

ALBERTA
PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – August 29, 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 Reda Enterprises Ltd. with respect to the decision by the Director, Provincial Approvals Section, Alberta Environment and Parks, to refuse the application for SME 150109.

Cite as: *Reda Enterprises Ltd. v. Director, Provincial Approvals Section, Alberta Environment and Parks* (29 August 2018), Appeal No. 18-0002-D (A.P.L.A.B.).

BEFORE:

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

SUBMISSION BY:

Appellant: Reda Enterprises Ltd.

Director: Ms. Joanne Sweeney, Director, Alberta Environment and Parks.

EXECUTIVE SUMMARY

On December 21, 2017, Alberta Environment and Parks (AEP) refused an application by Reda Enterprises Ltd. (Reda) for a surface material exploration lease.

Reda appealed the decision on May 7, 2018, to the Public Lands Appeal Board (Board).

The Board received and reviewed Reda's submission as to why the appeal was filed after the legislated appeal period and why the Board should extend the appeal period. The appeal period is 20 days after the appellant received, became aware of, or should reasonably have become aware of the decision objected to, or 45 days after the date the decision was made, whichever occurs first.

Based on the submissions provided, the Board found Reda filed the Notice of Appeal past the legislated appeal period and did not provide any persuasive reasons to extend the appeal period. Allowing appeals past the end of the appeal period without exceptional circumstances would bring uncertainty into the disposition process as well as the appeal process, which would be contrary to the public interest.

Therefore, the Board dismissed the appeal.

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I. BACKGROUND

[1] On May 7, 2018, Reda Enterprises Ltd. (the “Appellant” or “Reda”) filed a Notice of Appeal with the Public Lands Appeal Board (the “Board”) appealing the refusal of an application for Surface Material Exploration Lease SME 150109 (the “SME”) by the Director, Provincial Approvals Section, Alberta Environment and Parks (the “Director”). The decision refusing the application was dated December 21, 2017.

[2] On May 8, 2018, the Board acknowledged receipt of the Notice of Appeal. The Appellant alleged the Director who made the decision exceeded the Director’s or Officer’s jurisdiction or legal authority.

[3] In its May 8, 2018 letter, the Board noted the Notice of Appeal was filed after the time limit prescribed in the legislation. The Board asked the Appellant to provide an explanation for the late filing of the Notice of Appeal and whether an extension of the filing period would be contrary to the public interest.

[4] On May 15, 2018, the Board received the Appellant’s submission. The Board did not request a response from the Director.

II. ANALYSIS

[5] The issue before the Board is whether the appeals were filed within the legislated timeframes and, if not, whether there are sufficient reasons for the Appeals Co-ordinator to exercise her discretion and extend the appeal period.

[6] The time limits for filing a Notice of Appeal are found in section 217(1) of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 (“PLAR”). This section states:

“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.”

[7] Under section 217(2), the Appeals Co-ordinator may extend the appeal period if it is not contrary to the public interest to do so.¹

[8] The Appellant explained it received notice of the refusal of the application on January 12, 2018. Based on this date, the appeal period ended 20 days after the Appellant received notice of the Director’s decision, which would have been February 1, 2018. The Notice of Appeal was filed on May 7, 2018, over three months after the appeal period ended.

[9] The Notice of Appeal was also received well past the 45-day limit under section 217(1)(b) of PLAR. Therefore, section 217(1)(b) of PLAR does not assist the Appellant.

[10] Section 217(1)(a) provides for a 20-day time limit after an appellant receives notice of the decision or became aware of the decision, or should reasonably have become aware of the decision objected to, to file a Notice of Appeal. The Appellant admitted it received notice of the refusal of the application on January 12, 2018. However, the Appellant did not file its appeal until May 7, 2018, three months after the appeal period was over. Clearly the appeal was filed past the legislated timeframe.

[11] The Appeals Co-ordinator must then consider whether there are sufficient reasons for her to extend the time limit to file an appeal and whether it would not be contrary to the public interest to do so. The Appeals Co-ordinator’s ability to extend an appeal period is discretionary and is used only in exceptional circumstances.

[12] Allowing an appeal to be filed after the appeal period has passed introduces uncertainty into both the processing of an application for a disposition and the appeal process. The public interest requires the Appeals Co-ordinator to balance the interests of the Appellant with the purpose of the legislation. The Appeals Co-ordinator would need to be persuaded that exceptional circumstances existed to extend the appeal period. In this case, the Appellant did not meet the onus of demonstrating extenuating circumstances.

¹ Section 217(2) of PLAR provides:

“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.”

[13] The Appellant said its Application was denied because the environmental intent of the subject lands was incompatible with sand and gravel extraction. The Appellant explained it attempted to discuss the application with the Director on numerous occasions to determine if certain conditions could be changed to reconcile its proposed sand and gravel extraction with the management intent of the Key Wildlife and Biodiversity Zones. The Appellant stated that, since it did not receive a response, it determined no terms or conditions could make sand or gravel extraction from the subject area acceptable from an environmental perspective. The Appellant stated that after its appeal period had expired, it learned the same land was designated for sand and gravel extraction by Alberta Transportation. The Appellant explained that as soon as it became aware of the designation, it filed its Notice of Appeal.

[14] The Appellant argued it is in the public interest to address the conduct of the Director where it appears she acted in bad faith.

[15] The Appellant noted the delay from the time it submitted its application in 2015 until the decision was made in December 2017. The Appellant said it contacted AEP to inquire about the status of the application throughout this period. The Appellant said there was no explanation for the delay or the breach of section 12(4) of PLAR.²

[16] The Appellant explained the Municipal District of Bonnyville (the “MD”) awarded the Appellant crushing work for the Alberta Transportation pit adjacent to the lands at issue. The Appellant understood Alberta Transportation gave the MD access to the pit to complete a final crushing as Alberta Transportation believed limited gravel resources remained in the pit. The Appellant learned the gravel resources were substantially more than Alberta Transportation believed. The Appellant concluded the adjacent area was likely resource rich and submitted the application for the subject area. The Appellant expected the MD to continue crushing in Alberta Transportation’s pit in the summer of 2016, but that was not allowed to happen. The Appellant believed Alberta Transportation recognized its error in granting the MD access to the pit as there were more reserves to extract than believed to be there, and Alberta

² Section 12(4) of PLAR provides:

“The director or officer must register a notice of the issuance or refusal to issue within 90 days of registering a notice under section 11(5).”

Transportation did not realize the resources in the subject lands until the Appellant submitted its application.

[17] The Appellant stated the delay in processing its appeal, the denial of the application, and the Director's lack of response to the Appellant's inquiries were not motivated by the environmental concerns claimed, but by a bad faith intention to frustrate and deny the Appellant's application so the subject lands could be used for sand and gravel extraction by Alberta Transportation.

[18] The Appellant stated it was in the public interest to address the conduct by the Director and grant an extension of the appeal period where material facts relating to the misconduct were not known until after the appeal period expired.

[19] The Appellant submitted the Director acted outside her jurisdiction by acting in bad faith, and she considered irrelevant factors in denying the application but granting a subsequent disposition for the same activity, specifically sand and gravel extraction. The Appellant stated it appeared the same lands were subsequently granted to Alberta Transportation after the Appellant's appeal period expired. The Appellant submitted it is in the public interest to address these issues through the appeal process rather than proceeding to the court on an application for judicial review or suing the Alberta government for damages from misfeasance in public office.

[20] The Appellant submitted it would be appropriate for the Board to grant an extension of time for service of the Notice of Appeal.

[21] The Appellant raised a number of concerns regarding the Director's actions throughout the application process. However, there was no explanation as to why the Notice of Appeal was filed after the appeal period. If the Appellant had questions why the SME was not issued, and the Director did not provide satisfactory answers to the Appellant's questions, the Appellant should have considered filing its Notice of Appeal when it received notice of the Director's decision and within the statutory appeal period.

[22] The Board does not know when the disposition was issued to Alberta Transportation, other than the Appellant stating it was shortly after the Appellant's appeal period expired. Based on the information, it appears the Appellant's appeal period ended February 2,

2018, 20 days after the Appellant received notification of the Director's decision to refuse the application. If the Director issued the disposition to Alberta Transportation shortly thereafter as stated by the Appellant, and the Appellant could have shown it has an appeal right, the appeal period would have expired 45 days after the decision was made to issue the disposition to Alberta Transportation, thereby expiring sometime in March. However, the Appellant did not file any appeal until May 7, 2018.

[23] The Appellant has not provided sufficient reasons for the Board to extend the appeal period. The public interest does not support bringing uncertainty into the appeal process, and no exceptional circumstances existed that caused the delay of filing the appeals. Although the public interest does not warrant extending the appeal period, this does not diminish the public interest and concern regarding the actions of the Director, if the information provided by the Appellant is accurate.

[24] Under these circumstances, the Appeals Co-ordinator cannot extend the appeal period and must dismiss the appeal.

[25] Therefore, the appeal is dismissed pursuant to section 123(5)(b) of the Act³ and section 219 of PLAR.⁴

³ Section 123(5)(b) of PLA states:

“The appeal body may dismiss a notice of appeal if ...

- (b) for any other reason the appeal body considers that the notice of appeal is not properly before it....”

⁴ Section 219 of PLAR states:

“(1) The appeals co-ordinator may, in his or her discretion and within 5 days after being served with a notice of appeal, reject the notice of appeal if it was not served in accordance with section 217 or if, in the opinion of the appeals co-ordinator, it does not meet the requirements of section 216.

(2) Where the appeals co-ordinator rejects a notice of appeal, the appeals co-ordinator must provide a notice of a rejection to the appellant and must make the notice available to the public.”

III. CONCLUSION

[26] The Board finds the Notice of Appeal was filed outside the legislated time limit, and the public interest does not support the Board extending the appeal period. Therefore, the Board dismisses the appeal.

Dated on August 29, 2018, at Edmonton, Alberta.



Marian Fluker
Acting Appeals Co-ordinator