

ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Dates of Mediation – September 19 and 21, 2000
Date of Report and Recommendations – October 5, 2000

IN THE MATTER OF sections 84, 85, 87, 92 and 93 of the
Environmental Protection and Enhancement Act, S.A. 1992, c.E-
13.3;

-and-

IN THE MATTER OF appeals filed by Mr. Frank Cowles, Mr. Ernie Semeniuk, Mr. Kevin Fenemor, Mr. John Ludwig on behalf of the Summer Villages of Sundance Beach and Golden Days, Mr. John Turgeon, Mr. Marcel Normandeau, Dr. Larry Eberlein, Ms. Jane Nagy, and Ms. Roberta McLaughlin on behalf of herself, Mr. Gerald McLaughlin, Mr. Brinton McLaughlin and Ms. Jennifer Binnendyke with respect to *Water Act* Approval 00073615-00-00 issued to Sunset Harbour Developments by the Manager, Regional Support, Parkland Region, Alberta Environment.

Cite as: Cowles *et al.* v. Manager, Regional Support, Parkland Region, Alberta Environment, re: *Sunset Harbour Developments Ltd.*

MEDIATION MEETING BEFORE

Dr. Steve E. Hrudehy

APPEARANCES

Appellants: Mr. Frank Cowles, Mr. Ernie Semeniuk representing himself and Mr. Kevin Fenemor, Mr. John Ludwig representing the Summer Villages of Sundance Beach and Golden Days, Mr. John Turgeon, Mr. Marcel Normandeau, Dr. Larry Eberlein, Ms. Jane Nagy, and Ms. Roberta McLaughlin.

Department: Mr. Peter Stevens, Mr. Vance Buchwald, Ms. Angela Fulton, Alberta Environment, represented by Mr. Grant Sprague, Alberta Justice.

Approval Holder: Mr. Rick Wilson, Ms. Rose Wilson, Ms. Barb Dreichel, Mr. E. Dreichel, Mr. Rick Pattenden, Mr. Henning Rasmussen, Sunset Harbour Developments Ltd. represented by Mr. Bruce Collingwood, Sharek Reay.

Board: Ms. Sheryl Kozyniak, Executive Director, Ms. Valerie Higgins, Hearing Officer.

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I. BACKGROUND

[1] On April 19, 2000, the Manager, Regional Support, Parkland Region, Alberta Environment (the “Director”) issued Approval 00073615-00-00 under the *Water Act* to Sunset Harbour Developments Ltd. (the “Approval Holder”). The Approval authorizes the Approval Holder to construct a marina and stormwater management works at Pigeon Lake in the SW 12-47-02-W5 subject to certain conditions.

[2] Notices of Appeal were received on May 5, 2000 from Mr. Frank Cowles, on May 8, 2000 from Mr. Ernie Semeniuk and Mr. Kevin Fenemor, on May 10, 2000 from Mr. John Ludwig on Behalf of the Summer Villages of Sundance Beach and Golden Days, and Mr. John Turgeon, Mr. Marcel Normandeau and Dr. Larry Eberlein, on May 18, 2000 from Ms. Jane Nagy, and on May 24, 2000 from Ms. Roberta McLaughlin on behalf of herself, Mr. Gerald McLaughlin, Mr. Brinton McLaughlin and Ms. Jennifer Binnendyke.

[3] The Board wrote to the Appellants acknowledging receipt of their Notices of Appeal, and also wrote to the Director requesting that he provide copies of all related correspondence, documents and materials related to this matter. The Board also provided the Approval Holder with copies of the Notices of Appeal.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective Boards’ legislation. Replies were subsequently received from both the NRCB and the AEUB stating that neither Board held a hearing or review.

[5] The Board received the documents requested from the Director and forwarded them to the parties on June 8, 2000 with the exception of Mr. Turgeon, Mr. Normandeau and Dr.

Eberlein. These parties indicated to the Board that they did not want an entire copy of the documents. In the Board's letter of June 16, 2000 copies of specific documents received from the Director were forwarded to Mr. Turgeon, Mr. Normandeau and Dr. Eberlein as requested. On June 8, 2000, the Board requested that a copy the documents be placed in the offices of the Summer Villages.

[6] On June 16, 2000, the Board requested in its letter that all parties provided their available dates for a mediation meeting.

[7] On June 16, 2000, the Board received a submission from Dr. Eberlein containing the terms and conditions imposed by the Department of Fisheries and Oceans. The Board stated in its letter :

“It is also the Board's understanding that you have identified conflicts between this authorization and the document issued by Alberta Environment. Some questions have been raised regarding this document. Would you please provide a further explanation regarding this document....”

Dr. Eberlein responded to the Board via e-mail on June 27, 2000.

[8] The Board, on June 23, 2000, requested all parties provide available dates for a pre-mediation meeting. On June 27, 2000, the Board advised the parties that a pre-mediation meeting would be held on June 29, 2000 at the Board's office. However, on June 29, 2000 due to scheduling difficulties of the Appellants, the Board advised that it would not proceed to a pre-mediation meeting.

[9] The Board received a letter of June 26, 2000 from Sunset Harbour Developments Ltd. In the letter, Sunset Harbour Development's Ltd. acknowledged the Appellants' concerns, and advised that they had worked closely with all levels of government with regards to design standards and environmental regulations. They went on to say that the grading contract does not

include channel dredging on the lake side excavation along the shoreline or shore protection, as this work is scheduled for next year, and that they would have preferred to meet with the Appellants prior to the start of construction scheduled to commence July 15, 2000. In closing, Sunset Harbour Developments Ltd. Advised that meeting the Appellants prior to the commencement of construction would have been preferable, however, they could not “under the circumstances justify a further delay in construction.” The Board forwarded this letter to the parties on July 4, 2000.

[10] On July 4, 2000, the Board received a letter from the Summer Villages of Sundance Beach and Golden Days expressing concern with the commencement of the work prior to the meeting with the Appellants. Then, on August 14, 2000, the Board wrote to all the parties, asking Mr. Ludwig “to confirm whether this statement of concern constitutes a request for a stay of any further work by the development until a meeting between the parties to the appeal is arranged.” The Board then went on to propose a two day mediation process with the first day for presentations by the Approval Holder and the Director with questions to follow. The second day would allow parties to convene discussions in an effort to resolve the appeals.

[11] On August 30, 2000, the Board advised that a two-day mediation meeting/settlement conference would proceed on September 19 and 21, 2000 at the Board’s office. An advertisement was placed in the Edmonton Journal on September 8, 2000, the Wetaskiwin Times on September 11, and the Leduc Representative on September 15, 2000.

II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[12] Pursuant to section 11 of the Environmental Appeal Board Regulations, A.R. 114/93, the Board conducted a mediation meeting/settlement conference in Edmonton, Alberta, on September 19 and 21, 2000, with Dr. Steve Hrudehy as presiding Board member.

[13] According to the Board's standard practice, the Board called the mediation meeting to facilitate through settlement conference the resolution of these appeals; or failing that, to structure procedural arrangements for the oral hearing. The Board invited representatives from each party to participate in the mediation meeting/settlement conference.

[14] In conducting the mediation meeting/settlement conference, Dr. Hrudehy reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the "Participants' Agreement to Mediation" and all participants signed.

[15] Following productive and detailed discussions, a resolution evolved and parties signed the attached settlement (pages 10 to 13 of this report).

III. RECOMMENDATIONS

[16] The Board recommends that the Minister of Environment vary Approval No. 00073615 in accordance with the Resolution contained herein. Attached for the Minister's consideration is a draft Ministerial Order implementing this recommendation.

[17] Further, with respect to section 92(2) and 93 of the Environmental Protection and Enhancement Act, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent to the following parties:

- Mr. Frank Cowles;
- Mr. Ernie Semeniuk;
- Mr. Kevin Fenemor;
- Mr. John Ludwig, representing the Summer Villages of Sundance Beach and Golden Days;
- Mr. John Turgeon, Mr. Marcel Normandeau and Dr. Larry Eberlein;
- Ms. Jane Nagy;
- Ms. Roberta McLaughlin, representing herself, Mr. Gerald McLaughlin, Mr. Brinton

McLaughlin and Ms. Jennifer Binnendyke;

- Mr. Rick Wilson, representing Sunset Harbour Developments Ltd; and
- Mr. Grant Sprague, Counsel, Alberta Justice, representing the Manager Regional Support, Parkland Region, Alberta Environment.

Dated on October 5, 2000, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hrudehy

IV. DRAFT MINISTERIAL ORDER

**Ministerial Order
/2000**

Environmental Protection and Enhancement Act
S.A. 1992, c.E13.3

Water Act
S.A. 1996, c.w-3.5

Order Respecting EAB Appeal Nos. 00-021 to 023, 00-025 to 027, 00-032, and 00-036

I, Halvar Jonson, Minister of Environment, pursuant to section 92(1) of the Environmental Protection and Enhancement Act, S.A. 1992, c.E-13.3, make the order in the attached Appendix.

Dated at the City of Edmonton in the Province of Alberta, this ____ day of _____, 2000.

Halvar Jonson
Minister of Environment

Draft Appendix

Order Respecting EAB Appeal Nos. 00-021 to 023, 00-025 to 00-027, 00-032, and 00-036

The decision of the Director, Mr. Kenn Looten, Manager Regional Support, Parkland Region, Alberta Environment, to issue Approval 00073615-00-00 under the Water Act, S.A. 1996, c.W-3.5, to Sunset Harbour Developments Ltd. on April 19, 2000 is varied as follows:

1. THAT Approval Condition No. 2 is amended by adding the following at the end of the Condition:

“The approval holder shall ensure the activity is in accordance with these plans and/or reports, with the following modifications to the reports:

- a) There will be no commercial fueling station at the marina. Boat owners must fill their boats in an enclosed area alongside the marina.
- b) The marina lagoon will be common property of the Condominium Corporation. The marina slips/moorage will be owned and operated by the approval holder and will be attached to Lot 22. Lots 22 and 23 will be retained by the approval holder for the time being for development as commercial properties.
- c) The general public will not have access to the boat launch. The boat launch will be for boaters holding slips in the marina only. The boat launch will be gated and locked when not in use. Signage at Secondary Road 771 will inform the public that the Development Access Road is a private road.
- d) The approval holder, in conjunction with the Condominium Corporation Board of Directors, will appoint a harbourmaster to oversee, regulate, and enforce the rules of the marina, including conditions imposed by the Department of Fisheries and Oceans (“DFO”) for the construction and operation of the marina.

- e) Signs at the marina entrance channel will inform the boating public that the marina is for residents of the condominium, boat club members, and their guests only.
- f) The Stormwater Management Plan will include three settling ponds rather than four, but will have the same overall capacity for stormwater collection. The Stormwater Management Plan will be designed to ensure that storm water runoff will not overflow into the adjacent unnamed creek at the northwest corner of the development.
- g) The approval holder shall grade in accordance with the Grading Plan dated June 16, 2000.”

2. THAT Approval Condition No. 5 is amended to read that:

“The approval holder will not conduct construction activities in the waters of Pigeon Lake between April 1 and July 15”.

3. THAT Approval Condition No. 10 is amended by adding at the end of the Condition that:

“The north bank of the 1000 sq. m. section of the Habitat Conservation Area will be bermed to an elevation equal to the existing natural berm located at the northeast corner survey pin, at a top width of one meter. The toe of the slope will be located on the north boundary of the development. The approval holder will construct a four-wire barbed fence on the leading edge of the constructed berm, from the end of the existing corner post to the existing natural berm at the lakeshore, all being subject to approval by DFO Canada. The adjacent landowner agrees to grant access to the approval Holder to complete the above. The approval holder agrees to submit to the Director Aas built≅ drawings of the development, including the modified 1000 sq. m. Habitat Conservation Area”.

4. THAT Approval Condition No. 11 is amended by adding at the end of the Condition that:

“Buoys will be placed along the entire length of the Habitat Conservation Area at a distance of 30 meters from shore. Buoys will be placed at a distance further from shore if allowed by the Canadian Coast Guard. Signs will be posted on the

trail along the Habitat Conservation Area, directed at both boaters and users of the trail, indicating that access to the Habitat Conservation Area is prohibited”.

5. THAT Approval Condition No. 13 is amended by deleting the phrase “adjoining the lakeshore”.

RESOLUTION OF APPEAL NOS. 00-021 to 023, 00-025 to 00-027, 00-032 AND 00-036 REGARDING APPROVAL NO. 00073615-00-00 (referred to as the "Approval") ISSUED UNDER THE WATER ACT BY THE MANAGER, REGIONAL SUPPORT, PARKLAND REGION, ALBERTA ENVIRONMENT, TO SUNSET HARBOUR DEVELOPMENTS LTD., AUTHORIZING THE CONSTRUCTION OF A MARINA AND STORMWATER MANAGEMENT WORKS AT PIGEON LAKE IN THE SW 12-47-02-W5.

All parties to these appeals have agreed to the following terms and conditions:

1. THAT with respect to Approval Condition No. 2, the Approval Holder agrees to ensure the activity is in accordance with the plans and/or reports submitted to the Department with modifications to the Approval Holder's Reports. The modifications are:
 - There will be no commercial fueling station at the marina. Boat owners must fill their boats in an enclosed area alongside the marina.
 - The marina lagoon will be common property of the Condominium Corporation. The marina slips/moorage will be owned and operated by the Approval Holder and will be attached to Lot 22. Lots 22 and 23 will be retained by the Approval Holder for the time being for development as commercial properties.
 - The general public will not have access to the boat launch. The boat launch will be for boaters holding slips in the marina only. The boat launch will be gated and locked when not in use. Signage at Secondary Road 771 will inform the public that the Development Access road is a private road.
 - The Approval Holder, in conjunction with the Condominium Corporation Board of Directors, will appoint a harbourmaster to oversee, regulate, and enforce the rules of the marina, including conditions imposed by the Department of Fisheries and Oceans (DFO) for the construction and operation of the marina.
 - Signs at the marina entrance channel will inform the boating public that the marina is for residents of the condominium, boat club members, and their guests only.
 - The stormwater management plan will include three settling ponds rather than four, but will have the same overall capacity for stormwater collection. The stormwater management plan will be designed to ensure that storm water runoff will not overflow into the adjacent unnamed creek at the Northwest corner of the development.
 - The Approval Holder shall grade in accordance with the Grading Plan dated June 16, 2000.

2. THAT Approval Condition No. 5 is amended to read that, "the Approval Holder will not conduct construction activities in the waters of Pigeon Lake between April 1 and July 15".
3. THAT Approval Condition No. 10 is amended by adding that, "the north bank of the 1000 sq. m. section of the Habitat Conservation Area will be bermed to an elevation equal to the existing natural berm located at the northeast corner survey pin, at a top width of one meter. The toe of the slope will be located on the North boundary of the Development. The Approval Holder will construct a four-wire barbed fence on the leading edge of the constructed berm, from the end of the existing corner post to the existing natural berm at the lakeshore, all being subject to approval by DFO, Canada . The adjacent landowner agrees to grant access to the Approval Holder to complete the above. The Approval Holder agrees to submit to the Director "as built" drawings of the Development, including the modified 1000 sq. m. Habitat Conservation Area".
4. THAT Approval Condition No. 11 is amended by adding that, "buoys will be placed along the entire length of the Habitat Conservation Area at a distance of 30 meters from shore. Buoys will be placed at a distance further from shore if allowed by the Canadian Coast Guard. Signs will be posted on the trail along the Habitat Conservation Area, directed at both boaters and users of the trail, indicating that access to the Conservation Area is prohibited".
5. THAT Approval Condition No. 13 is amended by deleting the phrase "adjoining the lakeshore".
6. THAT Restrictive Covenants on the Development properties will restrict any unit owner from placing a private dock into the marina or into the waters of Pigeon Lake.
7. THAT Restrictive Covenants on the Development Properties will place speed limits on boats anywhere the Condominium Association has jurisdiction.
8. THAT the Sewage System will be built as a step system with storage capacity added as required. The System will be designed to tie into municipal infrastructure in the event a municipal sewage system is built by the County in the vicinity of the Development.
9. THAT the private land submerged along the shoreline of Pigeon Lake making up the Habitat Conservation Area, as well as the walking trail and buffer zone along the conservation area, will be common property of the Condominium Corporation.

10. THAT pursuant to the *Condominium Property Amendment Act, 2000*, the Approval Holder, and any subsequent Condominium Association, must establish

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and adequately fund a "reserve fund" for the maintenance and upkeep of the common property. The reserve fund requirements are assessed through a reserve fund study conducted by an independent party as required under the Act.

Accordingly, adequate funding for the upkeep and maintenance of:

- (a) the marina lagoon (other than any structures on Lots 22 and 23 or the marina slips);
- (b) the Habitat Conservation Area;

- (d) the lakeshore);
the corridors
(buffer zones)
through which
the trail passes;
and
- (e) all other areas
and
improvements
comprising the
common
property;

will be addressed in the reserve fund study, and will be collected in the form of condominium fees. The Approval Holder agrees to abide by the provisions of the *Condominium Property Amendment Act, 2000*, including the establishment of a reserve fund for common property maintenance.

- 11. THAT the rail ballast material currently stockpiled on Lot 3 adjacent to Secondary Highway 771 will not be

used as a subgrade fill material referred to in Approval Condition No. 9.

- 12. THAT the Appellants, Mr. Frank Cowles, Mr. Ernie Semeniuk, Mr. Kevin Fenemor, Mr. John Ludwig on behalf of Summer Villages of Sundance Beach and

Golden Days, Mr.
Marcel Normandeau,
Mr. John Turgeon, Dr.
Larry Eberlein, Ms.
Jane Nagy and Ms.
Roberta McLaughlin,
agree to withdraw their
Notices of Appeal.

Mr. John Ludwig
Summer Village of
Sundance Beach
and Golden Days

“original signed by”

Date:

September 21, 2000

Mr. Marcel Normandeau

RESOLUTION AGREED TO BY:

“original signed by”

Date: September

21, 2000

Mr. Frank Cowles

“original signed by”

Date:

September 21, 2000

Mr. John Turgeon

“original signed by”

Date: September

21, 2000

Mr. Ernie Semeniuk

“original signed by”

Date:

September 21, 2000

Dr. Larry Eberlein

“original signed by”

Date: September

21, 2000

Mr. Kevin Fenemor

“original signed by”

Date:

September 21, 2000

Ms. Jane Nagy

“original signed by”

Date: September

21, 2000

“original signed by”

Date: September 21, 2000
Ms. Roberta McLaughlin

“original signed by” _____
Date: September
21, 2000
Mr. Rick Wilson
Sunset Harbour Developments Ltd.

“original signed by” _____
Date: September
21, 2000
Mr. Kenn Looten
Managaer, Regional Support,
Parkland Region, Alberta Environment
(represented by Mr. Grant Sprague)



ALBERTA ENVIRONMENT

Office of the Minister

**Ministerial Order
82 /2000**

Environmental Protection and Enhancement Act
S.A. 1992, c.E13.3

Water Act
S.A. 1996, c.w-3.5

**Order Respecting EAB Appeal Nos. 00-021 to 023, 00-025 to 027, 00-032,
and 00-036**

I, Halvar Jonson, Minister of Environment, pursuant to section 92(1) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, make the order in the attached Appendix.

Dated at the City of Edmonton in the Province of Alberta, this 18 day of October, 2000.

“original signed by”

Halvar Jonson
Minister of Environment

228 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 Telephone 780/427-2391 Fax 780/422-6259

Printed on recycled paper



Appendix

Order Respecting EAB Appeal Nos. 00-021 to 023, 00-025 to 00-027, 00-032, and 00-036

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5. THAT Approval Condition No. 13 is amended by deleting the phrase "adjoining the lakeshore".