

Court of King's Bench of Alberta

Citation: Paller v Drumheller (Town), 2024 ABKB 364

Date: 20240620
Docket: 2302 00088
Registry: Drumheller

2024 ABKB 364 (CanLII)

Between:

James Paller and Linda Paller

Applicants

- and -

The Town of Drumheller

Respondent

Reasons for Decision of the Honourable Justice B.B. Johnston

[1] The Applicants, James and Linda Paller (the “Pallers”) seek a declaration that the Respondent, the Town of Drumheller (the “Town”) has expropriated their property. They seek compensation for the cancellation of miscellaneous permit No. 810145 (the “Permit” or “Permit No. 810145”) in accordance with *Public Lands Act*. They ask that they not be required to relinquish possession of the land upon which their house sits, until a fair method of compensation, transfer of ownership and possession has been determined.

[2] The Town opposes the application. They assert the Permit renews and expires on a yearly basis and the Town provided notice that the Permit would not be renewed upon its expiry on December 31, 2023. The Town argues that non-renewal of the Permit does not entitle the Pallers to any compensation.

Background

[3] In 1978, the Pallers purchased certain chattels that included a house, outbuildings and fencing located at Newcastle Trail in Drumheller, Alberta (the “Improvements”). The purchase

was conditional on the assignment of Miscellaneous Permit No. 8389. The permit related to the land upon which the Improvements were affixed (the “Lands”). The assignment occurred on November 17, 1978.

[4] Between 1978 and 1981, Miscellaneous Permit No. 8389 subsequently became Miscellaneous Permit No. 9490, and then No. 810145. The only permit in evidence is Permit No. 810145 from 1981. There is little evidence relating to why the change in the permit numbering occurred. Specifically, the Pallers have no memory of how Permit No. 8389 became Miscellaneous Permit No. 9490 and then became No. 810145.

[5] The documents in evidence fill in some of the blanks, namely:

- By letter dated March 12, 1981 from the Assistant Deputy Minister, Public Lands Division, the Pallers were notified that the Permit would expire December 31, 1981. The Pallers were given the option to renew the permit for a further year or to advise that they no longer required a renewal. The Pallers needed to sign “Item A” if they wished to renew the Permit or “Item B” if the renewal was not required;
- The Permit was renewed for the 1981 year. The Pallers dated, signed and returned the letter with the prescribed fee of \$62.00 on April 10, 1981;
- The Permit appears to then have been prepared and signed by the Associate Minister of Public Lands and Wildlife with the date of May 5, 1981; and,
- Other stamped dates appear on the Permit including a “Noted” stamp dated “May 11, 1981”, a date stamp of “May 14, 1981”, an “EDP” stamp dated “15-5-81” and a “checked” stamp dated “May 19, 1981”. No evidence was adduced to explain these dates or the associated notations.

[6] The Permit was issued “pursuant to the *Public Lands Act* and Regulations” for a term of one calendar year “unless cancelled by either party prior to the expiry date”. The Permit could “be renewed upon an annual renewal endorsement being issued.”

[7] No further documentation was sent from the Public Lands Division to the Pallers to effect a renewal after 1981. Notwithstanding the lack of renewal documentation, the Pallers paid the annual renewal fee associated with the Permit every year, up to and including 2023.

[8] By letter dated March 21, 2001, Alberta Environment notified the Pallers that the department intended to assign the Permit to the Town “with the understanding that the Town will honour the terms and conditions of the Permit”. The Pallers would then be dealing with the Town and remitting payment directly to them. The letter further stated that “[a] copy of the [P]ermit and assignment will be registered by caveat against the title prior to transfer to the Town”.

[9] Pursuant to the purchase agreement, under section 20 of the *Public Lands Act*, the Minister of the Environment, assigned “all his rights, obligations, and interests in [the Permit]” to the Town and the Town agreed, amongst other things “to carry out the [P]ermit and be bound by the terms thereof in all respects as if the [P]ermit had been entered into by the [Town] and the [Pallers].”

[10] In 2003, the Town sent the Pallers an eviction notice alleging that the Permit had expired. The Pallers retained counsel and challenged the Town's actions. The Town ultimately resiled from its position.

[11] Between 2003 to 2005, the Town sent the Pallers a document titled "Temporary Occupancy Permit". The Pallers refused to accept the terms of the Temporary Occupancy Permit. After 2005, the Town ceased sending Temporary Occupancy Permits and advised the Pallers that the Town would rely upon "the original assigned Permit."

[12] In June 2023, the Town advised the Pallers that it would not be renewing the Permit past December 31, 2023. The Pallers would be required to vacate the Lands by the deadline.

[13] The Lands lie withing the flood plain of the Red Deer River. The Pallers were advised that the Lands were required as part of a Flood Mitigation Program that included the construction of a berm along the Red Deer River.

[14] The Pallers brought this Application to seek relief arising from the Town's decision to end the Pallers' right to occupy the Lands beyond December 31, 2023.

The Permit

[15] The Permit reads in part as follows:

Pursuant to The Public Lands Act and Regulations thereunder the above named permittee is hereby granted permission to occupy and use the above land, which contains __hectares (1.0 acres), more or less for the purpose of Residence.

This permit is issued effective January 1, 1981, and expires December 31, 1981 unless cancelled by either party prior to the expiry date and may be renewed upon an annual renewal endorsement being issued.

This permit is subject to the following conditions:

This permit is subject to the permittee complying with the stated conditions on the attached schedule.

[Signature: For: Associate Minister of Public Lands and Wildlife]

May 5, 1981

Schedule

...

6. No permanent improvements are to be constructed without prior written approval from the Director of Lands.

7. This permit is not assignable. In the event the improvements are sold, the purchaser must remove same within thirty days thereof.

8. This land is susceptible to occasional flooding and the Department assumes no liability to any damage that may occur thereon.

Issues

[16] The issues include:

- a) Is the Town's decision not to renew the Permit beyond December 31, 2023 a cancellation of the Permit entitling the Pallers to compensation?
- b) Alternatively, was the Town's decision not to renew the Permit, a constructive taking that entitles the Pallers to compensation?
- c) Should the cost implications of this application and the parties' rights and responsibilities going forward be factored into any remedy?

Analysis

[17] There is no dispute that the Town is the owner of the Lands and that the Pallers' occupation of the Lands is pursuant to the Permit issued under the *Public Lands Act*. The Permit is akin to a lease interest that allows the Pallers to occupy the Lands and pay an annual "rental". Unlike a lease however, the Improvements are chattels that belong to the Pallers and not the Town notwithstanding that they are affixed to the Lands.

[18] The Pallers argue that the *Public Lands Act*, RSA 1980, c P-30 ("*Public Lands Act*, 1980") was in effect as at the date of the Permit and on August 7, 2001 when the Permit was assigned to the Town. They therefore argue the *Public Lands Act*, 1980 applies.

[19] The Respondent does not challenge the Pallers' position as to which version of the *Public Lands Act* applies.

[20] Notwithstanding the position taken by the parties, the question of which version of the *Public Lands Act* applies is a live issue. There are significant differences between the two versions of the *Public Lands Act* including most notably the definition of a "disposition".

[21] The *Public Lands Act*, 1980 states:

Definitions

1 In this Act,

...

(e) "disposition"

- (i) means every instrument executed pursuant to this Act, the former Act, *The Provincial Lands Act* or the *Dominion Lands Act* (Canada) whereby any estate, right or interest in any land of the Crown is or has been granted to any person or by which the Crown divests or has divested itself in favour of any person of any estate, right or interest in any land, and
- (ii) without derogating from the generality of subclause (i), includes a conveyance, assurance, sale, lease, licence, permit, contract or agreement made, entered in or issued pursuant to any of those relating to land, but does not include a grant;

[22] The *Public Lands Act*, RSA 2000, c P-40 (*Public Lands Act*, 2000) version states:

Definitions

1 In this Act,

...

(e) “disposition” means any instrument pursuant to this Act, the former Act, *The Provincial Lands Act*, RSA 1942 c62, or the *Dominion Lands Act* (Canada), RSC 1927 c113, whereby

(i) any estate or interest in land of the Crown, or

(ii) any other right or privilege in respect of land of the Crown that is not an estate or interest in land,

is or has been granted or conveyed by the Crown to any person but **does not include** a grant or **an instrument as prescribed by regulation**; (Emphasis added).

[23] The Permit at issue would be an instrument that is prescribed by the regulation under the *Public Lands Act*. Under the *Public Lands Act*, 1980 version, the Permit would qualify as a “disposition” based on the definition in the legislation. Indeed, this was the legislation in force at the time that the Permit was issued and one would expect to find the authority for the issuance of such rights within the legislation in place at the time. Under the *Public Lands Act*, 2000, however, the Permit is no longer a “disposition”. This distinction is significant.

[24] Under the *Public Lands Act*, 1980, the Permit meets the definition of a disposition and therefore the Withdrawal from Lease section (s 79(1)) would apply, including the requirement of compensation in certain circumstances. However, under the *Public Lands Act*, 2000, the Permit does not fall within the definition of a disposition such that the Withdrawal from the Lease and compensation provisions (s. 82(1)) would not apply.

[25] In determining which legislation applies, the answer lies in the legislation itself. Section 2 of the *Public Lands Act*, 2000 states:

Application of Act

2(1) Except where this or any other Act expressly provides to the contrary, this Act does not apply to public land that is not under the administration of the Minister.

(2) All public land is under the administration of the Minister except that public land that is, by virtue of any other Act or an order of the Lieutenant Governor in Council, under the administration of another Minister of the Crown or of a Crown corporation.

(3) Unless otherwise provided in this Act, every disposition made or entered into

(a) under the former Act or the regulations under it, or

(b) under *The Provincial Lands Act*, RSA 1942 c62, or the *Dominion Lands Act* (Canada), RSC 1927 c113, or the regulations under those Acts and relating to land,

and any renewal or reissue of that disposition are in every respect subject to this Act and the regulations made under this Act.

[26] As is clear from the above wording, the intention is for the latest version of the *Public Lands Act* to apply to all dispositions, renewals, or reissues of dispositions of public land that are under the administration of the Minister.

[27] This then raises the question of whether the Lands are under the administration of the Minister, even though they were sold to the Town. There are two possible scenarios: first, the Lands, having been sold to the Town are not under the administration of the Minister. Under this scenario, the legislation, including the compensation provisions, do not apply to the Lands by virtue of section 2(1) of the *Public Lands Act*, 2000. The second scenario is that the Lands remain under the administration of the Minister due to the commitment that the Town made to the Minister when it purchased the Lands. Under the second scenario, since the Permit does not fall within the definition of a disposition, the provisions that address compensation when a disposition is cancelled would also not apply.

[28] Based on the legislation and application to the facts of this case, the *Public Lands Act*, 2000 applies. The Minister transferred all of his “rights, obligations and interests in” the Permit to the Town. As the Minister’s rights, obligations and interests are largely set out in legislation, it follows that the legislation would also apply to the Town from and after having taken title to the Lands and committed to “honour the terms and conditions” of the Permit. Therefore, the Paller’s application must be dismissed on the basis that the Permit is not a disposition for which compensation is to be paid.

[29] Even if it were accepted that the *Public Lands Act*, 1980 applies, the Paller’s application would still fail for the reasons that follow.

[30] The relevant sections of the *Public Lands Act*, 1980 are as follows:

Agreements re use of land

20(1) When the Minister proposes to sell public land pursuant to section 17 or pursuant to an order of the Lieutenant Governor in Council, the Minister may, as a condition of the sale, require the intended purchaser to enter into an agreement

(a) restricting the purposes to which the land to be sold may be used, and

(b) requiring the purchaser or his successors in title to retransfer the land to the Crown in the event that the land is no longer used for the purposes referred to in the agreement, on the terms and conditions the Minister prescribes.

(2) An agreement under this section may be registered under the *Land Titles Act* and is not void by reason only that the agreement or any provision of the agreement infringes the rule against perpetuities.

Definitions

69 In this Part,

- (a) “lease” means a disposition other than a disposition under which the holder may become entitled to an estate in fee simple, but includes a disposition containing an option to purchase the land to the extent that its provisions do not pertain to the option;
- (b) “lessee” means the holder of a lease.

Withdrawal from lease

79(1) One month after the date on which the Minister mails a notice in writing to the last known address of the lessee, he may cancel a lease or withdraw any part of the land contained in a lease

...

(c) when the land contained in the lease or to be withdrawn from it is to be designated as a park pursuant to the Provincial Parks Act or added to a park designated under that Act or its predecessors, or is to be set aside as a public resort or recreation area,

...

(e) when the land contained in the lease or to be withdrawn from it is required to provide public access to a public resort or recreation area or to a river, stream, watercourse, lake or other body of water, or

(f) when, in the opinion of the Minister, the land contained in the lease or to be withdrawn from it is required for a purpose that he considers to be in the public interest.

...

(3) When the Minister at the request of an applicant for a grant or disposition of public land contained in a lease cancels the lease or withdraws land from the lease pursuant to subsection (1), the applicant for the grant or disposition shall negotiate with and pay compensation to the lessee for the loss of the lessee's interest under the lease.

(4) When the Minister cancels a lease or withdraws land from a lease pursuant to subsection (1)(d), no compensation is payable to the lessee.

(5) When the Minister cancels a lease or withdraws land from a lease otherwise than in the circumstances set out in subsections (3) and (4), the Minister shall negotiate with and pay compensation to the lessee for the loss of the lessee's interest under the lease.

(6) If after 30 days from the date the lease was cancelled or land was withdrawn from the lease under subsection (1) the amount of compensation payable to the lessee has not been settled, the applicant or the Minister, as the case may be, or the lessee may

apply to the Land Compensation Board established under the *Expropriation Act* to determine the amount of compensation.

(7) When an application is made to the Land Compensation Board pursuant to subsection (6), the Board shall decide the compensation payable to the lessee on the same basis as if the lessee's interest in the land had been expropriated pursuant to the *Expropriation Act*, and that Act and the regulations made under it respecting the determination of compensation, hearings and procedures, including interest, costs and appeals, apply in the same manner as if the lessee's interest had in fact been expropriated.

[31] The issue presented by the parties is whether the Permit qualifies as a “disposition” under section 1(e) and a “lease” under section 69 such that the provisions of section 79 of the *Public Lands Act*, 1980, that provide for compensation when cancelled in certain circumstances, would also apply. The main dispute between the parties is whether the Town's actions constitute a “cancellation” of the Permit entitling to the Pallers to compensation or a “non-renewal” that would not.

Was there a Cancellation of the Permit?

[32] The Pallers assert that the Permit is a “disposition” under the *Public Lands Act*, 1980 because it is an “instrument executed pursuant to the *Public Lands Act*... whereby an estate, right or interest in any land of the Crown is or has been granted to any person... and ...includes a ...permit”: sections 1(e)(i) and (ii). Further, the Permit is a “lease” under the *Public Lands Act*, 1980 because a lease includes a disposition: section 69. The Town does not contest that the Permit is a “disposition” and a “lease” under the *Public Lands Act*, 1980.

[33] I agree that the Permit and the Pallers' occupancy of the Lands falls within the definition of a “disposition” of public lands and also a “lease” under the *Public Lands Act*, 1980.

[34] The Pallers further argue the Town's actions of not renewing the Permit amounts to effectively cancelling the Permit. They argue that the Town's decision was made in connection with a project the Town is carrying out for the public interest (i.e. flood mitigation) which is expressly contemplated by section 79(1)(f) of the *Public Lands Act*, 1980. The Pallers assert that since the Town is restricted under the Drumheller Purchase Agreement to using the Lands for recreational purposes, the provisions of sections 79(c) and 79(f) of the *Public Lands Act*, 1980 come into play. If leases are cancelled pursuant to these provisions, compensation is owed to the lessee under section 79(5) of the *Public Lands Act*, 1980

[35] Given the amount of compensation payable to the Pallers has not been determined within the statutorily mandated timeframe, the Pallers claim that they should be entitled to apply to the Land and Property Rights Tribunal to determine the amount of compensation: section 79(6) *Public Lands Act*, 1980.

[36] The Town's position is that their action relating to the Permit was not a cancellation under the *Public Lands Act*, 1980 but was a non-renewal. They suggest that if the legislature intended to include a non-renewal it would have expressly done so in the legislation. In this case, the Town argues that the Permit ended not because it was cancelled, but because the Town decided not to renew the lease upon its expiry on December 31, 2023. The Permit specifically

states that it expires at the end of the year unless cancelled by either party prior to the expiry date and may be renewed upon an annual renewal endorsement being issued.

[37] The Town’s argument has some appeal at first blush. There is a clear and obvious distinction between a cancellation and a non-renewal. A cancellation terminates the rights of the lessee to continue to occupy lands that are the subject of the lease while a non-renewal does not impact the rights of the lessee since without a renewal, the lessee has no rights to continue in occupation. The Permit recognizes that distinction in that it recognizes that the Permit may be “cancelled” prior to the expiry date and that it may be “renewed” upon an annual renewal endorsement being issued. Cancellation can only happen prior to the expiry of the lease because the lessee still has rights to be cancelled. Renewal is the extension of the lessee’s rights beyond the current term of the lease and requires both parties to agree, whether expressly or by implication: *Lust v. Foundations For the Future Charter Academy*, 2007 ABCA 165 at paras 18-20.

[38] It also stands to reason that in the case of a cancellation, the lessee should be compensated for the loss of their rights to occupy the lands while in the case of the expiry of the term, there should be no compensation as the lessee no longer has rights to be in occupation.

[39] The Town’s argument loses some of its appeal when one considers that the parties did not follow the terms that were set out in the Permit. Specifically, for nearly 40 years, the issuance of the annual renewal endorsements contemplated by the Permit to effect a renewal were ignored. The Pallers for their part continued to occupy the Lands and made the required payments while the Province and then the Town, accepted the payments and allowed the continued occupation of the Lands.

[40] The parties take different views as to how the failure to issue annual renewal endorsements impacts this case. The Town suggests that by accepting the Pallers’ annual payments and allowing the Pallers to occupy the Lands it was in effect an annual renewal for each year and that the failure to issue the annual renewal endorsements is of no consequence. The Pallers conversely argue that the failure to issue the annual renewal endorsements converted the Permit from an annual lease into an indefinite term lease and that the Town waived any formal renewal process.

[41] Neither party provided any authorities sufficiently on point to address the issue of whether the Permit continued as a series of annual leases/renewals or whether it was transformed into a lease of indefinite term. If the Permit was a series of annual leases, then upon the expiry of the current lease term and the Town’s decision not to issue a further renewal, there would be no cancellation and the Pallers would not be entitled to compensation. If the failure on the part of the Town to issue annual renewal endorsements caused the Permit to become a lease of indefinite term, then it could be cancelled by the Town upon some reasonable notice (the length of which would also have to be determined) and the Pallers would be entitled to be compensated (or perhaps allowed to remain on the Lands until the end of the reasonable notice period).

[42] The Pallers rely on authorities where the courts either implied a term that provided for termination on reasonable notice or where there were no termination rights: *Shaw Cablesystems (Manitoba)Ltd v Canadian Legion Memorial Housing Foundation (Manitoba)*, 1997 CarswellMan 56 (Man CA) and *Conseil Scholaire Catholique Franco-Nord v Nipissing Ouest (Municipalite)*, 2021 ONCA 544. These authorities are of little assistance in this case as they deal with interpreting contracts that provide for no term and no termination provisions. In this

case, the Permit has a term and addresses renewal and cancellation. However, these cases confirm that “the overriding principle is that the meaning of an agreement and the intent of the parties in entering into it must be derived from the words the parties used and the context in which they used those words” : *Conseil* at para 24 citing *Thunder Bay (City) v. Canadian National Railway Company*, 2018 ONCA 517 at para 30. Further, it is not the role of the Court to make a reasonable contract between parties just because there may be gaps in the disputed agreement: *Shaw Cablesystems* at para 86, citing *Martin- Baker Aircraft Co. v Canadian Flight Entertainment*, [1955] 2 Q.B. 556 at p. 578.

[43] Applying the law to the facts of this case, the wording in the Permit is clear. It provides for a term of one year:

“This permit is issued effective January 1, 1981, and expires December 31, 1981”

[44] The Permit further provides for either party to cancel before the end of that term:

“unless cancelled by either party prior to the expiry date”

[45] Finally, the Permit provides for a renewal for another year:

“upon an annual renewal endorsement being issued.”

[46] While it is true that annual renewal endorsements were not issued after 1981, the letter from the Minister dated March 12, 1981 seeking the Pallers’ decision on renewal for 1981 stated “If we do not receive a reply **or** the required rental and fee...”. The use of the word “or” would suggest that payment of the rental fee was itself sufficient to be considered by the Minister to be an election to renew the Permit for a further year.

[47] The interpretation of the plain and ordinary wording of the Permit is bolstered by the actual legislation under which the Permit was issued. Although not cited by counsel for either party, the issuance of Miscellaneous Permits was expressly contemplated by the Regulations enacted under the *Public Lands Act*, which Regulations set out certain parameters for these types of permits. Of significance is the fact that the legislation placed limits on the duration of such permits from well before the date that the Permit was issued. Limitations on the duration of such permits continue in place today. The historical statutory limitations are noted below.

[48] Under *Regulations Governing the Issue of Miscellaneous Permits on Public Lands* AR 269/57, permits were one year in duration as follows:

Miscellaneous Permits for building sites and other miscellaneous purposes may be issued on available Public Land in accordance with the regulations.

1. (a) Application for a Miscellaneous Permit must be made on the prescribed form and filed with or forwarded to the Agent.
- (b) The application must be accompanied by the rental at the rate prescribed by the Minister.
- (c) Application may also be made in person before a Sub-agent of Public Lands for the district in which the land applied for is situated, for transmission to the Agent, but such application shall have no force or effect until received by the Agent.

(d) An applicant shall declare what improvements are on the land applied for, giving the ownership and location of the same.

(e) Application for a Miscellaneous Permit may be made on or after the 1st day of January in each year in which the permit is to be issued and the permit shall expire on the 31st day of December following the date of issue. (Emphasis added).

[49] As an aside, the above Regulation explains why the Pallers submitted their request in March of 1981 for the Permit, which was to cover the period between January 1, 1981 and December 31, 1981 as this legislation required applications to be made after January 1 of the year for which the permit was being sought.

[50] This provision was amended by *Regulations Governing the Issue of Miscellaneous Permits on Public Lands Amendment Regulation – AR 43/89*, which set the maximum duration for a permit at one year. The amended wording was as follows:

1 *The Regulations Governing the Issue of Miscellaneous Permits on Public Lands* (Alta. Reg. 269/57) are amended by this Regulation.

2 Section 1(e) is repealed, and the following is substituted:

...

(e) A permit shall not be granted for a term greater than 1 year.

(f) A permit is renewable for future terms at the discretion of the Minister and on the terms and conditions that the Minister prescribes. (Emphasis added).

[51] The *Disposition and Fees Regulation AR 54/2000* further amended the provision. A permit was limited to one year while a lease could not be longer than 25 years. Specifically:

Miscellaneous dispositions

123(1) The Minister may issue

(a) a lease,

(b) a permit,

...

in respect of public land for any other purpose for which no disposition is specifically provided in the Act or this Regulation.

(2) No lease may be issued under subsection (1) for a term exceeding 25 years.

(3) No permit may be issued under subsection (1) for a term exceeding one year. (Emphasis added).

[52] The above provision was again amended by the *Public Lands Administration Regulation AR 187/2011*, that removed the distinction between a lease and a permit and just referred to a disposition and mandating a maximum term of 25 years. The amended wording was as follows:

Miscellaneous dispositions

144(1) The Minister may, by order, establish specific types of dispositions, including without limitation

(a) a lease,

(b) a permit,

...

in respect of public land for any purpose for which no disposition is specifically provided in the Act or this Regulation, and may establish forms for the dispositions.

(2) The director may issue dispositions referred to in subsection (1).

Term

145 The term of a disposition issued under section 144 must not exceed 25 years. (Emphasis added).

[53] The legislation in place when the Permit was issued provided for a maximum term of one year. This maximum term continued until 2011, or for roughly 30 years after the Pallers were issued the Permit. After 2011, permits then had a legislated maximum term of 25 years and could not be indefinite. Given the prescriptive term limits in the legislation, I can not accept the Pallers' interpretation that the term for the Permit was indefinite or anything but a one-year term that required renewal annually.

[54] The annual renewal could be effected by either the Pallers providing correspondence to the Town of their intention to renew or just be submitting payment, which they have done. However, the renewals also require the agreement of the Minister/ Town. This is clear from the legislation that set out the process for renewals/permits, specifically:

- *Regulations Governing the Issue of Miscellaneous Permits on Public Lands* – AR 269/57- required yearly applications for permits to be submitted and considered: section 1;
- *Regulations Governing the Issue of Miscellaneous Permits on Public Lands Amendment Regulation* – AR 43/89- added a provision making it clear that renewals were at the discretion of the Minister: sections 1 and 2;
- *Dispositions and Fees Regulation* – AR 54/2000- maintained the Minister's discretion to renew any permit: section 12; and
- *Public Lands Administration Regulation* – AR 187/2011- expanded on the process of the issuance of renewals and introduced the concept that persons without being issued renewals were considered overholding: sections 17-20.

[55] While it is true that the parties did not adhere precisely to the annual renewal requirements in the legislation or the Permit, this did not change the fundamental nature of the Permit as being an annual permit. Also, the failure to follow the renewal process did not change the requirement that renewals needed the agreement of both the Pallers and the Minister up to 2001, then the Town thereafter.

In light of the above, I find that the Town was within their right to elect to not renew the Permit beyond December 31, 2023. The Town's decision in this regard was not a cancellation of the Permit that triggered the compensation requirements set out in the *Public Lands Act*.

Was There a Constructive Taking?

[56] The Pallers argue that by the Town not renewing the Permit, there was a constructive taking of their property and they are therefore entitled to compensation.

[57] The Town disagrees and argues that the failure to renew is not the same as terminating a lease. Any suggestion or even an expectation of a renewal or extension of a lease, can not be a promise that the term will be renewed or extended: *McAnsh v Ontario*, 2023 ONSC 3537 at para 26.

[58] In order to establish a constructive taking, the Pallers must establish:

- 1) the public authority has acquired a beneficial interest in the property or flowing from it (i.e., an advantage); and
- 2) the state action has removed all reasonable uses of the property.

Annapolis Group Inc. v. Halifax Regional Municipality, 2022 SCC 36 at para 18.

[59] A contextual approach is appropriate and should include a consideration of :

- a) the nature of the government action (i.e., whether it targets a specific owner or more generally advances an important public policy objective), notice to the owner of the restrictions at the time the property was acquired, and whether the government measures restrict the uses of the property in a manner consistent with the owner's reasonable expectations;
- b) the nature of the land and its historical uses; and
- c) the substance of the alleged advantage: *Annapolis* at para 45.

[60] In applying the above principles, I find there was no constructive taking by the Town. The public authority, in this case the Town, did not acquire a beneficial ownership of the Lands but is in fact the legal owner of the Lands. It was the Pallers that acquired a beneficial interest in the form of a Permit to occupy the Lands, which interest came to an end when the Town decided not to renew the Permit.

[61] Applying a contextual approach, it is also clear that there was no constructive taking. The Pallers would have known when they acquired the interest that their occupation was subject to the Permit and the relevant legislation at the time. It was not an indefinite term but was a term of one year followed possibly by annual renewals. In light of my finding that the Permit was renewed in a series of annual renewals and that it did not transform into a lease of indefinite duration, there is no basis to find that there was a constructive taking of the Pallers' property. Their rights to occupy came to an end at the expiry of the last annual term and were not renewed by the Town. The Pallers had no further rights in the Lands that were impacted or "taken" whether constructively or otherwise.

Costs considerations

[62] Given my finding that the Town was within their right to not renew the Permit, and that the Pallers' interest in the Lands was not expropriated by the Town, it is unnecessary to deal with the costs considerations and relief sought by the Pallers.

Conclusion

[63] The application is dismissed.

[64] The parties may speak to costs within 30 days of this decision.

Heard on the 18th day of January 2024.

Dated at the Town of Drumheller, Alberta this 20th day of June, 2024.

B.B. Johnston
J.C.K.B.A.

Appearances:

Paul Barrette
for the Applicants

Colin Kloot
for the Respondent