

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – June 1, 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 Dennis Mercer and Linda Mercer with respect to *Water Act* Approval No. 00209177-00-00 and *Water Act* Amending Approval No. 00209177-00-01 issued to the Town of High River by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Mercer v. Director, Southern Region, Regional Services, Alberta Environment, re: Town of High River* (1 June 2007), Appeal Nos. 05-014 and 05-032-DOP (A.E.A.B.).

I. BACKGROUND

[1] On August 25, 2005, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 00209177-00-00 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Approval”) to the Town of High River, authorizing the construction of the Golf Course Dyke, and Baker Creek Dyke on the floodplain and/or floodway of the Highwood River, near High River, Alberta; and on October 12, 2005, the Director issued Amending Approval No. 00209177-00-01 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Amending Approval”) to the Town of High River, changing the alignment of the Baker Creek Dyke.

[2] Between August 30, 2005 and September 2, 2005, the Environmental Appeals Board (the “Board”) received Notices of Appeal in relation to Approval Number 00209177-00-00 from Dr. Dennis and Ms. Linda Mercer; Mr. Hans and Ms. Katherine Weinacker; Mr. Lyle Braunworth; Mr. Donald and Ms. Bette Green; Mr. Ron and Ms. Lorraine Gorsche; Mr. Keith Spackman; and Mr. Wayne Adams for Ms. Helen Adams. Between October 14 and 18, 2005 the Board received Notices of Appeal in relation to Amending Approval No. 00209177-00-01 from Dr. Dennis and Ms. Linda Mercer; Mr. Hans and Ms. Katherine Weinacker; Mr. Lyle Braunworth; Mr. Donald and Ms. Bette Green; Mr. Ron and Ms. Lorraine Gorsch; Mr. Keith Spackman; Mr. Emile Rocher; Mr. Cam Crawford on behalf of the Beachwood Homeowners Association; and on October 18, 2005, the Board received Notices of Appeal from Mr. Bruce and Ms. Carol Miles in relation to both the Approval and Amending Approval.

[3] This Discontinuance of Proceedings deals with the appeals of Dr. Dennis and Mrs. Linda Mercer only (the “Appellants”).

[4] The Board wrote to the Appellants, the Approval Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and that the Participants provide available dates for a mediation meeting, preliminary meeting or hearing.

[5] On September 26, 2005, the Board received a copy of the Record in relation to the Approval from the Director and on October 6, 2005, forwarded a copy to the Appellants and the Approval Holder. On October 21, 2005, the Board received a copy of the Record in relation to the Amending Approval from the Director and on October 27, 2005, forwarded a copy to the Appellants and Approval Holder.

[6] 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.

[7] In consultation with the Participants, the Board held mediation meetings on November 25, 2005, June 20, 2006, and a final meeting on January 31, 2007, in High River, Alberta.

[8] At the January 31, 2007 meeting, the Participants were advised that the mediation process has formally ended. In the Board's February 22, 2007 letter to the Participants, they were advised:

“As discussed at the information meeting, the Town of High River will be filing an application with Alberta Environment for an approval to build a tight wrap dyke in order to minimize the potential for future flooding of Beachwood Estates. In light of this application proceeding, the Appellants now have options available to them as to how they wish to proceed with their present appeals. As the mediation is now closed, the Appellants may request that their appeals be held in abeyance until the tight wrap dyke approval is issued, assuming it is acceptable to Alberta Environment. At that time, the Appellants can then decide if they want to appeal the tight wrap dyke as well as the present approval, proceed only with the present appeal, appeal the tight wrap dyke and withdraw the present appeal, or withdraw the present appeal and not appeal the tight wrap dyke. The Appellants also have the option of proceeding with their current appeals now. If one or more of the Appellants wish to continue with their appeals now, the Board will determine how to proceed.”

[9] On March 12, 2007, the Participants were advised that all the appeals would be held in abeyance pending the process described above.

[10] The Board received a call on May 28, 2007 from Mrs. Linda Mercer advising that she and Dr. Dennis Mercer were withdrawing their appeals. The Board confirmed the withdrawal in a letter to the Participants dated May 30, 2007.

[11] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the withdrawal of the appeals by the Appellants on May 28, 2007, the Board hereby discontinues its proceedings in Appeal Nos. 05-14 and 05-032.

Dated on June 1, 2007, at Edmonton, Alberta.

“original signed by”

Steve E. Hrudey, FRSC, PEng