during the summer months, the Board does not consider the reason for the request to be unreasonable.

6. Need to enforce orders

[59] To place Justice Veit's final factor in the context of this appeal, how does the Board balance the request for an extension given the Board's existing directions on timing?

[60] The Director's submissions indicate frustration with the pace at which this matter proceeded including frustration with a request to alter the Board's previously imposed schedule.

[61] The Board must consider the directions it has provided, the timeliness of the request being made, and the merits of the request.

[62] The consideration of the Board's existing direction is straightforward. Clarity had been provided to all Parties in the Board's letter of July 14, 2017. The direction was not peremptory nor was there any previous history of requests for extensions.

[63] The request for extension was made on July 25, 2017. In this case, it is not clear when the scheduling conflict for the Appellant first came to light, but the relative short time between notice of the submission schedule and the request suggests the request was made in a reasonable and timely fashion.

[64] With respect to the final consideration, the merits of the request, the Board recognizes that counsel are often faced with scheduling conflicts unexpectedly. While this is not a "pass" for counsel to have their schedules take precedence over the Board's process, the Board will endeavour to be reasonably accommodating.

[65] The Board wishes to be clear, however, that where there are urgent matters and where there are other available counsel in any counsel's office, the Board may not be so receptive to requests because of scheduling challenges. All parties must bear in mind the overall objectives of the regulatory scheme and the need for procedural fairness.

[66] In this case, the Board believes the extension request was made in a timely fashion and with a reasonable basis. Granting the extension will not undermine the Board's prior directions.

C. General Comments on Requests for Extensions

[67] While it is unusual for the Board to provide written reasons for an extension request, the Board recognises that it has the opportunity to outline its expectations and observations regarding a practice before the Board, including matters such as extension requests.

[68] The Board's expectations for requests for extensions or adjournments are as follows:

- (a) the request should be in writing and address each of the factors listed in paragraph 29 above;
- (b) the request should clearly set out the time extension requested or the dates to which the matter should be adjourned; and
- (c) the request must be copied to all parties to the matter.

[69] The Board observes the Director's Record is a vital consideration in every appeal. As counsel for the Director has repeatedly reminded the Board in this and many other appeals, the appeal is based on the Director's Record. Therefore in the vast majority of appeals, the Board wishes to receive the Director's Record before it considers any application or sets a process for submissions.

IV. CONCLUSION

[70] In summary, given that (a) the extension will not imperil the one-year time requirement in the Act for the issuance of a decision, (b) no significant prejudice will accrue to any party, (c) the reasons for the extension request and the additional time being sought are reasonable, and (d) the request does not undermine the Board's previous direction, the extension requested by the Appellant is granted.

Dated on April 13, 2018, at Edmonton, Alberta.

"original signed by"
Gordon McClure
Board Chair