Appeal Nos. 01-045, 046 and 047-D

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – August 1, 2001

IN THE MATTER OF Sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act,* S.A. 1992, c. E-13.3 and section 115 of the *Water Act*, S.A. 1996, c. W-3.5;

-and-

IN THE MATTER OF appeals filed by Mr. I. Samuel Kravinchuk on behalf of Mr. James Paron, by Mr. David Doull, and by Mr. David Doull on behalf of Mr. Dan Sorochan with respect to Approval 00137322-00-00 issued under the *Water Act* to Parkland County by the Director, Environmental Service, Northern East Slopes Region, Alberta Environment.

Cite as: *Paron et al.* v. *Director, Environmental Service, Northern East Slopes Region, Alberta Environment*, re: *Parkland County*.

PRELIMINARY MEETING
BY WRITTEN SUBMISSION ONLY BEFORE

William A. Tilleman, Q.C., Chair

PARTIES

Appellants:	Mr. David Doull, Mr. James Paron and Mr. Dan Sorochan, represented by Mr. David Doull.
Director:	Mr. Ed Hoyes, Director, Environmental Service, Northern East Slopes Region, Alberta Environment, represented by Mr. William McDonald, Alberta Justice.
Approval Holder:	Parkland County, represented by Mr. Jim Simpson.

EXECUTIVE SUMMARY

Mr. Paron, Mr. Doull and Mr. Sorochan (the "Appellants") are lakefront property owners on Lake Wabamun. Parkland County received an Approval under the *Water Act* for the cutting of weeds and the redevelopment of Ascot Beach on Lake Wabamun. The Appellants filed appeals opposing this Approval.

The reasons for their appeals are: (1) they object to various decisions made by Parkland County under the *Municipal Government Act*, including how municipal property taxes are spent and how development decisions are made; (2) that Parkland County should not have been granted the Approval because individual property owners have been turned down for similar approvals in the past; and (3) the work authorized under the Approval will result in an increased number of people using the area.

The Board reviewed these arguments and concluded that the concerns raised by the Appellants are too remote and relate to non-environmental consequences of the Approval. These concerns do not demonstrate that the Appellants are directly affected. Therefore, the Board dismisses these appeals.

TABLE OF CONTENTS

I. BACKGROUND

[1] On April 23, 2001, the Director, Environmental Service, Northern East Slopes Region, Alberta Environment (the "Director") issued Approval 00137322-00-00 (the "Approval") to Parkland County (the "Approval Holder") authorizing weed control and the re-establishment of Ascot Beach at SW 09-053-04-W5M on Lake Wabamun, near the Village of Wabamun, Alberta.

[2] The Environmental Appeal Board (the "Board") received Notices of Appeal from Mr. I. Samuel Kravinchuk on behalf of Mr. James Paron on May 4, 2001, from Mr. David Doull on May 7, 2001, and from Mr. David Doull on behalf of Mr. Dan Sorochan on May 7, 2001 (collectively the "Appellants"). The Notices of Appeal advised that Mr. David Doull would be representing all of the Appellants in this matter.

[3] The Board acknowledged the appeals on May 7, 2001 and requested that the Director provide copies of the records (the "Record") relating to the appeals. The Board also requested the parties provide comments, by May 15, 2001, on whether the Appellants are directly affected by the Approval as required by section 115(1) of the *Water Act*, S.A. 1996, c. W-3.5. Upon receiving comments, the Board advised that it would determine the status of the appeals.

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

[5] On May 14, 2001, the Director advised that it was waiting for the Records and requested additional time to review the Records and provide comments on whether the Appellants were directly affected. A request for an extension was also received from Mr. Doull in a letter of May 15, 2001. The extension was granted to May 18, 2001.

[6] The Board received letters from the Appellants, the Director, and the Approval Holder in relation to the directly affected issue.

[7] In the Director's letter of May 15, 2001, he advised that "…each Appellant must demonstrate some environmental effect that arises from this project before they can be found to have been directly affected and entitled to appeal. The Notices of Appeal do not contain sufficient information for further comment."

[8] Mr. Doull advises in his letter of May 18, 2001, received on May 22, 2001, that the "…beach conditions at these two locations is typical of all the property along the northshore …[and that w]e were not given any opportunity to provide comments with respect to the above projects." (Emphasis removed.) Mr. Doull also states that the Appellants live in close proximity to the projects. Mr. Doull states that:

> "…property owners have always paid premium tax dollars and we find it quite frustrating that our tax dollars are being used for these projects, and that Alberta Environment did not ensure that all property owners in the area were properly informed about these projects. Many lakefront property owners have wanted to do similar work in the past and they have been turned down, principally on the issue of destruction of fish habitat." (Emphasis removed.)

He goes on to state that "… it appears that Alberta Environment has double standards being that they are willing to look the other way on the fish habitat issue for the Parkland County, but if it was a private individual they would not." (Emphasis removed.) He also contends that with the promotion of these areas, including the re-establishment of a boat launch and campground sites, will bring about an increase in traffic, crime and noise, hence, issues of safety. Mr. Doull finds the Approval unacceptable for the stated reasons and citing that the Appellants were not personally contacted during the review and requests that "…the Approval be cancelled until there is legislation in place so that anyone applying to do similar work can do so with minimal effort." Although Mr. Doull requests that the Approval be cancelled, he states, with respect to his effort to undertake similar work, that "…we have a lot of difficulty with the idea that we have to go through a rigorous and expensive application/approval process to clean-up a mess that was created by Alberta Environments [sic] mismanagement…."

[9] The Approval Holder, in its letter of May 18, 2001, stated that the underlying issue is that the Appellants' appeals:

> "…appear to be based on their feelings that Parkland County should not get a permit for beach restoration if they cannot do so personally and that non-lake front owners are the only beneficiaries of this proposed work. Individuals are also

> allowed to apply for similar works under the *Water Act* and the public, including both lakefront owners and non-lakefront owners, will be able to use the proposed restored beach area for their enjoyment."

The Approval Holder does not believe the Appellants are directly affected.

[10] The Board requested that the Appellants provide comments in response to the Director and the Approval Holder's letters by May 29, 2001 and advised that it would then make a decision on the directly affected issue.

[11] On May 23, 2001, the Director advised that he was having difficulty compiling the Records and advised that the Board would be in receipt of the Records by May 25, 2001. In response to the Director's letter and Mr. Doull's telephone call to the Board office, the Board extended the May 29, 2001 deadline for the Appellants' submission to June 4, 2001. The Records were received on May 25, 2001, and a copy was forwarded to the Appellants and Approval Holder.[1]

[12] The Appellants' final submission, which consisted of a 2-page letter to the Board and 39 pages of attachments, was received on June 11, 2001. The attachments are principally documents already included in the Board's file. In the final submission, the Appellants argue: (1) that the Approval Holder did not address the issue of directly affected in its submission, (2) that the Approval was based on incomplete information, (3) the Approval Holder and the Director have not shown concern for the Appellants' interests, (4) that the Director should not be allowed to object to the Appellants' attempt to "… argue the contents of the appeal…", (5) that the Director should not be allowed to answer the questions that should be answered by the Approval Holder, (6) they are "…puzzled as to why no information is available with respect to certain questions they have posed…", and (7) that they have requested copies of similar applications in the area for comparison purposes and have not been given copies. The

---

[1] In letters received on May 30 and 31, 2001 by the Board, the Appellants requested further documentation from the Director and, hence, requested an extension of the June 4, 2001 deadline for the Appellants' submission. In reference to the Appellants' request for copies of plans, the Board advised on May 30, 2001 that the plans were contained in the Record and also attached a copy of the requested plan to the Board's letter for their reference. In reference to the Appellants' further request for documentation, the Board, on May 31, 2001, requested the other parties to the appeals provide their comments by June 4, 2001, with the final submission due from the Appellants on June 11, 2001. The Director responded on June 5, 2001 to the Appellants' issues and no response was received from the Approval Holder.

Appellants conclude that the "…approval should be cancelled unless the public can access and use 'Alberta Environment Resources' like the Parkland County has to secure this approval."

[13] Further correspondence was received from the Appellants on June 18 and 19, 2001, addressed to the Honourable Lorne Taylor, Minister of Environment, and a letter to the Board attaching a newspaper article. The Board acknowledged the letters on June 20, 2001. A letter from the Appellants addressed to Dr. Gloria Keays was also forwarded to the Board and acknowledged on June 22, 2001. The Board also received a further letter from the Appellants dated June 23, 2001, as well as a newspaper clipping dated July 26, 2001.

[14] This information was received after the deadline for submission had passed and was in addition to the submissions contemplated in the directions from the Board. While it is under no obligation to accept these submissions, the Board decided to keep these submissions in order to give the Appellants every opportunity to state their case. The Board wishes to make it clear that this approach should not be viewed as a precedent and the Board would normally not consider such additional submissions. In fact, sending in such additional information contravenes the Board's direction and is unfair to the other parties who did not have the same opportunity. However, given the Board's disposition of the matter neither the Director nor the Approval Holder are prejudiced by this additional information.

II. ANALYSIS

A. ISSUE

[15] The only issue to be dealt with at this time is to determine whether the Appellants are directly affected within the meaning of section 115(1)(a) of the *Water Act*, and therefore, have standing to bring these appeals. Specifically, section 115(1)(a) of the *Water Act* provides:

> "A notice of appeal under this Act may be submitted to the Environmental Appeal Board by the following persons in the following circumstances:
>
> (a) if the Director issues or amends an approval, a notice of appeal may be submitted
>
> (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected

> by the Director's decision, if notice of the application or proposed changes was previously provided under section 108…."

[16] The *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3 ("EPEA") has the same "directly affected" test to determine standing. It is found in section 84 of EPEA.[2] The Board has dealt with the "directly affected" test under EPEA on numerous occasions and is of the view that the cases under EPEA provide significant guidance in applying the test under the *Water Act*.

B. CASES

[17] First, there is no simple test to determine whether a person is directly affected. As stated in *Wessley*,[3] this determination must be made on a case by case basis, taking into account the particular facts and circumstances of each appeal.

[18] Second, in *Kostuch*[4] the Board reviewed the principles and authorities concerning the meaning of directly affected. The Board stated that the word "directly" requires an appellant to establish that a direct personal or private interest of an economic, environmental or other

---

[2] For example, section 84(1)(a) of EPEA provides:

> "84(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:
>
> (a) where the Director
>
> (i) issues an approval,
>
> (ii) makes an amendment, addition or deletion pursuant to an application under section 67(1)(a), or
>
> (iii) makes an amendment, addition or deletion pursuant to section 67(3)(a),
>
> a notice of appeal may be submitted
>
> (iv) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 70 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 69(1) or (2), or
>
> (v) by the approval holder or by any person who is directly affected by the Director's decision, in a case where no notice of the application or proposed changes was provided by reason of the operation of section 69(3)…."

[3] *Fred J. Wessley* v. *Director, Alberta Environmental Protection* (February 2, 1994), Appeal No. 94-001 (A.E.A.B.).

[4] *Kostuch* v. *Alberta (Director, Air & Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (NS) 246 (A.E.A.B.).

nature is likely to be impacted in some rationally connected way by the Approval in question. Generalized concerns or grievances will not be sufficient. The Board concluded its analysis by stating:

> "Two ideas emerge from this analysis about standing. First, the possibility that any given interest will suffice to confer standing diminishes as the causal connection between an approval and the effect on that interest becomes more remote. This first issue is a question of fact, i.e., the extent of the causal connection between the approval and how much it affects a person's interest. This is an important point; the Act requires that individual appellants demonstrate a personal interest that is directly impacted by the approval granted. This would require a discernible effect, i.e., some interest other than the abstract interest of all Albertans in generalized goals of environmental protection. 'Directly' means the person claiming to be 'affected' must show causation of the harm to her particular interest by the approval challenged on appeal. As a general rule, there must be an unbroken connection between one and the other.
>
> Second, a person will be more readily found to be 'directly affected' if the interest in question relates to one of the policies underlying the Act. This second issue raises a question of law, i.e., whether the person's interest is supported by the statute in question. The Act requires an appropriate balance between a broad range of interests, primarily environmental and economic."[5]

[19] Third, in *Boucher*[6] we found that the appellant was not directly affected because his concerns related to remote, non-environmental consequence of issuing an approval. Specifically, the argument put forward by the appellant in *Boucher* was that he was directly affected by the water transmission line because it was paid for by municipal taxes and he pays municipal taxes. Specifically, we held:

> "…that the appellants do not have a substantial interest in the outcome of this proposed water transmission line that surpasses the common interest of all residents in the ID who will be affected by this approval. To be directly affected by this project, the appellants must show some special indicia of environmental effect that will directly be felt by them -- as opposed to the residents of the ID at large. Showing special indicia depends upon the nature of the causal connection between the project appealed and the effect upon the complaining party. It is possible that concerns over economic matters may be relevant in establishing a causal connection with the project appealed, but there must *first* be an

---

[5] *Ibid*., at paragraphs 34 to 35. This approach was affirmed by the Alberta Court of Queen's Bench in *Kostuch* v. *Alberta (Director, Air & Water Approvals Division, Environmental Protection*) (1997) 21 C.E.L.R. (N.S.) 257 at paragraphs 25 to 26 (Alta.Q.B.).

[6] *Maurice Boucher v. Director, Environmental Protection* (February 2, 1994), Appeal No. 93-004 (A.E.A.B.).

environmental effect that is directly felt by the appellants."[7]

C. THESE APPEALS

[20] In summary, the Appellants' concerns are: (1) that they object to decisions made by the Approval Holder under the *Municipal Government Act*, S.A. 1994, c.M-26.1 ("MGA"), including how municipal property taxes are spent and how development decisions are made; (2) that the Approval Holder should not have been granted the Approval because individual property owners have been turned down for similar approvals in the past; and (3) the work authorized under the Approval will result in an increased number of people using the area. In the Board's view, taxes and public beach development and use relate to remote and, and for the most part, non-environmental consequences of the Approval. Therefore, they do not demonstrate that the Appellants are directly affected.

[21] Principally, the Appellants are concerned about the manner in which the Approval Holder, the local municipality, makes decisions and represents (or from the perspective of the Appellants – fails to represent) their interests in municipal decision-making. This concern is presented repeatedly throughout their submissions, and is expressed most clearly in their letter to the Minister of Municipal Affairs that is attached to their rebuttal submission. This is a political concern: it is *not* environmental concern. As such, this concern has no relevant place before the Board. Expressing a political concern about the manner in which the Approval Holder makes decisions does *nothing* to demonstrate that the Appellants are directly affected within the meaning of the *Water Act* – it does not demonstrate a direct, proximate, and closely held rational connection between the Approval and related environmental consequences.

[22] The Appellants are also concerned that the Approval Holder has been able to obtain an Approval to cut weeds and carry out beach restoration, while the Appellants have been unable to obtain a similar approval to carry out such work on their own property. While this argument does go to matters that are properly before the Board – the decision-making role of the Director – it does not demonstrate that the Appellants are directly affected, though the are probably generally affected by the Approval. But, the Appellants have not demonstrated that they are impacted by the decision to issue the Approval in a different way than any other

---

7 *Ibid*., at pages 5 to 6.

lakefront property owner anywhere in Alberta that have been refused a similar approval. The Appellants have not demonstrated a unique interest that would make them entitled to appeal this decision.

[23] Finally, the Appellants argue that the work authorized by the Approval will result in an increased number of people using the area for recreational purposes, which will in turn will have a negative impact on the Appellants through such things as traffic, crime, and noise. Again, this argument does not demonstrate a proximate and rational connection between the work carried out under the Approval and the impacts. It is not the cutting of weeds or the restoration of the beach that may cause traffic, crime, or noise. These things have no direct connection. Rather, the traffic, crime, or noise may be caused by the *use* of the area that is going to be authorized by the Approval Holder – a use authorized under the MGA, not under EPEA or the *Water Act*. This point is demonstrated by the fact that the Appellants themselves wish to undertake similar work. No one would suggest if the Appellants were granted a similar approval that their neighbours would be subject to increase traffic, crime or noise.

[24] Beyond these arguments, the Appellants have not presented any evidence – beyond a bare statement that they live in proximity to the proposed work – which speaks to the environmental impacts of the work authorized under the Approval. The have failed to present facts which demonstrate that they are directly effected. As a result, the Appellants have failed to discharge the onus that is on them to demonstrate that they are directly affected.

III. DECISION

[25] For the reasons discussed, the Appellants are not directly affected within the meaning of the section 115 of the *Water Act*. Therefore, pursuant to section 87(5)(a) of EPEA, the Board dismisses the appeals.

Dated on August 1, 2001, at Edmonton, Alberta.

"original signed by"

William A. Tilleman, Q.C.