

# ALBERTA PUBLIC LANDS APPEAL BOARD

## Report and Recommendations

Date of Report and Recommendations: November 13, 2020

**IN THE MATTER OF** sections 121, 122, and 124, of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections, 211, 212, 213, 226, 227, and 235 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

**-and-**

**IN THE MATTER OF** an appeal filed by Samco Developments Ltd. with respect to the decision of the Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks, to refuse to issue DLO 190115.

Cite as: *Samco Developments Ltd. v. Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks* (13 November 2020), Appeal No. 20-0004-R (A.P.L.A.B.), 2020 ABPLAB 21.

**BEFORE:**

Mr. Gordon McClure, Board Chair.

**PARTIES:**

**Appellants:** Ms. Cindy and Mr. Russell Dolanz, Samco Developments Ltd., represented by Ms. Shauna Finlay, Reynolds Mirth Richards & Farmer LLP.

**Director:** Mr. Cody Copithorne, Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks, represented by Ms. Shannon Keehn, Alberta Justice and Solicitor General.

## **EXECUTIVE SUMMARY**

Samco Developments Ltd. (the Appellant) applied to Alberta Environment and Parks for Department Licence of Occupation DLO 190115 for the installation of a boat launch on Lake Wabamun. The Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks (the Director), refused to issue DLO 190115 because private boat launches are not suitable on Lake Wabamun, the location is not suitable for a public boat launch, and since no application for a *Water Act* approval was submitted a disposition cannot be issued as the decision would be based off incomplete details.

The Appellant appealed the Director's refusal to the Public Lands Appeal Board (the Board).

A mediation meeting was held on October 21, 2020, which resulted in a resolution whereby the parties asked the Board to recommend to the Minister of Environment and Parks that the Appellant's application for the DLO be reinstated. The Board accepted the mediated agreement and recommended the Minister vary the Director's decision and reinstate the Appellant's application.

## TABLE OF CONTENTS

I. INTRODUCTION .....	1
II. BACKGROUND .....	1
III. DISCUSSION .....	2
IV. RECOMMENDATIONS .....	3
V. APPENDIX.....	4

## **I. INTRODUCTION**

[1] This is the Report and Recommendations of the Public Lands Appeal Board (the “Board”) to the Minister of Environment and Parks (the “Minister”), arising from a mediation of an appeal filed by Ms. Cindy and Mr. Russell Dolanz on behalf of Samco Developments Ltd. (the “Appellant”).

## **II. BACKGROUND**

[2] On July 16, 2019, the Appellant filed an application with Alberta Environment and Parks (“AEP”) under the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”) for a Department Licence of Occupation DLO 190115 (“DLO”) to install a boat launch on Lake Wabamun.

[3] On June 16, 2020, the Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”) issued a Notice of Merit Decision under the Public Lands Administration Regulation, A.R. 187/2011 (“PLAR”), refusing to issue the DLO because private boat launches are not suitable on Lake Wabamun, the location is not suitable for a public boat launch, and since no application for a *Water Act*, RSA 2000, c.W3, approval was submitted a disposition cannot be issued as the decision would be based on incomplete details.

[4] On June 19, 2020, the Appellant filed a Notice of Appeal with the Board appealing the Director’s refusal to issue the DLO. The Appellant stated that by refusing to issue the DLO, the Director erred in the determination of a material fact and exceeded the Director’s jurisdiction or legal authority. On June 22, 2020, the Appellant advised the Board it was including “erred in law” under the grounds of appeal. On June 25, 2020, the Board wrote to the Appellant and the Director (collectively the “Parties”), providing the Director with a copy of the Notice of Appeal, and requesting the Director provide a copy of the Department’s records (the “Department’s Record”).<sup>1</sup>

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<sup>1</sup> Pursuant to section 120 of the *Public Lands Act*, an appeal under the Act must be based on the decision and the record of the Director. The Board requested the Director provide:

1. The Director’s decision;

[5] The Board also requested the Director provide the contact information for any disposition holder(s) and/or the occupant(s) and adjacent private landowners if known, who may be impacted by this appeal. The Director provided the information on July 14, 2020, and the Board notified the potentially interested persons of the appeal and set a date to receive requests to be involved in the appeal.

[6] The Director provided the Department's Record on January 31, 2020 and a copy was subsequently provided to the Appellant.

[7] On August 11, 2020, the Board requested the Parties provide comments on the potential involvement of Mr. Thomas Dombrosky and Parkland County in the appeal prior to the Board making a decision. On September 8, 2020, the Board advised the Parties, Mr. Dombrosky and Parkland County that Mr. Dombrosky and Parkland County were granted intervenor status (the "Intervenors"). Further, should the appeal proceed to a hearing, the Intervenors would be permitted to file written submissions with the Board with respect to how they are impacted by the matter under appeal, followed by an opportunity for the Appellant and the Director to provide response submissions.

[8] In a letter dated August 14, 2020 to the Parties, the Board scheduled a mediation meeting for September 22, 2020. The mediation meeting was subsequently rescheduled to October 21, 2020, at the Board's office. The Parties reached an agreement at the mediation.

### **III. DISCUSSION**

[9] The mediated agreement resulted in the Parties asking the Board to recommend to the Minister that the Director's June 16, 2020 decision be varied and the Appellant's July 16, 2019 application for the DLO be reinstated.

[10] The Parties also agreed to additional terms set out in the attached agreement (Appendix), which do not require any action from the Minister.

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2. The Director's file as defined in section 209(f) of the *Public Lands Administration Regulation*;
  3. All related records in the Department's possession as defined under section 209(m) of the *Public Lands Administration Regulation*;
  4. All related policy documents, guidelines, and directives available to the Director when the decision was made; and
  5. An index.

#### IV. RECOMMENDATIONS

[11] In accordance with section 124(3) of the Act,<sup>2</sup> the Board recommends the Minister of Environment and Parks order that the Director's June 16, 2020 decision be varied and the Appellant's July 16, 2019 application be returned to the Director.

[12] With respect to section 124(4) of the Act,<sup>3</sup> the Board recommends that copies of this Report and Recommendations and any decision by the Minister regarding this appeal is to be provided to:

1. Ms. Shauna Finlay, Reynolds Mirth Richards & Farmer LLP, on behalf of Ms. Cindy and Mr. Russell Dolanz, Samco Developments Ltd.; and
2. Ms. Shannon Keehn, Alberta Justice and Solicitor General, on behalf of Mr. Cody Copithorne, Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks.

Dated on November 13, 2020, at Edmonton, Alberta.

"original signed by"

Gordon McClure  
Board Chair

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<sup>2</sup> Section 124(3) of the *Public Lands Act* provides:

"On receiving the report of the appeal body, the Minister may, by order, confirm, reverse or vary the decision appealed and make any decision that the person whose decision was appealed could have made, and make any further order that the Minister considers necessary for the purpose of carrying out the decision."

<sup>3</sup> Section 124(4) of the Act states:

"The Minister shall immediately give notice of any decision made under this section to the appeal body, and the appeal body shall immediately, on receipt of the notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the appeal body and to all the persons who the appeal body considers should receive notice of the decision."

## V. Appendix



**RESOLUTION  
PUBLIC LANDS APPEAL BOARD  
PLAB File No. 20-004**

In the matter of the mediation of the appeal filed by Cindy and Russell Dolanz, Samco Developments Ltd. (Appellants), in relation to the Notice of Merit Decision, Formal Disposition Application Refusal dated June 16, 2020, by the Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks (Director), stating a decision has been made to refuse the application in accordance with section 10(1) of the *Public Lands Administration Regulation* (PLAR) and providing three reasons for refusing to issue a disposition (DLO 190115) for a boat launch at NW 12-53-05-W5M on Lake Wabamun.


All participants to the appeal have agreed to the following terms and conditions:

1. The parties agree to request the Board prepare a Report and Recommendation asking the Minister to reinstate the application for DLO 190115 as if a decision had not been made.
2. The parties agree that, should the Minister reinstate the application, the following information will be required to be submitted in writing by the Appellants to the Director to continue processing the application:
  - a. confirmation the boat launch will be available for use by multiple parties and it is not for the exclusive use of the Appellants;
  - b. the projected number of boats that will use the boat launch on an annual basis;
  - c. the design of the boat launch, and an assessment of whether it is of sufficient size and design such that it requires engineered drawings and will meet the projected use;
  - d. a monitoring and maintenance plan to ensure that the boat launch, on the bed and shore, is in good repair over the period of the proposed disposition;
  - e. confirmation from CN that CN has a process that will provide access across the rail line for the proposed disposition;
  - f. confirmation from the County of Parkland that the County has a process to consider multiple user access to the proposed disposition;
  - g. confirmation that access will be guaranteed across the Appellants' land to reach the boat launch (i.e. in the event that there is a sale of the land to ensure continued access); and
  - h. an erosion control and sedimentation management plan, including the steps that will be taken to ensure erosion control and sediment management during the construction of the boat launch and for the life of the proposed disposition.




3. To make a decision on the application, the Director does not anticipate needing information outside that listed in or arising from the information described in clause 2. However, the parties acknowledge that further additional information may be required.
4. The parties acknowledge that additional authorizations may be sought and obtained before construction or operation of the boat launch can proceed, but that the applications for such authorizations need not be sought before a decision is made on the proposed disposition.
5. Should the application not be reinstated by the Minister, the parties agree that a new application may be submitted for the proposed disposition, and if submitted with the information in clause 2, then clauses 3 and 4 will apply.
6. The parties acknowledge that there is no promise, stated or implied, that a disposition will be issued.
7. THAT in consideration of the foregoing, the Appellants withdraw their Notice of Appeal.


RESOLUTION AGREED TO BY:

  
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Cindy Dolanz, Samco Developments Ltd.  
Represented by Shauna Finlay,  
Reynolds Mirth Richards & Farmer LLP

Date: October 21, 2020

  
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Russell Dolanz, Samco Developments  
Represented by Shauna Finlay,  
Reynolds Mirth Richards & Farmer LLP

Date: October 21, 2020

  
\_\_\_\_\_  
Cody Copthorne, Director,  
Provincial Programs Branch,  
Provincial Approvals Section,  
Regulatory Assurance Division,  
Alberta Environment and Parks  
Represented by Shannon Keehn,  
Alberta Justice and Solicitor General

Date: October 21, 2020



ALBERTA  
ENVIRONMENT AND PARKS

*Office of the Minister  
Government House Leader  
MLA, Rimbey-Rocky Mountain House-Sundre*

**MINISTERIAL ORDER**  
**66/2020**

*Public Lands Act,  
R.S.A. 2000, c. P-40*

and

*Public Lands Administration Regulation,  
Alta. Reg. 187/2011*

**ORDER RESPECTING PUBLIC LANDS APPEAL BOARD  
APPEAL NO. 20-0004**

I, Jason Nixon, Minister of Environment and Parks, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendix, being the Order Respecting Public Lands Appeal Board Appeal No. 20-0004.

DATED at the City of Edmonton, in the Province of Alberta, this 26 day of NOV., 2020.

  
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Jason Nixon  
Minister

## **APPENDIX**

### **Order Respecting Public Lands Appeal Board Appeal No. 20-0004**

With respect to the June 16, 2020, decision of the Director, Provincial Programs Branch, Provincial Approvals Section, Regulatory Assurance Division, Alberta Environment and Parks (the "Director"), to refuse to issue to Samco Developments Ltd. Department Licence of Occupation DLO 190115 under the *Public Lands Act*, R.S.A. 2000, c. P-40, I, Jason Nixon, Minister of Environment and Parks, order that:

1. The June 16, 2020 decision of the Director to refuse to issue DLO 190115 is varied and the application filed by Samco Developments Ltd. on July 16, 2019 is reinstated.