

**ALBERTA
PUBLIC LANDS APPEAL BOARD**

**Decision
Notice of Discontinuance**

October 21, 2014

IN THE MATTER OF section 211, and 217 of the
Public Lands Administration Regulation, A.R. 187/2011

-and-

IN THE MATTER OF an appeal by Mark Warner,
and filed with the Public Lands Appeal Board as PLAB 14-0010.

Cite as: *Warner v. Alberta (Environment and Sustainable Resource Development), 2014 A.P.L.A.B. 14-0010*

Solicitors of Record:

Andrew Bachelder on behalf of the Public Lands Appeal Board

Introduction

This is a decision regarding PLAB 14-0010, an appeal filed by Mr. Mark Warner (the “Appellant”) and the applicability of section 217 of the Public Lands Administration Regulation (PLAR).

Facts

The Appellant, as the holder of GRL 790176, appealed the non-renewal of the grazing lease, which was communicated to him by way of registered letters dated September 12, 2013 and October 24, 2013. In the October 24, 2013 letter the right to appeal to the Public Lands Appeal Board was specified. The Board received a Notice of Appeal from the Appellant on September 3, 2014, which was dated September 2, 2014. The Notice of Appeal did not include the October 24, 2013 letter and the Appellant indicated that he did not have a copy of it. The Board requested the letter from the Director and received a copy on September 17, 2014. As the date of Notice of Appeal was significantly beyond the 20 and 45 day time limitation specified in section 217 of the Public Lands Administration Regulation, the Board asked the Appellant to provide submissions on the following issues:

Why the appeal was filed outside the 20 day time limit;

(if applicable) Why the Board should apply a 45 day time limit; and

Why it would not be contrary to the public interest to extend the time for service of this Notice of Appeal.

The Appellant was given until by September 26, 2014, to provide the submission, however, given that the Appellant is a farmer and was actively involved in harvest at the time of the due date the Board, at the Appellant’s request, extended the deadline to October 3, 2014. Although the submissions were not received by the Board until October 15, 2014, the Board accepts the submission and extends the deadline accordingly.

Appellant’s Submission

The Appellant does not address the first two issues regarding the 20 day and 45 day time limitation. Regarding issue three the Appellant states: “I don’t think it would be against public

interest to uncover a whole lot of wrongdoings. I and many others who have been treated in a similar manner would not object to this appeal.”

Analysis

The Appellant appeals a decision made by Jeff Watson, Dispositions and Approvals Section (Director), dated October 24, 2013. The decision letter by the Director Is a Notice of Intent Not to Renew. While this may be an appealable issue, the Appellant did not file a Notice of Appeal until September 3, 2014, despite having been advised in the decision letter of his right to do so. Before the Board can proceed with an appeal it must first determine if the Notice of Appeal meets the requirements under section 217(1) of the Public Lands Administration Regulation. This section states:

Service of Notice of Appeal

217(1) A Notice of Appeal must be served on the Appeals Coordinator within

- (a) 20 days after the Appellant received, became aware of or should reasonably have become aware of the decision objected to, or
 - (b) 45 days after the date the decision was made,
- whichever elapses first.

The difference between the date of the decision letter and the date of the filing of the Notice of Appeal is 314 days. Section 217(2) of PLAR provides that the Appeals Coordinator may extend the period for the filing of a Notice of Appeal:

(2) The Appeals Coordinator may, either before or after the expiry of a period described in subsection (1)(a) or (b), extend the time for service of a Notice of Appeal if, in the opinion of the Appeals Coordinator, it is not contrary to the public interest to do so.

The test provided by the legislation for extending the period to serve a Notice of Appeal on the Appeals Coordinator is whether “it is not contrary to the public interest to do so” in the opinion of the Appeals Coordinator.

What exactly does “public interest” mean? It is a difficult concept to define, but noted administrative law specialists, Robert W. Macaulay and James L.H. Sprague, have stated:

The concept of doing something in the “public interest” refers to actions or decisions which are seen in the context of the spirit and intent of the legislation granting the authority as resulting in the good, or the benefit, or the well-being, of the public (to use different words to convey essentially the same meaning). Beyond that the term does not have a specific meaning but takes its parameters from the legislative context in which it is found. The application of the phrase involves the value judgment, or discretion, of the decision-maker that the thing being done will be, in the context of the relevant legislation, to the benefit of the public.

Macaulay and Sprague, Practice and Procedure before Administrative Tribunals, 8.2.

To put it in plain English, the public interest must be viewed with the intent of the legislation and the benefit of the public in mind.

The intent of the legislation in placing time limitations on the filing of a Notice of Appeal is to prevent the abuse of the appeal system by the filing of appeals long after the appealable event occurred. In the Public Lands Administration Regulation, this is balanced by allowing the Appeals Coordinator to exercise discretion and allow late filing of an appeal where the circumstances are such that an injustice would occur otherwise. These include situations where an Appellant was unaware of their right to appeal, or experienced other circumstances which prevented them from filing an appeal. The longer the period between the decision letter and the filing of a Notice of Appeal, the greater the burden on the Appellant to prove that acceptance of the Notice of Appeal would not be against the public interest.

Decision

After considering the submission of the Appellant, the Appeals Coordinator declines to exercise discretion to extend the time for service of the Notice of Appeal for the following reasons:

1. A period of time significantly longer than the 20 and 45 days provided for in section 217(1) of PLAR has passed since the Appellant became aware of the decision to not renew GRL 790176.
2. The Appellant was aware of his right to appeal shortly after October 24, 2013, yet an appeal was not filed until September 3, 2014.
3. The Appellant did not provide any relevant reasons as to why the appeal was filed so late.

The Public Lands Appeal Board cannot accept the appeal as it does not comply with the requirements of Section 217 of the Public Lands Administration Regulation.

The appeal is dismissed.