

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

Date of Preliminary Motions Hearing – September 13, 2010

Date of Decision – October 18, 2010

**IN THE MATTER OF** sections 91, 92, 95, and 97 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 Kent Williamson with respect to *Water Act* Approval No. 00266511-00-00 issued to Lacombe County by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Williamson v. Director, Central Region, Regional Services, Alberta Environment, re: Lacombe County* (18 October 2010), Appeal No. 10-017-D (A.E.A.B.).

**BEFORE:**

Justice Delmar W. Perras (ret.), Chair;  
Dr. Alan J. Kennedy, Board Member; and  
Mr. Alex G. MacWilliam, Board Member.

**BOARD STAFF:**

Mr. Gilbert Van Nes, General Counsel and  
Settlement Officer; Ms. Denise Black, Board  
Secretary; Ms. Valerie Myrmo, Registrar of  
Appeals; and Ms. Marian Fluker, Associate  
Counsel.

**PARTICIPANTS:**

**Appellant:** Mr. Kent Williamson.

**Director:** Mr. Todd Aasan, Director, Central Region,  
Regional Services, Alberta Environment,  
represented by Mr. Andrew Bachelder, Alberta  
Justice.

**Approval Holder:** Lacombe County, represented by Mr. Bill  
Barclay, Reynolds Mirth Richards & Farmer  
LLP.

**WITNESSES:**

**Appellant:** Mr. Kent Williamson and Mr. Kim Schmitt,  
President, Sylvan Lake Watershed Society.

**Approval Holder:** Mr. Bill Cade, Public Works Supervisor,  
Lacombe County, and Mr. Peter Stevens,  
MPE.

**Board:** Mr. Todd Aasan, Director, Central Region,  
Regional Services, Alberta Environment.<sup>1</sup>

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<sup>1</sup> Alberta Environment did not call any witnesses at the preliminary motions hearing. The Appellant requested he have the opportunity to question the Director. After receiving comments from all of the participants, the Board called the Director as its witness to answer questions posed by the Appellant and the Board.

## EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to Lacombe County for the expansion and maintenance of the existing Sunbreaker Cove boat launch on Sylvan Lake. Mr. Kent Williamson appealed the issuance of the Approval and requested a stay. The Board granted a temporary stay of the Approval based on information that the work about to start and was to be completed in the bed of the waterbody. The temporary stay was granted in order to allow the participants time to prepare for and attend a preliminary motions hearing at which the Board would consider whether to extend the stay.

Six days after the temporary stay was granted, the Board held a hearing to hear evidence and arguments on the issues of whether Mr. Williamson was directly affected, and if he was found directly affected, whether the stay should be granted.

The Board determined that Mr. Williamson was not directly affected. His concerns were based on the assumption the expanded boat launch would cause an increase in the number of boats on the Sylvan Lake, impacting the quality of the lake water. Lacombe County explained there were no data to demonstrate there would be an increase in usage of the boat launch, and the actual footprint of the expanded boat launch would remain the same as the unofficial site adjacent to the official boat launch would be removed.

The Board found the impacts on lake quality resulting from increased usage of the boat launch to be speculative and too remote to cause Mr. Williamson to be directly affected. Accordingly, Mr. Williamson did not have standing to bring an appeal and therefore, his appeal was dismissed.

According to section 97(2) of the *Environmental Protection and Enhancement Act*, only a party to an appeal can make an application for a stay. The temporary stay was lifted at the end of the preliminary motions hearing.

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## **I. BACKGROUND**

[1] On August 26, 2010, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 00266511-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Lacombe County (the “Approval Holder”) authorizing maintenance work on and construction of an expansion to the existing Sunbreaker Cove boat launch on Sylvan Lake, near the Summer Village of Sunbreaker Cove, Alberta.

[2] On September 6, 2010, the Environmental Appeals Board (the “Board”) received a Notice of Appeal and a Stay request from Mr. Kent Williamson (the “Appellant”). The Board notified the Approval Holder and the Director of the appeal, and requested the Director provide the Board with a copy of the records (the “Record”) relating to the appeal. The Appellant, Approval Holder, and Director (collectively, the “Participants”) were asked to provide available dates for a mediation meeting, preliminary motions hearing, or hearing. The Appellant was asked to provide answers to the following questions:

1. What are the serious concerns of Mr. Williamson that should be heard by the Board?
2. Would Mr. Williamson suffer irreparable harm if the Stay is refused?
3. Would Mr. Williamson suffer greater harm if the Stay was refused pending a decision of the Board, than Lacombe County would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay?
5. Is Mr. Williamson directly affected by the Approval issued to Lacombe County? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected.

[3] On September 7, 2010, the Board notified the Participants the Board was granting a temporary Stay of the Approval until the end of the preliminary motions hearing. The Stay prohibited any destructive work on the bed, bank, and shore of Sylvan Lake. The Board provided the following reasons for granting the temporary Stay:

“In making this decision, the Board is trying to balance the competing interests of all of the participants. While the Board did not have a written submission before it from Lacombe County, the Board was advised that work on the project was to begin today, that there would be costs incurred in delaying the project, and that

there is a short construction window for completing the work required for this project. These issues were taken into account when the Board made its decision to grant a temporary Stay.

Further, one of the key criteria that the Board considers in granting a Stay is whether there will be irreparable harm to the environment if the Stay is not granted. In this case, the information before the Board is the project involves excavation in the bed, bank and shore of Sylvan Lake, and the installation of a concrete boat launch. Based on the information before the Board at this time, the Board is of the view that such work, once undertaken, can not (*sic*) be undone in any meaningful way, such that irreparable harm would occur. These aspects were also taken into consideration when making the decision to grant the temporary Stay. Please note that the Board does not take the granting of a Stay lightly, and that the purpose of granting this Stay is to allow all of the participants to have an adequate opportunity to prepare to appear before the Board on an expedited basis to fully comment on these matters.”

[4] On September 9, 2010, the Board acknowledged receipt of part of the Record, including the application, Statements of Concern, and responses to the Statements of Concern.

[5] The Board set the preliminary motions hearing for September 13, 2010, in Edmonton, to hear submissions on two issues:

1. Is the Appellant directly affected by the Approval?
2. Should the Board grant a Stay of the Approval until the Board can hear the Appellant’s appeal, should he be found directly affected?

[6] At the end of the preliminary motions hearing, the Board issued an oral decision that the Appellant was not directly affected, and as a result, the appeal was dismissed and the temporary Stay was lifted. The Board advised the Participants that a written decision would follow.

## **II. DIRECTLY AFFECTED**

### **A. Submissions**

#### **1. Appellant**

[7] The Appellant explained he owns property approximately one kilometre from the Sunbreaker Cove boat launch. He stated he lives at his property at least six months each year

and uses the lake for fishing, water skiing, swimming, enjoying wildlife, and photographing birds. The Appellant stated he is not opposed to a boat launch at the location, but he has concerns with the expansion and increased capacity of the boat launch. The Appellant argued the expansion of the boat launch will affect his use and enjoyment of his property and the value of his property, impacts that he has not experienced with the existing boat launch.

[8] The Appellant argued there are two types of impacts, general impacts from the construction of the boat launch and immediate habitat loss, and impacts resulting from the subsequent use of the infrastructure.

[9] The Appellant explained there is a planned 580-lot high density development currently under appeal to the Municipal Government Board that is within 1.6 kilometres of the boat launch and on the same access road. He stated that adjacent to the development is a lot that appears to be for remote parking or storage. The Appellant stated the Approval Holder told him the expansion will allow an increase in the rate at which boats are launched and removed from the lake, but it did not mean there would be an increase in boating activity or volumes as a result of the expansion. The Appellant did not agree and argued the high density development will create an increased demand for access, resulting in negative impacts to the lake.

[10] The Appellant submitted the expansion of the boat launch will have an effect on the quality of the water in the lake. He stated the vegetation and riparian habitat will be reduced with the expansion, and the cumulative effects caused by the boat launch expansion, in addition to prior impacts, creates uncertainty for future fish and waterfowl health. The Appellant argued there will be a detrimental impact on the shoreline habitat due to the high water levels caused by boat wakes produced near the shore. The Appellant stated there is uncertainty of the sustainability of the fisheries due to bottom disturbances and shoreline erosion.

[11] The Appellant noted the Sylvan Lake Management Plan – Update 2000 (the “Plan”) is over a decade old, but the risk management recommendations proposed in the Plan have not been implemented to control existing development and new access infrastructure. The Appellant explained the purpose of the Plan is to promote responsible land use and development around Sylvan Lake. The Appellant stated the carrying capacity of the lake has not been determined. The Appellant also stated there is no science to support recreational capacity

assumptions. The Appellant referred to the 2003 Public Access Study which stated the lake capacity is 425 boats and the current boat use, as of 2003, was 300 boats. He stated there has probably been at least another 125 boats using the lake since the study was completed in 2003, so the lake is likely now at capacity.

[12] The Appellant expressed concern that no public consultation has been undertaken by the Sylvan Lake Management Plan Committee, including an absence of newsletters, surveys or public meetings, and there have been no motions for lake protection measures based on the recommendations of the studies. The Appellant referred to the Sylvan Lake Public Access Study which recommended that development and additional formal public access should not occur without careful planning to avoid degradation of the shoreline and lake habitats.

[13] The Appellant submitted that cumulative impacts from development including the expansion of the boat launch will cause a degradation of the lake due to additional pollution and nutrient loading and shoreline impacts. He said that a polluted eutrophic lake is characterized by cyanobacteria infestations that can cause negative health impacts such as swimmers' itch, itchy eyes, fish kills, and odours. The Appellant argued the Approval Holder and Director have not applied the guiding documents for the lake, including the Plan, the Sylvan Lake Public Access Study, and the AXYS Water Quality Assessment and Watershed Management Considerations.

## 2. Approval Holder

[14] The Approval Holder submitted the Appellant was not directly affected by the activities permitted under the Approval.

[15] The Approval Holder explained the Sunbreaker Cove boat launch has been operating since 1985, and the Approval Holder took over the operation of the facility in 2005. It stated that as part of its obligations in taking over the operation, it had to make improvements at the site. The Approval Holder stated it first looked at the on-land portion to address parking concerns, the day use area, and available facilities. The Approval Holder advised it considered the Public Access Study and the Plan for the on-land and in-water aspects of the proposed improvements.



[16] The Approval Holder stated it then looked at the in-water portion of the site, including the portion between the pier and the boat launch which was being used as an unofficial boat launch. The Approval Holder stated that no upgrades have been undertaken on the boat launch since 1985, just improvements and minor maintenance. It said the existing boat launch is in poor condition and not user-friendly. The Approval Holder stated the unofficial boat launch is next to a scour hole, which probably was the result of prop wash. The Approval Holder explained that part of its process of determining what should be done at the site involved consultation with some of the residents and listening to complaints filed by residents to Lacombe County and to the Sunbreaker Cove Summer Village. The Approval Holder stated the Sunbreaker Cove Summer Village reviewed the plan for the boat launch and provided input into the plan to expand the boat launch.

[17] In response to the Appellant's reference to the boat capacity analysis included in the Public Access Study, the Approval Holder stated it understood the capacity referenced in the study was the current boat launching capacity and the projected boat launching capacity, not the boat carrying capacity of the lake.

[18] The Approval Holder explained the Plan was developed for Red Deer County, Lacombe County, the Town of Sylvan Lake, and the summer villages surrounding the lake.

[19] The Approval Holder stated that part of mitigation for expanding the boat launch is to restrict access at another unofficial boat launch site in the northwest portion of the lake, and included shoreline rehabilitation at that location. The Approval Holder explained the expanded boat launch design would also remove the unofficial boat launch site adjacent to the official Sunbreaker Cove boat launch.

[20] The Approval Holder explained it looked at four factors to determine the best approach to improve the boat launch facility - safety, functionality, cost, and environmental impact. The Approval Holder explained the size of the existing boat launch was adequate, but safety concerns arise during storm events when all the boats have to come to shore at the same

time. The Approval Holder stated boaters used the unofficial launch area regularly, not just in storm events.

[21] The Approval Holder stated that boaters had difficulty navigating the narrow ramp, so this was taken into consideration when developing the plans for the expanded boat launch. It said this was a function of costs, because it had to continually notify all the proper agencies whenever minor maintenance was required. The Approval Holder explained that, initially, construction was to start the first week in August, but public interest groups and regulatory agencies asked that construction not start until after the September long weekend to accommodate peak boating times and the lack of official launching sites. The Approval Holder stated it delayed the project until September, but now there are limited dates to have the work completed before next year's boating season.

[22] The Approval Holder explained the Department of Fisheries and Oceans' assessment of Sylvan Lake noted the site was already disturbed with the existing boat launch, and the site had no emergent vegetation and limited submergent vegetation habitat. According to the Approval Holder, the expansion would have no or limited impact on fish habitat since construction would not impact the moderate fish habitat west of the site. The Approval Holder confirmed that no in-water construction was allowed between October 1 and June 30 of any year.

[23] The Approval Holder explained the lake bed gradient was within standards so no dredging or infilling was required except minor gradient changes.

[24] The Approval Holder stated that, in order to minimize the boat launch footprint, the expanded boat launch is narrower when compared to the cumulative width of the existing official and unofficial boat launches. The Approval Holder's consultant recommended doubling the ramp to maximize use of the width of the area and to maximize the capacity of the boat launch. The Approval Holder explained the boat launch would measure 24 m long by 12 m wide, but only 13 m x 12 m would be in the lake bed, an impact of 0.0018% of the littoral zone of the lake.

[25] The Approval Holder explained it had the option of working in wet or dry conditions. Wet conditions would suspend sediments and impact the environment while dry

conditions would require the use of inflatable water barriers and dewatering the area but would have the least amount of impact on the environment.

[26] The Approval Holder argued that, even though the boat launch has increased capacity, it does not mean use will increase. Under cross-examination, the Approval Holder stated it could not comment on the number of boaters who use the lake or currently use the site. The Approval Holder stated the limited parking on site will limit the number of boaters. The Approval Holder stated the improvement to the official boat launch could help eliminate some unofficial boat launch sites.

[27] The Approval Holder explained its consultant was not retained to look at impacts past the immediate site with increased usage of the boat launch.

### 3. Director

[28] The Director took no position on the issues before the Board. The Director explained he accepted the Appellant's Statement of Concern as being valid, but he reminded the Board that this does not bind the Board in making its ruling on the directly affected status of the Appellant.

[29] The Director explained he accepted the Appellant's Statement of Concern as part of the information gathering process, which is intended to be more inclusive, but it is the Board's decision to determine whether the Appellant is directly affected for the appeal process.

[30] The Director stated the provincial and federal governments' jurisdictions over public lands and navigable waters, respectively, meant Alberta Sustainable Resource Development and the Department of Fisheries and Oceans also had jurisdiction over determining the boat capacity of the lake. Accordingly, the Director did not factor boat capacity of the lake into the Approval. The Director explained he received recommendations for conditions from Alberta Sustainable Resource Development with respect to fisheries and wildlife.

[31] The Director did not know the rate of use of the Sunbreaker Cover boat launch, but he was aware of the limited number of boat launches on Sylvan Lake.

## **B. Analysis**

[32] The Board has discussed the issue of “directly affected” in numerous prior decisions. The Board received guidance on this issue from the Court of Queen’s Bench in *Court v. Director, Bow Region, Regional Services, Alberta Environment* (2003), 1 C.E.L.R. (3d) 134, 2 Admin L.R. (4d) 71 (Alta. Q. B.) (“*Court*”).

[33] In the *Court* decision, Justice McIntyre summarized the following principles regarding standing before the Board.

“First, the issue of standing is a preliminary issue to be decided before the merits are decided. See *Re: Bildson*, [1998] A.E.A.B. No. 33 at para. 4. ...

Second, the appellant must prove, on a balance of probabilities, that he or she is personally directly affected by the approval being appealed. The appellant need not prove that the personal effects are unique or different from those of any other Albertan or even from those of any other user of the area in question. See *Bildson* at paras. 21-24. ...

Third, in proving on a balance of probabilities, that he or she will be harmed or impaired by the approved project, the appellant must show that the approved project will harm a natural resource that the appellant uses or will harm the appellant’s use of a natural resource. The greater the proximity between the location of the appellant’s use and the approved project, the more likely the appellant will be able to make the requisite factual showing. See *Bildson* at para. 33:

What is ‘extremely significant’ is that the appellant must show that the approved project will harm a natural resource (e.g. air, water, wildlife) which the appellant uses, or that the project will harm the appellant’s use of a natural resource. The greater the proximity between the location of the appellant’s use of the natural resource at issue and the approved project, the more likely the appellant will be able to make the requisite factual showing. Obviously, if an appellant has a legal right or entitlement to lands adjacent to the project, that legal interest would usually be compelling evidence of proximity. However, having a legal right that is injured by a project is not the only way in which an appellant can show a proximity between its use of resources and the project in question.

Fourth, the appellant need not prove, by a preponderance of evidence, that he or she will in fact be harmed or impaired by the approved project. The appellant

need only prove a potential or reasonable probability for harm. See *Mizera* at para. 26. In *Bildson* at para. 39, the Board stated:

[T]he ‘preponderance of evidence’ standard applies to the appellant’s burden of proving standing. However, for standing purposes, an appellant need not prove, by a preponderance of evidence, that he will in fact be harmed by the project in question. Rather, the Board has stated that an appellant need only prove a ‘potential’ or ‘reasonable probability’ for harm. The Board believes that the Department’s submission to the [A]EUB, together with Mr. Bildson’s own letters to the [A]EUB and to the Department, make a prima facie showing of a potential harm to the area’s wildlife and water resources, both of which Mr. Bildson uses extensively. Neither the Director nor Smoky River Coal sufficiently rebutted Mr. Bildson’s factual proof.

In *Re: Vetsch*, [1996] A.E.A.B.D. No. 10 at para. 20, the Board ruled:

While the burden is on the appellant, and while the standard accepted by the Board is a balance of probabilities, the Board may accept that the standard of proof varies depending on whether it is a preliminary meeting to determine jurisdiction or a full hearing on the merits once jurisdiction exists. If it is the former, and where proof of causation is not possible due to lack of information and proof to a level of scientific certainty must be made, this leads to at least two inequities: first that appellants may have to prove their standing twice (at the preliminary meeting stage and again at the hearing) and second, that in those cases (such as the present) where an Approval has been issued for the first time without an operating history, it cannot be open to individual appellants to argue causation because there can be no injury where a plant has never operated.”<sup>2</sup>

Justice McIntyre concluded by stating:

“To achieve standing under the Act, an appellant is required to demonstrate, on a *prima facie* basis, that he or she is ‘directly affected’ by the approved project, that is, that there is a potential or reasonable probability that he or she will be harmed

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<sup>2</sup> *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraphs 67 to 71, 2 Admin. L.R. (4d) 71 (Alta. Q.B.). See: *Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection*, re: *Smoky River Coal Limited* (19 October 1998), Appeal No. 98-230-D (A.E.A.B.) (“*Bildson*”); *Mizera et al. v. Director, Northeast Boreal and Parkland Regions, Alberta Environmental Protection*, re: *Beaver Regional Waste Management Services Commission* (21 December 1998), Appeal Nos. 98-231-98-234-D (A.E.A.B.) (“*Mizera*”); and *Vetsch v. Alberta (Director of Chemicals Assessment & Management Division)* (1997), 22 C.E.L.R. (N.S.) 230 (Alta. Env. App. Bd.), (*sub nom. Lorraine Vetsch et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection*) (28 October 1996), Appeal Nos. 96-015 to 96-017, 96-019 to 96-067 (A.E.A.B.).

by the approved project. Of course, at the end of the day, the Board, in its wisdom, may decide that it does not accept the *prima facie* case put forward by the appellant. By definition, *prima facie* cases can be rebutted....”<sup>3</sup>

[34] When assessing the directly affected status of an appellant, the Board looks at how the appellant will be individually and personally affected. The more ways in which the appellant is affected, the greater the likelihood of finding that person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person’s use of the area. The closer these elements are connected to the person (their proximity), the more likely the person is directly affected. The onus is on the appellant to present a *prima facie* case that he or she is directly affected.<sup>4</sup>

[35] The Court of Queen’s Bench in *Court*<sup>5</sup> stated an appellant only needs to show there is a potential for an effect on that person’s interests. This potential effect must still be within reason, plausible, and relevant to the Board’s jurisdiction for the Board to consider it sufficient to grant standing.

[36] In assessing the directly affected status of an appellant, the Board will look at the proximity of the effect of the proposed project on the appellant. The distance from an appellant’s property to the site of the proposed project is just one factor used to assess proximity. Proximity takes into account the number of steps required to link the appellant with the potential environmental effect caused by the project. The fewer steps required, the more likely the appellant is directly affected.

[37] In this case, the Approval allows for the expansion and maintenance of a boat launch. The Appellant argued the expanded boat launch will result in an increase in the number of boats using the lake, resulting in increased negative impacts to the water quality and riparian ecosystems. This, he says, would then impact his use and enjoyment of his lakeside property.

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<sup>3</sup> *Court v. Director, Bow Region, Regional Services, Alberta Environment* (2003), 1 C.E.L.R. (3d) 134 at paragraph 75 (Alta. Q.B.).

<sup>4</sup> See: *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraph 75, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

<sup>5</sup> *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

[38] There are a number of steps between the Appellant and the potential impact of the expanded boat launch. The Appellant lives more than a kilometre from the Sunbreaker Cove boat launch. The Appellant argued he would be affected by the deterioration of the water quality in Sylvan Lake caused by increased boat activities on the lake, which, in part, would result from the expanded boat launch. However, the Appellant did not provide any evidence to indicate that the expanded boat launch will actually lead to an increased number of boats on the lake. At this point, the increase in use is speculative. The Board cannot rely on a speculative event as a basis to find an appellant directly affected. There must be some evidence that the event could occur. Evidence was provided by the Appellant and Approval Holder that the level of use of the boat launch is limited by parking. Although the Appellant argued there will be increased parking available through the developments currently being considered by Lacombe County, there was no evidence provided to the Board that the developments would actually result in increased use of the boat launch.

[39] The Appellant argued the increased boat traffic would have a negative impact on the water quality. He stated he has seen an increase in boat use on the lake without the expansion of the boat launch. The Appellant called no independent witness to support his assertions. According to the Approval Holder, boaters are using an unofficial boat launch site beside the official site and they are using other unofficial sites at accessible areas around the lake. The Approval Holder explained how the expanded boat launch will actually result in a smaller footprint than that caused by the official and unofficial sites currently in use.

[40] The Approval allows for the expansion and maintenance of the boat launch. The Appellant did not express concerns as to the construction of the boat launch, expressly stating he has no concern with the boat launch being constructed at this site. His concerns relate to the effects that may be caused if there is an increase in the boat traffic. This is too remote from the actual Approval issued to be the basis for being directly affected.

[41] The Appellant expressed concern regarding the lack of progress at implementing the recommendations included in the Plan. The Board acknowledges the Appellant's concern and sees benefit in the communities surrounding Sylvan Lake working together to protect a valuable resource. The Board expected the Approval Holder and the Director would have more

information on the use of the boat launches along Sylvan Lake, and this may be valuable information to gather for planning efforts around Sylvan Lake.

[42] The Approval Holder referred to the Board's previous decision, Preliminary Motions: *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Canmore* (29 November 2004), Appeal Nos. 04-019 and 04-020-ID1 (A.E.A.B.) ("*Nault*"), in which the appellants were found to be directly affected. In that case, the appellants lived approximately 100 metres from the proposed boat launch along the Bow River in Canmore. There was no established boat launch at the site where the proposed boat launch was to be constructed. These facts distinguish *Nault* from the situation before the Board in this appeal.

[43] The Appellant has the onus to demonstrate he will be directly affected by the proposed project. He did not provide the evidence required to show there will be an increase in the number of boats on the lake that will negatively impact the quality of the lake water. Without some evidence that the increase will occur, the Board cannot grant standing. As the Appellant has not met the onus, the Board finds the Appellant is not directly affected and his appeal is dismissed.

### **III. STAY APPLICATION**

[44] Prior to the start of the preliminary motions hearing, the Board granted a temporary Stay pending the outcome of the motion regarding the Appellant's directly affected status. The temporary Stay was in effect until the close of the preliminary motions hearing.

[45] According to section 97(2) of EPEA, only a party, or a participant who has demonstrated a *prima facie* case of the likelihood of being granted standing, can make an application for a Stay. Section 97(2) of EPEA provides "The Board may, on the application of a party to a proceeding before the Board, stay a decision in respect of which a notice of appeal has been submitted...."



[46] For the reasons set out above, the Board has dismissed the appeal. Based on the requirements of section 97(2) and the decision of the Board regarding the Appellant's standing, the Board cannot consider the Stay application. Therefore, the temporary Stay is lifted.

#### **IV. DECISION**

[47] The Appellant did not provide sufficient evidence to show the expansion of the boat launch will directly affect him. Therefore, the Board finds the Appellant is not directly affected and his appeal is dismissed. Since a Stay application can only be brought by a party, the Board cannot consider the Stay application brought by the Appellant, and the temporary Stay is lifted.

Dated on October 18, 2010, at Edmonton, Alberta.

"original signed by"  
D. W. Perras  
Chair

"original signed by"  
Alan J. Kennedy  
Board Member

"original signed by"  
Alex G. MacWilliam  
Board Member