

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – October 18, 2001

IN THE MATTER OF Sections 84, 85, and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992, E-13.3; and section 6 of Schedule 5 of the *Government Organization Act*, S.A. 1994, c. G-8.5;

-and-

IN THE MATTER OF an appeal and an application for Stay filed by Macalgary Developments (Scenic) Inc. and Sunbow Consulting Ltd. with respect to Enforcement Order No. 99-01 issued by the Deputy Minister, Alberta Environment.

Cite as: *Macalgary Developments (Scenic) Inc. et al. #2 v. Deputy Minister, Alberta Environment.*

EXECUTIVE SUMMARY

The Environmental Appeal Board received a Notice of Appeal and request for a Stay from Macalgary Developments (Scenic) Inc. and Sunbow Consulting Ltd. (the “Appellants”). The Appellants were appealing the decision of the Deputy Minister, Alberta Environment, to issue an Enforcement Order to the Appellants for the removal of a berm constructed on a Transportation Utility Corridor.

A mediation meeting/settlement conference was conducted to assist the parties in a resolution of the appeal; however, the appeal was not resolved. Several further attempts by the Board to facilitate mediation were also unsuccessful.

The parties requested the Board proceed to schedule a hearing and the Board, in consultation with the parties, the Board proceeded to determine the issues for that hearing. A Decision determining the issues for the hearing was subsequently issued on August 27, 2001. At that time the parties were also asked to provide the Board with their available dates for a hearing.

The Board was informed by Alberta Environment on September 21, 2001 that the Enforcement Order, that is the subject of this appeal, was cancelled. On October 5, 2001 the Appellants withdrew their appeal. The Board therefore discontinues its proceedings and closes its file.

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I. BACKGROUND

[1] On October 26, 1999, the Environmental Appeal Board (the “Board”) received a Notice of Appeal and Application for Stay each dated October 25, 1999 from Mr. Henry Beaumont Q.C., Beaumont Church, on behalf of his client Macalgary Developments (Scenic) Inc. and Sunbow Consulting Ltd. (the “Appellants”). The appeal was with respect to the decision of the Deputy Minister, Alberta Environment (the “Deputy Minister”), to issue Enforcement Order No. 99-01 (the “Order”) for the removal of a berm constructed on a Transportation Utility Corridor, established as a Restricted Development Area and to provide a completion schedule for the removal of the berm within 7 days of the issuance of the Enforcement Order.

[2] On October 26, 1999, the Board acknowledged receipt of the Notice of Appeal and application for Stay and, requested a copy of all correspondence, documents, and materials (the “Record”) relative to the appeal from the Deputy Minister.

[3] According to standard practice, on October 26, 1999, 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 Boards’ legislation. Both boards responded in the negative.

[4] On November 22, 1999, the Board received a letter dated November 18, 1999 from the Appellants, stating:

□ Please be advised that pursuant to agreements reached with Charlene Graham, counsel for the Department of the Environment relating to the above mentioned matter we are hereby withdrawing our application for stay of Enforcement Order No. 99-01 dated October 22, 1999...”

[5] On November 25, 1999, the Board wrote to the Appellants acknowledging their withdrawal of the Stay and asking the Appellants to advise, in writing, whether or not they would be proceeding with the appeal.

[6] On December 10, 1999, the Board received a letter from the Appellants stating:

□ ...this letter confirms and clarifies that we are not withdrawing our Appeal application, notwithstanding that we have withdrawn our Stay application...”

[7] On January 13, 2000, copies of the Record requested by the Board were provided by the Deputy Minister and a copy was forwarded to the Appellants on January 24, 2000. In the Board’s letters of January 24, 2000 to the Appellants, the Board asked whether they wished to have

a mediation meeting under section 11 of the Environmental Appeal Board Regulation¹, and if there were any other persons who might have an interest in the appeal. On this same date, the Board wrote to the Deputy Minister asking for comments on participating in a mediation meeting and asking whether there were any other persons who may have an interest in the appeal.

[8] Responses were received from the Appellants and the Deputy Minister. On February 3, 2000, the Board wrote to all parties informing them that a mediation meeting would be held on March 17, 2000, in Calgary, Alberta. A Notice of Mediation and Public Hearing advertisement was placed in the *Calgary Herald* on Wednesday, February 9, 2000.

II. THE MEDIATION MEETING

[9] Pursuant to section 11 of the Environmental Appeal Board Regulation² the Board conducted a mediation meeting in Calgary, Alberta on March 17, 2000 with Mr. Ron Peiluck as the presiding Board member and mediator.

[10] According to the Board's standard practice, the Board called the mediation meeting in an attempt to mediate or facilitate through a settlement conference the resolution of this appeal; or failing that, to structure procedural arrangements for the oral hearing. The Board invited representatives from each party to participate in the mediation meeting.

[11] In conducting the mediation meeting, Mr. Peiluck reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants Agreement to Mediate. All parties signed the Agreement and discussions ensued.

¹ AR 114/93.

² Section 11 of the Environmental Appeal Board Regulation states:

“Where the Board has determined the parties to the appeal, the Board may, prior to conducting the hearing of the appeal, on its own initiative or at the request of any of the parties, convene a meeting of the parties and any other interested persons the Board considers should attend, for the purpose of

(a) mediating a resolution of the subject matter of the notice of appeal, or
(b) determining any of the matters referred to in section 13.”

[12] Even though the appeal was not resolved at the mediation meeting/settlement conference on March 17, 2000, the parties agreed to continue discussions towards a mediated settlement. The parties were requested to provide the Board with status reports by April 17, 2000. On April 17, 2000, the parties requested an extension in order to continue the discussions.

[13] On May 17, 2000, the Board received letters from the parties advising that the appeal had not been resolved through discussions and requested the Board schedule a hearing. The Board responded advising it would like to make an additional attempt at mediation, and failing resolution, at the meeting would proceed to address those matters detailed in section 13 of the Environmental Appeal Board Regulation.

[14] The Board then made numerous attempts to mediate this matter. But, on August 31, 2000, the Board concluded:

“... As the Department does not wish to proceed to a[n other] mediation meeting, the Board will arrange a pre-hearing per section 13 of the *Environmental Appeal Board Regulation* in this matter as soon as possible...”³

[15] On September 7, 2000 the Deputy Minister advised that he would prefer to deal with all or some of the pre-hearing issues by way of written submission. In response to this suggestion,

3 Section 13 of the Environmental Appeal Board Regulation provides:

“Where the parties do not agree to a resolution of the subject matter of a notice of appeal, the presiding Board member, in consultation with the parties, may

- (a) determine a date for a future meeting,
- (b) admit any facts agreed to by the parties,
- (c) admit any evidence agreed to by the parties,
- (d) determine the matters to be included in the hearing of the appeal pursuant to section 87(2) and (3) of the Act,
- (e) determine any matter of procedure,
- (f) have the parties exchange documents and written submissions, and
- (g) where an oral hearing is to be held, determine
 - (i) the order of witnesses,
 - (ii) the day-to-day conduct of the hearing, and
 - (iii) any other matter necessary for the hearing.”

the Appellants advised the Board in a letter dated September 11, 2000 that there were a number of other issues that should be addressed

[16] The Board subsequently set a schedule for and received written submissions respecting the issues from the parties and on August 27, 2001, issued a Decision determining the issues for the hearing. The parties were also requested to provide the Board with available dates for a hearing.

[17] On September 4, 2001, the Appellants requested an extension in order to compile an agreed statement of facts for the purposes of the hearing. The Deputy Minister concurred and the Board agreed to the extension with status reports due by September 20, 2001.

[18] On September 21, 2001, the Board received a copy of a letter from the Deputy Minister, addressed to the Appellant stating:

“This letter is to advise that Enforcement Order 99-01, issued pursuant to the *Government Organization Act*, has been cancelled...

Given the above, I assume your clients will now be withdrawing their appeal...”

[19] The Board acknowledged receipt of the Deputy Minister’s letter on September 24, 2001 and advised that as it appeared to the Board that the appeal is now moot, it would issue a Decision dismissing the appeal and requested the parties advise the Board should they have any concerns.

[20] On October 5, 2001, the Board received a letter from the Appellant stating:

“...we are writing to advise that we have received instructions from our client to the effect that in light of the Province’s Ministerial Order to cancel the Enforcement Order, which is the subject matter of this appeal, our client is prepared to have the appeal removed.”

III. DECISION

[21] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, S.A.

1992 c. E-13.3, and based on the Appellants’ letter of October 5, 2001, and the cancellation of the Order, the Board discontinues its proceedings and will be closing its file.

Dated on October 18, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C

