
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance - November 14, 1997

IN THE MATTER OF Sections 84, 85, 86 and 87 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. Peter D. Watson with respect to Enforcement Order No. 97-05 issued by the Acting Director of Pollution Control, Alberta Environmental Protection to Mr. Watson and the letter of withdrawal dated November 14, 1997, the Board hereby discontinues its proceedings in this matter and will be closing its file pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*.

Cite as: Watson v. Acting Director of Pollution Control, Alberta Environmental Protection.

BACKGROUND

On September 4, 1997, Mr. Peter D. Watson (Appellant), represented by Mr. Allan E. Domes of Milner Fenerty, filed an appeal and a request for a stay to the Environmental Appeal Board with respect to Enforcement Order No. 97-05 issued by the Acting Director of Pollution Control, Alberta Environmental Protection (Department) to Mr. Watson, the registered owner of property legally described as Lot 16, Block 1, Plan 8622747, SW 1/4 27-46-1-W5M, in the Summer Village of Grandview in the Province of Alberta. The Enforcement Order was issued after investigators learned that a home was being constructed over top of an existing water well.

By copy of a letter dated September 4, 1997, the Board requested the Department of Environmental Protection provide all related correspondence, documents and materials by September 12, 1997.

As standard practice, on September 15, 1997, the Board wrote to the Alberta Energy and Utilities Board (AEUB) and the Natural Resources Conservation Board (NRCB) requesting they advise whether the matter was the subject of a public hearing or review by either Board. Both the AEUB and the NRCB advised that this appeal did not deal with a matter that had been the subject of any hearing or review by either Board.

On September 10, 1997, Mr. Gilbert Van Nes, counsel for the Director, advised that Board that in conversation with Mr. Domes, he requested that the Director hold enforcement of this matter in abeyance until the Board is able to make a decision respecting his client's request for a stay. Mr. Van Nes advised the Board that the Director agreed to this request.

Correspondence received from the Department dated September 12, 1997, was forwarded to Mr. Domes. In the Department's cover letter it stated:

“... With respect to the request by Mr. Domes' client for a stay of this enforcement order pending the decision of the Board, we can advise you that the Director takes no position respecting the request for a stay. However, in making its decision, we are of

the view that the Board should have regard to the following information:

1. Alberta Environmental Protection views this matter as a public safety issue. Enforcement action was taken because of the potential danger caused by a build up of dangerous gases from the water well. In particular, we are concerned not only for the safety of Mr. Watson and his family, but also for the safety of Mr. Watson's neighbours and the public at large.
...
3. It is our information that there have been at least seven explosions in Alberta since 1980 that resulted from the build up of dangerous gases from water wells.

In the event that the Board grants a stay, Alberta Environmental Protection would request an expedited hearing in order to address the public safety concerns. I note also that we would be prepared to meet with Mr. Domes and his client in order to identify the specific issues that would need to be addressed at such a hearing. ...”

The Board informed the parties on October 6, 1997, that a hearing would be taking place on October 21, 1997, and requested written submissions be submitted on or before October 14, 1997. The Board advised the parties that oral arguments on the issue of the Stay requested by the Appellant and the potential public safety issue expressed by the Department would be heard at the hearing. The Board also advised the neighbours of Mr. Watson that a hearing would be taking place on October 21, 1997, and provided them with a copy of the Notice of Public Hearing.

Mr. Domes wrote to the Board on October 9, 1997, requesting the following:

“... In light of Mr. Watson's intended application for a Certificate of Variance, we agree with Mr. Van Nes that the appeal to the Board may well be moot should the Minister determine that a Variance should be granted. Given our further understanding that the Director will not be taking any enforcement action pending a disposition of the application for a Variance by the Minister, we hereby apply to the Board for an adjournment *sine die* of Mr. Watson's appeal to the Board as well as the Stay Application, both of which are currently scheduled for October 21, 1997. ...”

The Board granted Mr. Domes' request for an adjournment on October 10, 1997, on the basis that the

Appellant has undertaken to complete an application for a Ministerial Certificate of Variance. The Board also noted in their letter of October 10, 1997, the following:

“... The Board initially scheduled this matter, reducing the 45 day notice period, on the Department’s assertion that the public safety might be involved. The Board notes that the Department has agreed to hold off on enforcement of its directive and the Board takes from this that the Department is satisfied that there is no longer a threat to public safety justifying proceeding at an early date. The Board therefore adjourns this matter and will reschedule it for a date on or after November 17, 1997. This will allow the Appellant to complete the application for a Ministerial Certificate of Variance and the Minister of Environmental Protection to process the application within the time frames outlined by the parties in their correspondence. ...”

The Board notified all parties on October 17, 1997, that the hearing was set for November 18, 1997, and written submissions were requested. However, on November 14, 1997, the Board received a letter from Mr. Domes on behalf of Mr. Watson stating:

“Please be advised that the Appellant hereby withdraws his Notice of Objection in the above matter.

As soon as possible, kindly acknowledge that the appeal has been discontinued pursuant to Subsection 87(7) of the *Environmental Protection and Enhancement Act*.”

DECISION

Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on Mr. Domes’ letter dated November 14, 1997, the Board hereby discontinues its proceedings in this matter and will be closing its file.

Dated on November 14, 1997, at Edmonton, Alberta.

William A. Tilleman, Chair