

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – May 5, 2008

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 appeals filed by Bruce Miles and Carol Miles with respect to *Water Act* Approval No. 00209177-00-00 and *Water Act* Amending Approval No. 00209177-00-01 issued to the Town of High River by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Miles v. Director, Southern Region, Regional Services, Alberta Environment, re: Town of High River* (05 May 2008), Appeal Nos. 05-040 and 05-041-DOP (A.E.A.B.).

I. BACKGROUND

[1] On August 25, 2005, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 00209177-00-00 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Approval”) to the Town of High River (the “Town” or “Approval Holder”), authorizing the construction of the Golf Course Dyke, and Baker Creek Dyke on the floodplain and/or floodway of the Highwood River, near High River, Alberta; and on October 12, 2005, the Director issued Amending Approval No. 00209177-00-01 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Amending Approval”) to the Town of High River, changing the alignment of the Baker Creek Dyke.

[2] Between August 30, 2005 and September 2, 2005, the Environmental Appeals Board (the “Board”) received Notices of Appeal in relation to Approval Number 00209177-00-00 from Dr. Dennis and Ms. Linda Mercer; Mr. Hans and Ms. Katherine Weinacker; Mr. Lyle Braunworth; Mr. Donald and Ms. Bette Green; Mr. Ron and Ms. Lorraine Gorsche; Mr. Keith Spackman; and Mr. Wayne Adams for Ms. Helen Adams. Between October 14 and 18, 2005 the Board received Notices of Appeal in relation to Amending Approval No. 00209177-00-01 from Dr. Dennis and Ms. Linda Mercer; Mr. Hans and Ms. Katherine Weinacker; Mr. Lyle Braunworth; Mr. Donald and Ms. Bette Green; Mr. Ron and Ms. Lorraine Gorsch; Mr. Keith Spackman; Mr. Emile Rocher; Mr. Cam Crawford for the Beachwood Home Owners Association; and on October 18, 2005, the Board received Notices of Appeal from Mr. Bruce and Ms. Carol Miles in relation to both the Approval and Amending Approval.¹ This Discontinuance of Proceedings deals with the appeals of Mr. Bruce and Ms. Carol Miles only (the “Appellants”).

[3] The Board wrote to the Appellants, the Approval Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. The Board also requested the Director

¹ The appeals filed by Dr. Dennis and Ms. Linda Mercer were withdrawn. See: *Dr. Mercer v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of High River* (1 June 2007), Appeal Nos. 05-014 and 05-032-DOP (A.E.A.B.).

provide the Board with a copy of the records (the "Record") relating to these appeals, and that the Participants provide available dates for a mediation meeting, preliminary meeting or hearing.

[4] On September 26, 2005, the Board received a copy of the Record in relation to the Approval from the Director and on October 6, 2005, forwarded a copy to the Appellants and the Approval Holder. On October 21, 2005, the Board received a copy of the Record in relation to the Amending Approval from the Director and on October 27, 2005, forwarded a copy to the Appellants and Approval Holder.

[5] 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.

[6] In consultation with the Participants, the Board scheduled a mediation meeting for November 25, 2005, in High River, Alberta.

[7] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in High River, Alberta on November 25, 2005, with Dr. Alan J. Kennedy as the presiding Board Member (the “Mediator”). In conducting the mediation meeting, the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants’ Agreement to Mediate.

[8] Further meetings were held on June 20, 2006, and on January 31, 2007, in High River, Alberta.

[9] At the January 31, 2007 meeting, the Participants were advised that the mediation process has formally ended. In the Board’s February 22, 2007 letter to the Participants, they were advised:

“As discussed at the information meeting, the Town of High River will be filing an application with Alberta Environment for an approval to build a tight wrap dyke in order to minimize the potential for future flooding of Beachwood Estates. In light of this application proceeding, the Appellants now have options available to them as to how they wish to proceed with their present appeals. As the mediation is now closed, the Appellants may request that their appeals be held in abeyance until the tight wrap dyke approval is issued, assuming it is acceptable to Alberta Environment. At that time, the Appellants can then decide if they want to

appeal the tight wrap dyke as well as the present approval, proceed only with the present appeal, appeal the tight wrap dyke and withdraw the present appeal, or withdraw the present appeal and not appeal the tight wrap dyke. The Appellants also have the option of proceeding with their current appeals now. If one or more of the Appellants wish to continue with their appeals now, the Board will determine how to proceed.”

[10] On March 12, 2007, the Participants were advised that all the appeals would be held in abeyance pending the process described above.

[11] On March 30, 2007, the Approval Holder was requested to advise the Board by April 13, 2007, when it expected to file its application with Alberta Environment for the tight wrap dyke, noting that as agreed the Appellants would have an opportunity to review the application and provide comments to the Town prior to the Town submitting the application.

[12] Regular status reports were requested and received from the Town. On April 24, 2008, the Town advised that the technical report prepared by Golder Associates would be forthcoming. The Board acknowledged the Town’s letter on April 25, 2008, advising that the CD of the Golder report would be reproduced and distributed to the Participants when received, and comments regarding the report would be due by May 30, 2008.

[13] On April 28, 2008, the Board received a telephone call from Mr. Bruce Miles advising he is withdrawing their appeals. The Board confirmed the withdrawal in a letter to the Participants on April 28, 2008.

II. DECISION

[14] 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 appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 05-040 and 05-041.

Dated on May 5, 2008, at Edmonton, Alberta.

Steve E. Hruday, FRSC, PEng