

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – September 19, 2016

IN THE MATTER OF sections 91, 92, 93, 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 an appeal filed by Phillip Valleau with respect to Approval Nos. 00361705-00-00 and 00367709-00-00 issued to the Town of Wainwright under the *Water Act*, by the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Valleau v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *Town of Wainwright* (19 September 2016), Appeal No. 16-009-ID1 (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

SUBMISSIONS BY:

Appellant:

Mr. Philip Valteau, represented by Mr. J. Philip Warner, Q.C., Bishop & McKenzie LLP.

Approval Holder:

Town of Wainwright, represented by Mr. Ronald Nelson, Brownlee LLP.

Director:

Mr. Neil Hollands, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Lisa Semenchuk, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks issued two Approvals under the *Water Act* to the Town of Wainwright.

The Board received notice from Mr. Philip Valleau of his intent to appeal the Approvals. Legal counsel for Mr. Valleau asked the Board to grant his client a two week extension to file his actual Notices of Appeal.

Under the *Water Act*, a Notice of Appeal of an approval must be filed within seven days of receipt of notice or the last provision of notice of the decision that is appealed from.

The Town of Wainwright did not object to an extension of the filing period, but the Director opposed any extension.

After reviewing the submissions of the parties on the request for the extension, the Board found there were no extenuating circumstances to warrant an extension and, accordingly, denied the request for the extension.

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I. BACKGROUND

[1] On July 6, 2016, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the “Director”), issued Approval Nos. 00361705-00-00 and 00367709-00-00 (the “Approvals”) to the Town of Wainwright (the “Approval Holder”) under the *Water Act*, R.S.A. 2000, c. W-3.

[2] On July 15, 2016, the Environmental Appeals Board (the “Board”) received a request from legal counsel for Mr. Philip Valteau (the “Appellant”) for an extension of the statutory seven-day deadline to file Notices of Appeal regarding the Approvals.

[3] The Board asked the Approval Holder and Director to provide comments on the extension request.

[4] On July 18, 2016, the Appellant notified the Board that he would not be filing a Notice of Appeal with respect to Approval No. 00361705-00-00 and was only requesting the extension to apply to Approval No. 00367709-00-00.

II. SUBMISSIONS

A. Appellant

[5] The Appellant explained he received notice of the Approvals on July 11, 2016, and was requesting an extension to the seven-day appeal period provided in the *Water Act*.

[6] The Appellant stated the Approvals and correspondence with the Director about the applications for the Approvals leave many questions unanswered. He said he needed responses to these questions he asked of the Director to determine whether he should pursue appeals and on what grounds any appeals should be based.

[7] The Appellant stated that, on July 14, 2016, he received responses to some of the questions asked in his June 14, 2016 email to the Director. The Appellant noted the responses provided information from the Approval Holder’s consultant. The Appellant stated the additional information created significant concerns over the granting of the Approvals and the viability of the works proposed to remediate the flooding.

[8] The Appellant said he was in contact with the Approval Holder and was trying to reach an agreement on the remedial measures and resolve the flooding and related issues. The Appellant stated the remaining information requested of the Approval Holder should assist in reaching a longer term resolution.

[9] The Appellant requested an extension of two weeks, until July 29, 2016, in order to receive the additional information and, if possible, facilitate discussions toward reaching a mutually beneficial resolution. The Appellant stated if he was still unable to decide to appeal or on the grounds of an appeal within the two-week extension period, then he may request a further extension.

B. Approval Holder

[10] The Approval Holder explained it was in discussions with the Appellant in an effort to resolve the issues currently before the Board. The Approval Holder noted the Appellant had subsequently advised that he would not be appealing Approval No. 00361705-00-00.

[11] In consideration of the Appellant's decision with respect to Approval No. 00361705-00-00, the Approval Holder did not oppose the two-week extension request with respect to Approval No. 00367709-00-00.

C. Director

[12] The Director opposed the application for an extension and argued the circumstances outlined by the Appellant did not appear to have prevented the Appellant from taking action within the time frame provided for filing an appeal.

[13] The Director stated the uncertainty as to when an extension period or periods would come to an end is troubling and threatens the certainty of the regulatory process.

III. ANALYSIS

[14] Section 116 of the *Water Act* sets the times for filing a Notice of Appeal.¹ The appeal period for an approval issued under the *Water Act* is seven days. The appeal period starts upon receipt by the prospective appellant of notice of the decision.

[15] Section 116(2) of the *Water Act* allows the Board to extend the appeal period if there are sufficient grounds to do so.²

[16] The Appellant requested an extension to the appeal period prior to the end of the appeal period. At the time the request was made, the Appellant still had three days to file his Notice of Appeal.

[17] When an approval is issued, the project proponent has authority to proceed with the approved project subject to any terms and conditions in the approval. A prudent proponent would wait until the appeal period has passed before proceeding with the project because, if an appeal is successful, the proponent may be required to put the site back to pre-disturbance condition. A proponent should, in most cases, be able to rely on the legislated appeal period. This does not mean the Board will not use its discretion under section 116(2) of the *Water Act* to extend the appeal period if asked to and if circumstances warrant it. The Board generally will not extend an appeal period unless the person requesting the extension can show special or extenuating circumstances.³

[18] The Appellant asked for the extension in order to receive additional information from the Approval Holder regarding his concerns about the proposed project. The Appellant

¹ Section 116(1) of the *Water Act* states:

“A notice of appeal must be submitted to the Environmental Appeals Board

(a) not later than 7 days after...

(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....”

² Section 116(2) of the *Water Act* states:

“The Environmental Appeals 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.”

³ See: *O’Neill v. Regional Director, Parkland Region, Alberta Environmental Protection re: Town of Olds* (12 March 1999), Appeal No. 98-250-D (A.E.A.B.).

could have completed and submitted a Notice of Appeal within the seven-day appeal period based on the information available at the time. The Notice of Appeal did not have to contain a fulsome argument of the Appellant's issues. If additional information became available, he could have supplemented his Notice of Appeal. If the additional information resulted in the Appellant's concerns being addressed, he could withdraw his appeal. A desire to wait for additional information does not, in the Board's opinion, create the extenuating circumstances necessary for the Board to grant an extension of time to file a Notice of Appeal.

[19] The Appellant indicated he might ask for further extensions if he was unable to reach a decision within the two-week period originally requested. Continuation of the appeal period in such a fashion would lead to uncertainty in the process. The regulatory system must be fair to all involved, including appellants and approval holders.

[20] The Appellant did not demonstrate the extenuating circumstances the Board requires in order to exercise its discretion to extend the time to file a Notice of Appeal. Therefore, the Board denies the request to extend the appeal period.

IV. CONCLUSION

[21] Having reviewed the submissions provided by the parties, the Board denies the Appellant's request to extend the time period to file his Notice of Appeal.

Dated on September 19, 2016, at Edmonton, Alberta.



Alex MacWilliam
Board Chair