

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – April 27, 2017

IN THE MATTER OF sections 91, 92, 94, 95, and 98 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 Kinniburgh South Limited Partnership, by its General Partner 1290765 Alberta Ltd., and Golden Triangle Construction Management Inc. with respect to Administrative Penalty No. WA-16/07-AP-SSR-16/07 issued to Kinniburgh South Limited Partnership, by its General Partner 1290765 Alberta Ltd., and Golden Triangle Construction Management Inc., under the *Water Act*, by the Director, South Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Kinniburgh South Limited Partnership and Golden Triangle Construction Management Inc. v. Director, South Saskatchewan Region, Alberta Environment and Parks* (27 April 2017), Appeal Nos. 16-046 & 047-D (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTICIPANTS:

Appellants: Kinniburgh South Limited Partnership, by its General Partner 1290765 Alberta Ltd., and Golden Triangle Construction Management Inc., represented by Mr. Craig Johnson.

Director: Mr. Craig Knaus, Director, South Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Erika Gerlock, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty in the amount of \$35,000.00 to Kinniburgh South Limited Partnership, by its General Partner 1290765 Alberta Ltd., and Golden Triangle Construction Management Inc. (the Appellants) for contravening the *Water Act*. AEP determined the Appellants removed seven wetlands within the Town of Chestermere between 2011 and 2013 without an approval. AEP assessed a penalty of \$5,000.00 for each count for a total administrative penalty of \$35,000.00.

The Board received Notices of Appeal from the Appellants appealing the Administrative Penalty. A mediation meeting was held and a resolution was reached whereby the parties recommended to the Board the Administrative Penalty be varied by reducing the Administrative Penalty to \$25,000.00. The Board accepted the mediated agreement and varied the Administrative Penalty accordingly.

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I. BACKGROUND

[1] On October 5, 2016, the Director, South Saskatchewan Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. WA-16/07-AP-SSR-16/07 (the “Administrative Penalty”) to Kinniburgh South Limited Partnership, by its General Partner 1290765 Alberta Ltd., and Golden Triangle Construction Management Inc. (collectively, the “Appellants”), for contraventions of sections 36(1) and 142(1)(h) of the *Water Act*, R.S.A. 2000, W-3.¹ The Director has the authority to issue an administrative penalty under section 152 of the *Water Act*.²

[2] The Administrative Penalty was for a total amount of \$35,000.00. That amount reflected the evidence before the Director that the Appellants had removed seven wetlands within the Town of Chestermere without first obtaining an approval under the *Water Act*. This resulted in seven counts of contravening the *Water Act*, and the Director assessed a penalty of \$5,000.00 per count for a total administrative penalty of \$35,000.00.

[3] On November 15, 2016, the Environmental Appeals Board (the “Board”) received Notices of Appeal from the Appellants. The Board acknowledged receipt of the appeals and notified the Director of the appeals. The Board also requested the Appellants and Director (collectively, the “Parties”) provide available dates for a mediation meeting.

[4] A mediation meeting involving the Parties and a member of the Board acting as mediator was held on April 5, 2017, in Calgary. Productive discussions resulted in a resolution of the appeals.

¹ Section 36(1) of the *Water Act* states:

“... no person may commence or continue an activity except pursuant to an approval unless it is otherwise authorized under this Act.”

Section 142(1)(h) of the *Water Act* provides:

“A person who commences or continues an activity except under an approval or as otherwise authorized by this Act is guilty of an offence.”

² Section 152 of the *Water Act* provides:

“If the Director is of the opinion that a person has contravened a provision of this Act that is specified for the purposes of this section in the regulations, the Director may, subject to the regulations, by notice in writing given to that person, require that person to pay to the Government an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues.”

II. DISCUSSION

[5] The mediated agreement resulted in the Parties recommending to the Board the Administrative Penalty be reduced to \$25,000.00 by deleting Counts 6 and 7.³ The Parties recommended the date for payment of the Administrative Penalty be varied to April 30, 2017.

[6] The Board considers the mediated agreement as reasonable and will vary the Administrative Penalty according to the agreement reached between the Parties.

III. DECISION

[7] Based on the mediated agreement the Board varies the Administrative Penalty as follows:

1. Counts 6 and 7 are deleted and the Administrative Penalty is reduced to \$25,000.00; and
2. The Administrative Penalty is to be paid by April 30, 2017.

[8] Pursuant to section 98(3) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12,⁴ a copy of this decision is to be provided to:

1. Mr. Craig Johnson, Kinniburgh South Limited Partnership and Golden Triangle Construction Management Inc.; and
2. Ms. Erika Gerlock, Alberta Justice and Solicitor General, on behalf of the Director, South Saskatchewan Region, Alberta Environment and Parks.

IV. ORDER OF THE BOARD

[9] In accordance with sections 98 (1) and (2) of the *Environmental Protection and Enhancement Act*, the Board has the authority to confirm, reverse, or vary the decision of the

³ Counts 6 and 7 related to the removal of Wetlands 7 and 9, respectively, as indicated on the map attached to the Administrative Penalty.

⁴ Section 98(3) of EPEA states:

“On making its decision, the Board shall immediately

- (a) give notice of the decision to all persons who submitted notices of appeal or made representations to the Board and to all other persons who the Board considers should receive notice of the decision, and
- (b) make the written decision available in accordance with the regulations.”

Director.⁵ Therefore, with respect to the decision of the Director to issue Administrative Penalty No. WA-16/07-AP-SSR-16/07 to Kinniburgh South Limited Partnership, by its General Partner 1290765 Alberta Ltd., and Golden Triangle Construction Management Inc. for contravention of sections 36(1) and 142(1)(h) of the *Water Act*, the Board orders the decision of the Director to issue the Administrative Penalty is varied as follows:

1. Counts 6 and 7 are deleted;
2. The Administrative Penalty is reduced to \$25,000.00; and
3. The Administrative Penalty is to be paid by April 30, 2017.

Dated on April 27, 2017, at Edmonton, Alberta.

“original signed by”
Alex MacWilliam
Board Chair

⁵ Sections 98(1) and (2) of EPEA provide:

- “(1) In the case of a notice of appeal submitted under section 91(1)(n) or (o) of this Act or a notice of appeal submitted under section 115(1)(j), (l) or (q) of the *Water Act*, the Board shall, within 30 days after the completion of the hearing of the appeal, make a written decision on the matter.
- (2) In its decision, the Board may (a) confirm, reverse or vary the decision appealed and make any decision that the Director whose decision was appealed could make”