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July 7, 2017

ALC File: 49921  
Your File: 73766.1.71.

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DELIVERED BY ELECTRONIC MAIL

Dear Sir

Re: **Appeal Hearing 49921**

Please find attached the Agricultural Land Commission's determination following your Appeal Hearing of June 22, 2017.

If you have any questions about the Appeal Hearing please direct them to Martin Collins at ([martin.collins@gov.bc.ca](mailto:martin.collins@gov.bc.ca)) or 604-660-2554.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Martin Collins', written over a horizontal line.

Martin Collins, Director of Policy and Planning



Agricultural Land Commission Order to Adjourn and Interim Relief  
ALC File 49921

Appellant: Ronald Troy Darbyshire of Kettle River Mechanical

Appeal of the March 10, 2017 Stop Work Order issued by  
Roland Persinovic, ALC Compliance and Enforcement Officer pursuant to  
section 55 of the *Agricultural Land Commission Act*

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### Introduction

On March 10, 2017, Roland Persinovic, Agricultural Land Commission (ALC) Compliance and Enforcement Officer, issued a Stop Work Order to Ronald Troy Darbyshire (the Appellant) to cease commercial activity at 3345 West Almond Gardens Road, Grand Forks, BC (the Stop Work Order).

On May 4, 2014, ALC received a Notice of Appeal from Chris Wendell on behalf of the Appellant of the Stop Work Order pursuant to section 55 of the *Agricultural Land Commission Act* (ALCA).

On May 11, 2017, the Appeal Commissioners provided direction regarding procedure related to the Appeal (the May 11, 2017 Directions). The May 11, 2017 Directions included timelines for the submission of additional information and representations.

On June 14, 2017, further to the May 11, 2017 Directions, the Appeal Commissioners received a written representation from the Appellant asking that the Stop Work Order “be lifted until a new [non-farm use] application is heard and decided upon by the Agricultural Land Commission”.

An oral hearing occurred on June 22, 2017 at the ALC Offices located in Burnaby, BC (“the June 22 Hearing”).

### Background

The legal description of the property located at 3345 Almond Road, Grand Forks, BC is:

Parcel Identifier: 004-750-772  
Lot 3, District Lot 363, Similkameen Division Yale District, Plan 6263 (the Property)

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

In or about 2013, the Appellant applied (through his then agent, Robert Holtby) under section 20(3) of the ALCA for the Commission to permit a non-farm use of the Property, namely a then-existing truck repair and machine maintenance business on a 0.5 hectare portion of the Property. The Commission resolved as follows in Resolution #310/2013:

...2

*THAT the request to use approximately 0.5 ha for the purpose of a truck  
And machine repair shop business and associated parking be refused as proposed.*

*AND THAT the Commission is prepared to allow the temporary non-farm use of a 0.2 ha  
area for truck and machine repair for up to eighteen (18) months from the date of the  
Commission's letter communicating the decision. The temporary approval is for the sole  
purpose of facilitating the relocation of the business to a suitably designated site outside  
the ALR without undue disruption of the business.*

*AND that the temporary approval is subject to the following conditions*

1. *That on or before August 31, 2014 the 'Parking Lot' area (approximately 0.3 ha) as  
detailed in Figure 1.0 of the Holtby Report, is to be rehabilitated to an agricultural  
standard equal to or better than that which existed prior to the development of the  
non-farm activity. A report prepared by a qualified professional agrologist detailing  
the land rehabilitation is to be submitted for Commission review and approval. The  
report criteria is as follows:*

#### *GENERAL REQUIREMENTS*

- A) *The report is to be prepared by a fully qualified professional capable of preparing  
a soil reclamation plan.*
  - B) *The qualified professional must state his/her qualifications and experience in the  
report and certify that adequate field work was carried out and that the report was  
prepared by the signatory author.*
  - C) *A report must contain a statement outlining the objectives of the report,  
limitations of the report which may be imposed by the intensity of survey, survey  
scale intensity, resource information used and source, and other limitations which  
may affect the interpretation of the findings in the report.*
  - D) *The report must be signed by the qualified professional with his/her professional  
designation attached.*
  - E) *All reports must contain field evidence or qualified citation of others work which  
adequately support the opinions, findings and conclusions drawn in the report.*
  - F) *Subjective or personal opinion must be clearly distinguished from that supported  
by field evidence or cited authority.*
  - G) *Certification of the work.*
2. *The temporary approval for non-farm use is granted for the sole benefit of the  
applicant and is non-transferable.*

The Commission's letter communicating its decision was originally dated February 6, 2013 (it should have been 2014). On realizing the error in the date, the Commission's letter was replaced by one dated March 4, 2014.

The conditions described in Resolution #310/2013 related to rehabilitation of a 0.3 hectare parking lot area (the portion of the 0.5 hectares for which temporary approval was not given) on or before August 31, 2014. An agrologist's report detailing the land rehabilitation and meeting certain requirements was to be submitted for Commission review and approval in this regard.

The Appellant suggests some confusion in the communication of Resolution #310/2013 to him, but there appears to be no doubt that it was communicated to his agent, Mr. Holtby.

It does not appear to be contested that a portion of the Property continued to be used for truck and machine repair into 2017. The Appellant does say that at some point (the date is not specified in the Appellant's submissions) he took steps to rehabilitate the parking lot area.

It does not appear that any application for judicial review of Resolution #310/2013 was brought. Further, the Commission was not requested to reconsider Resolution #310/2013 under section 33 of the ALCA.

### **Stop Work Order**

Among the various materials the Appeal Commissioners had before them at the June 22 Hearing was a copy of the Stop Work Order together with the documents referenced therein. These documents comprised the "ALC Documents Package" to which the Appellant was provided electronic access on May 11, 2017 as part of this Appeal.

On March 10, 2017, the Compliance and Enforcement Officer issued, pursuant to sections 49 and 50 of the ALCA, the following Order and Stop Work Order to the Appellant:

1. Cease the aforementioned non-farm activity immediately; and
2. Complete the parking lot rehabilitation as ordered in ALC Resolution # 310/2013 on or before April 30, 2017.

On Tuesday April 25, 2017, Bob Holtby, P. Ag sent a letter certifying rehabilitation of the 0.3 ha parking lot area. The status of the rehabilitation and the certification were questioned by Compliance and Enforcement staff.

### **Appeal**

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.*

On May 4, 2017, ALC received a Notice of Appeal from the Appellant of the Stop Work Order.

## Written Evidence and Written Submissions

In the Appellant's submissions of June 14, 2017, he "proposes that the order be lifted under a new application is heard and decided upon by the Agricultural Land Commission".

The Appellant states in the submissions that he opposes the Stop Work Order. However, the submissions appear chiefly to be directed to Resolution #310/2013, and the request that the Stop Work Order be lifted for the time being, pending a decision by the Commission on a new non-farm use application.

At paragraph 16 of the Appellant's submissions of June 14, 2017, it is stated: "While Kettle Valley Mechanical is a non-farm use, the Appellant submits that its operation is sufficiently consistent with, and related to farming within the ALR, warranting permission from the Commission under Section 25(1)(b) of the ALCA." The Appellant also makes other arguments in support of the granting of an application for non-farm use.

The Appellant sets out various arguments in the June 14, 2017 submissions, including as follows:

- *Bill 24 established Zone 1 and Zone 2 in the ALR in 2014 and expanded the scope of considerations permitted the ALC in its consideration of applications, to give more flexibility to recognize different demands on the land. The ALC's decision to refuse the commercial use predates the adoption of Bill 24.*
- *The commercial operation is a vital component of the farming community because it is the only heavy duty mechanic that services farmers in the Grand Forks area. Kettle River Mechanical services over 15 farming operations in the area.*
- *The Appellant's agrologist indicates that the capability of the land for agriculture is very poor (CLI Class 5A, improvable to Class 2A). No irrigation water is available and therefore improvements are not possible.*
- *The Appellant tried to cultivate the land, but gave up cultivating the land because the soils are too stony and there is no irrigation water.*
- *The Appellant constructed his shop on the northwest corner of the property, preserving the remainder of the land for agriculture.*
- *The shop and yard only occupy 0.22 ha of the 2.3 ha property.*
- *From an economic perspective (as per Section 4.3 of the ALCA), the commercial facility benefits the region by permitting local servicing, repair and Inspection Services. Furthermore there is no possibility that the Appellant's entire income could be derived from agriculture on the property.*
- *The Appellant also provides a community benefit by servicing the 23 municipal vehicles.*
- *A petition in support of the commercial operation totals over 450 signatures.*
- *There are factual errors in Resolution #310/2013. They include the ALC's belief that there were two wells on the property (there is only one); that there was a 0.5 ha parking area (since rehabilitated); and that the facility could be accommodated on lands outside the ALR (disavowed by local realtor).*

- *The Appellant is asking for interim relief in part because of the heavy, physical emotional toll the Stop Work Order is taking on his health and family life.*
- *The Appellant's request is to lift the Stop Work Order while a new non-farm use application is submitted and evaluated.*

The June 14, 2017 submissions concluded by stating that "In assessing the repercussions of lifting the stop-work order, the ALC will suffer no apparent harm, while the Appellant, his family and the community around them will avoid significant and unquantifiable detriment."

### **Relief Requested**

The June 14, 2017 submissions in support of the Notice of Appeal dated May 4, 2017, requested, as stated above, that the Stop Work Order "be lifted under a new application is heard and decided upon by the Agricultural Land Commission".

No application for non-farm use in relation to the Property was before the Appeal Commissioners nor are the Appeal Commissioners the body that would decide such an application. However, the Appellant's submissions appear in large part to be directed to Resolution #310/2013 (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.

Section 55(2) of the ALCA states:

- (2) *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.*

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

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.

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).

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**

The appeal process included an oral hearing which was held on June 22, 2017 at the ALC offices in Burnaby, BC.

The Appellant (Troy Darbyshire) and his son Travis Darbyshire, attended the June 22 Hearing. The Darbyshires were represented by articled student Nicholas Lucyk, who was also in attendance at the June 22 Hearing.

During the June 22 Hearing, oral submissions were made by Nicholas Lucyk pursuant to the written submissions received June 14, 2017 (which are noted above). Further, representations were made at the June 22 Hearing by two witnesses by telephone, noted below.

### **Terry Rilkoﬀ (Farmer, Electoral Area D)**

Mr. Rilkoﬀ indicated that Kettle River Mechanical provides a valuable and necessary service to the Grand Forks farm community, and that the land capability for agriculture is limited on the subject Property.

### **Brian Thate (realtor at ReMax Little Oak, Grand Forks)**

Mr. Thate indicated that he was unable to find a suitable relocation site for Kettle River Mechanical, and that its present location is appropriate for the community it services.

## **Appellant**

The Appellant indicates that he seeks the lifting of the Stop Work Order to permit the operation of the business while another ALC application for non-farm uses (as per section 20(3) of the ALCA) is submitted to the Kootenay Panel of the ALC to be reviewed in the context of section 4.3 and section 6 of the ALCA.

## **Conclusion**

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 Stop Work 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 (such as the Compliance and

Enforcement Officer) considers that a person is contravening a provision of the ALCA or the Regulations. 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. The Appellant acknowledged in his June 14, 2017 submissions that "Kettle Valley Mechanical is a non-farm use". Further, given Resolution #310/2013, the Commission had not permitted the non-farm use to occur at the time the Stop Work Order was issued;

- do not have submissions from the Appellant on whether a stop work order under section 50 of the ALCA may be reversed despite the fact it is directed at stopping a non-farm use which is not permitted under the ALCA. If ultimately this is what the Appellant seeks as a final determination on the appeal, the Appellant should address the Appeal Commissioners' powers in this regard in the submissions for which the Appeal Commissioners are providing the opportunity below;
- note that it appears the thrust of the Appellant's June 14, 2017 submissions was to seek the lifting of the Stop Work Order pending a new non-farm use application rather than address whether or not the Stop Work Order was properly issued on the facts before the Compliance and Enforcement Officer in March 2017. The Appellant worded the submission as seeking "interim relief". Therefore, it may be that the Appellant would have further submissions on the Stop Work Order if a final decision on the appeal was sought;
- 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;
- also have the option of adjourning the appeal, including to permit further submissions and to ascertain whether the Appellant will pursue his stated desire to approach the Kootenay Panel of the ALC with a non-farm use application to determine whether the commercial operation can be accommodated under the provisions of the ALCA in Zone 2, based on the criteria established in section 4.3 and section 6 of the ALCA; and
- have the power to stay or suspend the operation of the Stop Work Order in connection with an appeal from that order.

Based on the evidence and the factors outlined above, the Appeal Commissioners adjourn the appeal for three months until October 20, 2017. The appeal will then be considered to ascertain the status of the proposed application for non-farm use and consider further submissions.

In connection with the above, the operation of the Stop Work Order will be stayed until October 20, 2017. That is, no enforcement of the Stop Work Order will be undertaken until October 20, 2017.

In the particular circumstances outlined in this case, the Appeal Commissioners consider that an adjournment (with a stay of the Stop Work Order in the interim) are appropriate but that it would not at this point, on the record before the Commission, be appropriate to defer enforcement of the Stop Work 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, and/or to formulate submissions to address the concerns that the Appeal Commissioners raise in this decision.

The Appellant will be afforded an opportunity to provide information on the status of an ALC application prior to or on October 20, 2017 and to make submissions on whether further interim relief (such as a further adjournment and stay of the Stop Work Order beyond October 20, 2017) 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.

If the Appellant wishes to extend the interim relief provided for here beyond October 20, 2017, it would be helpful to receive as part of the submissions noted above more specific argument on why "there is a serious issue to be tried" regarding the Stop Work Order that is the subject of the appeal rather than on whether "there is a serious issue to be tried" regarding whether or not a regional panel should grant a non-farm use application.

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Appeal Commissioners: Frank Leonard, Chair  
Sharon Mielnichuk  
Richard Mumford  
Bill Zylmans  
Linda Michaluk  
Gerry Zimmermann  
Dave Merz

Decision Date: July 7, 2017