

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – February 14, 2003

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 Notices of Appeal filed by Elma and Alex Shennan, and Roy and Charlotte Bohn with respect to Approval No. 00186804-00-00, issued on July 25, 2002, to Parkbridge Communities Inc. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Shennan et al. v. Director, Central Region, Regional Services, Alberta Environment re: Parkbridge Communities Inc.* (14 February 2003), Appeal Nos. 02-066 and 068-D (A.E.A.B.).

BEFORE:

William A. Tilleman, Q.C., Chair.

PARTIES:

Appellant: Ms. Elma and Mr. Alex Shennan; and Mr. Roy and Ms. Charlotte Bohn.

Director: Mr. Darryl Seehagel, Central Region, Regional Services, Alberta Environment, represented by Ms. Michelle Williamson, Alberta Justice.

Approval Holder: Parkbridge Communities Inc., represented by Mr. Garth Anderson, Gowling Lafleur Henderson LLP.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to Parkbridge Communities Inc. authorizing the construction of a storm water management pond at NE 15-53-27-W4M, on a tributary of the Atim Creek, near Spruce Grove, Alberta.

The Board received Notices of Appeal from Ms. Elizabeth Poburan, Mr. Alex and Ms. Elma Shennan, Mr. Rene Victoor, and Mr. Roy and Ms. Charlotte Bohn appealing the Approval. The Notices of Appeal filed by Mr. Alex and Ms. Elma Shennan, Mr. Rene Victoor, and Mr. Roy and Ms. Charlotte Bohn were filed after the deadline for submitting Notices of Appeal.

As a result of the late filing of the Notices of Appeal, the Board dismisses the appeals of Mr. Alex and Ms. Elma Shennan and Mr. Roy and Ms. Charlotte Bohn.

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	SUMMARY OF EVIDENCE.....	3
	A. Ms. Elma Shennan	3
	B. Mr. Roy and Ms. Charlotte Bohn.....	3
	C. Director	3
III.	ANALYSIS.....	4
IV.	CONCLUSION.....	7

I. BACKGROUND

[1] On July 25, 2002, the Director, Central Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 00186804-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Parkbridge Communities Inc. (the “Approval Holder”) authorizing the construction of a storm water management pond on a tributary of the Atim Creek at NE 15-53-27-W4M near Spruce Grove, Alberta.

[2] On August 8, 2002, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Ms. Elizabeth Poburan.¹ The Board wrote to Ms. Poburan, the Approval Holder, and the Director acknowledging receipt of this appeal. In the same letter, the Board requested available dates for a mediation meeting or hearing, and the Director was requested to provide the Board with a copy of the records (the “Record”) relating to the Approval.

[3] 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 been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[4] On August 19, 2002, the Board received Notices of Appeal from Mr. Alex and Ms. Erma Shennan and Mr. Rene Victoor, and on August 20, 2002, it received a Notice of Appeal from Mr. Roy and Ms. Charlotte Bohn (collectively the “Appellants”).²

[5] On August 20, 2002, the Board wrote to the Appellants and Mr. Rene Victoor, stating that:

“The normal time limit prescribed in the *Water Act* for filing such an appeal is **7 days**. As the Approval was issued on July 25, 2002, this Notice of Appeal appears to be outside the time limit prescribed in the *Water Act*. **In this regard, Mr. And Ms. Bohn are requested to advise the Board if they wish to request an extension of time to appeal. Please indicate to the Board the reasons for the extension of time to appeal.** The granting of the extension is at the

1 See: *Poburan v. Director, Central Region, Regional Services, Alberta Environment re: Parkbridge Communities Inc.* (27 September 2002), Appeal No. 02-064-R (A.E.A.B).

2 On August 28, 2002, Mr. Rene Victoor withdrew his appeal. See: Letter from Mr. Rene Victoor, dated August 28, 2002. Therefore, in this decision, “Appellants” refers only to Mr. Alex and Ms. Erma Shennan and Mr. Roy and Ms. Charlotte Bohn.

discretion of the Board and is not routinely granted. Mr. and Ms. Bohn are requested to provide this information **in writing** to the Environmental Appeal Board by August 26, 2002.”³ (Emphasis in the original.)

[6] In its letter of August 20, 2002, the Board also advised the Appellants that the Board has strict deadlines and “...failure to respond to the Board in a timely manner may result in the dismissal of the appeal pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*.”

[7] On August 27, 2002, the Board received a copy of the Record from the Director, and on August 28, 2002, the Board forwarded a copy to the Appellants and Approval Holder.

[8] On August 26, 2002, the Board received a letter from the Director regarding the Notices of Appeal filed by the Appellants and Mr. Rene Victoor. The Director opposed any application for an extension of time to file the appeals. He also stated that none of the Appellants, nor Mr. Victoor, had filed a Statement of Concern.

[9] On August 27, 2002, the Board contacted the Appellants and Mr. Victoor again, stating:

“Further to my conversation with Ms. Bohn and Mr. Victoor, the Board has not yet received a response to its letter of August 20, 2002.... Mr. Victoor and Mr. and Ms. Bohn are requested to provide this information in writing to the Environmental Appeal Board by September 3, 2002.”⁴

The Board reiterated that failing to respond to a request of the Board may result in the Board dismissing the appeal.

[10] The Board received responses from Ms. Erma Shennan on August 27, 2002, and Mr. Roy and Ms. Charlotte Bohn on August 28, 2002.⁵

3 Letter from Board, dated August 20, 2002. Letters were also sent to Ms. Elma and Mr. Alex Shennan and Mr. Rene Victoor on the same date and with the same deadlines.

4 Letter from Board, dated August 27, 2002.

5 As indicated, on August 28, 2002, Mr. Victoor withdrew his appeal.

II. SUMMARY OF EVIDENCE

A. Ms. Elma Shennan

[11] On August 27, 2002, the Board received a submission from Ms. Elma Shennan. In her submission, Ms. Shennan stated:

“This letter is to inform you that we filed our notice of appeal as quickly as we could. If it is found that we were not on time to do so, that is because we were not duly notified in a fair manner. We found out after the fact, that we had to have pre-filed a notice of concern to Alberta Environment. This important information coming from a small unassuming notice placed in a part of our local paper was not appropriate. We were not able to notice it....”⁶

B. Mr. Roy and Ms. Charlotte Bohn

[12] On August 28, 2002, the Board received a letter from Mr. Roy and Ms. Charlotte Bohn. In their letter they stated:

“There has been insufficient notification to us of the intent to build this pond, resulting in a lack of time to respond accordingly.

Apparently there was something concerning the proposed pond in the local weekly paper at the end of July. We had been on holiday during July. We never saw the notice. The neighbour who told us about this only found out about it after the appeal date was past. A small notice posted once in a small weekly newspaper is too easy to miss. When our local County receives a request from a landowner for permission to make changes that may affect the neighbours, those neighbours are sent a letter of notification by the County. We would have expected the same from other levels of Government and are somewhat alarmed that the law does not require that concerned neighbours be told about important changes affecting their land.”⁷

C. Director

[13] The Director opposed any extension of time for filing the Notice of Appeal. He further submitted that none of the Appellants had standing as they had not filed Statements of Concern pursuant to section 115(1)(a)(i) of the *Water Act*.

6 Letter from Ms. Elma Shennan, dated August 27, 2002.

7 Letter from Mr. Roy and Ms. Charlotte Bohn, dated August 27, 2002.

III. ANALYSIS

[14] Section 115 of the *Water Act* identifies who can file a Notice of Appeal. It states:

“(1) A notice of appeal under this Act may be submitted to the Environmental Appeal Board by the following persons in the following circumstances:

- (a) if the Director issues or amends an approval, a notice of appeal may be submitted (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director’s decision, if notice of the application or proposed changes was previously provided under section 108....”

Section 109 of the *Water Act* states:

“(1) If notice is provided

- (a) under section 108(1), any person who is directly affected by the application or proposed amendment, and
- (b) under section 108(2), the approval holder, preliminary certificate holder or licensee

may submit to the Director a written statement of concern setting out that person’s concerns with respect to the application or proposed amendment.

(2) A statement of concern must be submitted

- (a) in the case of an approval, within 7 days after the last providing of the notice, and
- (b) in every other case, within 30 days after the last providing of the notice,

or within any longer period specified by the Director in the notice.”

[15] Notice of the application was published in the *Stony Plain Reporter* and the *Spruce Grove Examiner* on or about June 28, 2002.⁸ In the advertisement, it states that a Statement of Concern must be filed within 7 days of the providing of the notice and that “...failure to file statements of concerns may affect the right to file a notice of appeal with the Environmental Appeal Board.” According to the Director, and reviewing the Record, only one Statement of Concern was received, from Ms. Elizabeth Poburan. There is no indication of a Statement of Concern being filed by any of the Appellants.

8 See: Director’s Record at Tabs 19 and 20.

[16] Under the *Water Act*, a Notice of Appeal must be filed within 7 days after provision of the notice of the approval, even though the Board has the discretion to extend the filing period. Section 116 states:

- “(1) A notice of appeal must be submitted to the Environmental Appeal Board
- (a) not later than 7 days after
 - (i) receipt of a copy of a water management order or enforcement order, or
 - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from;
- or
- (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.
- (2) The Environmental Appeal Board may, on application made before or after the expiry of the period referred to in subsection (1), extend that period, if the Board is of the opinion that there are sufficient grounds to do so....”

[17] In its August 20, 2002 letter, the Board asked the Appellants to provide reasons why an extension of time to appeal should be granted and to provide reasons as to why the Notices of Appeal were filed late. Their responses were briefly set out above.⁹

[18] The Appellants argued that the notice of the Approval application was a “...small unassuming notice placed in a part of the local paper...”¹⁰ and that “...a small notice posted once in a small weekly newspaper is too easy to miss.”¹¹ The Board has ruled in previous decisions that requiring approval holders to give actual notice to all potentially affected people is a burden that is too heavy for the Director to impose. In *Cardinal River Coals*, the Board stated:

“Ms. Ladouceur implies that she should not be subject to the section 84(1)(a)(iv) requirement, because she was out of town on the dates the AEP’s public notice was published and, thus, she was never apprized of her chance to submit a statement of concern on the *EPEA* approval ‘in accordance with section 70.’ Her ‘implied’ argument misses the point. As a legal matter, section 84(1)(a)(iv), and sections 70 and 69 which are referenced directly and indirectly through section

9 See paragraphs 11 and 12.

10 Letter from Ms. Elma Shennan, dated August 27, 2002.

11 Letter from Mr. Roy and Ms. Charlotte Bohn, dated August 27, 2002.

84(1)(a)(iv), require that a statement of concern be provided as a prerequisite to filing an appeal if the Director provides notice. Presumably, notice means notice to the public generally rather than notice to particular interested persons, *especially* those persons of whose identity the Director is unaware; that burden is too much for the Director to carry. In other words, it is irrelevant that the particular appellant may have never actually received the notice, as long as the notice itself was adequate for informing the public generally. And Ms. Ladouceur does not question the sufficiency of the Director's notice to the public generally."¹²

[19] Also, this Board said in another case, *O'Neill*:

“Statements of concern are a legislated part of the appeal process. Though it is seldom seen, circumstances could arise where it may be possible for the Board to process an appeal where a statement of concern was filed late. Or perhaps an appeal could be processed even when a statement of concern has not been filed--due to an extremely unusual case (e.g. a directly affected party being hospitalized) where a person's intent to file is otherwise established in advance. But those circumstances are highly fact-specific, exceptionally rare, and they do not apply to the present case. Indeed we cannot imagine a case proceeding to the next step where the appellant, like Mr. O'Neill, refuses to answer Board questions and provide at least some evidence of the requisite statement of concern and its proper filing. His appeal cannot proceed.”¹³ (Footnotes removed.)

[20] In the case *Grant and Yule*,¹⁴ the appellants submitted similar arguments to the Board as what are presented here. In *Grant and Yule*, the Board assessed the manner in which the advertisement was placed, including the size of the notice and the choice of publication. Based on these criteria, the Board notes that, in this case, the notice was actually published in *two* local newspapers. There was no evidence that the advertisements were uniquely small or hidden in a way that would have prevented the Appellants from seeing the notice and responding to it within the specified time limits. If that was the case, the fact that the advertisement was carried by two local newspapers helped to cure the defect.

[21] Even if the Board accepted the dates provided by Ms. Poburan for receiving actual notice, the Notices of Appeal were filed late. The Approval was dated July 25, 2002. The letter notifying Ms. Poburan of the Approval was postmarked July 30, 2002, and she received the

12 Re: *Cardinal River Coals Ltd.* (1999), 28 C.E.L.R. (N.S.) 145 at paragraph 25 (A.E.A.B.).

13 *O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection*, Re: *Town of Olds* (12 March 1999), Appeal No. 98-250-D at paragraph 14 (A.E.A.B.).

14 *Grant and Yule v. Director, Bow Region, Natural Resources Service, Alberta Environment*, re: *Village of Standard* (15 May 2001), Appeal Nos. 01-015 and 01-016-D (A.E.A.B.).

letter on August 7, 2002. Pursuant to section 116(1)(ii) of the *Water Act*, the appeal period would start from the date that notice is received. Based on this scenario, the deadline for filing an appeal would have been August 14, 2002. The Board received the Notices of Appeal from Mr. and Ms. Shennan on August 19, 2002, and from Mr. and Ms. Bohn on August 20, 2002, five and six days, respectively, after the deadline. That was too late.

[22] As no persuasive reasons were provided to extend the filing deadline, the Board does not find it has the jurisdiction to proceed with the appeals of Mr. Alex and Ms. Elma Shennan and Mr. Roy and Ms. Charlotte Bohn.

[23] The Board notes that Ms. Elizabeth Poburan did file a Statement of Concern and a valid Notice of Appeal, and her appeal will proceed in the ordinary course.¹⁵

IV. CONCLUSION

[24] The Board finds that statutory prerequisite to filing a Notice of Appeal have not been met and that no special circumstances exist to extend the appeal deadline. Pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board dismisses the appeals filed by Mr. Alex and Ms. Elma Shennan and Mr. Roy and Ms. Charlotte Bohn.

Dated on February 14, 2003, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chair

¹⁵ See: *Poburan v. Director, Central Region, Regional Services, Alberta Environment re: Parkbridge Communities Inc.* (27 September 2002), Appeal No. 02-064-R (A.E.A.B).