



PUBLIC LANDS APPEAL BOARD

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2021 ABPLAB 4

April 22, 2021

Via E-Mail

Mr. Alden Vogt
Fort Smith Construction NT Ltd.
Box 1365
Fort Smith, NT X0E 0P0
(Appellant)

Mr. Paul Maas
Environmental Law Section
Alberta Justice and Solicitor General
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9820 – 106 Street
Edmonton, AB T5K 2J6
(Counsel for Director, AEP)

Dear Gentlemen

Re: Decision* Fort Smith Construction NT Ltd./Notice of Administrative Penalty and Proceeds Assessment No. PLA-20/04-AP-NR-20/04/Our File No.: PLAB 20-0029

The Board acknowledges receipt of the attached email dated April 7, 2020 from Mr. Vogt responding to the Board's request for information. The Board also acknowledges receipt of the attached letter dated April 8, 2021 from Mr. Maas advising he is representing the Director.

This is the decision of the Appeals Co-ordinator, Public Lands Appeal Board, regarding the late filing of the Notice of Appeal by Mr. Alden Vogt on behalf of Fort Smith Construction NT Ltd. (the "Appellant").

Background

The Appellant appealed the Notice of Administrative Penalty and Proceeds Assessment No. PLA-20/04-AP-NR-20/04 (the "Administrative Penalty") issued against it by the Director, Regulatory Assurance Division-North Region, Alberta Environment and Parks (the "Director"), on August 21, 2020. The Administrative Penalty consisted of a penalty of \$15,000.00 and a proceeds assessment of \$24,087.13, for a total of \$39,087.13. The Director found the Appellant contravened section 20 of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act"),¹ by

* *Fort Smith Construction NT Ltd. v. Director, Regulatory Assurance Division-North Region, Alberta Environment and Parks* (22 April 2021), Appeal No. 20-0029-D (A.P.L.A.B.) 2021 ABPLAB 4.

1 Section 20 of the *Public Lands Act* states:

"No person shall enter on and occupy public land for any purpose unless

(a) the director has authorized that person to enter on and occupy the public land for a stated period for the purpose of

(i) conducting appraisals, inspections, analyses, inventories or other investigations of the natural resources or underground formations that might exist on the land,
or

entering onto public land and excavating and removing sand without authorization from Alberta Environment and Parks (“AEP”).

The Appellant filed the Notice of Appeal on March 31, 2021, more than 7 months after it was issued. On April 7, 2021, the Board wrote to the Appellant and stated the Notice of Appeal was filed outside the timeframes prescribed in section 217(1) of the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”), which reads:

- “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.”

The Board noted section 217(2) of PLAR permits the Appeals Coordinator to extend the time for filing a Notice of Appeal if it is not contrary to the public interest to do so. Before deciding whether to accept or dismiss the appeal, the Board asked the Appellant to respond to the following questions:

1. Why was the Notice of Appeal filed late with the Board? and
2. Is it against the public interest to extend the time for filing the appeal?

Submissions

On April 7, 2021, Mr. Vogt, President of Fort Smith Construction Ltd., responded to the Board’s request. In response to the question of why the Notice of Appeal was filed late, the Appellant explained the Administrative Penalty was received during a situation where it was dealing with fraud by its previous bookkeeper. The Appellant stated the Director was informed of the situation and that all the Appellant’s efforts were focused on keeping the company from bankruptcy. Further, the Appellant said the COVID-19 pandemic caused turmoil in its office, and items were misplaced and overlooked, including the Administrative Penalty from the Director. The Appellant stated:

“We did receive an email after the fact closer to the end of the period for filing an appeal however it was not communicated to me in a timely manner. The first I realized there was an appeals deadline was when we received the email from Mr.

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- (ii) exploring for or excavating fossil remains or objects of geological, ethnological, historical or scientific interest,
 - (b) the director has authorized that person to enter on and immediately occupy the public land in respect of which the person has submitted an application for a disposition,
 - (c) the person is the holder of a registered fur management agreement under the *Wildlife Act* respecting the public land,
 - (d) the person is the holder of a timber disposition under the *Forests Act* respecting the public land,
 - (e) the person is expressly authorized to enter on and occupy the public land for that purpose by the director or an officer, or
 - (f) the person is otherwise authorized to enter on and occupy the public land under this Act or the regulations.”

Tatlow on the 26th of March at which point I was scrambling to make some sort of representation for appeal.”²

The Appellant submitted that it was in the public interest to extend the time to file the Notice of Appeal. The Appellant noted he is an aboriginal business owner, and he feels he is being discriminated against. He stated he is being prosecuted while others who were taking sand from the pit did not have any action taken against them. The Appellant stated the Administrative Penalty was initiated by a complaint to AEP from a person who had a “personal vendetta” against him.

Analysis

The Administrative Penalty was issued on August 21, 2020, and the Appellant filed the Notice of Appeal on March 31, 2021. If the Board applies the more generous timeframe in section 217(1)(b) of PLAR, the Appellant had 45 days from August 21, 2020, to file the Notice of Appeal, which would be October 5, 2020. Instead, the Appellant filed the Notice of Appeal on March 31, 2021, 177 days after October 5, 2020. The Board confirms the Appellant’s Notice of Appeal was filed late.

The Appeals Co-ordinator must determine under section 217(2) if it would be against the public interest to extend the timeframe for the Appellant to file the Notice of Appeal.

The Board notes neither the Act nor PLAR provides a definition or interpretation of the term “public interest.” According to Macaulay and Sprague, the authors of *Practice and Procedure Before Administrative Tribunals*, where discretion is to be exercised based on what is in, or harms, the public interest, the public interest must be assessed taking into account the interests reflected in the particular legislation and the nature of the issue that would end up in dispute should the matter proceed.³

The purpose of the Act and PLAR is to ensure public lands are managed in a responsible manner throughout the Province. A key part of that management is balancing the various competing interests of people who want to use the land for different purposes and ensuring the land is available for use by future generations.

² Email from the Appellant, April 7, 2021.

³ In its decision in *Warner v. Alberta (Environment and Sustainable Resource Development)*, 2014 ABPLAB 14-0010, the Board considered the comment from Robert W. Macaulay and James L.H. Sprague:

“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.” Macaulay and Sprague, *Practice and Procedure before Administrative Tribunals*, page 8.2.

See: *Memorial Gardens Association (Canada) Limited v. Colwood Cemetery Company*, [1958] S.C.R. 353 at page 357, 1958 SCC 82 at paragraph 7.

The nature of the issue in this appeal is an enforcement proceeding. In this case, the Director had determined (and for this decision, the Board does not have to agree or disagree with this assessment) the Appellant contravened the legislation by entering onto public lands and removing sand without proper authorization. The unauthorized use of public lands is directly contrary to AEP's ability to manage the land properly, and the use of administrative penalties is one of the tools the Director uses to respond to such contraventions.

In *Gionet v. Director, Lower Athabasca Region, Alberta Environment and Parks*,⁴ the Board reviewed some of the basic principles the Appeals Co-ordinator considers when determining whether to extend the time to file a Notice of Appeal:

- the time limits for filing an appeal was included in the Act and PLAR to provide a level of certainty to the appeal process;
- the authority to extend an appeal period is used only in extenuating 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 the appellant to provide sufficient reasons to grant the extension.

While the Board is sympathetic to the Appellant's situation, the reasons provided by the Appellant for filing the Notice of Appeal late are either matters that were within the Appellant's control or irrelevant to the late filing. The COVID-19 pandemic has caused significant turmoil, but the Administrative Penalty was issued on August 21, 2020, several months after the pandemic started in Canada. As such, the Board expects business owners, such as the Appellant, should have been in a position to respond to matters such as the Administrative Penalty by this time. The noting of the COVID-19 pandemic and a fraud investigation does not explain any circumstances outside the Appellant's control for the late filing of the Notice of Appeal more than 7 months after the issuance of the Administrative Penalty. Further, alleged personal vendettas or discrimination, though potentially relevant to an appeal, are irrelevant to the timely filing of a notice of appeal.

The public interest in this appeal requires weighing the importance of maintaining integrity in the regulatory process and ensuring administrative penalties are addressed in a timely manner against the rights of an appellant to proceed with their appeal. In this case, the Appellant did not provide a reasonable explanation for the delay in submitting the Notice of Appeal and, therefore, has not met the onus placed on it.

Decision

The Board dismisses the Appellant's Notice of Appeal for being filed beyond the time limit set by section 217(1) of PLAR. Based on the Appellant's submission and the legislation, the Appeals Co-ordinator finds it would be against the public interest to extend the time to file the Notice of Appeal under section 217(2) of PLAR.

⁴ See: *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks* (4 September 2018), Appeal Nos. 17-0014-0016-D (A.P.L.A.B.).

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6207, by e-mail at PLAB@gov.ab.ca, or by fax at 780-427-4693.

Yours truly,



Gordon McClure
Appeals Coordinator and Chair
Public Lands Appeal Board

Att.

Any information requested by the Public Lands Appeal Board is necessary to allow the Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of this appeal. The information you provide will be considered a public record.

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