

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – January 10, 2023

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 an appeal filed by Sharlene Fritz with respect to the decision of the Director, Regulatory Assurance Division South, Alberta Environment and Protected Areas, to issue *Water Act* Preliminary Certificate No. 00346962-00-00 to Ian MacGregor.

Cite as: *Fritz v. Director, Regulatory Assurance Division South, Alberta Environment and Protected Areas*, re: *Ian MacGregor* (10 January 2023), Appeal No. 22-090-D (A.E.A.B.), 2023 ABEAB 1.

BEFORE:

Dr. Chidinma Thompson, Chair.

PARTIES:

Appellant: Ms. Sharlene Fritz.

Director: Mr. Craig Knaus, Director, Regulatory Assurance Division South, Alberta Environment and Protected Areas.

Preliminary Certificate Holder: Mr. Ian MacGregor, assisted by Ms. Brie Nelson, WaterSMART.

EXECUTIVE SUMMARY

Alberta Environment and Protected Areas (EPA) issued a Preliminary Certificate under the *Water Act* to Ian MacGregor for the Carraig Ridge Development in the M.D. of Bighorn No. 8. The Preliminary Certificate states Mr. MacGregor will receive a Licence to operate works and divert water for municipal purposes (subdivision water supply), upon compliance with the conditions in the Preliminary Certificate.

The Board received twenty-four appeals, one of them being from Ms. Sharlene Fritz (the Appellant). The Board noted the Notice of Appeal from Ms. Fritz was filed after the expiry of the thirty-day time limit for filing appeals specified in the *Water Act*, and requested the Appellant provide written reasons as to why she filed the appeal late and why the Board should extend the time period to file the appeal. The Appellant provided a response. The Board considered the Appellant's response and the legislation and determined the Appellant did not provide evidence to demonstrate extenuating circumstances prevented her from filing the Notice of Appeal on time.

The Board dismissed the late-filed appeal.

TABLE OF CONTENTS

| | | |
|------|-----------------------------|---|
| I. | INTRODUCTION | 1 |
| II. | BACKGROUND | 1 |
| III. | ISSUE | 2 |
| IV. | APPELLANT'S SUBMISSION..... | 2 |
| V. | ANALYSIS..... | 2 |
| VI. | DECISION | 4 |

I. INTRODUCTION

[1] This is the Environmental Appeal Board's (the "Board") decision regarding the Notice of Appeal filed by Ms. Sharlene Fritz (the "Appellant") of the Preliminary Certificate issued under the *Water Act*, R.S.A. 2000, c.W-3, by the Director, Regulatory Assurance Division South, Alberta Environment and Protected Areas (the "Director") to Mr. Ian MacGregor. The Board found the Notice of Appeal was filed late and the Appellant did not provide reasons for the Board to extend the time to file, and therefore, dismissed the appeal.

II. BACKGROUND

[2] On November 4, 2022, the Director issued *Water Act* Preliminary Certificate No. 00346962-00-00 ("Preliminary Certificate") to Mr. Ian MacGregor for the Carraig Ridge Development in the M.D. of Bighorn No. 8. The Preliminary Certificate states Mr. MacGregor will receive a Licence to operate works and divert up to 6,205 cubic metres of water per year at a maximum diversion rate of 22 cubic metres of water per day, from the source of water in NW 09-026-W5M, for municipal purposes (subdivision water supply) with a priority of 2014-01-28-001, upon compliance with the conditions in the Preliminary Certificate.

[3] Between November 21, 2022 and December 9, 2022, the Board received 24 appeals of Mr. MacGregor's Preliminary Certificate. The Appellant's appeal was received on December 9, 2022.

[4] On December 15, 2022, the Board acknowledged receipt of the Appellant's Notice of Appeal. The Board noted the normal time limit for filing an appeal of a preliminary certificate was 30 days after the Appellant was provided with notice of the Director's decision. The Notice of Appeal stated the Appellant received notice of the Director's decision to issue the Preliminary Certificate on November 8, 2022. The Board requested the Appellant provide reasons for an extension of time to appeal and why the Notice of Appeal was filed outside the

30-day time limit. The Appellant submitted a written response to the Board on December 21, 2022.

III. ISSUE

[5] The issue to be decided is should the Board extend the appeal period for the Appellant's late-filed Notice of Appeal?

IV. APPELLANT'S SUBMISSION

[6] The Appellant submitted on December 21, 2022: "I can offer no specific reason or extenuating circumstance. If the Board wishes to dismiss my Notice of Appeal, then that is the decision they must make."

V. ANALYSIS

[7] After reviewing the Appellant's submission, the Board determined the appeal must be dismissed based on two grounds:

- (a) the Appellant did not meet the legislated time limits for filing the Notice of Appeal; and
- (b) the Appellant failed to provide sufficient reasons for the Board to grant an extension of time.

[8] Section 116(1)(b) of the *Water Act* provides a time period for filing an appeal of a preliminary certificate of not later than thirty 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. The Board may, on application under section 116(2), extend the time period for filing a notice of appeal if the Board is of the opinion there are sufficient grounds to do so. Section 116(2) of the *Water Act* states:

“116(2) 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.”

[9] Sections 91(4)(c) and 93 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) have similar wording:

“91(4) A notice of appeal must be submitted to the Board ...

(c) not later than 30 days after receipt of notice of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case. ...

93 The Board may, before or after the expiry of the prescribed time, advance or extend the time prescribed in this Part or the regulations for the doing of anything where the Board is of the opinion that there are sufficient grounds for doing so.”

[10] The legislation has a strict time limit of 30 days to submit a Notice of Appeal in this case, however, both EPEA and the *Water Act* provide the Board with some flexibility to allow for late-filed appeals in certain situations. The Board uses this authority only in exceptional circumstances. The legislation included time limits for filing an appeal to provide a level of certainty to the appeal process and to balance the interests of the parties. The Board will not exercise its discretion to extend the time limit unless an appellant can demonstrate there were exceptional circumstances that caused the Notice of Appeal to be filed late.¹

[11] The onus is on the appellant to show that extenuating or special circumstances existed that prevented them from filing a Notice of Appeal within the legislated timeframe.² While the Board is not bound by the formal rules of evidence that bind the courts, there must be

¹ *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.), 1999 ABEAB 98.

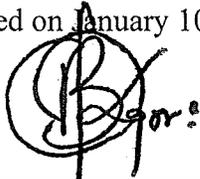
² *Olineck v. Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development*, re: *Hutterian Brethren Church of Vegreville* (28 October 2014), Appeal No. 14-012-D (A.E.A.B.), at paragraph 63. Affirmed following a judicial review at: *Olineck v. Alberta (Environmental Appeals Board)*, 2017 ABQB 311.

a factual basis for its decisions. The Appellant stated in her submission she did not have any extenuating circumstances or reason for filing the appeal late.

VI. DECISION

[12] The Board finds the Notice of Appeal filed by Ms. Sharlene Fritz, EAB No. 22-090, was filed outside the legislated time period, and the Appellant did not provide evidence of extenuating circumstances that prevented her from filing the appeal on time. Therefore, the Board will not extend the appeal period, and the appeal is dismissed pursuant to section 95(5)(a)(iii).³

Dated on January 10, 2023, at Edmonton, Alberta.

A handwritten signature in black ink, appearing to be 'Chidinma Thompson', written over a horizontal line.

Dr. Chidinma Thompson
Board Chair

³ Section 95(5)(a)(iii) of EPEA provides: "The Board (a) may dismiss a notice of appeal if ... (iii) for any other reason the Board considers that the notice of appeal is not properly before it,"