

Agricultural Land Commission Order to Adjourn and Interim Relief  
ALC File 46291

Appellants: Pacific Coast Fruit Products Ltd and;  
Stephen John Robinson and  
Stewart David Robinson.

Appeal of the August 11, 2017 Stop Work Order issued by Kim Grout , ALC  
Chief Executive Officer (CEO) pursuant to section 55 of the *Agricultural Land  
Commission Act*

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### Introduction

- [1] August 11, 2017, Kim Grout ALC Chief Executive Officer (CEO) of the Agricultural Land Commission (ALC) issued an Order to Diane Klatt, President of Pacific Coast Fruit Products (PCFP) Ltd. and the landowners Stephen Robinson and Stewart Robinson (the Appellants) “to vacate and cease all business activity on the Property by November 11, 2017. (the Order).
- [2] On October 10, 2017, ALC received a Notice of Appeal of the Order from Spencer O. May on behalf of the Appellants pursuant to section 55 of the *Agricultural Land Commission Act (ALCA)*. In this letter, Mr. May submitted that the Order should be stayed until the Appeal was heard.
- [3] On Oct 17, 2017, the ALC received a letter from the Appellant’s Counsel requesting whether the ALC’s August 11, 2017 Order would be stayed until pending the completion of the Appeal. The ALC confirmed in a letter dated October 18, 2017 that the Order would be stayed until the completion of the Appeal.
- [4] On November 16, 2017, the Appeal Commissioners provided direction regarding procedure related to the Appeal including timelines for the submission of additional information and representations.
- [5] An oral hearing occurred on February 8, 2018 at the ALC Offices located in Burnaby, BC (the February Hearing). The Appeal Panel consisted of Frank Leonard (ALC Chair) and ALC Vice Chairs Richard Mumford, Gerry Zimmermann, Linda Michaluk, Dave Zehnder, and Dave Merz.

### Background

- [6] The legal description of the property located at 90 Winson Road is:

Parcel Identifier: 003-243-842  
Lot 18, Section 3, Township 16, New Westminster District, Plan 32347 (the Property)

- [7] The Property is located within a designated agricultural land reserve (ALR) as defined in section 1 of the ALCA.

[8] In 2012 the Appellants applied with Copper Seven Enterprises (under section 20(3) of the ALCA) for the Commission to permit a non-farm use of the Property, specifically the processing of fruit not grown on the Property. The Commission resolved in a letter dated December 10, 2012, as follows in Resolution #349/2012:

*“That the application be refused*

*And That the applicant is ordered to relocate its corporate offices off the property to an appropriately zoned property situated outside the ALR. The applicant is required to submit its relocation plan and timeline to the Commission within 30 days from the date of the Commission’s letter communicating the decision.”*

## Order

[9] Among the various materials the Appeal Commissioners had before them at the February 8, 2018 Appeal Hearing was a copy of the Order together with the documents referenced therein. These documents comprised the "ALC Documents Package" to which the Appellant was provided electronic access on November 16, 2017 as part of this Appeal.

[10] On August 11, 2017, the CEO issued, pursuant to sections 49 and 50 of the ALCA, the following Order to the Appellant:

*“I hereby Order Pacific Coast Fruit Products Ltd to vacate and cease all business activity on the Property by November 11, 2017.”*

## Appeal

[11] Section 55(1) of the ALCA permits an appeal from certain specified orders, including an order made under section 50 of the ALCA. Section 55(1) states as follows:

[1] *A person who is the subject of a determination, a decision, an order or a penalty under section 50, 52 or 54 (1) may appeal the determination, decision, order or penalty to the commission by serving the commission with a notice of appeal.*

[12] On October 10, 2017, ALC received a Notice of Appeal from the Appellant’s solicitor (Spencer O. May) of the Order.

## Written Evidence and Written Submissions

[13] In the Appellant’s submissions of October 10, 2017 seventeen grounds for appeal of the Order are cited, and background materials are provided. In summary the Appellant’s counsel advises that the regulatory aspects of the use of the Property have changed since the ALC’s 2012 resolution. He indicates that the processing facility is being operated in compliance with the

regulation; the aggrieved neighbour now legally consents to the use of the Property; and the office (currently occupied by Pacific Coast Fruit Products Ltd.) will be used by the current owners of the processing facility. As such it is requested that the Order be lifted and the landowner be afforded the opportunity to submit a new non-farm use application to the Agricultural Land Commission. The Appellants set out further various arguments in their January 2018 submission, summarized as follows:

- The Order does not support or further the purposes of the Commission in that it will not put more land into production, or preserve agricultural land or encourage farming.
- PCFP is a fruit processing and trading company which receives fruit from over 40 BC farmers and over 30,000,000 pounds of Fraser Valley, and Okanagan Valley produce as well as processes the landowner's (Robinsons) fruit.
- The landowner, the Robinsons, processes fruit on the property that is grown on their extensive holdings under the Pacific Canadian Fruit Packers name.
- The issue is the use of an existing home on the Property, which is converted to offices used by PCFP. PCFP has purchased a non-ALR property upon which it intends to consolidate its operations within 3 years.
- The original (2012) ALC non-farm use application arose because of complaints from the neighbours, the Maddalozzo's to the City of Abbotsford, the BC Farm Industry Review Board and the ALC about the use of the property for processing fruit not grown on the property and the use of the offices by PCFP which does not produce fruit.
- Following an April 11, 2011 FIRB ruling that the existing use was not a farm use, the landowner applied for, and was refused a non-farm use application by the ALC. The ALC's decision referenced the processing use, but not the office use.
- The reference only to the processing use in the ALC's 2012 decision is cited by the Appellants as proof that the ALC has not had opportunity to consider the question of PCFP's use of the offices in the absence of PCFP's use of the processing facility.
- In 2014 the Maddalozzo's lawsuit was settled by PCFP and the previous landowner; Copper Seven. In addition Copper Seven sold the property to the present owners, the Robinsons.
- Since the Robinsons have purchased the Property, fruit from their extensive holdings is processed on the Property, making the processing facility lawful.
- PCFP is in the process of constructing a new office to replace the offices on the subject Property, but is currently using the office as part of a joint venture agreement with the Robinsons
- The land occupied by the offices cannot be used for agriculture, and if not used by PCFP would like be used as an office, or residence by the Robinsons.
- The Appellants respectfully submit that there is neither any benefit to agriculture, or any public policy basis to enforce the Order, and that given the change in circumstances since the ALC's 2012 Resolution, that PCFP and the Robinson's should be given an opportunity to make another application to allow PCFP to use the current office space until their new office space is available.

## Relief Requested

[14] The January 2018 submission in support of the Notice of Appeal October 10, 2017, requests that the Order be vacated and that PCFP and the Robinsons be allowed to make a new application for non-farm use to allow PCFP to use the office until their new offices are complete.

[15] No application for non-farm use in relation to the Property is before the Appeal Commissioners nor are the Appeal Commissioners the body that would decide such an application. However, the Appellants' submissions appear in large part to be directed to Resolution #349/2012 (including its history) and the outcome of a new non-farm use application. The Appeal Commissioners are mindful of not commenting in a manner that would be seen as an attempt to tie the hands of the panel that would ultimately consider a new non-farm use application if such an application is made.

[16] Section 55(2) of the ALCA states:

*On an appeal under this section, the commission may*

*(a) confirm or reverse the determination, decision, order or penalty, or*

*(b) refer the matter, with or without directions, back to the person who made the initial determination, decision or order.*

[17] Certain other statutory provisions appear to be relevant to the "interim relief" requested by the Appellant.

[18] Section 55.01 of the ALCA provides that certain provisions of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (ATA) apply to the Commission in relation to appeals, including sections 25 and 39 of the ATA.

[19] Section 25 of the ATA provides: "The commencement of an appeal does not operate as a stay or suspend the operation of the decision being appealed **unless the tribunal orders otherwise**" (emphasis added).

[20] Section 39 of the ATA provides:

**39** (1) *An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.*

(2) *In considering whether an application should be adjourned, the tribunal must have regard to the following factors:*

*(a) the reason for the adjournment;*

*(b) whether the adjournment would cause unreasonable delay;*

*(c) the impact of refusing the adjournment on the parties;*

*(d) the impact of granting the adjournment on the parties;*

*(e) the impact of the adjournment on the public interest.*

## Hearing

[21] The appeal process included an oral hearing which was held on February 8, 2018 at the ALC offices in Burnaby, BC (as defined earlier, the February Hearing). Individuals in attendance at the February Hearing included Ellen MacIntyre and Dianne Klatt (principals of PCFP); Stewart Robinson (landowner); and Cam Watt (Sales Manager for Pacific Canadian Fruit Packers). During the February Hearing, oral submissions were made by Spencer May pursuant to the written submissions received January 2018 (which are noted above). Further, representations were made at the February Hearing by Dianne Klatt, Ellen MacIntyre, and Stewart Robinson (as noted below).

### **Dianne Klatt and Ellen MacIntyre (PCFP principals)**

Ms Klatt and Ms MacIntyre provided a summary of how they started Pacific Coast Fruit Products, its expansion, and its move to the Property. In addition they provided information about how Pacific Coast Fruit Products is working with Pacific Canadian Fruit Packers (Robinsons) to process and market frozen and fresh blue berries and cranberries. Other information about competitive pressures from other berry growing countries was also provided.

### **Stewart Robinson (landowner)**

Mr. Robinson indicated that he was a long time fruit grower (blueberries) and that he owned about 700 acres of farmland in the Fraser Valley. He indicated that if PCFP were not occupying the offices on his Property he would hire his own marketing staff to fill the space.

## Appellant

[22] The Appellants indicate that they are seeking the lifting of the Order to permit the operation of the PCFP while another ALC application for non-farm uses (as per section 20(3) of the ALCA) is submitted to the South Coast Panel of the ALC to be reviewed in the context of section 6 of the ALCA.

## Conclusion

[23] Having received and considered the information submitted as part of the appeal, the Appeal Commissioners:

- do not presently have a basis to find that, at the time the Order was issued, it should not have been issued. Section 50 of the ALCA provides for the issuance of a stop work order where an official of the Commission considers that a person is contravening a provision of the ALCA or the Regulations or a decision of the ALC. Among the provisions of the ALCA is section 20(1), which provides that a person must not use agricultural land for a non-farm use unless permitted under the ALCA.

- note that on an appeal under section 55 of the ALCA, the Appeal Commissioners may (a) confirm or reverse the determination, decision, order or penalty, or (b) refer the matter, with or without direction, back to the person who made the initial determination, decision or order; or
- also have the option of adjourning the appeal, including to permit further submissions and to ascertain whether the Appellant will pursue its stated desire to approach the South Coast Panel of the ALC with a non-farm use application to determine whether the commercial office operation can be accommodated under the provisions of section 6 of the ALCA; and
- have the power to stay or suspend the operation of the Order in connection with an appeal from that Order.

[24] Based on the evidence provided by the Appellants and the factors outlined above, the Appeal Commissioners adjourn the Appeal until May 31, 2018. The Appeal will then be considered to ascertain the status of the proposed application for non-farm use and consider further submissions.

[25] In connection with the above, the operation of the Order will be stayed until May 31, 2018. That is, no enforcement of the Order will be undertaken until May 31, 2018.

[26] In the particular circumstances outlined in this case, the Appeal Commissioners consider that an adjournment (with a stay of the Order in the interim) is appropriate but that it would not at this point, on the record before the Commission, be appropriate to defer enforcement of the Order for a longer time period. There is a public interest in respecting the ALCA and stop work orders that have been granted in face of conduct that an official considers to be in contravention of the ALCA. The window provided is sufficient for some steps to be taken toward pursuit of a non-farm use application if the Appellant intends to pursue this route.

[27] The Appellants will be afforded an opportunity to provide information on the status of an ALC application prior to or on May 31, 2018 and to make submissions on whether further interim relief (such as a further adjournment and stay of the Order beyond May 31, 2018) would be appropriate or, further or alternatively, what final relief is sought and whether that is within the power of the Commission to grant and why.



Appeal Panel:

A handwritten signature in black ink that reads 'Frank Leonard'.

Frank Leonard, Chair

A handwritten signature in black ink that reads 'Gerry Zimmermann'.

Gerry Zimmermann

A handwritten signature in black ink that reads 'Linda Michaluk'.

Linda Michaluk

A handwritten signature in black ink that reads 'Richard Mumford'.

Richard Mumford

A handwritten signature in black ink that reads 'Dave Merz'.

Dave Merz

A handwritten signature in black ink that reads 'Dave Zehnder'.

Dave Zehnder

Appeal Decision Date: February 21, 2018