

ALBERTA PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – June 29, 2022

IN THE MATTER OF sections 82, 121 and 123 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, 213, and 216 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF an appeal filed by Jody Dahrouge of 877384 Alberta Ltd, with respect to the decision of the Director, Lands Division, Alberta Environment and Parks, to refuse to issue SML 150021 to 877384 Alberta Ltd.

Cite as: Jurisdiction Decision: *877384 Alberta Ltd. v. Director, Lands Division, Alberta Environment and Parks* (29 June 2022), Appeal No. 22-0001-D (A.P.L.A.B.), 2022 ABPLAB 5.

BEFORE:

Mr. Gordon McClure, Appeals Co-ordinator
and Board Chair.

WRITTEN SUBMISSIONS BY:

Appellants: Mr. Jody Dahrouge, 877384 Alberta Ltd.,
represented by Mr. Everett Normandeau.

Director: Mr. Osman Hamid, Director, Lands Division,
Alberta Environment and Parks, represented by
Ms. Alison Altmiks, Alberta Justice and
Solicitor General.

EXECUTIVE SUMMARY

The Appellant, Mr. Jody Dahrouge and 877284 Alberta Ltd. (the Appellant) filed a Notice of Appeal with the Public Lands Appeal Board (the Board) in regards to the refusal of the Director, Lands Division, Alberta Environment and Parks (the Director), to issue Surface Material Lease SML 150021. The Board's Appeals Co-ordinator noted that the Notice of Appeal was filed after the expiry of the time limits set by the *Public Lands Administration Regulation* (PLAR), and requested submissions from the Appellant as to:

- why the Notice of Appeal was late;
- an explanation of any exceptional circumstances surrounding the late Notice of Appeal; and
- why it would not be contrary to the public interest to accept the Notice of Appeal.

After reviewing the submissions from the Appellant and the Director, the Appeals Co-ordinator found the Appellant's Notice of Appeal was filed after the expiry of the time limits, and there were no extenuating circumstances contributing to the late filing. It would be contrary to the public interest under PLAR to extend the time for the Appellant to file the Notice of Appeal. The Appeals Co-ordinator found the Notice of Appeal was not properly before the Board and dismissed the appeal.

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I. INTRODUCTION

[1] This is the decision of the Appeals Co-ordinator for the Public Lands Appeal Board (the “Board”) regarding whether the Notice of Appeal filed by Mr. Jody Dahrouge for 877284 Alberta Ltd. (“877384”) (the “Appellant”) is not properly before the Board due to being filed outside time limits set by the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”). The Appellant appealed the decision of the Director, Lands Division, Alberta Environment and Parks (the “Director”), to refuse to issue SML 150021 to 877384.

II. DECISION

[2] The Appeals Co-ordinator found the Appellant’s Notice of Appeal was filed after the expiry of the time limits set by section 217(1) of PLAR.¹ Further, the Appeals Co-ordinator found there were no extenuating circumstances contributing to the late filing of the Notice of Appeal, and it would be contrary to the public interest under section 217(2) of PLAR² to extend the time for the Appellant to file the Notice of Appeal. The Notice of Appeal was not properly before the Board, therefore, the appeal was dismissed.

III. BACKGROUND

[3] On December 21, 2021, the Director refused the Appellant’s application for SML 150021 (the “SML”) and mailed the refusal letter to the Appellant using an Alberta Corporations search to generate the mailing address.

¹ Section 217(1) of PLAR states:

“(1) 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.

² 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.”

[4] On January 26, 2022, the refusal letter sent to the Appellant was returned. Alberta Environment and Parks (“AEP”) confirmed another mailing address for the Appellant and the refusal letter was re-sent by mail to the Appellant the same day.

[5] On April 5, 2022, the Appellant submitted a Notice of Appeal to the Board.

[6] The Board acknowledged receipt of the Notice of Appeal from the Appellant on April 7, 2022, and commented that the appeal was filed outside prescribed time limits. The Board noted that the Appeals Co-ordinator had discretion to grant an extension to the period for filing a Notice of Appeal, and requested the Director provide a limited Department’s record (Director’s Limited Record) related to how the Director’s decision was provided to the Appellant. The Board stated that further submissions may be sought after the record was received from the Director.

[7] The Director’s Limited Record was received on April 19, 2022, and provided to the Appellant and the Director (the “Parties”) on April 25, 2022.

[8] On April 25, 2022, the Appeals Co-ordinator requested submissions from the Appellant as to:

- why the Notice of Appeal was late;
- an explanation of any exceptional circumstances surrounding the late Notice of Appeal; and
- why it would not be contrary to the public interest to accept the Notice of Appeal.

[9] The Appellant provided a submission on April 29, 2022, in regards to the late submission of the Notice of Appeal. On May 5, 2022, the Board requested a response from the Director and a rebuttal submission from the Appellant. The Director’s response submission was received on May 12, 2022, and the Appellant’s rebuttal submission was received May 18, 2022.

ISSUES

[10] The Board requested the Parties provide submissions on:

- why the Notice of Appeal was late;
- an explanation of any exceptional circumstances surrounding the late Notice of Appeal; and
- why it would not be contrary to the public interest to accept the Notice of Appeal.

IV. ANALYSIS

A. Why the Notice of Appeal was late

(i) *Submissions*

[11] The Appellant submitted the appeal was late as they were not aware of the Director's decision until their agent was made aware of the decision on March 29, 2022. The Appellant stated:

“We feel that AEP did not follow their own procedures when sending out the notice of decision. This resulted in the applicant never receiving the notice of decision in a timely fashion. The applicant cannot be expected to file an appeal if we do not even know there has been a decision made.”³

[12] The Director submitted the Appellant filed its Notice of Appeal beyond the time limits provided under section 217(1) of PLAR, which requires a Notice of Appeal be served on the Appeals Co-ordinator within the first of:

- (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.

[13] The Director submitted the decision to refuse the SML was made on December 21, 2021 as identified in the letter.⁴ The Director noted the Board indicated in previous

³ Appellant's Response Submission, May 18, 2022, at page 1.

⁴ Director's Limited Record, at Tab 1.

decisions⁵ that the 45 day time limit stipulated in section 217(1)(b) of PLAR is tied to the date of the decision and does not require service or notice of a decision to trigger the limitation period.⁶

[14] The Director noted the address AEP used on January 26, 2022 for the resent refusal letter was the same mailing address provided by the Appellant's agent in an email to the Director on April 4, 2022 confirming the Appellant's address.

[15] The Director observed that the Notice of Appeal submitted on April 5, 2022, was almost 10 weeks after the refusal letter was sent, well beyond 20 days after the letter is presumed to have been received and beyond the 45 days provided under section 217(1) of PLAR.

(ii) Analysis

[16] The Board noted the refusal letter sent to the Appellant on December 21, 2021, was returned to AEP and resent on January 26, 2022, to a different address confirmed by the Appellant's agent.

[17] Though it may be presumed the Appellant should have received, become aware, or reasonably have become aware of the Director's decision within 20 days after the refusal letter was resent on January 26, 2022, there is no way to ascertain if and when the Appellant became aware of the Director's decision, as there was no means of tracking delivery of the Director's decision.

[18] Section 217(1)(b) of PLAR requires a Notice of Appeal be served on the Appeals Co-ordinator within 45 days after the date the decision was made. The 45 day time limit stipulated in section 217(1)(b) of PLAR is tied to the date of the decision and does not require service or notice of a decision to trigger the limitation period.

⁵ See: *House v. Director, Regulatory Assurance Division —North Region, Alberta Environment and Parks*, 2021 ABPLAB 19, at paragraph 31; and *Syncrude v. Director, Public Lands Disposition Management Section, Land Policy and Programs Branch, Lands Division, Alberta Environment and Parks* (3 September 2021), Appeal No. 21-0003-ID1 (A.P.L.A.B.), 2021 ABPLAB 18, at paragraph 27.

⁶ Director's Submission, dated May 12, 2022, para. 4

[19] The Notice of Appeal was received by the Board 69 days after AEP resent the refusal letter to the Appellant on January 26, 2022, outside the 45 day time limit stipulated in section 217(1)(b) of PLAR.

B. Exceptional circumstances surrounding the late Notice of Appeal

(i) Submissions

[20] The Appellant submitted the Director assumed that because the refusal letter was signed December 21, 2021, that it was sent out the same day, and the same assumption was made about the refusal letter sent on January 26, 2022.

[21] The Appellant alleged AEP did not follow its own procedures when sending notice of the Director's decision. The Appellant submitted that AEP's usual procedure was to send a notice of decision by registered mail and email, and noted AEP followed this practice when sending notice of a related decision. However, the Appellant noted both refusal letters were sent to the Appellant by regular post without any attempt to track or confirm delivery.

[22] The Appellant submitted they did not knowingly miss any dates for filing the appeal. The Appellant stated: "Had the proper procedure been followed with the decision for SML 150021 we would have filed the appeal with the PLAB timelines."⁷

[23] The Director submitted there was no requirement in the legislation for decisions to be sent by registered mail or otherwise tracked.

[24] The Director noted that under section 23(1)(a) of the *Interpretation Act*, RSA 2000, c. I-8, where a document is mailed in Alberta to an address in Alberta, service is presumed to be effected 7 days from the date of mailing unless the contrary is proved.⁸ The Director stated

⁷ Appellant's Rebuttal Submission, May 18, 2022, at page 1.

⁸ Section 23(1)(a) of the *Interpretation Act* states:

"If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta..."

that the refusal letter sent on January 26, 2022, was presumed to be served by February 2, 2022. The Director submitted that for the Notice of Appeal to have been filed on time it would have to have been filed by February 22, 2022, however, it was not filed until April 5, 2022.

[25] The Director noted that in *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*, the Board reviewed some basic principles the Board considers when determining whether to extend the time to file a Notice of Appeal:

- (a) the time limits for filing an appeal was included in the Act and PLAR to provide a level of certainty to the appeal process;
- (b) 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;
- (c) the Board should not extend the appeal period without a valid reason for doing so; and
- (d) the onus is on the person requesting the extension to provide sufficient reasons to grant the extension.⁹

(ii) Analysis

[26] The return of the December 21, 2021 refusal letter created an exceptional circumstance. However, the circumstances of the returned refusal letter was mitigated by the Director resending the letter on January 26, 2022, to the correct address, later confirmed by the Appellant's agent.

[27] Considering the January 26, 2022 date as the of issuance of the Director's decision, for the Appellant to meet the requirements of section 217(1)(a) of PLAR, the Appellant should have should have filed a Notice of Appeal by February 15, 2022. However, as there is no means of the Board determining whether the Appellant received the refusal letter, the Board will apply section 217(1)(b) of PLAR.

⁹ *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*, 2018 ABPLAB 27, at paragraphs 29-34.

[28] Section 217(1)(b) of PLAR 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.”

Section 217(1)(b) is tied to the date of the Director’s decision and does not require service or notice of a decision to trigger the limitation period. However, as the Director had initially had the incorrect address for the Appellant and resent the refusal letter, the Board considers the date the refusal letter was resent, January 26, 2022, as the date of the Director’s decision.

[29] By applying section 217(1)(b) of PLAR to the date of the Director’s decision (January 26, 2022), the deadline for the Appellant to file a Notice of Appeal with the Board becomes March 12, 2022.

[30] The Appellant has not provided any evidence of exceptional circumstances that would have prevented the Notice of Appeal from being filed by March 12, 2022. Without the Appellant providing sufficient reasons as to the extenuating circumstances affecting the filing the Notice of Appeal, the Board cannot accept the Notice of Appeal.

C. Why it would not be contrary to the public interest to accept the Notice of Appeal

(i) Submissions

[31] The Appellant submitted it would not be contrary to the public interest as there were no other parties affected by the disposition or the appeal of the decision.

[32] The Director submitted section 217(2) of PLAR provided the Appeals Co-ordinator the ability to extend the time for service, noting the Board in *House v. Director, Regulatory Assurance Division —North Region, Alberta Environment and Parks*, stated:

“Neither the Act nor PLAR provides a definition or interpretation of the term "public interest." The authors of Practice and Procedure before Administrative Tribunals stated that 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.

The intent of the Act and PLAR is to ensure public lands are managed in a responsible manner throughout Alberta. Balancing the various competing interests of people wanting to use the land for different purposes, along with ensuring the land is available for use by future generations, is essential in the effective management of public lands.”¹⁰

(ii) *Analysis*

[33] The legislation has a strict time limit to submit a Notice of Appeal, however, there is some flexibility for the Appeals Co-ordinator to accept late-filed appeals in certain situations. Section 217(2) of PLAR states:

“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.”

The Appeals Co-ordinator uses this authority only in exceptional circumstances, where it is not against the public interest.

[34] There is no definition or interpretation of the term “public interest” in the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”) or PLAR. When determining what the public interest is, the Board considers the interests reflected in the Act and PLAR and the nature of the issue under appeal.¹¹

[35] The intent of the Act and PLAR is to provide effective and responsible management of public lands throughout Alberta that balances interests of people wanting to use the land for different purposes, along with ensuring the land is available for use by future generations. The legislation included time limits for filing an appeal to provide a level of certainty to the appeal process and to balance the interests of the parties. As the legislation is

¹⁰ *House v. Director, Regulatory Assurance Division —North Region, Alberta Environment and Parks*, 2021 ABPLAB 19, at paragraphs 24-25, and 27.

¹¹ *House v. Director, Regulatory Assurance Division —North Region, Alberta Environment and Parks*, 2021 ABPLAB 19, at paragraph 24.

presumed to be in the public interest, the Appeals Co-ordinator will not exercise his discretion to extend the time limit unless an appellant can demonstrate there were exceptional circumstances that caused the Notice of Appeal to be filed late

[36] As noted previously, section 217(1)(b) of PLAR does not require service to have taken place for the time limitation to be established. Extenuating circumstances may warrant an extension of the time limits for the service of the Notice of Appeal that would not be against the public interest, however without a full and proper explanation as to extenuating circumstances contributing to filing a Notice of Appeal 69 days after the date the decision was resent, the late Notice of Appeal cannot be accepted. The Appeals Co-ordinator finds that the Appellant has not provided an acceptable explanation on why the Notice of Appeal was filed late, therefore, the Appeals Co-ordinator finds it would not be in the public interest to extend the time to file the Notice of Appeal.

V. DECISION

[37] The Appeals Co-ordinator finds the Appellant's Notice of Appeal was filed after the expiry of the time limits set by section 217(1)(a)(b) of PLAR. Further, the Appeals Co-ordinator finds there are no extenuating circumstances contributing to the late filing of the Notice of Appeal. It would be contrary to the public interest under section 217(2) of PLAR to extend the time for the Appellant to file the Notice of Appeal.

[38] As the Notice of Appeal is not properly before the Board, the appeal is dismissed.

Dated on June 29, 2022, at Edmonton, Alberta.

"original signed by"

Gordon McClure
Appeals Co-ordinator
and Board Chair