

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Decision – October 26, 2001

IN THE MATTER OF sections 84, 85, 86 and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13.3, and section 115 of the *Water Act*, S.A. 1996, c. W-3.5.

-and-

IN THE MATTER OF an appeal filed Mr. Perry and Ms. June and Ms. Marie Ellis with respect to Approval No. 00082525-00-00 issued under the *Water Act* by the Director, Bow Region, Natural Resources Service, Alberta Environment, to the Village of Standard to maintain existing works, upgrade the water collection system, replace a water supply line, and conduct spring supply testing and examinations in SE 21-25-22-W4M.

Cite as: *Ellis v. Director, Bow Region, Natural Resources Service, Alberta Environment, re: Village of Standard.*

EXECUTIVE SUMMARY

On December 29, 2000 the Environmental Appeal Board received a Notice of Appeal from Mr. Perry and Ms. June and Ms. Marie Ellis relating to *Water Act* Approval No. 00082525-00-00, issued to the Village of Standard by the Director, Bow Region, Natural Resources Service, Alberta Environment. The Approval authorizes the Approval Holder to maintain existing works, upgrade the water collection system, replace a water supply line and conduct spring supply testing and examination in the Village of Standard.

After numerous abeyances of this appeal, the Board finally set the matter down for hearing on October 29, 2001. On October 19, 2001, the Board received a letter from Mr. Perry and Ms. June and Ms. Marie Ellis advising that an agreement had been reached and they were withdrawing their appeal. On October 22, 2001, the Board advised the parties that it would be discontinuing its proceedings and closing its file regarding this appeal.

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I. BACKGROUND

[1] On December 19, 2001, Approval No. 00082525-00-00 (the “Approval”) was issued to the Village of Standard (the “Approval Holder”) under the *Water Act*, S.A. 1996, c. W-5, by the Director, Bow Region, Natural Resources Service, Alberta Environment (the “Director”). The Approval authorizes the Approval Holder to maintain existing works, upgrade the water collection system, replace a water supply line and conduct spring supply testing and examinations in SE 21-25-22-W4 M. A letter was also issued with the Approval stating: “[t]his Approval does not allow for the increased diversion or use of water”.

[2] A Notice of Appeal was received by the Environmental Appeal Board (the “Board”) from Mr. Bradley Gilmour, Bennett Jones, on behalf of Mr. Perry, Ms. Marie and Ms. June Ellis (the “Appellants”) with respect to the Approval.

[3] On January 3, 2001 the Board acknowledged receipt of the Notices of Appeal from the Appellants and requested a copy of the records related to the appeals. On that same day the Board also notified the Approval Holder of the appeal.

[4] According to standard practice, on January 3, 2001, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective Board’s legislation. Both Boards replied in the negative.

[5] On January 9, 2001, the Board acknowledged letters dated January 4, 2001 from the Appellants and January 7, 2001 from Mr. Hugh Ham, counsel for the Village of Standard, and at his request forwarded all correspondence relating to this file to him. On that same date, the Board acknowledged receipt of a voice mail from Mr. Gilmour asking him to determine whether the Approval Holder would be prepared to agree not to do any work under the Approval until the appeal was completed. At this time the Board requested a written update from the Approval Holder by Wednesday, January 17, 2001.

[6] On January 16, 2001 the Appellants requested that the file be held in abeyance for a period of 45 days, which was agreeable to all parties. The Board granted this abeyance and

requested a status report by March 2, 2001. Further abeyances were requested on March 2, 2001 and April 2, 2001.

[7] On April 12, 2001, the Appellants advised the Board that they had entered into a temporary access agreement for the purpose of allowing the Approval Holder to conduct testing. The Board requested that the parties provide the Board with a status report by June 15, 2001.

[8] On June 15, 2001, the Appellants provided a status report to the Board indicating that the Approval Holder would be providing a copy of the testing results to them. On June 18, 2001 the Board responded to the Appellant's letter and advised that it would not accept any further requests for abeyances.

[9] On June 20, 2001, the Board acknowledged the Appellant's letter of June 19, 2001 in which he objected to the Board's stance regarding an abeyance and the Board advised that consideration would be given to an abeyance where there is reasonable justification and a strong possibility of resolution.

[10] The Board received a further request on July 9, 2001 for an extension from the Appellants to continue their discussions with the Approval Holder. The Board granted the extension and requested that status reports be provided by July 31, 2001.

[11] On July 13, 2001, the Approval Holder advised the Board that it was withdrawing its application for an increased diversion and suggested that the appeals before the Board were now moot. On July 16, 2001, the Board acknowledged letters from the Approval Holder dated July 13 and July 14, 2001. At that time the Board requested that the Director advise if the Approval issued to the Village of Standard had been cancelled and the Appellants was asked to confirm if they were withdrawing their appeal if the Approval was cancelled.

[12] On July 23, 2001, the Board acknowledged a letter from the Director advising that the Approval had not been cancelled. On July 25, 2001, the Board acknowledged the letter from the Appellants confirming they were not withdrawing their appeal and requested all parties provide available dates for a mediation meeting/settlement conference or hearing by July 31, 2001.

[13] On July 31, 2001, the Director and the Appellants provided the Board with available dates for a mediation meeting/settlement conference. The Approval Holder was requested to provide their available dates by August 3, 2001.

[14] On August 13, 2001, the Board advised the parties to the appeal that a number of issues should be clarified prior to a mediation meeting/settlement conference and set down deadlines for submissions.

[15] On September 18, 2001, the Board advised all parties to the appeal that the mediation meeting/settlement conference scheduled for September 20, 2001 had been cancelled, as construction plans necessary for the mediation meeting/settlement conference, had not been provided. The Board also advised the parties at this time that the Board would be proceeding directly to a hearing.

[16] On September 19, 2001, the Director provided the Board with a copy of a letter sent to the Appellants addressing their concerns raised in their September 18, 2001 letter.

[17] On October 2, 2001, the Board advised all parties to this appeal that a hearing had been scheduled for October 29, 2001 in Calgary. At that time the Board requested written submissions from the parties regarding the issues to be dealt with at the hearing.

[18] Written submissions regarding the issues were subsequently received from the parties, and upon review of the submissions, the Board concluded that the only issue to be dealt with at the hearing would be:

“Was the Director correct and reasonable in issuing this approval given the provisions of the *Water Act* and the regulations?”

[19] On October 19, 2001, the Board received a letter from the Appellants stating:

“Please be advised that the Ellis’ and the Village of Standard have reached an agreement in respect of the Ellis’ concerns. The Ellis’ hereby withdraw their appeal in respect of this matter.”

II. DECISION

[20] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on the Appellants' letter of October 19, 2001, the Board hereby discontinues its proceedings in Appeal No. 00-076 and will be closing its file.

Dated on October 26, 2001 at Edmonton, Alberta.

William A. Tilleman, Q.C., Chairman