

ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Mediation Meetings – November 24, 2008 & June 16, 2009
Date of Discontinuance of Proceedings – June 19, 2009

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 Donald E. Upton with respect to *Water Act* Approval No. 00236132-00-00 issued to the Municipal District of Rocky View No. 44 by the Director, Southern Region, Environmental Management, Alberta Environment.

Cite as: *Upton v. Director, Southern Region, Environmental Management, Alberta Environment, re: Municipal District of Rocky View No. 44* (19 June 2009), Appeal No. 08-012-DOP (A.E.A.B.).

I. BACKGROUND

[1] On August 12, 2008, the Director, Southern Region, Environmental Management, Alberta Environment (the “Director”) issued Approval No. 00236132-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Municipal District of Rocky View No. 44 (the “Approval Holder”) for the construction and maintenance of a flood protection works within the flood plain of the Elbow River at NW 12-023-05-W5M and NE 11-023-5-W5M near Bragg Creek.

[2] On August 21, 2008, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Dr. Donald E. Upton (the “Appellant”) appealing the Approval. The Appellant stated he is concerned with potential flooding on his property that will be caused by the proposed berm on Bracken Road.

[3] On August 22, 2008, the Board wrote to the Appellant, the Approval Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Approval Holder and the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal and that the Participants provide available dates for a mediation meeting, a preliminary motions hearing or a hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board, the Energy Resources Conservation Board and the Alberta Utilities Commission asking whether this matter had been the subject of a hearing or review under their respective legislation. The boards all responded in the negative.

[5] The Board received a copy of the Record on September 18, 2008 and provided a copy to the Appellants and the Approval Holder on September 25, 2008. In the same letter, the Board advised that it would like to proceed to a mediation meeting and that it was concerned about the potential impact a resolution and/or any changes to the Approval may have on the other residents in the area.

[6] On October 8, 2008, in consultation with the Participants, the Board scheduled a mediation meeting for November 24, 2008 in Calgary, Alberta.

II. MEDIATION MEETING

[7] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Calgary, Alberta, on November 24, 2008 with Mr. Alex MacWilliam, Board Member, as the presiding mediator (the “Mediator”).

[8] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants’ Agreement to Mediate. All in attendance signed the agreement and discussions ensued.

[9] Following productive and detailed discussions at the mediation meetings on November 24, 2008 and June 16, 2009, the Appellant withdrew his appeal.

III. DECISION

[10] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 08-012 and closes its file.

Dated on June 19, 2009, at Edmonton, Alberta.

Dr. Steve E. Hruddy, FRSC, PEng
Chair