

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – August 1, 2002

IN THE MATTER OF sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and section 115 of the *Water Act*, R.S.A. 2000, c. W-3.

-and-

IN THE MATTER OF a Notice of Appeal filed by the Municipal District of Rocky View No. 44, with respect to *Water Act* Preliminary Certificate No. 00137211-00-00 issued to Apple Creek Golf and Country Club by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Municipal District of Rocky View No. 44 #2 v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club.*

EXECUTIVE SUMMARY

Alberta Environment issued to Apple Creek Golf and Country Club a Preliminary Certificate under the *Water Act* authorizing the diversion of 119,929 cubic metres of water annually from McPherson Coulee in SE 35-27-1-W5M and an Approval under the *Water Act* authorizing the construction of a channel improvement, control gates, dykes and a diversion pipe on McPherson Coulee and an unnamed water body in SE 35-27-1-W5M near Airdrie, Alberta.

Eleven appeals were filed with respect to this Preliminary Certificate and Approval. The Municipal District of Rocky View No. 44 appealed both and the Board dismissed the portion of the appeal related to the Approval for filing their Notice of Appeal late. The Board received a motion from Alberta Environment to dismiss the appeal of the Preliminary Certificate filed by Municipal District as they suggested that they were not directly affected by the Preliminary Certificate. The Board requested submissions and in the process of deliberating, it received a letter dated July 24, 2002, advising that it would "...no longer pursue the appeal in question".

The Board therefore closes its file with respect to the appeal of the Municipal District of Rocky View No. 44 related to the Preliminary Certificate.

TABLE OF CONTENTS

I. BACKGROUND	1
II. DECISION	4

I. BACKGROUND

[1] On March 18, 2002, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 00137206-00-00 (the “Approval”) and Preliminary Certificate No. 00137211-00-00 (the “Certificate”), under the *Water Act*, R.S.A. 2000, c. W-3,¹ to the Apple Creek Golf and Country Club (the “Approval Holder”) authorizing the construction of channel improvements, control gates, dykes, and a diversion pipe on McPherson Coulee and an unnamed water body, and upon compliance with certain conditions, allowing the diversion of 119,929 cubic metres of water annually from McPherson Coulee in SE 35-27-1-W5M near Airdrie, Alberta.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal dated March 25, 2002, from Mr. Ronald Hanson, Ms. Irene Hanson and Mr. Wayne Hanson, Mr. Frank Jensen, Mr. Mark Davy, Mr. Daniel Davy, and Mr. Soren Davy, a Notice of Appeal dated March 26, 2002, from Mr. Ken Reid, and a Notice of Appeal dated March 27, 2002, from Mr. Robert Copley. On March 28, 2002, all of the above appellants provided the Board with revised Notices of Appeal, which included the Preliminary Certificate as well as the Approval. On April 3, 2002, Mr. Jeff Green, Co-ordinator, Planning Services for the City of Airdrie and on April 17, 2002, Mr. Peter Kivisto, Municipal Manager, Municipal District of Rocky View No. 44 provided the Board with Notices of Appeal.²

[3] On April 5, 2002, the Board acknowledged receipt of these appeals and requested the Director provide copies of the records (the “Record”) relating to these appeals. The Board also notified the Approval Holder of the appeals and provided copies of the appeals. In the same letter, the Board requested that the Appellants, Director, and Approval Holder advise the Board if there are other persons that may have an interest in these appeals.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had

¹ As of January 1, 2002, the *Water Act*, R.S.A. 2000, c. W-3 replaced the *Water Act*, S.A. 1996, c. W-3.5.

² Mr. Ronald Hanson, Ms. Irene Hanson and Mr. Wayne Hanson, Mr. Frank Jensen, Mr. Mark Davy, Mr. Daniel Davy, Mr. Soren Davy, Mr. Ken Reid, Mr. Robert Copley, the City of Airdrie, and the Municipal District of Rocky View No. 44 are the Appellants (the “Appellants”).

been the subject of a hearing or review under their respective legislation. Both Boards responded in the negative.

[5] On April 12, 2002, the Board acknowledged receipt of the letter dated April 11, 2002, from the Director, which provided two additional approvals issued to Apple Creek Golf and Country Club. These approvals were issued under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”)³ and authorized the construction, operation and reclamation of a wastewater system and a waterworks system for the Apple Creek Golf and Country Club. Copies of these approvals were provided to the Appellants as well as information regarding the timelines for filing appeals on these approvals.

[6] On April 18, 2002, the Board acknowledged receipt of the Notice of Appeal dated April 17, 2002, from the Municipal District of Rocky View No. 44 (the “Municipal District”), with respect to the Approval and the Certificate. The Notice of Appeal from the Municipal District acknowledged that the portion of the appeal relating to the Approval was late, as the seven-day filing period had already passed.⁴ In the acknowledgement of the Notice of Appeal, the Board requested that the Municipal District provide the reason to the Board as to why it should be granted an extension of time to appeal and that it provide an explanation as to why the appeal was filed outside the seven-day time limit. The Municipal District was also advised by the Board that, if its appeal was not accepted due to the expiration of the seven-day appeal period, and the matter proceeds to a hearing, that the Municipal District would have an opportunity to apply to the Board for intervenor status at that time. Upon receiving submissions, the Board dismissed the portion of the Notice of Appeal related to the Approval.⁵

³ As of January 1, 2002, the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3, was replaced with the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12.

⁴ See: Notice of Appeal filed for the Municipal District of Rocky View (E.A.B. Appeal Number 02-006) where the Municipal District states:

“The Municipality also, under Section 116(2) of the *Water Act*, respectfully requests that you accept this appeal for both the approval and the issuance of the preliminary certificate (although the approval appeal period has expired). Should the Board not accept this appeal due to expiration of the 7 day appeal period, the MD would respectfully request to be added as a Third Party to any appeal proceedings...”

⁵ *Municipal District of Rocky View No. 44. v. Director, Southern Region, Regional Services, Alberta Environment*. (June 25, 2002), E.A.B. Appeal No. 02-006.

[7] On April 30, 2002, the Board acknowledged receipt of the Record from the Director, and at that time provided a copy to the Appellants and the Approval Holder.

[8] On May 2, 2002, the Board acknowledged receipt of the Director's response submission with respect to the late filing of the appeal by the Municipal District. On May 3, 2002, the Approval Holder's response submissions with respect to the late filing were received and acknowledged by the Board.

[9] On May 27, 2002, an information meeting was held in Airdrie, Alberta in which the concerns of the Appellants were identified. On May 31, 2002, the Board wrote to the Parties thanking them for their participation in the meeting and at that time requested that the Director determine whether it would be possible to give a better indication of the type and timing of the impacts that would result from this project.

[10] On June 4, 2002, the Director advised that a water availability study could be completed by Alberta Environment using the "Watshort" computer program, which would take approximately two to three months to complete. On June 11, 2002, the Board advised the Director that "...it believes that it may be of benefit to all parties involved, if Alberta Environment were to complete the water availability study...." On June 13, 2002, the Director advised the Board that the water availability study would be completed by Alberta Environment and would be forwarded to the Board when it was completed.

[11] On June 4, 2002, the Director submitted a motion to dismiss all the appeals, with the exception of the appeal filed by R. L. Hanson. The Director stated that there are two separate grounds for dismissal, failure to file a statement of concern, and not being directly affected. The Director's motion indicated that the following appeals should be dismissed for failure to file a statement of concern: Mr. Daniel Davy, Mr. Soren Davy, Mr. R. Mark Davy, Mr. Frank Jensen and Mr. Robert Copley. The motion also stated that Mr. Ken Reid, the City of Airdrie, the Municipal District of Rocky View No. 44, Ms. Irene Hanson, and Mr. Wayne Hanson, should have their appeals dismissed as they are not, in the Directors' opinion, directly affected. On June 11, 2002, the Board set out a schedule for the Appellants to deal with the Director's request to dismiss the appeals via written submissions.

[12] On June 25, 2002, the Board acknowledged receipt of the initial submissions received. On July 11, 2002 the Board wrote to the parties advising that rebuttal submissions which were due on July 9, 2002 had not been received and therefore the submissions were closed, and the Board would be reviewing the submissions it received and would issue its decision in due course.

[13] During deliberations of the motions in front of it, the Board received a letter on July 24, 2002, from the Municipal District stating:

“In light of the Environmental Appeal Board’s decision of June 26, 2002 to dismiss the MD’s appeal against the Water Act Approval and the Director of Environment’s decision of June 4, 2002 stating that our appeal against the issuance of the Preliminary Certificate be dismissed on the grounds that the MD is not considered a directly affected party, the MD hereby informs your office that we will no longer pursue the appeal in question.... The MD therefore withdraws its appeal against the issuance of the Preliminary Certificate issued on March 18, 2002 with regard to the Apple Creek Golf & Country Club.”

II. DECISION

[14] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based on the Municipal District’s letter dated July 24, 2002, the Board discontinues its proceedings in Appeal No. 02-059 and will be closing its file.

Dated on August 1, 2002, at Edmonton, Alberta

“original signed by”

Dr. John Ogilvie