

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – January 3, 2007

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 appeals filed by Allan Blomme and Laurence Marketing Group with respect to Enforcement Order No. 2002-WA-03 issued to the Laurence Marketing Group Ltd. and Allan Blomme by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Blomme et al. v. Director, Southern Region, Regional Services, Alberta Environment* (3 January 2007), Appeal Nos. 02-131 and 140-DOP (A.E.A.B.).

I. BACKGROUND

[1] On December 18, 2002, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Enforcement Order No. 2002-WA-03 (the “Order”) to The Laurence Marketing Group Ltd. and Mr. Allan Blomme for an alleged contravention of sections 36(1) and 142(1)(h) of the *Water Act* R.S.A. 2000, c. W-3, by conducting an activity without an Approval at Plan 8911194, Block 1, (Wilderness Campground) in Okotoks, Alberta.

[2] On December 23, 2002, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Allan Blomme appealing the Order.

[3] The Board acknowledged receipt of the appeal on December 30, 2002, notified the Director of the appeal and requested that the Director provide a copy of the records relating to the appeal (the “Record”) to the Board. The Board also requested that the Appellant and the Director provide their available dates for a mediation meeting or hearing.

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

[5] On January 8, 2003, the Board received a letter from the Appellant requesting that the Board include Laurence Marketing Group Ltd. as an appellant. The Appellant advised:

“...Allan Blomme is a beneficial owner of all of the shares of Laurence and his Notice of Appeal is also signed on behalf of Laurence...”

[6] On January 23, 2003 the Board received a copy of the Record from the Director, including an escrow agreement between Mr. Larry Blomme and the Appellant that has been sealed by the Director. The Director advised that the Appellant was unavailable and that they could not obtain the Appellant’s permission to disclose the document at that time.

[7] On February 3, 2003, the Board forwarded a copy of the Record to the Appellant, with the exception of the sealed escrow agreement. In the Board’s letter of February 3, 2003, the Board also responded to the Appellant’s letter of January 8, 2003. The Board’s letter stated:

“...it appears to the Board that Mr. Allan Blomme may have a beneficial interest in the Laurence Marketing Group. In this regard, the Board has opened up an appeal file for the Laurence Marketing Group. However, as the Board has not yet had the opportunity to review the escrow agreement, which is currently sealed, it is presently unclear to the Board as to whether it is the land or the Laurence Marketing Group that is in escrow. Therefore, until the Board has had the opportunity to review the escrow agreement, the final determination of whether to accept the appeal of the Laurence Marketing Group is subject to further consideration by the Board.”

[8] On February 6, 2003, in consultation with the Director and the Appellant, the Board scheduled a Hearing, to take place in Calgary, Alberta on March 13, 2003. On February 27, 2003, in a letter to the Director and the Appellant, the Board advised that it would deal with the issue of whether to accept the appeal of the Laurence Marketing Group at the beginning of the Hearing on March 13, 2003. Written submissions and witness lists were subsequently received from the Director and the Appellant in preparation for the Hearing.

[9] On February 28, 2003, the Board received a letter from the Appellant advising:

“At the time relevant to the matters outlined in the Enforcement Order...the subject lands were registered to the Laurence Marketing Group Ltd...The shares were beneficially owned by Allan Blomme, and were legally held by Larry Blomme, the arrangements being subject to an Escrow Agreement...I give authority that the Escrow Agreement...can be unsealed and made available to any party interested in this appeal...Circumstances have changed as of January 27, 2003, whereby: Larry Blomme ceased to be a shareholder, director and officer of the Corporation. Allan Blomme is now the sole shareholder, director and officer of the corporation. The Notice of Appeal was filed by Allan Blomme, but it was his intention that the Appeal be made on his own behalf, and on behalf of the Corporation...”

The Appellant also advised that discussions with the Director were ongoing in order to develop “...a strategy to solve problems which gave rise to the Enforcement Order...”, and requested the Board adjourn the Hearing to allow discussions to continue. The Appellant also provided available dates for the re-scheduling of the Hearing. The Board granted the request for an adjournment, and on March 13, 2003, in consultation with the Appellant and the Director, the Board re-scheduled the Hearing to April 3, 2003.

[10] On March 26, 2003, the Board received a letter from the Director advising that he had been advised that the Appellant may not be in attendance at the Hearing due to personal reasons. The Board scheduled conference calls for March 27 and April 1, 2003 in order to

discuss with the Director and the Appellant the issue of whether the Appellant would attend the Hearing, and if the Appellant was unable to attend, their position on what the next step in this matter should be. Subsequent to the conference calls, the Board received a letter dated April 1, 2003, from the Appellant requesting a further adjournment of the Hearing due the same personal reasons. In the Appellant's letter it also stated, with respect to the Director's witnesses that were listed in the Director's written submission for the Hearing:

"...I have no information either by way of Affidavit or by 'will say' statements from Darren Bourget, Sheldon Ruchkall or Wendell Koning. It appears that Mr. Ruchkall and Mr. Koning may be giving expert evidence. I do note that in the procedure for the hearing I am permitted 20 minutes for Cross-Examination. The Cross-Examination cannot be effective until I have advance information and copies of any relevant documents, which will be used by these witnesses. I see that there is no procedure for obtaining advance information, however Gilbert Van Nes has alerted me to the need for a formal application to the Board for this purpose. I await your further advice on these applications."

[11] On April 1, 2003, the Board responded to the Appellant's letter, requesting comments from the Director and the Appellant on the following matters:

1. the adjournment request,
2. the request for 'will say' statements,
3. the question of onus and how this should be addressed,
4. the possibility of proceeding with a portion of the hearing (i.e. the evidence of Alberta Environment) as scheduled, and
5. the possibility of dealing with this hearing in writing."

[12] The Board received responses from the Director and the Appellant on April 1, 2003. After reviewing the responses, the Board advised in a letter dated April 2, 2003 that instead of the Hearing, which was scheduled for April 3, 2003, a Preliminary Meeting would be held in order to deal with various preliminary motions of the Director and the Appellant. The Board advised that arguments on the following issues would be heard by the Board at the Preliminary Meeting:

1. What is the proper onus with respect to the hearing of this matter?
2. What hearing procedures will be used for this hearing, including whether the hearing will be conducted by in writing and what deadlines should be set? (See section 94(2) of the *Environmental Protection and Enhancement Act*.)

3. Whether Alberta Environment should be required to provide “will say” statements prior to the hearing or as part of the hearing procedure?
4. Whether the Board should dismiss the appeal as requested by Alberta Environment?

[13] On April 3, 2003, the Board held a Preliminary Meeting, in Calgary, Alberta to deal with the preliminary issues as well as whether to accept the appeal of the Laurence Marketing Group. The Board issued its decision by letter on April 14, 2003, with respect to the Preliminary Meeting. The Board advised the Director and the Appellant that the appeal of the Laurence Marketing Group is properly before the Board and that the motion to dismiss the appeal by Alberta Environment is denied, and that it would schedule a Hearing.

[14] On April 19, 2004, the Board received a letter from the Director requesting the Hearing be held by written submissions. The Board had begun scheduling the Hearing, when it received notice from the Appellant and Laurence Marketing Group (collectively the “Appellants”) that they were working together towards a resolution. The Board put the appeals into abeyance to give the Director and the Appellants (collectively the “Participants”) an opportunity to resolve the Order.

[15] On August 16, 2004, the Director wrote to the Appellants attaching an amendment to the Order which set out new deadlines for compliance with the Order. On December 6, 2004, the Director wrote again to the Appellants granting a request by the Appellants for an extension to the Order. On December 7, 2004, the Board wrote to the Participants and requested the Appellants advise if they were withdrawing their appeals because it appeared to the Board that the Participants had reached an agreement. The Appellants responded to the Board on December 23, 2004, advising they were not prepared to withdraw the appeals until the remedial work was completed and the Order had been withdrawn by the Director. The Appellants requested a further abeyance of the appeal, and on January 5, 2005, the Board requested status reports by May 31, 2005.

[16] On June 8, 2005, the Board wrote to the Participants requesting status reports. Status reports were received indicating discussions between the Participants had broken down. The Board wrote to the Participants on July 12, 2005, advising the Board had decided to proceed to a Hearing and requested the Participants provide their available dates for a Hearing by July 22,

2005. However, on August 18, 2005, the Board received a telephone call from the Director advising of their intent to engage in further discussions with the Appellants. The Board requested the Participants provide status reports and available dates for a Hearing to the Board by August 25, 2005.

[17] On August 30, 2005, the Board acknowledged a telephone call from the Appellants, providing a status report. The Board granted a further abeyance to allow the Participants to continue their discussions with a view to resolving these matters. Settlement discussions continued and the Participants provided regular status reports to the Board until January 13, 2006, when the Board advised the Participants it would like to schedule a mediation meeting.

[18] In consultation with the Participants, the Board scheduled a mediation meeting and a site visit for March 29, 2006, in Calgary, Alberta.

II. MEDIATION MEETING

[19] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Okotoks, Alberta on March 29, 2006 with Mr. Alex MacWilliam as the presiding Board Member (the "Mediator").

[20] In conducting the mediation meeting the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All Participants signed the Agreement and discussions ensued.

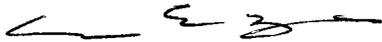
[21] Following productive and detailed discussions at the mediation meeting, an Interim Resolution was reached and the Participants agreed to continue discussions.

[22] On November 15, 2006, the Board received a letter from the Director advising that they were closing Enforcement Order No. 2002-WA-03. The Board wrote to the Appellants asking if they were withdrawing their appeals, and on November 21, 2006, the Board received a response advising they wished to withdraw their appeals.

III. DECISION

[23] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c W-3, and based upon the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 02-131 and 02-140 and closes its file.

Dated on January 3, 2007, at Edmonton, Alberta.



Steve E. Hruddy, F.R.S.C., P.Eng.
Chair