

ALBERTA  
ENVIRONMENTAL APPEAL BOARD  
COST DECISION

Date of Decision: June 18, 1998

**IN THE MATTER OF** Sections 84 and 88 of the Environmental Protection and Enhancement Act, (S.A. 1992, ch. E-13.3 as amended);

- and -

**IN THE MATTER OF** an appeal filed by Mr. Richard Stelter with respect to Approval No. 1069-01-00 issued to GMB Property Rentals Ltd. by the Director of Air and Water Approvals Division, Alberta Environmental Protection.

Cite as: Cost Decision re: *GMB Property Rentals Ltd. (Richard Stelter)*

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d.	Cost of making and copying videotape	25.00
e.	Cost of aerial photographs	40.00
	TOTAL	\$295.00

GRAND TOTAL APPLICATION \$5,972.85

## SUMMARY OF ARGUMENTS REGARDING COSTS

### A. The Appellant

[4] In making the application for costs, Ms. Buss argued that the Director had committed a flagrant violation of Mr. Stelter's rights in issuing the Approval. Accordingly, because the Director was at fault, costs should be assigned against the Department.

### B. The Director

[5] In reply, counsel for the Director argued that the criteria for awarding costs are outlined in Section 20(2) of the *Environmental Appeal Board Regulation*<sup>2</sup> and that any costs which have been incurred are costs which should be borne by the respective parties.

[6] In an April 24, 1998 letter, counsel for the Director advised of the following:

"The Director strongly objects to Counsel for the Appellant applying for costs and seeking a stay without notice to either the parties or the Board. Without notice, counsel for the Director had no opportunity to either consider the position or to seek instructions from the Director on these two significant matters.

The Director respectfully requests the Board to adjourn any decision with respect to costs. The basis for this is:

- notice of application for costs was not provided by counsel for the appellants

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<sup>2</sup> AR 114/93.

## CONSIDERATIONS OF THE BOARD

[9] Sections 18(1) & (2) of AR 114/93, the regulations governing the Board's proceedings, authorize any party to apply for an award of either interim or final costs, if the costs are "reasonable" and "directly and primarily related" both to the "matters" addressed in the notice of objection<sup>3</sup> and to the "preparation and presentation" of the party's submission. Section 18 states:

- 18 (1) Any party to a proceeding before the Board may make an application to the Board for an award of costs on an interim or final basis.
- (2) A party may make an application for all costs that are reasonable and that are directly and primarily related to
- (a) the matters contained in the notice of objection, and
  - (b) the preparation and presentation of the party's submission.

[10] Section 20 of the *Environmental Appeal Board Regulation*<sup>4</sup> provides for the matters to be considered by the Board when awarding final costs. The relevant portions of Section 20 read:

- 20(2) In deciding whether to grant an application for an award of final costs in whole or in part, the Board may consider the following:
- (a) whether there was a meeting under section 11 or 13(a);
  - (b) whether interim costs were awarded;
  - (c) whether an oral hearing was held in the course of the appeal;
  - (d) whether the application for costs was filed with the appropriate information;
  - (e) whether the party applying for costs required financial resources to make an adequate submission;
  - (f) whether the submission of the party made a substantial contribution to the appeal;
  - (g) whether the costs were directly related to the matters contained in the notice of objection and the preparation and presentation of the party's submission;
  - (h) any further criteria the Board considers appropriate.

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<sup>3</sup> Where, as here, the Board has decided to consider only a sub-set of the matters referenced in the notice of objection, the application for costs must show that the costs are "directly and primarily" related to that subset.

<sup>4</sup> *Supra*, note 2.

Water Resources' personnel appeared disrespectful of Mr. Stelter's property rights, but, again, the Board did not find that issuing the Approval (that was under the Board's jurisdiction) was a violation of Mr. Stelter's rights.

[14] Mr. Stelter's case was primarily based upon how his rights and interests were adversely affected by the Director's decision. The Board's decision, in the public interest of seeing the purposes of the Act served, also benefits Mr. Stelter's personal interests. The Board was not presented with evidence that Mr. Stelter's participation in this Appeal to represent his personal interests constituted an unreasonable financial burden upon him.

#### CONCLUSION

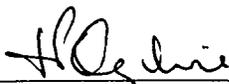
[15] The Board's decisions on the merits do not create judicial "winners and losers" and the Board is not constrained to award costs on that basis. The Appellant acted in his best interests and achieved a ruling on the merits which served his interests while serving the public interest. The Board does not find any basis for punishing the Director, as requested by the Appellant.

[16] For the reasons stated, the Board will not award costs.

Dated on June 18, 1998, at Edmonton, Alberta.



Dr. Steve E. Hrudey, Panel Chair



Dr. John P. Ogilvie



Mr. Ron V. Peiluck