

---

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

---

Date of Discontinuance of Proceedings – October 30, 2000

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

-and-

**IN THE MATTER OF** an appeal filed on March 16, 1999 by Mr.  
Gilbert J. Clark, with respect to Approval No. 00072331-00-00,  
issued under the *Water Act*, S.A. 1996, c.W-3.5, to H.N.T.  
Enterprises Ltd. by the Director, Parkland Region, Alberta  
Environment.

Cite as: *Clark v. Director, Regional Support, Parkland Region, Alberta Environment*  
re: *H.N.T. Enterprises Ltd.*

## **TABLE OF CONTENTS**

BACKGROUND .....	1
MEDIATION MEETING/SETTLEMENT CONFERENCE.....	3
DECISION .....	9

## **BACKGROUND**

[1] On March 5, 1999, the Director, Regional Support, Parkland Region, Alberta Environment (the “Director”) issued Approval No. 00072331-00-00, under the *Water Act* S.A. 1996, c.W-3.5, to H.N.T. Enterprises Ltd. (the “Approval Holder”). The Approval authorizes H.N.T Enterprises Ltd. to construct shoreline erosion control works in Sylvan Lake at Lot 15 and 16, Block 2, Plan No. 1823 MC, SW 26-39-02-W5M subject to certain conditions.

[2] On March 16, 1999, the Environmental Appeal Board (the “Board”) received a Notice of Appeal, dated March 16, 1999, from Mr. Gilbert J. Clark (the “Appellant”) appealing the Approval. The Appellant stated that he is the owner of Lot 15 and had received no notice of the application for the Approval, and also that he believed that the work was not done in compliance with the legislation.

[3] On March 16, 1999, the Board acknowledged receipt of the Appellant’s letter and, at that time requested a copy of all correspondence, documents and materials relative to the appeal from the Director. On this same date the Board also provided the Approval Holder with a copy of the Notice of Appeal.

[4] According to standard practice, on March 16, 1999, 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 the NRCB and from the AEUB, both dated March 17, 1999, stating that they did not hold any hearing or review under their respective legislation.

[5] On April 8, 1999, copies of the documents requested by the Board were provided

by the Director. Copies of those documents were forwarded to the Appellant and the Approval Holder on April 9, 1999.

[6] On April 12, 1999, the Board wrote to the parties, asking if the parties would like to participate in a mediation pursuant to section 11 of the Environmental Appeal Board Regulations, A.R. 114/93 (the "Regulation" ) and in the event the Board were to proceed with the appeal, if there were any other persons who may have an interest in this appeal. At that time, the Board also requested that the Appellant provide further clarification with respect to his Notice of Appeal, specifically the Board stated:

- “1. Explain in more detail the environmental concerns you have with the decision issued by the Director in the above noted approval
2. Explain in more detail why you believe the work done was not “in compliance with the regulations” and please specify which regulations as well as the section number.

#### **I. Required Contents of the Notice of Appeal**

Section 5(1) of the Board's regulations require notices of objection to include specific information. The section 5(1) information requirements are quoted below. Could you please respond to the following:

- (a) “the details of the decision objected to.”  
Please indicate the details of Approval No. 72331 that you object to and the sections of the *Water Act* and for the Water Regulations pursuant to which the appeal is brought.

#### **II. Issues Raised By Your Appeal**

At this stage of the appeal, the Board would like you to clarify the relief you are seeking and the reasons why you believe the Board should grant the relief, and please list the issues that you would like to address in a hearing if this matter proceeds to a hearing. As your letter does not specifically summarize your concerns with the Approval, please state them clearly to provide sufficient detail for the Board at this time.”

[7] The Board received a response to its April 12, 1999 letters, from the Director dated April 19, 1999, and from the Appellant dated April 23, 1999. A response was not received from the Approval Holder.

[8] The Appellant, in his letter of April 23, 1999 advised that he would not be able to provide the Board with written representations at that time. The April 23, 1999 letter stated:

“... The main reasons I have not been able to provide this to you yet, is because there is a hearing of the Development Appeal Board of the Summer Village of Sunbreaker Cove on Monday, April 26 relating to the development permit which was issued for the construction of the erosion control devices that are the subject matter of the Environmental Appeal Board Hearing. The results of the Development Appeal Board process may well have a significant impact on whether or not I will seek to proceed with the Appeal before the Environmental Appeal Board.”

[9] The Board received a further letter from the Appellant dated April 28, 1999, in which he requested that the Board's request for written representations be held in abeyance pending the result of the Development Appeal Board hearing.

[10] In consultation with the parties, the Board granted the Appellant's request on April 29, 1999, and agreed to hold the appeal in abeyance until May 13, 1999, at which time the Appellant would provide a status report to the Board. On May 13, 1999, the Appellant provided his written representations to the Board.

[11] Having reviewed the written representations from the Appellant and the Director, the Board advised the parties in a letter dated May 27, 1999, that a mediation meeting/settlement conference would be held in Calgary, Alberta, on June 28, 1999.

#### **THE MEDIATION MEETING/SETTLEMENT CONFERENCE**

[12] According to the Board's standard practice, the Board called the mediation meeting/settlement conference in an attempt to mediate or facilitate 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 at the mediation meeting.

[13] In conducting the mediation meeting, Dr. Ogilvie reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the "Participants' Agreement to Mediate" and all participants signed.

[14] At the mediation meeting/settlement conference on June 28, 1999, the parties agreed to hold the appeal in abeyance for 45 days, with a written status report due from all parties on August 16, 1999.

[15] On August 17, 1999, the Board agreed to continue to hold the appeal in abeyance, as was requested by the Appellant, in his letter to the Board dated August 16, 1999. The parties were asked to provide status reports to the Board by September 8, 1999.

[16] Status reports were received from the Director and Approval Holder and on October 18, 1999, the Board wrote to the parties asking them to provide available dates for an appeal hearing for the months of November and December 1999.

[17] On October 26, 1999, the Board received a letter dated October 26, 1999, from the Director, advising of his intentions to make a written application to the Board to dismiss the appeal. The October 26, 1999 letter stated:

"...The essence of the Director's position is that the approval concerns the issue of notice and, despite any errors in giving notice, the work was completed. At this point an appeal has no utility..."

[18] In a letter dated October 28, 1999 to the parties, the Board requested that the parties provide their comments with respect to the Director's letter of October 26, 1999.

[19] The Board received a further letter from the Director on October 29, 1999,

advising that the Director did not believe that all of the issues raised in the Appellant's letter of May 13, 1999 were properly before the Board, and went on to suggest that a further mediation meeting would be appropriate. The Board forwarded this letter to the other parties to the appeal, on November 2, 1999, and requested that they provide comments to the Board with respect to the Director's letter.

[20] A letter was received from the Appellant on November 3, 1999, agreeing to another mediation. On November 5, 1999, a further letter was received from the Appellant, in response to the October 26, 1999, letter from the Director. The Appellant advised that he had no objection to a further mediation, but that he wanted the appeal dealt with before the Christmas break and did not wish any potential mediation process to result in the delay of the hearing of the appeal.

[21] In consultation with the parties, an appeal hearing was therefore set for December 13, 1999, in Calgary, Alberta. A Notice of Public Hearing advertisement was placed in the Calgary Herald on November 13, 1999 and in the Sylvan Lake News on November 17, 1999, advising of the hearing which was to be held on December 13, 1999, in Calgary. The advertisement contained information regarding the date, time and location of the hearing. It also asked that if any person, other than the parties wished to make representations before the Board, to advise the Board office by November 19, 1999. A news release was forwarded to the Public Affairs Bureau regarding the hearing and was placed on the Alberta Government website on December 13, 1999. It was also distributed on the same day to 95 daily newspapers, radio stations and television stations within Alberta. No intervenor requests were received.

[22] On November 17, 1999, the Board received a letter from counsel for the Director advising that, upon review of the Appellant's letter of November 3, 1999, the Director was amenable to a further mediation.

[23] The Board advised parties by letter of November 17, 1999, that the Board would be available for mediation if this was how the parties wished to proceed. The Board requested

that the parties provide their response to the Board by November 22, 1999.

[24] The Approval Holder wrote to the Board on November 18, 1999, requesting a date change for the appeal hearing. The Board received a further letter from the Approval Holder dated November 21, 1999, advising that there had been some significant progress toward a resolution. He advised that they had been focussed on finding a mutually acceptable solution to the issue, and that he was confused about the reasons behind the abandonment of the mediation process and the scheduling of the December 13, 1999 hearing. The Board requested by letter dated November 23, 1999, that the parties provide their comments to the Approval Holder's letter.

[25] The Board received a reply from the Appellant on November 24, 1999, advising:

“...Timing is important to me because the Board may make a ruling which requires action to be taken in the winter of 2000. If such is the case, then H.N.T. will have sufficient time to take the steps that are necessary.

In the event this matter is delayed further, then any remedy directed may not be effective.

I certainly agree with his comments that progress has been made, but my view is that the Hearing date for the Appeal should still be maintained to assist in the settlement process.”

[26] The Board received a reply from the Director on November 24, 1999, stating:

“...It appears all parties wish to continue the mediation process. The Director believes this to be a reasonable approach”.

[27] While maintaining the appeal hearing date of December 13, 1999, the Board, in consultation with all parties, proceeded to schedule a second mediation. The mediation meeting/settlement conference was held on December 2, 1999, in Calgary, Alberta. The Director attended via teleconference. At the mediation meeting/settlement conference it was agreed by the parties that the Approval Holder and the Appellant would provide the Board with a status report by January 31, 2000, and that the appeal hearing scheduled for December 13, 1999, would



be adjourned. The parties also agreed that if a resolution were not reached by January 31, 2000, the Board would proceed to an appeal hearing on February 16, 2000.

[28] A Notice of Rescheduling of a Public Hearing was placed in the Calgary Herald and the Sylvan Lake News on December 22, 1999, advising that the hearing originally to be held on December 13, 1999, had been re-scheduled to February 16, 2000. A news release was forwarded to the Public Affairs Bureau regarding the hearing and was also placed on the Alberta Government website on December 13, 1999.

[29] The Board received a letter dated January 27, 2000 from the Appellant, requesting an adjournment of the scheduled February 16, 2000 appeal hearing, and on January 28, 2000, the Board received a letter from the Director concurring with the Appellants suggestion that the appeal be adjourned, and advising that he was supportive of the attempt between the Appellant and the Approval Holder to mutually resolve their issues.

[30] In a letter to the parties dated January 28, 2000, the Board granted the request to adjourn the hearing and requested that the parties provide status reports to the Board by February 21, 2000.

[31] On February 26, 2000, the Board received a letter from the Approval Holder advising that a solution was mutually arrived at, however, there were some details and possibly some differences between himself and the Appellant that remained unresolved.

[32] On February 29, 2000, the Board received a letter from the Appellant advising that an agreement had been signed, but that it required some modification.

[33] The Board received a further status report from the Approval Holder on April 14, 2000, advising that one detail remained unresolved. On July 11, 2000, the Board received a status report from the Appellant stating that discussions had not resulted in an agreement and asked for a hearing to be set as soon as possible.

[34] By letter of July 12, 2000, the Board requested that the parties provide their comments to the Board with respect to the Appellant's letter and also asked parties to provide their available dates for a possible hearing.

[35] Available dates were received from the parties and a new hearing date was scheduled for October 30, 2000. The Approval Holder in his letter of August 14, 2000, to the Board stated:

“...By way of update, there is a conditional sale of the property now in place. Mr. Gib Clark has by way of letter, agreed to drop the appeal in the event the sale is completed. The close date for the sale is Oct 4, 2000...”

[36] The Board wrote to the parties on August 15, 2000, stating:

“...Given the conditional sale of the property as outlined in Mr. Gary's letter, the Board would like to propose hearing dates of October 30, 31 or November 1, 2000...should the sale not be complete by October 4, 2000...”

[37] The Board received responses, to its August 15, 2000 letter from the Appellant and Director and on September 1, 2000, the Board wrote again to the parties, stating:

“...Further to the Board's letter of August 15, 2000, the Board will conduct a hearing in this matter if the sale of the property is not complete by October 4, 2000. The hearing will take place on October 30, 2000 in Calgary, Alberta, provided there are no objections from any of the parties...The parties are also requested to provide the Board with a status report by the close of business on October 4, 2000. The Board will confirm whether or not the appeal hearing will proceed upon receipt of the status reports.”

[38] On October 20, 2000, the Board received a letter of the same date from the Appellant, stating:

“Please be advised that I am abandoning my Appeal in the within matter. As a

result, the scheduled Hearing set for October 30, 2000 in Calgary will not be necessary.”

## **DECISION**

[39] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on Mr. Clark’s letter dated October 20, 2000, the Board hereby discontinues its proceedings in Appeal No. 99-006 and will be closing its file.

Dated October 30, 2000 at Edmonton, Alberta.

---

Dr. William A. Tilleman