



ALBERTA
ENVIRONMENTAL APPEALS BOARD

2021 ABEAB 14

May 31, 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)

Mr. Barry Robinson

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Mr. Myron Thompson

Chief Administrative Officer
Town of Blackfalds
Box 220
5018 Waghorn Street
Blackfalds, AB T0M 0J0
(Approval Holder)

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 a reconsideration request filed by the Director, Regional Approvals, Regulatory Assurance Division – South, Environmental and Parks (the Director), concerning the procedures for the hearing. This decision was made by Ms. Anjum Mullick, Panel Chair.

Hearing of these Appeals

The Board will hear these appeals on June 14 (8:00 am to approximately 5:20 pm), June 17 (8:00 am to approximately 6:05 pm), June 21 (8:00 am to approximately 5:30 pm), and June 22, 2021 (8:30 am to approximately 11:55 am).

* Cite as: *Davis et al. v. Director, Regional Approvals, Regulatory Assurance Division – South, Alberta Environment and Parks, re: Town of Blackfalds* (31 May 2021), Appeal Nos. 20-011-014 and 016-ID3 (A.E.A.B.), 2021 ABEAB 14.

Background

On April 30, 2021, three preliminary motions were filed on behalf of Ms. Anita Alexander. The two relevant motions were: (1) for additional time to cross-examine the Director and the Town of Blackfalds, and (2) to allow final arguments to be made in writing following the close of the oral part of the hearing.¹ In response to the motions, the Board: (1) granted the additional time for the cross-examination and extended the time for all parties, and (2) agreed to allow written closing arguments followed by an oral closing process that, among other things, provides the Board with the opportunity to ask questions.²

The Director now brings a reconsideration motion to revise the schedule for the hearing and return to the Board's usual practice of oral closing arguments. Ms. Alexander, Ms. Davis, and the Town provided comments in response. Mr. Hill did not provide any comments.

Revised Schedule

Specifically, concerning the amount of time allocated for the hearing, "...the Director submits the time allocated to cross-examine a Party should not significantly exceed that Party's time to give direct evidence."³ Further, the "...Director submits the Appellants' total time for giving evidence or cross-examining the other parties should not exceed the combined time of the Director and the Town for same."⁴ Finally, "The Board's usual practice in past hearings has been to allocate equal or less time to cross-examine a party as that party had to present direct evidence."⁵ The Town responded that it agreed with the Director.

The Director presented two options for the Board to consider; Option 1, reduce the Board's proposed schedule by 12 hours, and Option 2, reduce the Board's proposed schedule by 10 hours. Ms. Davis supports Option 1. The Town supports Option 2.

Ms. Alexander responded, stating, "Ms. Alexander agrees with the general proposition of the Director's letter that the Appellants and Respondents should be given roughly equal time to present direct evidence and cross-examine the opposing parties." Ms. Alexander continues, "However, it is difficult, at this preliminary stage, for the Appellant to accurately estimate the time required to cross-examine other parties. The Respondents have not yet indicated the number or identity of the witnesses they intend to call..." Ms. Alexander notes that she will require approximately 1 hour for the direct evidence and has requested 3 hours of cross-examination, in total, for the Respondents (the Director and the Town).

¹ See Preliminary Motions of Anita Alexander, Appellant, dated April 30, 2021, at paragraph 3.

² *Davis et al. v. Director, Regional Approvals, Regulatory Assurance Division – South, Alberta Environment and Parks, re: Town of Blackfalds* (12 May 2021), Appeal Nos. 20-011-014 and 016-ID2 (A.E.A.B.), 2021 ABEAB 11.

³ Director's Letter, dated May 14, 2021, page 1.

⁴ Director's Letter, dated May 14, 2021, page 1.

⁵ Director's Letter, dated May 14, 2021, page 1.

Based on these comments and a review of the submissions provided by the Appellants to date, the Board has revised the hearing schedule. A copy of the revised schedule is attached. In summary, the Board has provided 4 hours of direct evidence for the Appellants (in total, including the time allotted for rebuttal evidence) and 4 hours of direct evidence for the Respondents (in total). Further, the Board has provided 6 hours and 10 minutes for cross-examination for the Appellants and 6 hours of cross-examination for the Respondents. In the Board's view, this balances time for the Appellants and the Respondents for each segment of the hearing, taking into account what the Board has seen of the cases being presented by the Appellants. The time allotted is based on the Board's assessment of how long it will take each of the parties to present their case (through direct evidence, cross-examination, and rebuttal) based on the Board's experience.

Closing Arguments

With respect to closing arguments, the Director states he

"...has no objection to the Board's decision allowing the Parties to provide final written legal arguments at the close of, or following, the oral hearing. However, the Director requests that the Board reconsider its decision to establish a schedule to file further written submissions and to hold a second, separate hearing for oral closing arguments."⁶

The Director points to Rule 30 of the Board's Rules of Practice and argues the wording "shall be entitled" gives the "...Parties the *option* to file a brief at the end of an oral hearing."⁷ The Town supports the Director's argument that the oral arguments should be done at the closing of the oral hearing.

The Appellant, Ms. Alexander, "...agrees with the position of the Director that the parties can give brief closing arguments on the final day of the oral hearing and that the parties can opt to provide a final written brief to the Board on a date to be set by the Board."⁸ The Town "... agrees that [the closing arguments] can be scheduled at the conclusion of the final hearing date."⁹

Based on these comments and the Board's standard practice, the Board will conclude the oral hearing with oral closing arguments on the last day of the hearing. The Board

⁶ Director's Letter, dated May 14, 2021, page 2.

⁷ Director's Letter, dated May 14, 2021, page 3. Rule 30 of the Board's Rules of Practice provides: "At the close of the hearing and upon such terms as the Board may find reasonable, any Party to the proceedings shall be entitled to file a written brief, propose findings of fact and conclusions of law, or do both. At the close of the hearing, the Presiding Board Member will provide each Party with an opportunity to make closing remarks. Any brief, proposed findings of fact and conclusions of law, and closing remarks shall be included as part of the record."

⁸ Ms. Alexander's letter May 17, 2021, page 2.

⁹ Town's Letter, dated May 14, 2021, page 1.

anticipates these arguments will be on a separate day from the evidentiary part of the hearing. The Board is hopeful that scheduling the closing arguments on a separate day at the end of the hearing and the request that legal arguments be made in the written submissions for the hearing will obviate the need for written closing arguments. Notwithstanding, any of the parties are free to make an application to the Board to file a written closing brief after the close of the oral hearing.

Additional Matters

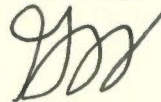
There are two additional matters the Board would like to address with the parties. The first matter is that the Board notes that counsel for Ms. Alexander has indicated there are a number of documents that he intends to put to the panel for the Director and the panel for the Town during cross-examination. The Board notes that in the past, parties have filed "aids to cross-examination" consisting of a collection of documents they wish to refer to during cross-examination. The Board has found that such aids to cross-examination are of great assistance to the Board and the other parties in following the cross-examination. The Board strongly encourages the filing of such aids to cross-examination in this case.

The second matter is also concerning documents. As this is a hearing by way of a video conference, it will be necessary for the documents to be "called up on the screen" as they are discussed. The Board wishes the parties to note that they will be responsible for such "sharing of documents." The Board will transfer control for the sharing of documents to the various parties during each stage of the hearing.

If there are any questions or concerns about the schedule for the hearing and closing arguments, they are due in writing to the Board by **4:30 pm on Thursday, June 3, 2021**.

I can be reached toll-free by first dialing 310-0000 followed by 780-427-4179 or via e-mail at gilbert.vannes@gov.ab.ca.

Yours truly,



Gilbert Van Nes
General Counsel and
Settlement Officer

Att.

cc: Mr. Ron Henschel, Aurora Heights Management Ltd.
Mr. Joe Tindall on behalf of Mr. Everett and Ms. Bev Loney

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.

M:\EAB\Appeals 2020\20-011 Town of Blackfalds 387959 (Davis)\Letter May 31 2021 Decision on Schedule, Closing Arguments.docx

DAY 1 - June 14, 2021	Allotted Time	Running Total	Start	End
Start Time		0:00		8:00 AM
Opening by Board	0:15	0:15	8:00 AM	8:15 AM
Opening Comments by Anita Alexander	0:05	0:20	8:15 AM	8:20 AM
Opening Comments by Anto Davis	0:05	0:25	8:20 AM	8:25 AM
Opening Comments by William Hill	0:05	0:30	8:25 AM	8:30 AM
Opening Comments by Town of Blackfalds	0:05	0:35	8:30 AM	8:35 AM
Opening Comments by AEP	0:05	0:40	8:35 AM	8:40 AM
Direct Evidence by Aurora Heights	0:20	1:00	8:40 AM	9:00 AM
Cross Exam Aurora by Alexander	0:10	1:10	9:00 AM	9:10 AM
Cross Exam Aurora by Davis	0:10	1:20	9:10 AM	9:20 AM
Cross Exam Aurora by Hill	0:10	1:30	9:20 AM	9:30 AM
Re-Direct Evidence by Aurora Heights	0:05	1:35	9:30 AM	9:35 AM
<i>Break</i>	0:10	1:45	9:35 AM	9:45 AM
Board Questions	0:05	1:50	9:45 AM	9:50 AM
Direct Evidence by Alexander	1:00	2:50	9:50 AM	10:50 AM
Cross Exam Alexander by Town	0:50	3:40	10:50 AM	11:40 AM
Cross Exam Alexander by AEP	0:50	4:30	11:40 AM	12:30 PM
Re-Direct Evidence by Alexander	0:05	4:35	12:30 PM	12:35 PM
<i>LUNCH</i>	1:00	5:35	12:35 PM	1:35 PM
Board Questions	0:20	5:55	1:35 PM	1:55 PM
Direct Evidence by Davis	1:00	6:55	1:55 PM	2:55 PM
<i>Break</i>	0:10	7:05	2:55 PM	3:05 PM
Cross Exam Davis by Town	0:50	7:55	3:05 PM	3:55 PM
Cross Exam Davis by AEP	0:50	8:45	3:55 PM	4:45 PM
Re-Direct Evidence by Davis	0:05	8:50	4:45 PM	4:50 PM
<i>Break</i>	0:10	9:00	4:50 PM	5:00 PM
Board Questions	0:20	9:20	5:00 PM	5:20 PM
End Day 1				

DAY 2 - June 17, 2021	Allotted Time	Running Total	Start	End
Start Time		0:00		8:00 AM
Opening by Board	0:05	0:05	8:00 AM	8:05 AM
Direct Evidence by Hill	1:00	1:05	8:05 AM	9:05 AM
<i>Break</i>	0:10	1:15	9:05 AM	9:15 AM
Cross Exam Hill by Town	0:50	2:05	9:15 AM	10:05 AM
Cross Exam Hill by AEP	0:50	2:55	10:05 AM	10:55 AM
Re-Direct Evidence by Hill	0:05	3:00	10:55 AM	11:00 AM
<i>LUNCH</i>	1:00	4:00	11:00 AM	12:00 PM
Board Questions	0:20	4:20	12:00 PM	12:20 PM
Direct Evidence by Town	2:00	6:20	12:20 PM	2:20 PM
<i>Break</i>	0:10	6:30	2:20 PM	2:30 PM
Cross Exam by Alexander	1:30	8:00	2:30 PM	4:00 PM
Cross Exam by Davis	0:45	8:45	4:00 PM	4:45 PM
Cross Exam by Hill	0:45	9:30	4:45 PM	5:30 PM
Re-Direct by Town	0:05	9:35	5:30 PM	5:35 PM
<i>Break</i>	0:10	9:45	5:35 PM	5:45 PM
Board Questions	0:20	10:05	5:45 PM	6:05 PM
End Day 2				

DAY 3 - June 21, 2021	Allotted Time	Running Total	Start	End
Start Time		0:00		8:00 AM
Opening by Board	0:05	0:05	8:00 AM	8:05 AM
Direct Evidence by AEP	2:00	2:05	8:05 AM	10:05 AM
<i>Break</i>	0:10	2:15	10:05 AM	10:15 AM
Cross Exam by Alexander	1:30	3:45	10:15 AM	11:45 AM
Cross Exam by Davis	0:45	4:30	11:45 AM	12:30 PM
Cross Exam by Hill	0:45	5:15	12:30 PM	1:15 PM
Re-Direct by AEP	0:05	5:20	1:15 PM	1:20 PM
<i>LUNCH</i>	1:00	6:20	1:20 PM	2:20 PM
Board Questions	0:20	6:40	2:20 PM	2:40 PM
Rebuttal Evidence by Alexander	0:30	7:10	2:40 PM	3:10 PM
Cross Exam Alexander by Town	0:15	7:25	3:10 PM	3:25 PM
Cross Exam Alexander by AEP	0:15	7:40	3:25 PM	3:40 PM
Re-Direct by Alexander	0:05	7:45	3:40 PM	3:45 PM
<i>Break</i>	0:10	7:55	3:45 PM	3:55 PM
Board Questions	0:05	8:00	3:55 PM	4:00 PM
Rebuttal Evidence by Davis	0:15	8:15	4:00 PM	4:15 PM
Cross Exam Davis by Town	0:10	8:25	4:15 PM	4:25 PM
Cross Exam Davis by AEP	0:10	8:35	4:25 PM	4:35 PM
Re-Direct by Davis	0:05	8:40	4:35 PM	4:40 PM
Board Questions	0:05	8:45	4:40 PM	4:45 PM
Rebuttal Evidence by Hill	0:15	9:00	4:45 PM	5:00 PM
Cross Exam Hill by Town	0:10	9:10	5:00 PM	5:10 PM
Cross Exam Hill by AEP	0:10	9:20	5:10 PM	5:20 PM
Re-Direct by Hill	0:05	9:25	5:20 PM	5:25 PM
Board Questions	0:05	9:30	5:25 PM	5:30 PM
End Day 3				

DAY 4 - June 22, 2021	Allotted Time	Running Total	Start	End
Start Time		0:00		8:30 AM
Opening by Board	0:05	0:05	8:30 AM	8:35 AM
Closing Comments by Alexander	0:20	0:25	8:35 AM	8:55 AM
Questions by Board	0:05	0:30	8:55 AM	9:00 AM
Closing Comments by Davis	0:20	0:50	9:00 AM	9:20 AM
Questions by Board	0:05	0:55	9:20 AM	9:25 AM
Closing Comments by Hill	0:20	1:15	9:25 AM	9:45 AM
Questions by Board	0:05	1:20	9:45 AM	9:50 AM
<i>Break</i>	0:10	1:30	9:50 AM	10:00 AM
Closing Comments by Town	0:30	2:00	10:00 AM	10:30 AM
Questions by Board	0:05	2:05	10:30 AM	10:35 AM
Closing Comments by AEP	0:30	2:35	10:35 AM	11:05 AM
Questions by Board	0:05	2:40	11:05 AM	11:10 AM
Final Comments by Alexander	0:10	2:50	11:10 AM	11:20 AM
Questions by Board	0:05	2:55	11:20 AM	11:25 AM
Final Comments by Davis	0:10	3:05	11:25 AM	11:35 AM
Questions by Board	0:05	3:10	11:35 AM	11:40 AM
Final Comments by Hill	0:10	3:20	11:40 AM	11:50 AM
Questions by Board	0:05	3:25	11:50 AM	11:55 AM
End of Day 4 - End of Oral Hearing				