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ALBERTA  
PUBLIC LANDS APPEAL BOARD  
  
Decision

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Date of Decision – December 18, 2023

**IN THE MATTER OF** sections 121, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, and 217 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

**IN THE MATTER OF** an appeal filed by Dan Koch and Pat Koch, with respect to the decision of the Director, Public Lands Disposition Management, Forestry and Parks, to renew Recreational Lease 930006 to the Summer Village of Burnstick Lake.

Cite as: *Koch v. Director, Public Lands Disposition Management, Forestry and Parks, re: Summer Village of Burnstick Lake* (18 December 2023), Appeal No. 23-0002-D (A.P.L.A.B.), 2023 ABPLAB 18.

**BEFORE:**

Mr. Andrew Bachelder, Acting Appeals  
Co-ordinator.

**SUBMISSIONS BY:**

**Appellants:** Mr. Dan Koch and Ms. Pat Koch.

**Director:** Mr. Jon Murray, Director, Public Lands  
Disposition Management, Forestry and Parks,  
represented by Ms. Jade Vo, Alberta Justice.

**Summer Village of Burnstick Lake:** Mr. Harold Esche, Mayor, and Ms. Therese  
Kleeberger, CAO, Summer Village of  
Burnstick Lake.

## EXECUTIVE SUMMARY

The Summer Village of Burnstick Lake (Village) was issued a Recreational Lease (Lease) by Forestry and Parks (Department) in 1994 for the purpose of constructing a playground. On July 3, 2022, the Director, Public Lands Disposition Management, Forestry and Parks (Director) renewed the Lease. On June 2, 2023, the Village released to the residents their plans for constructing the playground.

On July 21, 2023, Mr. Dan Koch and Ms. Pat Koch (Appellants), filed a Notice of Appeal with the Public Lands Appeal Board (Board). The Appellants appealed the Director's decision to renew the Lease, alleging the Director erred in making the decision to renew the Lease by failing to comply with a regional plan authorized under the *Alberta Land Stewardship Act*, S.A. 2009, c. A-26.8.

On July 24, 2023, the Director requested the Board dismiss the Appellants' Notice of Appeal for being filed beyond the 45-day period set by the *Public Lands Administration Regulation*, A.R. 187/2011 (PLAR) as the time limit for filing appeals.

The Village applied to be added as a party to the appeal. After hearing from the Director and the Appellants, the Board added the Village as a party. The Board requested written submissions from the Appellants, the Director, and the Village (Parties) regarding the Director's motion to dismiss the Notice of Appeal.

After reviewing the written submission from the Parties, along with the legislation and caselaw, the Board's Acting Appeals Coordinator found it was contrary to the public interest to extend the time for the Appellants to serve the Notice of Appeal on the Acting Appeals Co-ordinator for the following reasons:

- (a) the Appellants did not demonstrate extenuating circumstances sufficient to justify the late filing of the Notice of Appeal;
- (b) over a year had elapsed since the Lease was renewed and the Appellants filed their Notice of Appeal; and
- (c) granting an extension of time to file the Notice of Appeal when the Appellants' reasons were insufficient and significant time had passed since

the Lease was renewed would undermine certainty in the approval and appeal process.

Accordingly, the Acting Appeals Co-ordinator dismissed the Appellants' Notice of Appeal.

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## I. INTRODUCTION

[1] This is the Public Lands Appeal Board’s (the “Board”) decision regarding the application by the Director, Public Lands Disposition Management, Forestry and Parks (the “Director”), to dismiss the Notice of Appeal filed by Mr. Dan Koch and Ms. Pat Koch (the “Appellants”). The Appellants appealed the decision of the Director to issue the renewal for Recreational Lease REC 930006 (the “Lease”) to the Summer Village of Burnstick Lake (the “Village”). The Director applied to have the Notice of Appeal dismissed for being filed late.

[2] The Acting Appeals Co-ordinator reviewed the information provided by the Appellants, the Director, and the Village, and determined the Notice of Appeal was filed outside the timeline specified by the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”), and it would be contrary to the public interest to extend the timelines for the Notice of Appeal to be filed. The Board therefore grants the Director’s motion and dismisses the Appellants’ Notice of Appeal for being filed late.

## II. BACKGROUND

[3] The Summer Village of Burnstick Lake is located in Clearwater County, southwest of the City of Red Deer. On August 17, 1994, the predecessor to Forestry and Parks (the “Department”),<sup>1</sup> issued the Lease to the Village. The Lease consisted of two separate lots north of the Village boundary, described as SW ¼ 11-35-7-W5 (the “SW Lot”), and SE ¼ 11-35-7-W5. The Lease authorizes the construction of a playground.

[4] In 2018, the Lease was renewed for a four-year term to allow the Village to determine if a longer-term lease was required. In December 2020, the Village presented a Municipal Development Plan to the residents of the Village (the “Residents”), which was

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<sup>1</sup> Forestry and Parks became responsible for public lands in 2022.

subsequently approved by the Village Council. The Municipal Development Plan proposed a “playing field” for the SW Lot.<sup>2</sup>

[5] After sending an email to the Residents seeking volunteers, the Village formed a committee in August 2021 that would help develop and design the playground (the “Playground Committee”). On November 15, 2021, the Village applied to the Department for a renewal of the Lease.

[6] On July 3, 2022, the Director issued the renewal of the Lease to the Village for the purpose of developing a children’s playground.

[7] On April 21, 2023, the Appellants emailed the Village expressing opposition to the playground project.

[8] On June 2, 2023, the Village emailed the Residents a copy of the playground project plan developed by the Playground Committee and asked for comments.

[9] On June 17, 2023, the Village Council approved the playground project plan.

[10] On June 28, 2023, the Appellants emailed the Village and requested an update on the status of the Lease renewal.

[11] On July 13, 2023, the Appellants phoned the Department and on July 19, 2023, spoke with a Public Lands Officer who advised the Appellants the Lease had been renewed and directed the Appellants to the Village for a copy.

[12] On July 21, 2023, the Appellants filed a Notice of Appeal with the Board. The Appellants cited as grounds for the appeal under section 213(1)(a)(iv) of PLAR<sup>3</sup> that the Director

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<sup>2</sup> Summer Village of Burnstick Lake’s letter, September 28, 2023, at page 3. Also see Municipal Development Plan – Summer Village of Burnstick Lake, <[www.burnsticklakesummervillage.ca/Files/Bylaws/MDP\\_Summer\\_Village\\_of\\_Burnstick\\_Lake\\_Final\\_Dec\\_7\\_2020.pdf](http://www.burnsticklakesummervillage.ca/Files/Bylaws/MDP_Summer_Village_of_Burnstick_Lake_Final_Dec_7_2020.pdf)>, at page 7.

<sup>3</sup> Section 213(1)(a)(iv) of PLAR states:  
“A decision is appealable only on the grounds that  
(a) the director or officer who made the decision ...  
(iv) did not comply with an ALSA regional plan.”

erred in issuing the renewal of the Lease by failing to comply with a regional plan authorized under the *Alberta Land Stewardship Act*, S.A. 2009, c. A-26.8.

[13] On July 24, 2023, the Board wrote to the Appellants and the Director advising of the Board's receipt of the Notice of Appeal.

[14] On July 24, 2023, the Director requested the Notice of Appeal "... be dismissed for being out of time as the 45 day appeal period under section 217(1)(b) of the *Public Lands Administration Regulation*<sup>[4]</sup> has lapsed."<sup>5</sup>

[15] On July 25, 2023, the Board wrote to the Appellants and the Director and acknowledged receipt of the Director's letter and application to dismiss the Notice of Appeal. The Board requested the Appellants answer the following questions:

- why was the Notice of Appeal filed late? and
- would it be contrary to the public interest for the Acting Appeals Co-ordinator to extend the expiry period described in section 217(1) of PLAR?

[16] In response to the Board's July 25, 2023 letter, the Appellants provided additional information on July 25 and August 17, 2023.

[17] On September 27, 2023, the Board requested the Appellants answer the following additional questions:

- “1. In your email dated August 17, 2023, you stated, ‘We anticipate that the Appeal will also be instrumental in clarifying the misinformation/misunderstanding being circulated regarding the purpose and intent of the Recreational Lease.’ Please expand and clarify what you meant by ‘misinformation/misunderstanding being circulated.’

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<sup>4</sup> Section 217(1) 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.”

<sup>5</sup> Director's letter, July 24, 2023.



2. Please explain why you were unaware the Recreational Lease had been issued on July 3, 2022.”

[18] Also on September 27, 2023, the Board wrote to the Village and informed it of the appeal. The Board stated that if the Village wished to participate in the appeal it needed to provide a letter to the Board explaining why it is affected by the Lease and what extent of involvement would be appropriate for the Village.

[19] The Village responded on September 28, 2023, stating that the Village should be involved in the appeal for the following reasons:

- (a) the Village is the leaseholder and could be significantly impacted by any changes to the Lease;
- (b) the Village Council and staff have knowledge about factual matters related to the appeal; and
- (c) the Village has invested significant amounts of money into Lease improvements.

The Village’s letter provided background regarding the Lease.

[20] On October 2, 2023, the Appellants responded to the Board’s questions. On October 13, 2023, the Board asked the Appellants and the Director to provide comments on the Village’s request to be involved in the appeal. Both the Director and the Appellants were in favour of the Village participating. The Board added the Village as a party to the appeal.

[21] On October 25, 2023, the Board set a schedule for filing written submissions regarding the Director’s motion to dismiss the appeal, and received written submissions from the Appellants, the Director, and the Village (the “Parties”) between October 26 and November 15, 2023.

[22] In making the decision regarding the Director’s motion to dismiss the Notice of Appeal, the Acting Appeals Co-ordinator reviewed the information provided by the Parties, along with the relevant legislation and caselaw.

### III. ISSUES

[23] The Board must consider the following:

- A. Was the Notice of Appeal filed after the expiry of the timelines in section 217(1) of PLAR?<sup>6</sup> and:
- B. Would it be contrary to the public interest for the Acting Appeals Co-ordinator to extend the expiry period described in section 217(1) of PLAR?

### IV. SUBMISSIONS AND ANALYSIS

[24] The Board considered the Parties' submissions and summarized them below.

#### A. Was the Notice of Appeal filed after the expiry of the timelines in section 217(1) of PLAR?

##### (i) Submissions

[25] The Appellants submitted that as the physical design of the playground has not been approved by the Department, the time period to file a Notice of Appeal has not started.<sup>7</sup>

[26] The Director observed that the Notice of Appeal was filed more than 45 days after the decision was made to issue the renewal. The Director stated:

“This Board has consistently found 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.”<sup>8</sup>

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<sup>6</sup> Section 217(1) 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.”

<sup>7</sup> Appellants' Rebuttal Submission, November 15, 2023.

<sup>8</sup> Director's Response Submissions, November 8, 2023, at page 2.

[27] The Village noted the Appellants indicated they became aware of the playground concept on April 21, 2023, and filed the Notice of Appeal on July 21, 2023, which is beyond the time limitations provided in PLAR.

(ii) *Analysis*

[28] Section 217 of PLAR sets the timeline for serving a Notice of Appeal on the Board. Section 217(1) 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.”

[29] The Director issued the renewal of the Lease on July 3, 2022. As the Appellants did not become aware of the decision until July 19, 2023, the 45-day period would be applicable. The latest date by which the Notice of Appeal should have been served on the Board is August 17, 2022.

[30] The Board finds the Appellants’ Notice of Appeal was filed past the dates provided in PLAR.

**B. Would it be contrary to the public interest for the Acting Appeals Co-ordinator to extend the expiry period described in section 217(l) of PLAR?**

(i) *Submissions*

[31] The Appellants submitted they were unaware the Director had issued the Lease on July 3, 2022. The Appellants stated they thought the Village submitted an application for the Lease to the Director on July 2, 2023, when the Village requested feedback for the playground plan from the Village Residents. The Appellants stated: “It is evident that there is an alarming

amount of misinformation/misunderstanding being circulated regarding the purpose and intent of the recreational lease.”<sup>9</sup>

[32] The Appellants stated that they, along with other residents, “... were not advised of the nature and specific details of the Proposed Playground until June 2, 2023 so until that time we had no context with which to launch an appeal.”<sup>10</sup> The Appellants provided the Board with a copy of an email sent to the Village on June 28, 2023. In the email the Appellants wrote: “Has the playground proposal been presented and approved by the [Alberta] governing bodies? (i.e. is a permanent playground, fencing permitted and considered acceptable?)”<sup>11</sup> When the Village did not respond, the Appellants phoned a Public Lands Officer in Sundre on July 13, 2023, and left a message. The Public Lands Officer returned the Appellants’ phone call on July 19, 2023, and advised the Appellants of the Board’s appeal process and told them to contact the Village for a copy of the Lease. The Appellants noted that they filed their Notice of Appeal on July 21, 2023.

[33] The Appellants submitted it would not be contrary to the public interest for the Acting Appeals Co-ordinator to extend the expiry period described in section 217(1) of PLAR. The Appellants stated:

“Given the overwhelming lack of documented support received as feedback from Residents to Council (previously provided) and Council’s reluctance to put the issue to a vote we firmly believe that the Appeal is in the public’s best interest. We anticipate that the Appeal will also be instrumental in clarifying the misinformation/misunderstanding being circulated regarding the purpose and intent of the Recreational Lease.

Additionally, the public’s best interests will be served by the Appeal in reducing potential conflicts currently being observed at the Village Boat Launch, such as congestion, overuse, unauthorized use, environmental damage, fire risk and safety issues.”<sup>12</sup>

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<sup>9</sup> Appellants’ Letter, August 17, 2023, at page 1.

<sup>10</sup> Appellants’ Letter, August 17, 2023, at page 3.

<sup>11</sup> Appellants’ Letter, August 17, 2023, at page 3.

<sup>12</sup> Appellants’ Letter, August 17, 2023, at page 4.

[34] The Appellants concluded their submissions by requesting the Acting Appeals Co-ordinator exercise the discretion granted in section 217(2) and extend the time to file their Notice of Appeal.

[35] The Director submitted the following dates and actions were relevant to the issue of whether it was contrary to the public interest to extend the time to file the Notice of Appeal:

- the Village was issued the Lease for a children's playground on August 17, 1994;
- the Village applied for a renewal of the Recreation Lease on November 15, 2021;
- the Director issued the renewal on July 3, 2022;
- on July 19, 2023, a Lands Officer, in response to Mr. Dan Koch's request for a copy of the Lease, advised him to contact the Village for a copy; and
- the Appellants filed the Notice of Appeal on July 21, 2023.

[36] The Director acknowledged the Appeals Co-ordinator has discretion under section 217(2) of PLAR to extend the time for filing a Notice of Appeal if the Appeals Co-ordinator is of the opinion that it would not be contrary to the public interest.

[37] The Director referred to the Board's previous decisions in *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*,<sup>13</sup> and *Reda Enterprises Ltd. v. Director, Provincial Approvals Section, Alberta Environment and Parks*,<sup>14</sup> where the Board outlined some basic principles the Appeals Co-ordinator considered when determining if it was appropriate to extend the time to file a Notice of Appeal.

[38] The Director noted the Appellants submitted they were unaware of the Lease's renewal because they had not read the Village Council meeting agenda and minutes or discussed the matter with other residents. The Director stated:

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<sup>13</sup> *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*, 17-0014-0016-D, 2018 ABPLAB 27.

<sup>14</sup> *Reda Enterprises Ltd. v. Director, Provincial Approvals Section, Alberta Environment and Parks*, 18-0002-D, 2018 ABPLAB 28.

“The fact that the Appellants did not read the Council meeting agendas or Council meeting minutes which included discussions about the renewal of REC 930006 is not an extenuating circumstance to justify an extension of the appeal period.”<sup>15</sup>

[39] The Director submitted the onus is on the Appellants to provide sufficient evidence to justify extending the time to file the Notice of Appeal, and the Appellants did not demonstrate “extenuating circumstances, exceptional circumstances or sufficient reasons to justify an extension of the appeal period.”<sup>16</sup>

[40] The Village stated the volunteer Playground Committee reported its progress at Council meetings and all Council meeting agendas were emailed to the Residents and minutes were posted on the Village website.

[41] The Village noted that in early June 2023, it sent an email to all Residents outlining the proposed playground project and asked for comments. At the Council meeting in June 2023, the Village said Council received a presentation and report from the Playground Committee and discussed the report with the Residents in attendance, following which the Council approved a modified version of the playground plan.<sup>17</sup>

[42] The Village submitted it took “extensive steps to ensure engagement with interested residents and to provide residents many opportunities for input into the final design.”<sup>18</sup>

[43] The Village stated it supported the legislated requirements and the Director’s motion to dismiss the Notice of Appeal.<sup>19</sup>

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<sup>15</sup> Director’s Response Submission, November 8, 2023, at page 3.

<sup>16</sup> Director’s Response Submission, November 8, 2023, at page 3.

<sup>17</sup> Summer Village of Burnstick Lake’s letter, September 28, 2023, at page 2.

<sup>18</sup> Summer Village of Burnstick Lake’s letter, September 28, 2023, at page 2.

<sup>19</sup> Summer Village of Burnstick Lake’s Response Submission, October 26, 2023.

(ii) *Analysis*

[44] The legislation provides for circumstances where it is in the public interest to extend the deadline for an appellant to serve a notice of appeal on the Board. 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.”

[45] To determine if it would be appropriate to extend the time to serve the Notice of Appeal, the Acting Appeals Co-ordinator must determine what the public interest is in this circumstance. As the *Public Lands Act* and PLAR do not define the term “public interest” the Acting Appeals Co-ordinator looks to the courts for guidance. The Supreme Court of Canada, in considering an appeal of a decision made by the Public Utilities Commission of British Columbia, held that the public interest:

“... is predominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion. In delegating this administrative discretion to the Commission the Legislature has delegated to that body the responsibility of deciding, in the public interest ... and in reaching that decision the degree of need and of desirability is left to the discretion of the Commission.”<sup>20</sup>

[46] The importance of the applicable legislation in determining public interest has also been noted in the esteemed text, *Practice and Procedure Before Administrative Tribunals*:

“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.”<sup>21</sup>

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<sup>20</sup> *Memorial Gardens Association (Canada) Limited v. Colwood Cemetery Company*, [1958] SCR 353, at 357.

<sup>21</sup> Lorne Sossin, *Practice and Procedure Before Administrative Tribunals*, Online Edition (Toronto: Thomson Reuters Canada, 2023), at § 1.19.

[47] The Acting Appeals Co-ordinator, when deciding whether it would be contrary to the public interest to extend the time to file a notice of appeal, must consider who the *Public Lands Act* and PLAR addresses the following:

- the overall purpose of the *Public Lands Act* and PLAR;
- the various interests in the *Public Lands Act* and PLAR, including the interests of the Appellants, the Village, and the Director; and
- any constraints on the Board to exercise its statutory discretion granted to extend the legislated timelines.

[48] The purpose of the *Public Lands Act* and PLAR is to ensure responsible management of public lands throughout the province. The appeals system established by the legislation is an important part of the management of public lands. It allows appeals of certain decisions made by the Department to an unbiased and independent decision-maker, the Board. To provide certainty and order to the appeals system, the legislation requires appeals be served in a specific manner and within a specific time. The legislation grants discretion to the Appeals Co-ordinator to extend the time to serve a notice of appeal, which preserves the public interest in having an appeals system that is not overly strict in its application of the timelines. The Appeals Co-ordinator must apply discretion on a case-by-case basis and in a manner that is fair to all parties.

[49] In previous decisions, the Board set out some basic principles for the Appeals Co-ordinator to consider when assessing if extending the time to file a notice of appeal is appropriate:

- the time limits for filing an appeal were included in the Act and PLAR in order to provide a level of certainty to the appeal process;
- the authority to extend an appeal period is used only in extraordinary 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 an appellant to provide sufficient reasons to grant the extension.<sup>22</sup>

[50] The Acting Appeals Co-ordinator applied the above principles to the Appellants' appeal and found the following points to be relevant in making the decision:

- (a) The *Public Lands Act* and PLAR do not require the Director to inform the public regarding issuance of public lands dispositions. An interested party must assume responsibility to check regularly with the Department on the status of an application.
- (b) The Board does not have jurisdiction to determine if the Village acted appropriately or to resolve municipal disputes. The Board may only consider if the Director's decision to issue the renewal was correct.
- (c) The Notice of Appeal was filed by the Appellants over a year after the renewal was issued. The Village proceeded with the playground project, informing the residents, forming a volunteer playground committee, and spending money and resources on the project. Unless the Appellants had extraordinary circumstances to justify the late filing, it would be contrary to the public interest in ensuring a degree of certainty in the approval and appeal process.
- (d) The Appellants stated their Notice of Appeal was filed late because they did not know the Lease had been issued on July 3, 2022, and they were unaware of the nature and specific details of the playground until June 2, 2023, and therefore had no context with which to launch an appeal. However, the Board notes the Appellants had expressed their opposition to the playground in an email to the Village on April 21, 2023, without knowing the design of the playground. Therefore, the Board finds the design of the playground was irrelevant or not a significant factor to the Appellants' appeal.
- (e) Although the Appellants did not learn until July 19, 2023, that the Lease was renewed, the information was available if the Appellants had sought it. The Village posted Council meeting minutes on its website, which would have included reports from the Playground Committee on the playground project, and the Village emailed all Residents the Council meeting agendas. The Appellants acknowledged they did not review the emails or the Village's website.

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<sup>22</sup> *Gionet et al. v. Director, Lower Athabasca Region, Alberta Environment and Parks*, 2018 ABPLAB 27 (17-0014-0016-D), at paragraph 34.

V. **DECISION**

[51] In making the decision on whether to extend the time to file the Notice of Appeal, the Acting Appeals Co-ordinator considered the legislation, the arguments and information provided by the Parties, and the relevant caselaw.

[52] In the Acting Appeals Co-ordinator's opinion, it would be contrary to the public interest to extend the time for the Appellants to serve the Notice of Appeal on the Acting Appeals Co-ordinator for the following reasons:

- (a) the Appellants did not demonstrate extenuating circumstances sufficient to justify the late filing of the Notice of Appeal;
- (b) over a year had elapsed since the Lease was renewed and the Appellants filed their Notice of Appeal; and
- (c) granting an extension of time to file the Notice of Appeal when the Appellants' reasons were insufficient and significant time had passed since the Lease was renewed would undermine certainty in the approval and appeal process.

[53] Accordingly, the Acting Appeals Co-ordinator dismisses the Appellants' Notice of Appeal.

Dated on December 18, 2023, at Edmonton, Alberta.



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Andrew Bachelder  
Acting Appeals Co-ordinator