



ALBERTA
ENVIRONMENTAL APPEALS BOARD

2021 ABEAB 12

May 17, 2021

Via E-Mail

Ms. Antonietta Davis

[REDACTED]
(Appellant EAB 20-011 & 20-016)

Mr. William Hill

[REDACTED]
(Appellant EAB 20-012)

Ms. Anita Alexander

[REDACTED]
(Appellant EAB 20-013 & 014)

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(Intervenor)

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(Approval Holder)

Joe Tindall on behalf of
Everett and Bev Loney

[REDACTED]
(Intervenor)

Dear Ladies and Gentlemen:

Re: Decision* - Town of Blackfalds/Water Act Approval Nos. 00387959-00-00 & 00391359-00-00/Our File Nos.: EAB 20-011-014 & 20-016 (public file)

This is the decision and reasons of the Environmental Appeals Board (the Board) with respect to the requests by three intervenors to participate in the hearing of these appeals. This decision was made by Ms. Anjum Mullick, Panel Chair.

* Cite as: *Davis et al. v. Director, Regional Approvals, Regulatory Assurance Division – South, Alberta Environment and Parks, re: Town of Blackfalds* (17 May 2021), Appeal Nos. 20-011-014 and 016-ID2 (A.E.A.B.), 2021 ABEAB 12.

Decision

The application to intervene filed by Aurora Heights Management Ltd. (Aurora) is granted, in part. Aurora will be permitted to file a written submission in preparation for the hearing. **This written submission is due by 4:30 pm on May 28, 2021.** Aurora will be permitted to present oral evidence for 20 minutes at the start of the hearing, after the opening comments, and be subject to cross-examination by each of the Appellants for 10 minutes. Aurora will not be permitted to present opening comments, cross-examine other parties, or present closing comments, orally or in writing. The Board will provide a revised timetable for the hearing, under separate cover.

The application to intervene filed by Ms. Bev Loney and Mr. Everett Loney is granted, in part. Ms. and Mr. Loney will be permitted to provide a written submission only. Their written submission should include a map identifying the location of the project and the location of their property. **The written submission of Ms. and Mr. Loney is due by 4:30 pm on May 21, 2021.** Ms. and Mr. Loney will not be permitted to participate orally in any part of the hearing.

The application to intervene filed by Mr. Lorne Zaparniuk is denied. As a result, Ms. Zaparniuk will not be permitted to participate in the hearing.

Background

Sections 7 and 9 of the Environmental Appeal Board Regulation Alta. Reg. 114/93 (see Appendix) require the Board to provide the opportunity for persons to apply to intervene in the hearing of an appeal. Upon receiving these applications to intervene, the Board requests comments from the parties to the appeal as to whether the person applying to intervene should be allowed to intervene and how the person should be permitted to appeal.

The Board then considers these comments from the parties to the appeal and assesses the request to intervene in accordance with Rule 14 of the *Environmental Appeals Board Rules of Practice*. Rule 14 provides in part:

“As a general rule, those persons or groups wishing to intervene must meet the following tests:

- their participation will materially assist the Board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;
- the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent;
- the intervention will not repeat or duplicate evidence presented by other parties; and

- if the intervention request is late, there are documented and sound reasons why the intervenor did not earlier file for such status.”

Intervenor Applications

As is required by the Board’s legislation, on Thursday, April 29, 2021, the Board published its Notice of Hearing in the Red Deer Advocate, the Lacombe Express, and Central Alberta Life. On the same day, it was distributed on the Government of Alberta’s Online News Network. The Notice of Hearing invited any person who wished to make representations to the Board with respect to the hearing of these appeals to make an application in writing to the Board by May 6, 2021.

Aurora

On April 29, 2021, the Board received an application from Aurora. Aurora stated that it was directly and adversely affected by the appeals. Aurora explained that it

“...owns and operates a residential development that is part of the Greater Stormwater Management Plan which is incorporated in Approvals #00387959-00-00 [and #]00391359-00-00. These Approvals, which are the subject of the [appeals], are the last critical steps that will remove the remaining barriers that have virtually stopped our development from proceeding.”

Aurora states it “...supports the Town of Blackfalds application and approvals to establish a Storm Water Master Plan ... and to construct the permanent outfall trunk that will support future development.” Aurora continues stating: “Upon completion of the project, we will be able to apply to connect and operate our proposed storm water management facility which is desperately needed to permit much needed residential development.”

Aurora argues that there is “... a lot of misinformation on the impacts of water from the project on Lacombe Lake.” According to Aurora, the project “...will reduce runoff volumes and is *designed to improve and maintain water quality*. The Appellants’ comments regarding water quality concerns for downstream Lacombe Lake are based on a lack of understanding of the project...” (Emphasis in the original.) Aurora advised that they “...have retained experts to assist us in designing our redevelopment wetland/storm pond to stabilize and improve water quality and levels.” In this regard, Aurora attached a wetland assessment for their project, prepared by CPP Environmental, dated September 16, 2016.

Loney

On May 3, 2021, the Board received an application from Ms. Bev Loney and Mr. Everett Loney. The Loneys advised they own 25.11 acres within the Town of Blackfalds, between Highway 2A and C&E Trail, south of the Greystone Estates acreages. They advised that a small marshy area, approximately one-half acre in size, existed in the north end of their property when they purchased it in 1989. According to the Loneys, when the Town of Blackfalds began

developing the area in 2000, water accumulated in the marshy area. As a result, it is now approximately 8 acres in size and restricts access to the northern part of the land.

The Loneys' state, "If the Town of Blackfalds stormwater management system including the linear wetland system would prevent further accumulations of water on our property, then the plan should go forward with its approval and construction."

Zaparniuk

On May 6, 2021, the Board received an intervenor application from Mr. Lorne Zaparniuk. Mr. Zaparniuk advises that he is a landowner on Lake Lacombe and that he is "...concerned with pollutants from stormwater..." entering Lacombe Lake. He is also concerned with "...the lack of mitigation measures to deal with invasive species entering Lake Lacombe..." Mr. Zaparniuk notes, "Alberta Environment [and Parks] is very concerned about [invasive] species entering existing water bodies and many [water bodies] have been contaminated already." Mr. Zaparniuk states, "I feel we should do everything to preserve this wildlife reserve with varied and abundant birds (pelicans, etc.) feeding here and any invasive species could alter this fragile ecosystem."

Comments on Intervenor Applications

The Town of Blackfalds, the Director, Ms. Anita Alexander, and Ms. Antonietta Davis provided the Board with comments. The Board did not receive any comments from Mr. William Hill.

Town of Blackfalds

In response to the Board's request for comments on the intervenor applications, the Town of Blackfalds advised that Aurora "...appears to have material evidence and a tangible interest related to and relevant to the [a]ppeal." Further, "...Aurora's evidence does not appear to be the same as the current evidence before the Board."

With respect to Ms. Bev Loney and Mr. Everett Loney, the Town of Blackfalds states, "...their concerns appear to relate to specific drainage outside of the lake and area immediately in consideration before the Board, but may ultimately be impacted by the Approvals and in that regard are not duplicative."

With respect to Mr. Lorne Zaparniuk, the Town of Blackfalds "...notes that the concerns raised in his correspondence are echoed in the current appeals and there is no apparent new evidence alleged to or presented in his request for intervenor status." The Town notes "...Mr. Zaparniuk did not avail himself of the opportunity to appeal the Approvals..."

Director

The Director notes that Aurora "...may have evidence relevant to this appeal..." However, the Director states, "...it is not apparent their evidence will materially assist the Board or differ substantively from the information and argument put forward by the Town of Blackfalds."

With respect to Ms. and Mr. Loney, the Director states it is unclear whether the Loneys "...are seeking to participate in the hearing as intervenors, or if they simply wish to submit ... [their] letter to the Board for consideration." The Loneys' application "...does not indicate what information or evidence they could offer that experts of the parties will not provide."

With respect to Mr. Zaparniuk, the Director states, "Mr. Zaparniuk does not appear to have evidence or arguments that differ in a material way from the information being put forward by the Appellants, and his concerns appear duplicative of the Appellants' concerns."

The Director states that if any of the intervenors are allowed to intervene, they should be limited to providing "...brief written submissions only, to avoid delaying the hearing.

Ms. Alexander

Ms. Alexander "takes no position with respect to the applications to intervene of Lorne Zaparniuk and Everett and Bev Loney."

With respect to Aurora, Ms. Alexander argues "...the issues in these [a]ppeals deal with alleged errors and omissions in the Director's analysis of certain facts relevant to the Approvals...." Ms. Alexander continues that Aurora "...has not identified any legal argument pertaining to these issues that would differ from arguments that the Town of Blackfalds ... and the Director are capable of making." According to Ms. Alexander, Aurora "...does not identify any additional evidence that it intends to bring that would differ from evidence already in the possession of the Town and the Director." Ms. Alexander notes that Aurora "...appears to be primarily concerned with the impact the [a]ppeals may have on the timing of proceeding with their planned development." Given that Ms. Alexander's application for a stay was denied, Ms. Alexander states, "...the Town currently holds the necessary Approvals for the stormwater management system. Any delay in proceeding with the development is an issue between the Town and Aurora...."

Ms. Alexander accepts that Aurora has a tangible interest in the outcome of these appeals. However, Ms. Alexander notes that the Board has previously held that having a tangible interest in the outcome of the appeals is not determinative in granting intervenor status. Ms. Alexander is concerned the intervention will unnecessarily delay the appeal. Ms. Alexander notes the time for the "...oral hearing is very tight." Ms. Alexander states Aurora "...does not identify any additional evidence that it intends to bring that would differ from the evidence already in possession of the Town and the Director." Based on this, Ms. Alexander argues that Aurora's participation would be duplicative. Finally, if Aurora is granted permission to intervene, she requests permission to submit supplementary evidence to respond to Aurora and requests the opportunity to cross-examine Aurora's witnesses.

Ms. Davis

Ms. Davis argues "...that it is not appropriate to grant [Aurora] status as a participant in the appeal hearing." Ms. Davis continues that Aurora's "...arguments were based on the economic impact that the delay in the project has caused it, and the economic

consequences of the approval not being granted.” According to Ms. Davis, “...the matters before the appeal board relate to whether the legal and environmental requirements for having the stormwater management plan approved have not been met.” Ms. Davis states, “The economic impacts on [Aurora] of the approval not being granted do not speak in any way to whether or not the approval has met the proper environmental standards....”

Analysis

Aurora

The Board is of the view that Aurora has a tangible interest in these appeals. The fact that the nature of the interest is economic does not exclude Aurora from being a proper intervenor in these appeals. Aurora will be a user of the project if it proceeds, and therefore has a unique perspective to bring to the hearing of these appeals. Further, Aurora has been working in the area, developing the type of wetland used in the project, and therefore appears to have relevant evidence to bring to the Board. While allowing Aurora to participate in the hearing of these appeals will extend the hearing, the Board believes the information Aurora will present is worth extending the hearing by one hour.

Aurora will be permitted to intervene in the hearing. Its application is granted, in part. It will be permitted to provide a written submission for the hearing and speak to this written submission at the hearing.

Loneys

The Loneys are concerned about increased flooding of their land since the Town of Blackfalds began developing the area in 2000. The Loneys are hopeful the proposed stormwater management system will prevent further accumulations of water on their property. In the Board's view, the Loneys will provide unique evidence from a different perspective than the parties to the appeal. The Board also expects this evidence will be relevant to the issue of “cumulative environmental impacts of the activities authorized by the Approvals on Lacombe Lake.”

The Loneys' application to intervene is granted, in part. They will be permitted to file a written submission to be considered in the hearing of these appeals.

Zaparniuk

Mr. Zaparniuk expresses two concerns with the Town of Blackfalds project. The first is the potential for pollutants from stormwater entering Lacombe Lake. The second is the potential for invasive species entering Lacombe Lake.


The concern about potential pollutants entering Lacombe Lake is one of the main issues raised by the Appellants. As such, the Board is of the view that Mr. Zaparniuk's evidence on this issue would be duplicative. Furthermore, there is no suggestion that Mr. Zaparniuk's evidence would be of assistance to the Board in his application.

Regarding the concern about potential invasive species entering Lacombe Lake, the Board notes that this is a general concern within the province. However, this is not an issue raised by the Appellants, and therefore it is not an issue that is before the Board. It is not appropriate to allow intervenors to raise new issues to be considered in the hearing of an appeal. Further, if Mr. Zaparniuk wanted this issue to be included in the hearing of these appeals, he should have come forward as an appellant.

Therefore, Mr. Zaparniuk's application to intervene in the hearing of these appeals is denied.

We can be reached toll-free by first dialing 310-0000 followed by 780-427-6569 for Valerie Myrmo, Registrar of Appeals, 780-427-7002 for Denise Black, Board Secretary, and 780-427-4179 for Gilbert Van Nes, General Counsel and Settlement Officer. We can also be contacted via e-mail at valerie.myrmo@gov.ab.ca, denise.black@gov.ab.ca, and gilbert.vannes@gov.ab.ca.

Yours truly,



Gilbert Van Nes
General Counsel and
Settlement Officer

cc: Mr. Lorne Zaparniuk

The information collected by the Board is necessary to allow the Environmental Appeals Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of these appeals. The information you provide will be considered a public record.

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Appendix A – Legislation

The *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 provides:

- 7(1) ...[W]here the Board makes a determination to proceed with a notice of appeal, it shall
- (a) where the Board decides to conduct the hearing of the appeal by means of an oral hearing...
 - (ii) publish a notice containing the information specified in subsection (2) in any manner the Board considers appropriate...;
 - (b) where the Board decides to conduct the hearing of the appeal on the basis of written submissions...
 - (ii) publish a notice containing the information specified in subsection (2) in any manner that the Board considers appropriate.
- (2) A published notice referred to in subsection (1)(a)(ii) or (b)(ii) must contain the following:...
- (c) a statement that any person who is not a party to the appeal and wishes to make representations on the subject matter of the notice of appeal must submit a request in writing to the Board;
 - (d) the deadline for submitting a request in writing under clause (c);...
- 9(1) A request in writing referred to in section 7(2)(c) shall
- (a) contain the name, address and telephone number of the person submitting the request,
 - (b) indicate whether the person submitting the request intends to be represented by a lawyer or other agent and, if so, the name of the lawyer or other agent,
 - (c) contain a summary of the nature of the person's interest in the subject matter of the notice of appeal, and
 - (d) be signed by the person submitting the request.
- (2) Where the Board receives a request in writing in accordance with section 7(2)(c) and subsection (1), the Board shall determine whether the person submitting the request should be allowed to make representations in respect of the subject matter of the notice of appeal and shall give the person written notice of that decision.
- (3) In a notice under subsection (2), the Board shall specify whether the person submitting the request may make the representations orally or by means of a written submission.