



Agricultural Land Commission Appeal Decision, ALC File 50039

Appellants: 0946363 B.C. Ltd. (Terrance Marvin McLeod)

**Appeal of the January 7, 2014 Stop Work Order issued by Ron MacLeod,
ALC Compliance and Enforcement Officer pursuant to section 55 of the
*Agricultural Land Commission Act***

Introduction

On January 7, 2014, Ron MacLeod (“Mr. R. MacLeod”), Agricultural Land Commission (“ALC”) Compliance and Enforcement Officer, issued a Stop Work Order to 0946363 B.C. Ltd. with regard to unauthorized non-farm development in the Agricultural Land Reserve on the property at 8583 – 259 Road, Fort St. John, B.C. (the “Stop Work Order”).

On March 6, 2014, the ALC received a Notice of Appeal from Augustine T. Earmme (“Mr. Earmme”) on behalf of Terrance Marvin McLeod (the “Appellant”) of the Stop Work Order pursuant to s. 55 of the *Agricultural Land Commission Act* (the “Act”). The Appellant is identified on B.C. Registry Services’ B.C. Company Summary as being the sole Director, Secretary and President of 0946363 B.C. Ltd.

The appeal process included an oral hearing which occurred on June 26, 2014 at the offices of the ALC in Burnaby, B.C. (the “Appeal Hearing”).

On June 24, 2014, the Appeal Commissioners provided direction regarding the Appeal Hearing. The Appeal Commissioners provided this overview with the intention that the Appellant could



approach the occasion with a general understanding of how the appeal process, including the Appeal Hearing, would unfold.

The Appeal Hearing was held on June 26, 2014. The Appeal Commissioners heard oral submissions from the Appellant in addition to submissions made in advance of the Appeal Hearing.

Further to the Appeal Hearing, the Appeal Commissioners directed Eamonn Watson (“Mr. Watson”), ALC Planner, to prepare a map to provide a visual overview and clarity to matters addressed during the Appeal Hearing. On September 2, 2014, Mr. Watson provided a Note to File, dated same, to the Appeal Commissioners, a copy of which was also provided to the Appellant.



Background

The legal description of the property located at 8583 – 259 Road, Fort St. John, B.C., is:

Parcel Identifier: 014-675-005

The South West ¼ of Section 34, Township 83, Range 18, West of the Sixth Meridian, Peace River District, Except Parcel A (19137M) and Plans A1633, 11543, H660 and 26574

(the “Property”)

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

On October 12, 2012, the Peace River Regional District (the “Regional District”) received an application for non-farm use in the ALR from the Appellant, then acting as agent for the registered owner of the Property, Yvonne Celestine Wiles (“Ms. Wiles”), pursuant to section 20(3) of the Act.

The application for non-farm use stated that the proposal was to construct a rodeo facility with indoor arenas, a campsite, a chuck wagon track, restaurant and offices. The application was accompanied by a letter from Ms. Wiles stating that she had given the Appellant authority to make the application.

An application for non-farm use may not proceed to the ALC for consideration unless authorized by a resolution of the local government, in this instance the Regional District, if the land, on the date the application is made, is zoned by bylaw to permit agricultural or farm use: Act, s. 25(3).

On November 22, 2012, the Regional District passed a motion in support of the non-farm use application and in support of forwarding the non-farm use application to the ALC.



On November 28, 2012, the Property was acquired by and registered in the name of 0946363 B.C. Ltd.; the Appellant is the sole Director, Secretary and President of this company.

On December 18, 2012, the ALC received the application for non-farm use.

On March 21, 2013, nine members of the ALC met and considered the application. After reviewing the file material the ALC, by Resolution #86/2013, refused the non-farm use application.

The Minutes of Resolution #86/2013 were provided to the Appellant under cover of a letter dated April 12, 2013 (due to a typographical error, the letter states 2012). The cover letter advised the Appellant of the opportunity to request reconsideration pursuant to s. 33(1) of the Act.

On May 27, 2013, the Chair of the ALC, two ALC Commissioners and ALC staff were in the Fort St. John area on other business and arranged with the Appellant to visit the Property.

On June 6, 2013, the ALC received an email from the Appellant “appealing” Resolution #86/2013. ALC staff processed this as a request for reconsideration under s. 33 of the Act.

Also on June 6, 2013, Colin Fry (“Mr. Fry”), then ALC Executive Director, stated in an email that the request for reconsideration could not be heard until after June 11, 2013. The Royal Canadian Mounted Police Musical Ride was scheduled to hold an event on the Property on June 11, 2013. Mr. Fry expressed that the ALC did not take issue with holding this event on the Property on June 11, 2013 because the ALC could not review the request for reconsideration in advance of this date.

On July 18, 2013, the ALC met to consider the request for reconsideration of Resolution #86/2013. The ALC dismissed the request for reconsideration of Resolution #86/2013 on the grounds that neither ss. 33(1)(a) nor 33(1)(b) of the Act had been fulfilled.



In or about early November 2013, the ALC was made aware of development activities on the Property that may have been consistent with those non-farm use activities expressly refused by Resolution #86/2013.

On November 14, 2013, Mr. R. MacLeod contacted the Appellant by telephone to inform him of Mr. R. MacLeod's intent to conduct a site inspection of the Property on the following day. The Appellant was out of the country and directed Mr. R. MacLeod to contact Craig Spicer ("Mr. Spicer"), the Horse Park Manager, who would provide Mr. R. MacLeod access to the Property.

On November 15, 2013, Mr. R. MacLeod arrived to the Property and met with Mr. Spicer. Mr. R. MacLeod advised Mr. Spicer of the reasons for the site inspection and of his authority as an official of the ALC pursuant to s. 49 of the Act. Mr. Spicer showed Mr. R. MacLeod inside the structures as well as answered questions about the use of the Property. Mr. R. MacLeod took photographs throughout the site inspection.

The Appellant wrote a letter to the ALC, dated November 19, 2013, clarifying his intentions "with regard to any future use of [the Property] in Fort St. John."



Stop Work Order

Among the various materials the Appeal Commissioners had before them on this appeal was a copy of the Stop Work Order together with the documents referenced therein and related thereto. These documents comprised the “ALC Documents Package” to which the Appellant was provided electronic access on June 20, 2014 as part of this appeal.

On January 7, 2014, Mr. R. MacLeod issued, in accordance with s. 50 of the Act, the following Stop Work Order to 0946363 B.C. Ltd.:

1. *Cease the contravention of using one of the Quonset buildings for the commercial storage of boats and other recreational vehicles. To comply with the ordered cessation of the contravention, all commercially stored boats and recreational vehicles are to be removed from the Property on or before June 1, 2014;*
2. *Cease the contravention of using one of the steel buildings for the commercial storage of industrial equipment. To comply with the ordered cessation of the contravention, all commercially stored industrial equipment is to be removed from the Property on or before June 1, 2014; and*
3. *Cease the contravention of developing and operating a commercial rodeo facility on the Property. To comply with the ordered cessation of the contravention, the grandstands and the elevated announcer’s booth are to be removed from the Property on or before June 1, 2014.*

In addition to the Stop Work Order, Mr. R. MacLeod stated that:

I was unable to assess the condition of the soils on the Property as it was snowing when I conducted the site inspection on November 15, 2013 and it had been snowing for several days prior. Since I do not know the nature of any earthworks that may have occurred on the Property, and since Mr. Spicer was unable to provide information regarding the source site of the stockpiled soil, I consider it prudent to ask for your voluntary compliance to leave the stockpiled soil in place and to not remove any of the stockpiled soil from the



Property until weather allows me to conduct a follow up site inspection. I would appreciate receiving your written assurance in this regard.

Mr. R. MacLeod based his Stop Work Order on four (4) findings related to the Property and the activities on the Property. In the January 7, 2014 letter communicating the Stop Work Order Mr. R. MacLeod stated the following:

Based on my observations at the November 15, 2013 site inspection and Mr. Spicer's representations during the inspection, I consider that 0946363 BC Ltd. has undertaken or allowed the establishment and development of non-farm uses on the Property without approval from the ALC. More specifically, I consider the contraventions to be:

- 1. The use of one Quonset building for the commercial storage of boats and other recreational vehicles;*
- 2. The partial use of one steel building for the commercial storage of industrial equipment;*
- 3. The development of a commercial rodeo facility on the Property which appears to be generally consistent with the facility expressly denied by the ALC regarding non-farm use application (ALC File 53049); Resolution #86/2013 dated March 21, 2013. Also, a request to the ALC that it reconsider Resolution #86/2013 was considered and dismissed on August 19, 2013.*
- 4. As noted above, I have taken into account the fact that [the Appellant] wrote a letter to the Commission on November 19, 2013. That letter includes the statement that:
"While certain media reports have made reference to my intentions (some – unfortunately – reflected what I said – others did not!) I wish to state categorically that I have no intention of conducting any activity on this property which is not permitted under the terms of the ALC Act, regulations or orders of the Commission".
That letter also includes an offer to post a bond to ensure removal of the grandstands or to take other steps required. Despite these representations, I must recognize that they have come very late in the day, and I do not have sufficient confidence in all the circumstances - including the erection of these works despite the Commission's decisions and numerous public statements [the Appellant] has previously made with*



regard to compliance - that the actions I consider to be required to comply with the legislation would be taken in the absence of an order.



Grounds of Appeal

S. 55(1) of the Act permits an appeal from certain specified orders, including an order made under section 50 of the Act. S. 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 March 6, 2014, the ALC received a Notice of Appeal from Mr. Earmme, of Earmme and Associates, solicitors for the Appellant.

The Notice of Appeal set out the grounds for the appeal as follows:

- 1. There is no “Commercial Storage” on the Property, as [the Appellant] is not charging any party for any storage on the Property despite the observations of [Mr. R. MacLeod] in the Letter. The boats and other recreational vehicles stored in the Quonset building belong to [the Appellant]. The industrial equipment and personal property in the one steel building belongs to [the Appellant], [the Appellant’s] father-in-law and uncle. [The Appellant] is not charging a fee of any kind to his relatives;*
- 2. [The Appellant] has never operated a commercial rodeo facility on the Property. [The Appellant] was granted permission by the Commission to conduct an RCMP musical ride during July of 2013. The grandstands were on the Property when the Commission gave approval for the musical ride. At that time, the Commission made no reference to removing the grandstands. Further, we refer to Policy Number 4 dated March 2003 of the Commission, wherein grandstands could be required for some of the agri-tourism activities identified in that policy which we would like to conduct on the Property. The grandstands qualify as temporary and seasonal;*
- 3. The Property is also used as a training facility for horses and as such requires a timing booth, the “elevated announcers booth” will be used as a timing booth. Such use is permitted under the Act;*



4. [Mr. R. MacLeod, who] *issued the order did not give sufficient weight to [the Appellant's] offer to post a bond to ensure compliance with an Order of the Commission and, to ensure that the uses conducted on the Property are allowed under the Act. [The Appellant] wishes to reiterate to the Commission that the Property and any improvements thereon will only be used for uses allowed under the Act or for those uses approved by the Commission as a result of an application. [The Appellant] provided a letter to the Commission dated November 19, 2013 (copy enclosed for your reference) which clearly stated our commitment to ensure compliance with the legislation;*
5. *The Board of the Peace Review Regional District ("PRRD"), at its meeting of February 27, 2014, decided to proceed with a review of the Fort St. John Fringe Area which may include the Property. Depending on the results of the review, the Property may be considered for future exclusion from the Agricultural Land Reserve ("ALR");*
6. [The Appellant] *will be obtaining a detailed Agricultural Capability On Site for the Property once weather permits and that we will be submitting such a report to the Commission requesting reconsideration of our application. [The Appellant] does not believe that the Property has the capabilities as identified in the soil classification maps used by the Commission to determine the capabilities of a property;*

The Notice of Appeal also states that:

[The Appellant] has made many improvements to the Property to make portions of the Property arable. When [the Appellant] purchased the Property, it was not in the best of shape and [the Appellant] has removed thirty plus loads of garbage including metal, old steel structures, old houses, old granaries that were no longer being used, piles of wood that was being stored and acres of trees that were dead. The stockpiled soil mentioned under "Additional Requirement" in the Letter is from cleaning up the Property and as a result of creating drainage ditches to open more of the lands for hay crops. The soil will be used on the banks of drainage ditches, or to improve other areas of the Property and will not be removed from the Property.



Relief Requested on Appeal

Section 55(2) of the Act 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.*

The Notice of Appeal requested either a reversal of the Stop Work Order pursuant to s. 55(2)(a) or that the Stop Work Order be referred back to Mr. R. MacLeod with directions. In this regard, the Notice of Appeal specifically stated the following:

[The Appellant] seeks from the Commission that the Stop Work Order set out in the Letter be reversed; or the Commission refer the matter back to [Mr. R. MacLeod] with a recommendation that any enforcement of the same be delayed. We would request that the Order be delayed for at least a two-year period from April 1, 2014; or until either the results of the review by [the Regional District] and the ALC for the Fort St. John Fringe Area are completed or the application has been reconsidered by the ALC.



Written Evidence and Written Submissions

The Appeal Commissioners' received a copy of an email from the Appellant, dated June 24, 2014, advising that the Appellant's "presentation [would] be based on existing file information, with the possible exception of some new photographs of current activities on the [Property]." The Appellant provided five (5) photographs in this regard.

In addition to the ALC Documents Package noted previously, the Appeal Commissioners received a Note to Appeal Commissioners, dated June 24, 2014, including two (2) example news articles and a Note to File, dated June 24, 2014, prepared by Mr. R. MacLeod. These documents were also provided to the Appellant by email on June 25, 2014.

The Appeal Commissioners received copies of two (2) emails, first from the Appellant and second from Kirk Miller ("Mr. Miller") on behalf of the Appellant, with respect to the June 24, 2014 Note to Appeal Commissioners and the June 24, 2014 Note to File.

After the Appeal Hearing, the Appeal Commissioners received an additional Note to File, dated September 2, 2014, prepared by Mr. Watson. This Note to File was prepared in communication with, and based on information provided from, the Appellant.



Appeal Hearing

As noted previously, the appeal process included an oral hearing which was held on June 26, 2014 at the offices of the ALC in Burnaby, B.C.

In addition to the Appellant and the Appeal Commissioners, present at the Appeal Hearing were Mr. Miller, representing the Appellant via telephone, and Gail McLeod (“Ms. G. McLeod”), the Appellant’s wife. ALC Staff, Mr. Watson and Mr. Fry were also present during the Appeal Hearing.

During the Appeal Hearing, oral submissions were made by the Appellant as outlined in his June 24, 2014 email. Provided in this section is a brief summary of these oral submissions.

The Appellant provided some personal and family history as well as how he came to own the Property.

The Appellant reiterated the relief sought by the appeal, which was unchanged from that of the Notice of Appeal.

The Appellant explained that Mr. Spicer, during the site inspection conducted by Mr. R. MacLeod on November 15, 2013, provided Mr. R. MacLeod with incorrect information with respect to the storage of recreational vehicles and industrial equipment on the Property.

The Appellant discussed the elevated booth on the Property as it is related to the Act, the Regulation, and ALC policies and the uses permitted therein. In this regard, the Appellant provided information with respect to the 38 stall horse stable on the Property permitted under s. 2(2)(h)(i) of the Regulation. The Appellant took the position that the elevated booth is a building or structured required for horse training and, as a result, is consistent with s. 2(2)(h) and 2(3) of the Regulation. S. 2(2)(h) and 2(3) of the Regulation permit the following:



- (2) *(h) horse riding, training and boarding, including a facility for horse riding, training and boarding, if*
 - (i) *the stables do not have more than 40 permanent stalls, and*
 - (ii) *the facility does not include a racetrack licensed by the British Columbia Racing Commission;*
- (3) *Any activity designated as farm use includes the construction, maintenance and operation of a building, structure, driveway, ancillary service or utility necessary for that farm use.*

The Appellant also discussed the activities on the Property in relation to s. 2(2)(e) of the Regulation, which permits “agri-tourism activities, other than accommodation, on land that is classified as a farm under the *Assessment Act*, if the use is temporary and seasonal, and promotes or markets farm products grown, raised or processed on the farm”. The Appellant noted that these activities are further addressed in ALC Policy #4, dated March 2003, “Activities Designated as Farm Use: Agri-tourism Activities in the ALR”. In this regard, the Appellant pointed out that bleachers could be required to support some of the agri-tourism activities addressed in ALC Policy #4 provided the bleachers are temporary and/or seasonal. The Appellant indicated that the bleachers currently on the Property are temporary, can be readily moved and have little impact on the Property.

The Appellant clarified that despite the previous non-farm use application, the Property has not been used for rodeo purposes. Furthermore, the Appellant understood that approval from the ALC by way of non-farm use application pursuant to s. 20(3) of the Act would be required to pursue a rodeo on the Property.

The Appellant provided an overview of the improvements and clean up on the Property that was conducted after the Property was purchased, including, but not limited to, improvements that related to the movement of soil on the Property, such as for drainage.

The Appellant discussed his letter of November 19, 2013.



The Appeal Commissioners and the Appellant, along with Mr. Miller and Ms. G. McLeod, discussed further details with respect to those items noted above as well as clarifications with respect to the Note to File, dated June 24, 2014, prepared by Mr. R. MacLeod.



Reasons and Findings

Mr. R. MacLeod issued the Stop Work Order on January 7, 2014 based on sound and reasoned findings as he had observed and as were provided to him by Mr. Spicer during the November 15, 2013 site inspection.

The buildings on the Property have been cleared of all recreational vehicles and industrial equipment. Equipment stored on the Property must be required by the farm operation on the Property. Recreational vehicles stored on the Property must be owned by the property owner; the storage of recreational vehicles on the Property owned by people other than the property owner, regardless of the exchange of monies, is not permitted by the Act and Regulation.

There is a horse facility on the Property that the Appeal Commissioners understand is in compliance with s. 2(2)(h)(i) of the Regulation, which permits “horse riding, training and boarding, including a facility for horse riding, training and boarding, if (i) the stables do not have more than 40 permanent stalls”.

Any activity that is a permitted farm use, pursuant to s. 2 of the Regulation, must be necessary for that farm use and commensurate to the size and scale of the farm operation. In this regard, the Appeal Commissioners find that the use of the elevated booth as a timing booth related to horse training is an acceptable farm use in association with s. 2(2)(h) of the Regulation.

Agri-tourism is a permitted use in the ALR pursuant to s. 2(2)(e) of the Regulation, which permits: “agri-tourism activities, other than accommodation, on land that is classified as a farm under the *Assessment Act*, if the use is temporary and seasonal, and promotes or markets farm products grown, raised or processed on the farm”. This use is further clarified in ALC Policy #4, March 2003, “Activities Designated as Farm Use: Agri-tourism Activities in the ALR”.



Although the Appellant has demonstrated an understanding that agri-tourism activities must be temporary and seasonal, the Appeal Commissioners also emphasize the importance that any agri-tourism activity must also promote or market farm products grown, raised or processed on the farm. In other words, agri-tourism activities would vary based on the operation of any specific farm.

An appeal is not the forum to determine agri-tourism uses that would or would not be consistent with the Regulation and policy in this regard. In future it will be imperative to confirm with the ALC that a proposed use is consistent with the Act, Regulation and applicable policies before proceeding with development and/or events in this regard. Uses determined to be inconsistent with the Act, Regulation and applicable policies would require a non-farm use application under s. 20(3) of the Act. The Appeal Commissioners take no position with respect to any potential agri-tourism activity raised during the appeal process.

Despite the Appeal Commissioners' position with respect to agri-tourism activities in general, the seating capacity of all the bleachers currently on the Property would be excessive and should be limited to a single section regardless of the agri-tourism activity they may support.

The Appellant has demonstrated a general understanding that uses not permitted under the Act and Regulation require approval from the ALC by way of non-farm use application under s. 20(3) of the Act.



Conclusion

The Appeal Commissioners find that, at the time the Stop Work Order was issued, it was correct and reasonable based on the information available to Mr. R. MacLeod at that time.

However, the Appeal Commissioners find that the scale and scope of the activities on the Property have been clarified since the Stop Work Order was issued. As a result, and pursuant to section 55(2)(a) of the Act, the Appeal Commissioners reverse the Stop Work Order under the following conditions:

1. All activities on the Property must be compliant with the Act and Regulation;
2. Should the Appellant be contemplating a non-farm use(s) on the Property an appropriate application must be submitted pursuant to the Act well in advance of any such activity being pursued;
3. The removal or storage of all but one (1) section of bleachers on the Property. The Appeal Commissioners do not object to the storage of bleachers on the Property provided they are clearly not available for seating. Should the Appellant determine that extra section(s) of bleachers are required for specific use that is believed to be consistent with the Act and Regulation, the appropriateness of this use must be confirmed with the ALC in advance of this use taking place; and
4. If the Appellant is contemplating any other uses on the Property that requires interpretation of uses permitted by the Act and Regulation, the Appellant should contact the ALC well in advance of that use(s) taking place to ensure it is permitted.

Appeal Commissioners: **Jennifer Dyson, Chair**
 Lucille Dempsey
 Bert Miles



Appeal Decision Date: November 13, 2014

I hereby certify that the decision herein is the unanimous decision of the Appeal Commissioners.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jennifer Dyson, Chair