



# Environmental Appeal Board

**Citation:** *Vintage Views Developments Ltd. & John Aantjes v. Director, Environmental Management Act*, 2025 BCEAB 14

**Decision No.:** EAB-EMA-23-A014(a)

**Decision Date:** 2025-04-10

**Method of Hearing:** Conducted by way of written submissions concluding on October 1, 2024

**Decision Type:** Summary Dismissal

**Panel:** Cynthia Lu, Panel Chair

**Appealed Under:** *Environmental Management Act*, S.B.C. 2003, c. 53

**Between:**

Vintage Views Developments Ltd. & John Aantjes

**Appellants**

**And:**

Director, *Environmental Management Act*

**Respondent**

**Appearing on Behalf of the Parties:**

For the Appellants: Ronald J. Obirek

For the Respondent: David Brownell  
June Ling

# SUMMARY DISMISSAL

## INTRODUCTION

[1] Vintage Views Developments Ltd. and John Joseph Aantjes (the “Appellants”) appeal a Determination of Administrative Penalty (the “Determination”) made by the Director (the “Respondent”), *Environmental Management Act*, S.B.C. 2003, c. 53 (the “Act”), of the Ministry of Environment and Parks<sup>1</sup> (the “Ministry”) on June 7, 2023. Mr. Aantjes is the principal behind Vintage Views Developments Ltd., which owns and operates a municipal wastewater collection and treatment system for a residential development near Okanagan Falls, BC. The Determination was issued for multiple contraventions of the *Municipal Wastewater Regulation* which occurred between 2020 and 2022. The Determination levies an administrative penalty of \$197,500.

[2] The Appellants filed a notice of appeal on July 7, 2023, to the Environmental Appeal Board (the “Board”). The Board received the notice of appeal and appeal filing requirements on July 12, 2023. Between July 12, 2023, and September 24, 2024, the Board engaged with the parties in pre-hearing correspondence, pre-hearing conferences, and made preliminary rulings regarding this appeal.

[3] On September 24, 2024, the Board requested written submissions from the parties on whether to summarily dismiss the appeal under section 31(1)(e) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the “ATA”). Section 31(1)(e) of the ATA gives the Board authority to dismiss the appeal if “the applicant failed to diligently pursue the application or failed to comply with an order of the tribunal.” In accordance with section 31(2) of the ATA, before dismissing an appeal under section 31(1), the Board must give the applicant an opportunity to make written submissions or otherwise be heard.

[4] The Board received the Appellants’ submissions on September 27, 2024, and the Respondent’s submissions on October 1, 2024. The Appellants request amendments to the appeal timelines. The Respondent asks the Board to dismiss the appeal under sections 18 and 31 of the ATA. However, the Board did not seek submissions on any possible dismissal under section 18. As a result, I will not address that requested remedy further in this decision.

## ISSUE

[5] The issue before me is whether the appeal should be summarily dismissed under section 31(1)(e) of the ATA. This requires me to address whether the Appellants failed to diligently pursue the appeal or failed to comply with an order of the Board.

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<sup>1</sup> Known as the Ministry of Environment and Climate Change Strategy at the time of the Determination.

## BACKGROUND

[6] The Appellants filed a notice of appeal on July 7, 2023. The Board confirmed receipt on July 13, 2023. Pre-hearing conferences (“PHCs”) occurred on September 14, 2023, and November 1, 2023. During this period, the parties engaged in voluntary document disclosure. On December 15, 2023, the Appellants wrote to the Board to confirm receipt of the Respondent’s documents and noted that a request for further documents may be made in due course. The Appellants also requested to enter an alternate dispute resolution process or facilitated settlement discussion.

[7] On December 20, 2024, the Board set a deadline for voluntary document disclosure of January 29, 2024, and asked parties to confirm whether they agree to participating in a facilitated settlement discussion. On January 29, 2024, the Respondent advised that they do not consent to a facilitated settlement discussion.

[8] On January 29, 2024, the Appellants asked for an extension until March 1, 2024, to request further documents from the Respondent through the document disclosure process. On February 5, 2024, the Board denied the Appellants’ request for an extension to the document disclosure process because the Appellants had failed to provide adequate reason to the Board. Neither party applied to the Board for document production.

[9] Next, the Board asked parties to make submissions on whether the matter should be heard by a method other than written hearing. The Appellants maintained their request for an oral hearing. The Respondent submitted that a written hearing was appropriate. In a letter to the parties on April 4, 2024, the Board communicated its preliminary ruling that the hearing could fairly proceed by written submissions. At the same time, the Board ordered a written submission schedule for the parties. The Appellants’ written submissions were due May 30, 2024, and Respondent’s submissions on June 27, 2024.

[10] On May 28, 2024, the Appellants requested a 2-month extension to the written submission deadlines ordered by the Board on April 4, 2024. On June 7, 2024, the Board ordered a revised written submissions schedule, with the Appellants’ submissions due September 20, 2024, and Respondent’s submissions on October 18, 2024.

[11] On May 30, 2024, the Appellants wrote to the Board, raising concerns that the Board had demonstrated bias and other errors in its handling of the appeal to date.

[12] On June 4, 2024, the Chair of the Board wrote back to the Appellants, having reviewed the appeal file. The Chair concluded that, while there were miscommunications and misunderstandings present, these did not arise to the level of bias. The Chair clarified the miscommunications and misunderstandings as he saw them.

[13] On June 28, 2024, the Appellants requested a pre-hearing conference to discuss summoning expert witnesses. A third PHC occurred on August 13, 2024, where the Board’s

Practice and Procedures Manual was discussed, including the process for filing an application for an order to summon witnesses. Following the PHC, the Board sent a letter to the parties to summarize the discussion and confirm the previously ordered written submission schedule.

[14] On September 20, 2024, the Appellants notified the Board that they would be unable to send in their submissions by the end of the day and would email the Board on September 23, 2024. On September 23, 2024, the Appellants informed the Board that their submissions would not be submitted by the end of the day. On September 24, 2024, the Appellants informed the Board that it would be able to email its submissions by September 25, 2024. The Appellants provided written submissions by email on September 27, 2024, in which they request additional procedural decisions from the Board, which I will outline below.

[15] On September 24, 2024, the Board sought written submissions from the parties on whether to summarily dismiss the appeal under section 31(1)(e) of the *ATA* because the Appellants have failed to diligently pursue the appeal and failed to comply with an order of the Board. The Board set the Appellants' submission deadline for this issue to be September 27, 2024, and the Respondent's deadline to be October 1, 2024.

## **PARTIES' SUBMISSIONS**

### **Summary of Appellants' Submissions**

[16] The Appellants submit background context, history, and an update of recent (up to September 2024) activities related to the sewer utility and its ownership.

[17] The Appellants request amendments to the timelines set by the Board in the appeal process. The Appellants submit the timeline amendments are required to permit fair process, to complete a question-and-answer with listed witnesses, for an oral hearing (if granted), and for facilitated settlement discussions to occur.

[18] The Appellants request the Board's assistance with subpoenas for witnesses who otherwise will not cooperate. The Appellants submit a list of names of witnesses they wish to question, noting that a question-and-answer with their named witnesses may require questions to be posed of additional witnesses. The Appellants state these witnesses need to be questioned to establish evidence in this appeal.

[19] The Appellants reiterate their request for an oral hearing, a process they consider necessary so that witnesses can be questioned in front of the Board. The Appellants reiterate their request to engage in facilitated settlement discussions. The Appellants also submit concerns regarding bias and prejudgement in the pre-hearing process.

## Summary of Respondent's Submissions

[20] The Respondent submits the Board ought to dismiss the appeal because the Appellants have not diligently pursued their appeal. The Respondent argues that the Appellants have raised sweeping allegations irrelevant to the appeal, promised action that never occurs, and have engaged in a pattern of delay. The Respondent submits the Appellants have a long history of delays through the course of this appeal process. The Respondent submits the Appellants benefit from further delay of the appeal process at the expense of the Respondent's responsibility to properly administer the *Act*.

[21] The Respondent submits the Board ought to dismiss the appeal because the Appellants have not complied with the Board's rules and procedures and have breached the Board's orders. The Respondent submits the Appellants breached the Board's order on the timing of submissions and offered no explanation for their misconduct, and no submissions on why the appeal should not be dismissed.

[22] The Respondent submits the Appellants' request for extension should not be granted as the request does not meet the requirements of an application under the Board's Rules, the request came seven days after the submissions were due, and the reasons for extension are inadequate. The Respondent notes that when the Appellants acknowledged they would be unable to meet the submission deadline, they did not seek an extension.

## DISCUSSION AND ANALYSIS

[23] Section 11 of the *ATA* gives authority to the Board to make rules respecting its practice and procedures. In accordance with *ATA* Section 11, the Board has established Rules ("Board Rules"). The Board supplements its Rules with its Practices and Procedures Manual. The Practices and Procedures Manual and Board Rules are publicly available on the Board's website and were provided to the Appellants in correspondence by the Board on July 13, 2023, and September 14, 2023.

[24] Section 14 of the *ATA* gives the Board authority to make orders to facilitate the just and timely resolution of an application to the tribunal. In practice, to facilitate just and timely resolution of appeals, the Board orders parties to adhere to submission deadlines. The Board's procedures for scheduling written submissions for written hearings is outlined in section 11 of the Board's Practices and Procedures Manual. The procedures for parties to request a deadline extension are specified in Board Rule 16 and the Board's Practices and Procedures Manual. Board Rule 16 states that all pre-hearing and post-hearing applications must be made to the Board in writing. All applications must include the reasons for the application, the relief requested, whether it is known if other parties agree to it, and any evidence to be relied on. The Board's Practices and Procedures Manual states that if a party "is not able to deliver their submissions by the date specified by the

Board, they must apply for an extension of time. The application should be made prior to the specified deadline” (page 32).

[25] In this appeal, the Board ordered the written submission schedule for the written appeal hearing on June 7, 2024. The Appellants’ submissions were due on September 20, 2024. The Board confirmed the ordered submission schedule in another letter to the parties on August 15, 2024. The Appellants did not make their written submissions on or before September 20, 2024. In their correspondence with the Board between September 20-24, 2024, the Appellants referred to computer problems as the reason for the delay in providing submissions. The Appellants did not apply for an extension to the submission deadline in accordance with the Board’s Rule 16 on or before September 20, 2024.

[26] The issue currently before me is whether the appeal should be summarily dismissed under section 31(1)(e) of the ATA, if the Appellants’ failed to diligently pursue the appeal or failed to comply with an order of the Board. The Appellants’ submissions, dated September 27, 2024, do not appear to address why the appeal should not be summarily dismissed for the reasons in section 31(1)(e) of the ATA. Instead, the Appellants’ submissions appear to relate to issues that have already been decided by the Board, or procedural matters relating to the appeal on the merits. The Appellants’ submissions request an unspecified timeline extension to subpoena witnesses, for an oral hearing to be conducted, and for facilitated settlement discussions to occur.

[27] The procedures related to summoning witnesses were reviewed with the parties during the August 13, 2024, PHC and confirmed in the August 15, 2024, summary letter from the Board to the parties. The Appellants’ request does not meet the requirements specified in Board Rule 24 on the Application for a Summons, that applications must be made 60 calendar days prior to the appellant’s first written submissions. The Appellants’ request was made after their written submissions were due.

[28] Regarding the Appellants’ request for an oral hearing, Board Rule 17 states that the Board will determine the method of hearing. During the pre-hearing process, the Board received submissions from both parties on the method of hearing. The Board made a preliminary ruling on April 4, 2024, that the hearing would proceed by written submissions.

[29] Regarding facilitated settlement discussions, the Board’s Rule 14 states that the Board will not convene a settlement meeting unless all parties to the appeal agree to participate. The Respondent advised on January 29, 2024, that they do not consent to a facilitated settlement discussion. The Appellant was made aware of this in a letter from the Board on February 5, 2024.

[30] Additionally, the Appellants submit allegations of bias and prejudgement during the prehearing process. Allegations of bias were addressed by the Board Chair in a letter to parties on June 4, 2024. The Chair concluded there was insufficient basis to conclude there was bias in this case.

[31] The Appellants' requests are not proper applications made in accordance with the Board's Rules and have been previously addressed by the Board; therefore, I will not rule on them.

[32] The Appellants did not meet the Board's order to provide written submissions by September 20, 2024. The Appellants did not apply for an extension to the submission deadline in accordance with the Board's Rules. Consequently, I find that the Appellants failed to comply with an order of the Board.

[33] Section 31(1) of the *ATA* gives the Board authority to summarily dismiss appeals should at least one of the provisions 31(1)(a) to 31(1)(g) apply:

**Summary dismissal**

**31 (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:**

(a) the application is not within the jurisdiction of the tribunal;

...

(e) the applicant failed to diligently pursue the application or **failed to comply with an order of the tribunal;**

...

(emphasis added)

[34] Section 31(2) of the *ATA*, says "[b]efore dismissing all or part of an application under subsection (1), the tribunal must give the applicant an opportunity to make written submissions or otherwise be heard." I find the Appellants were provided an opportunity to make written submissions in accordance with section 31(2) of the *ATA*. The Appellants' submissions in response to this opportunity provide insufficient reasons and evidence on why the appeal should not be summarily dismissed.

[35] The Board has previously dismissed appeals for failure to provide submissions (*Telegraph Cove Resorts Ltd. v. Delegate of the Director, Environmental Management Act*, 2019 BCEAB 25 (CanLII); *Norman Tapp v. Director, Environmental Management Act*, 2022 BCEAB 20 (CanLII) and *Wilfred Boardman v. Regional Manager (Kootenay Boundary Region)*, 2014 BCEAB 19 (CanLII)). While the context and facts vary case by case, the Board has consistently held that it is the appellant's responsibility to file submissions and evidence in accordance with the Board's procedures to support their grounds for appeal.

[36] The issue before me is whether the appeal should be summarily dismissed under section 31(1)(e) of the *ATA*. I have found that the Appellants' failed to comply with an order of the Board without sufficient justification and, instead, attempt to reargue and re-raise matters already addressed by the Board. I find this is a sufficient reason to dismiss the appeal.

## DECISION

[37] In making my decision, I have carefully considered the parties' submissions and the available evidence, whether or not they are specifically referenced in the reasons above. For the reasons above, I find that the Appellants failed to comply with an order of the Board, and I summarily dismiss the appeal under section 31(1)(e) of the *ATA*.

"Cynthia Lu"

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Cynthia Lu, Panel Chair  
Environmental Appeal Board