

ALBERTA
PUBLIC LANDS APPEAL BOARD

Discontinuance of Proceedings

Date of Decision – July 4, 2018

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

-and-

IN THE MATTER OF an appeal filed by Henry Vos with respect to the decision of the Director, Provincial Approvals Section, Alberta Environment and Parks, to reject land disposition request LDR 140022.

Cite as: *Vos v. Director, Provincial Approvals Section, Alberta Environment and Parks* (4 July 2018), Appeal No. 17-0012-DOP (A.P.L.A.B.).

BEFORE:

Ms. Marian Fluker, Acting Board Chair and Appeals Co-ordinator.

PARTIES:

Appellant: Mr. Henry Vos.

Director: Ms. Lennea Oseen, Alberta Environment and Parks, represented by Ms. Lisa Semenchuk, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Mr. Henry Vos (the Appellant) submitted a Land Disposition Request (LDR) to Alberta Environment and Parks (AEP) for public land located between the Shaftesbury Settlement River Lot 3 and the Peace River. The Director rejected the LDR, and the Appellant filed a Notice of Appeal with the Public Lands Appeal Board (the Board).

AEP filed a preliminary motion with the Board requesting the Board dismiss the Appellant's Notice of Appeal on the ground the Board did not have the jurisdiction to hear appeals of decisions regarding the sale of public land.

The Board received submissions from the parties on the issue of whether the Board had jurisdiction. The Board concluded the Appellant was appealing the refusal of the Director to issue a disposition, which is an appealable decision under section 211 of the *Public Lands Administration Regulation*.

The Board held a mediation meeting with the parties, but no resolution was reached.

The Board then scheduled a public hearing of the appeal, but the Appellant withdrew his Notice of Appeal prior to the start of the hearing.

Therefore, pursuant to section 123(8) of the *Public Lands Act*, the Board discontinued the appeal.

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I. BACKGROUND

[1] The Board received a Notice of Appeal from the Appellant on July 31, 2017, appealing the Director's decision to refuse to issue a disposition for public land located between the Shaftesbury Settlement River Lot 3 and the Peace River. The Director stated the reasons for the rejection were as follows:

- (a) Alberta Transportation opposed the LDR as the land may be required for future infrastructure needs;
- (b) the land is vulnerable to flooding; and
- (c) the land is located within a Key Wildlife Biodiversity Zone.

[2] The Board wrote to the Appellant and the Director (collectively, the "Parties") acknowledging receipt of the Notice of Appeal and requesting the Director provide the record and policies (the "Director's Record") on which the decision was based. On September 6, 2017, the Director stated she would not be providing the Director's Record as she was of the opinion the Board did not have jurisdiction to hear an appeal of the decision.

[3] The Board requested the Director's Record from the Director again on October 12, 2017, and advised the Parties that once the Director's Record was received and distributed, the Board would set dates for submissions regarding the issue of the Board's jurisdiction to hear the appeal. In a letter dated October 16, 2017, the Director stated the Board only had jurisdiction if the appeal is of a type of decision listed in section 211 of the *Public Lands Administration Regulation* ("PLAR"),¹ and the Director was of the view her decision did not fall under section 211. The Director submitted the Board should make its decision based solely on the Notice of Appeal. The Director stated no further records from Alberta Environment and Parks ("AEP") were necessary for the Board to make its decision regarding its jurisdiction to hear the appeal.

[4] The Board responded to the Director's correspondence on October 16, 2017, stating that, based only on the documents before it, specifically the Notice of Appeal and the Director's decision letter dated June 29, 2017, the Board found the Appellant had applied for a disposition and his application was refused by the Director. The Board noted section 211(b) of PLAR states "the rejection of an application under the Act for a disposition" is a prescribed

decision from which an appeal is available, and therefore, the Appellant's Notice of Appeal was properly before the Board. The Board again requested the Director advise when the Director's Record would be provided. The Board also requested available dates from the Parties for a mediation meeting or hearing.

[5] The Director provided the Director's Record on November 17, 2017, and noted the Director's Record showed the Appellant had requested a sale of public land, which was not an appealable matter under PLAR. The Board received a preliminary motion from the Director on December 7, 2017, requesting the Board "confirm that it does not have jurisdiction to hear an appeal of [AEP's] decision to not sell the former island and former channel of the Peace River to Mr. Vos." In this preliminary motion, the Director asked the Board to reject the Notice of Appeal.

[6] The Board received written submissions from the Parties on whether the Board had jurisdiction to accept the Appellant's Notice of Appeal.

[7] On May 11, 2018, the Board provided its decision to the Parties confirming the Board had jurisdiction to hear the appeal. The Board proceeded to schedule a mediation meeting and hearing.

[8] On June 4, 2018, the Board held a mediation meeting in Peace River, Alberta. Although productive discussions were held, a resolution was not reached.

[9] The Board proceeded to schedule a written hearing. The Appellant's initial submission was due June 12, 2018, the Director's response on June 19, 2018, and the Appellant's rebuttal submission was due June 26, 2018.

[10] On June 7, 2018, the Appellant requested an extension of time to provide his initial submission.

[11] On June 7, 2018, the Board notified the Appellant it would not extend the submission deadline to June 21, 2018, as requested, but it would provide the Appellant until June 14, 2018 to provide his submission. Dates for receiving the Director's response submission and the Appellant's rebuttal submission were also revised.

¹ Alta. Reg. 187/2011.

[12] The Appellant did not provide his submission on June 14, 2018. The Board wrote to the Appellant reminding him his submission was due. The Board extended the submission deadline to June 15, 2018, and notified the Appellant that it could dismiss the appeal if the Appellant failed to provide the information requested.

[13] On June 15, 2018, the Board received an e-mail from the Appellant indicating he was withdrawing his appeal.

II. DISCUSSION

[14] In the email withdrawing his appeal, the Appellant expressed frustration in the application process and the delays he faced since he applied for the disposition.

[15] Under section 123(8) of the *Public Lands Act*, R.S.A. 2000, c. P-40, the Board must discontinue its proceedings if the appeal is withdrawn.²

[16] The Appellant withdrew his appeal on June 15, 2018, and therefore the Board must dismiss the appeal.

[17] However, section 123(8) of the Act also provides the Board be satisfied that all issues related to the appeal have been resolved before it can discontinue the appeal.

[18] The Board appreciates the challenges facing individuals in preparing the documentation required for the application for a commercial recreational site, such as a campground, on public lands. As stated by the Appellant, the application process can be overwhelming.

[19] The Board understands the application process adopted by Alberta Environment and Parks for these disposition requests is based on the on-line application forms developed by the Alberta Energy Regulator for use by the oil and gas industry. These forms are complicated and perhaps too detailed for what is being applied for in a case such as a recreational campground.

² Section 123(8) of the *Public Lands Act* states:

“The appeal body shall discontinue its proceedings in respect of a notice of appeal if the notice of appeal is withdrawn, once the appeal body is satisfied that all issues related to the appeal have been resolved.”

[20] It is also the understanding of the Board that AEP is in the process of developing a new system, preferably more user-friendly, which will assist the public in using the system and will benefit AEP itself, since there should be a higher percentage of forms that are completed correctly at first instance.

[21] Upon review of the Director's Record, it was not clear to the Board the intended use of the area was for a campsite, since this information was not included in the application, and the Board only became aware of the true intent of the application in the Appellant's email withdrawing his appeal. If this information had been available to the Director at the time the application was filed, it may have provided some assistance to the decision-making process. The Board is perplexed how clarification of the intended purpose of the public lands was not discussed during the meetings the Appellant had with the Director over the four-year period since the application was filed.

[22] The Board appreciates the Appellant raising his concerns regarding the existing application process. However, on reviewing the current application form that must be filed when requesting public lands for recreational purposes, it is clear the information provided by the Appellant does not satisfy the requirements of the application.³

[23] The Appellant has the option of submitting a new application for the campsite. The Appellant can determine the best time for him to re-apply, if he chooses to do so, depending on the timing of the new application system for recreational sites.

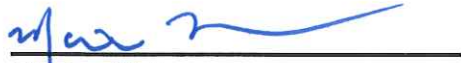
[24] The Appellant expressed frustration with the application process, but it is hoped the mediation meeting provided the Appellant the opportunity to gain a better understanding of the process and for the Director to gain a greater appreciation of the frustration users of the system are currently having. Although the Appellant's concerns may not have been resolved to his satisfaction, the Board is satisfied the Appellant adequately considered his options and determined withdrawing his appeal was the most reasonable option available to him.

³ See: Review Process for Commercial Recreational Tourism Use, AEP, Public Land Management, 2016, No. 1. Some of the information required in the application process includes: a project overview and development plan for the site; information about the site including watercourses, easements, rights of way, means of servicing and accessing the site; a five-year business plans; and a management plan. It may also require preparation of wildlife, vegetation, soil, or water management plans; First Nations consultation; public consultation; preparation of an Environmental Impact Assessment; and completion of an Historical Resource Impact Assessment.

III. DECISION

[25] Pursuant to section 123(8) of the *Public Lands Act*, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 17-0012 and closes its file.

Dated on July 4, 2018, at Edmonton, Alberta.



Marian Fluker
Acting Chair