

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Discontinuance of Proceedings

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Date of Discontinuance of Proceedings – March 22, 2006

**IN THE MATTER OF** sections 91, 92 and 95 of the  
*Environmental Protection and Enhancement Act*, R.S.A. 2000, c.  
E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

**-and-**

**IN THE MATTER OF** an appeal filed by Lakeland County with  
respect to *Water Act* Amending Approval No. 00139297-00-01  
issued to Parkland Developments Limited by the Director,  
Northern Region, Regional Services, Alberta Environment.

Cite as: *Lakeland County v. Director, Northern Region, Regional Services, Alberta Environment re: Parkland Developments Limited* (22 March 2006), Appeal No. 05-049-DOP (A.E.A.B.).

## **I. BACKGROUND**

[1] On November 29, 2005, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Amending Approval No. 00139297-00-01 (the “Amending Approval”) to Parkland Developments Limited, (the “Approval Holder”) revising the construction completion date under condition 12 of original Approval No. 00139237-00-00. The original Approval authorizes the construction of a storm water management works and a fish spawning pond in Lakeland County.

[2] On December 9, 2005, the Environmental Appeals Board (the “Board”) received a Notice of Appeal and a request for a Stay from Lakeland County (the “Appellant”) appealing the Amending Approval.

[3] On December 12, 2005, the Board wrote to the Appellant, the Approval Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and the Director of the appeal and request for a Stay. The Board requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal and that the Parties provide available dates for a mediation meeting, preliminary meeting or hearing. The Board also requested the Appellant provide further information in relation to the Stay request.<sup>1</sup>

[4] According to standard practice, 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 legislation. Both boards responded in the negative.

[5] On December 14, 2005, the Board received a response from the Appellant in relation to the Stay request. Upon review of the Appellant’s letter, the Board granted a

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1. What are the serious concerns of Lakeland County, with respect to the Amending Approval, that should be heard by the Board?
2. Would Lakeland County suffer irreparable harm if the Stay is refused?
3. Would Lakeland County suffer greater harm if the Stay is refused pending a decision of the Board, than Parkland Developments Limited would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay?

temporary Stay of the Approval until midnight December 21, 2005. In granting the temporary Stay, the Board stated:

“...the purpose of granting this temporary Stay is to obtain the additional information that the Board requires to make its final determination on the stay request. Further in making its decision to grant the temporary Stay, the Board also noted at that time, that Parkland Developments is currently authorized to undertake work under the Approval that, in the Board’s view, could be irreversible in the event that this appeal is successful...”

The Board requested the Director and the Approval Holder provide their written comments to the Board in response to the Appellant’s December 14, 2005 letter, before making its final decision on the Stay request.

[6] On December 16, 2005, the Board received written comments from the Director and the Approval Holder in response to the Appellant’s December 14, 2005 letter. The Approval Holder advised that they would not to do any work in relation to this matter until the fall of 2006. On December 19, 2005, the Board lifted the temporary Stay and requested the Approval Holder notify the Board immediately should they decide to do any work before the appeal process was concluded.

[7] On December 30, 2005, the Board received a copy of the Record from the Director, and on January 5, 2006, forwarded a copy to the Appellant and the Approval Holder.

[8] On January 26, 2006, in consultation with the Parties, the Board scheduled a mediation meeting for March 14, 2006 in Lac LaBiche, Alberta. However, on February 24, 2006, the Board received a letter from the Director requesting the Board adjourn the mediation sine die and dismiss the appeal. The Director’s grounds for dismissal were:

- “1. Section 41(3) of the *Water Act* clearly states that extending the date of a term or condition of an approval cannot be appealed;
2. Still further or in the alternative, the appeal ought to be dismissed pursuant to s. 95(a)(i) [sic] of the *Environmental Protection and Enhancement Act* (EPEA) because it is ‘...frivolous or vexatious or without merit’”

The Board acknowledged the Director’s letter and scheduled a submission process to address the motion. The initial submission of the Appellant was not received by the due date of March 14,

2006, and on March 15, 2006, the Board sent a letter to the Parties, requesting the Appellant provide his initial submission by March 17, 2006.

[9] On March 16, 2006, the Board received a letter from the Appellant advising that they did not receive the Board's correspondence regarding the submission process and requested the Board set new deadlines. The Board responded on March 16, 2006 granting the extension for submissions, and requested the Appellant provide the Board with their initial submission by March 24, 2006. On March 16, 2006, the Board received a letter from the Approval Holder objecting to the rescheduling of the submission process.

[10] On March 21, 2006, the Board received a letter from the Appellant withdrawing the appeal stating "...having regard to s. 41 of the *Water Act*, Lakeland County hereby advises that it is withdrawing its appeal in respect to this matter."

## **II. DECISION**

[11] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12, and based on the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 05-049 and closes its file.

Dated on March 22, 2006, at Edmonton, Alberta.

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Steve E. Hrudey, D.Sc. (Eng.), P.Eng.  
Chair