



Agricultural Land Commission Appeal Decision, ALC File 50960

Appeal pursuant to section 55 of the *Agricultural Land Commission Act*

Appellants: John Edward Tomlinson, Karen Rose Tomlinson, Jenna Marie Crees
Trevor Alan Crees, Michael Davie Gibson and Tara Gaye Gibson

BEFORE: An Appeal Panel of the ALC

Jennifer Dyson, ALC Chair
Dave Merz, ALC Vice Chair
Richard Mumford, ALC Vice Chair
Linda Michaluk, ALC Vice Chair
Dave Zehnder, ALC Vice Chair

DATE: September 27, 2018

PLACE: ALC Offices at #201, 4940 Canada Way, Burnaby, BC

APPEARING: For the Appellants: John Tomlinson (landowner), Brent Meckling
(Counsel on behalf of the landowners)

Appeal

[1] On April 13, 2018, a Stop Work Order dated April 13, 2018 (“Stop Work Order”) from Kim Grout, Agricultural Land Commission (“ALC”) Chief Executive Officer (“CEO”) was provided to John Tomlinson, on behalf of the owners of PID 011-761-059 – *Lot 19, Section 13, Township 11, New Westminster District Plan 1279* (“Telegraph Trail Property”) pursuant to section 50 of the *Agricultural Land Commission Act* (“ALCA”).

[2] The Stop Work Order specified two actions:

(a) Cease construction of and relating to the two single family dwellings in the south central and southeast areas of the Telegraph Trail Property, including the importation of fill, provided, however, that any remaining construction (and related filling) of the Owners’ choice of one of the two dwellings, may resume once the other has been completely removed; and

(b) Cease construction of and relating to the “1250 [sq.] ft. suite” towards the northeast of the Telegraph Trail Property, including the importation of fill, until the manufactured home in the southwest of the property has been completely removed.



[3] On June 15, 2018 the ALC received a Notice of Appeal from the Appellants pursuant to section 55 of the ALCA.

[4] The Appeal Panel (“Panel”) of the ALC has the authority to hear this appeal under section 55 of the ALCA which provides:

55 (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.*

(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.

[5] The Appellants are requesting the Stop Work Order be reversed and set aside.

The Appeal Process

[6] On June 15, 2018, the ALC received a Notice of Appeal on behalf of the Appellants pursuant to section 55 of the ALCA. The Notice of Appeal was acknowledged in a letter from the ALC dated June 18, 2018.

[7] On July 27, 2018, the Panel provided direction regarding procedure related to the Appeal Hearing and applicable timelines (the “July 27, 2018, Directions”). The July 27, 2018, Directions included timelines for the submission of additional information and representations.

[8] On July 27, 2018, the Appellants were provided electronic access to the information that was before the ALC CEO Kim Grout when she made the Stop Work Order, and to a copy of the Stop Work Order itself (“ALC Documents Package”).

[9] The Appeal was conducted by way of an oral hearing which was attended by the Appellant Tomlinson as noted above and his counsel on September 27, 2018. The ALC CEO made a written submission dated September 24, 2018, and did not attend the hearing.

Background

[10] The Stop Work Order relates to the property located at 26115 Telegraph Trail, Langley, BC (as defined above, the “Telegraph Trail Property”). The legal description of the Telegraph Trail Property is:

PID 011-761-059 – *Lot 19, Section 13, Township 11, New Westminster District*
Plan 1279

[11] The Telegraph Trail Property is 3.12 ha in area and is located within a designated agricultural land reserve (“ALR”) as defined in section 1 of the ALCA.

[12] The first written ALC involvement with the Appellants began with an April 22, 2016 e-mail after the Appellant Tomlinson phoned ALC staff to discuss a 7.3 ha property in the Township of Langley (“Langley”) on 48th Ave. that contained no structures. The Appellant provided an e-mail and a diagram indicating he wanted to construct dwellings for three families, greenhouses, and operate a generational farm. A site diagram showing greenhouses and homes was submitted with the e-mail.

[13] An April 22, 2016 e-mail from ALC staff member Tony Pellett, Regional Planner, responding to the Appellant’s April 22, 2016 e-mail indicated that while a single home and a single floor accommodation above a garage/workshop was permitted, the question of a second home was solely under the authority of the Township of Langley to determine whether it would be necessary for farm use. Regional Planner Pellet was clear that the “Commission has no say in that decision”.

[14] On May 2, 2016 ALC staff member Tony Pellett, Regional Planner, provided an e-mail to the Appellant about procedures for approving more than a single home on an ALR parcel. He pointed out that section 18 of the ALCA provides for local government to approve homes as it deems necessary for farm help. Regional Planner Pellet stated that in order to establish the generational farm it was clearly necessary for each of the siblings’ families to have a separate residence.

[15] On May 2, 2016, the Appellant Tomlinson prompted ALC Regional Planner Pellett (by e-mail) to confirm that the proposal the Appellant Tomlinson outlined in e-mails and in the diagram “meets your definition of a bona fide farm”.

[16] On May 3, 2016 ALC Regional Planner Pellett confirmed via e-mail that “I have also undertaken a thorough study of the generational farm proposal advanced by John Tomlinson and am confirming that it meets the definition of a bona fide farm.”

[17] On May 6, 2016, at the request of the Appellant Tomlinson, ALC Regional Planner Pellett issued a letter on ALC letterhead indicating that the Tomlinson farm proposal met the definition of a bona fide farm, and that Langley had authority (under section 18 of the ALCA) to issue permits for more than one residence on an ALR property if Langley deemed the additional residence(s) necessary for farm use.

[18] On May 11, 2016, Langley confirmed to the Appellant Tomlinson by e-mail that it had no issue with the ALC position that the proposed generational farm is a bona-fide farm, and that two (2) single family dwellings would be permitted along with separate accommodation above an accessory or farm building.

[19] On April 5, 2017 the Appellant Tomlinson made a Declaration of Intended Use for Langley in respect of Accessory Buildings on the Telegraph Trail Property and in particular, that a temporary accessory mobile will be used as a temporary living quarters during the construction of the second dwelling and that he would complete the demolition of the temporary accessory mobile within 60 days of occupancy or being permitted to occupy the second single family dwelling.

[20] On a date unknown ALC Officer Blanshard visited the Telegraph Trail Property with Langley staff and identified that there was active residential construction occurring at the Telegraph Trail Property and no record of ALC authorization.

[21] On February 6, 2018 ALC Compliance and Enforcement (“C&E”) Officer Sharon Henderson visited the Telegraph Trail Property to verify the information of ALC Officer



Blanshard. C&E Officer Henderson confirmed that additional residences had been or were being constructed. C&E Officer Henderson observed at least two wood frame houses and an incomplete structure that appeared to be another residence existed on the Telegraph Trail Property. C&E Officer Henderson observed a trailer dwelling. C&E Officer Henderson observed considerable recent fill that occupied the foundation areas of the second house and the barn. C&E Officer Henderson observed that landscaping had occurred; that two large canvass shelters were in place over a parking area; and that no agriculture was occurring on the Telegraph Trail Property. Although C&E Officer Henderson observed that the first house appeared to be occupied, there was answer when C&E Officer Henderson knocked on the door. The trailer and second house were not obviously occupied.

[22] On February 6, 2018, C&E Officer Henderson served a Stop Work Order dated February 6, 2018 (the “First Stop Work Order”) on the Appellant Tomlinson at his place of business. The First Stop Work Order issued under s. 50 of the ALCA ordered immediate cessation of the following activities / land uses:

1. *Deposition of imported fill, soil, gravel or any other like material in the absence of evidence satisfactory to the Commission that the fill is necessary for the Owners’ farm use.*
2. *Construction of residential or other buildings not related to farming including but not limited to structures, roads, parking areas, landscaping, septic fields.*

[23] On February 7, 2018, the Appellant Tomlinson e-mailed C&E Officer Henderson, referenced the 2016 documentation with ALC Regional Planner Pellett, and requested that the First Stop Work Order be immediately withdrawn.

[24] On February 7, 2018, the Appellant Tomlinson e-mailed ALC Regional Planner Pellett, forwarding the 2016 documentation and advising that the owners had to build infrastructure before they could bring the farm into production. The Appellant Tomlinson advised that he had earlier offered a bond to guarantee that they would follow through with the farming and that ALC Regional Planner Pellett had indicated that was not necessary.

[25] On February 13, 2018, C&E Officer Henderson advised the Appellant Tomlinson that she would consult with planning staff and management and be in touch.

[26] On February 14, 2018, the ALC received a Notice of Appeal from the Appellant Tomlinson in respect of the First Stop Work Order.

[27] Also on February 14, 2018, the Appellant Tomlinson e-mailed C&E Officer Tomlinson and stated that the fill was a driveway through very wet area on a bona fide farm going to a barn that is needed for a future green house and vegetable production. The Appellant Tomlinson stated that all approvals had been obtained from the ALC and Langley before the Telegraph Trail Property was purchased and the housing arrangements were disclosed.

[28] The Notice of Appeal was acknowledged in a letter from the ALC dated February 15, 2018.

[29] On February 20, 2018, the ALC received a letter from Brent Meckling, counsel for the Appellants, seeking immediate particulars of the Stop Work Order or withdrawal of the Stop Work Order. Reference was made to the Appellant's previous interactions (in 2016 and referenced above) with ALC staff, to reliance by the local government and the Appellants on the 2016 statements made by ALC staff, as well as to *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* pertaining to structures and fill.

[30] On March 2, 2018, the ALC received a second letter from Brent Meckling asserting that the Appellants continued to suffer significant prejudice and seeking a response to the correspondence dated February 20, 2018.

[31] On April 3, 2018, the First Appeal Panel provided direction regarding procedure related to the Appeal Hearing and applicable timelines (the "April 3, 2018, Directions"). The April 3, 2018, Directions included timelines for the submission of additional information and representations.

[32] On April 9, 2018, the First Appeal Panel received an e-mail from Mr. Meckling stating that without the particulars of the First Stop Work Order that had been sought, it was difficult to provide meaningful submissions on the appeal by the date stipulated in the April 3, 2018 Directions.

[33] On April 11, 2018, ALC Director of Policy and Planning Collins e-mailed Mr. Meckling to advise that the CEO was reviewing the matter and it was possible that a response would be provided early the following week.

[34] On April 13, 2018 the ALC issued a varied Stop Work Order in response to the February 20, 2018 letter (and questions). The varied Stop Work Order specified the following:

a) Cease construction of and relating to the two single family dwellings in the south central and southeast areas of the Telegraph Trail Property, including the importation of fill, provided, however, that any remaining construction (and related filling) of the Owners' choice of one of the two dwellings, may resume once the other has been completely removed; and

(b) Cease construction of and relating to the "1250 [sq.] ft. suite" towards the northeast of the Telegraph Trail Property, including the importation of fill, until the manufactured home in the southwest of the property has been completely removed.

The Appeal Submissions

Appellants' Submission

[35] The Appellants provided a written submission and made an oral presentation at the September 27, 2018 Appeal Hearing. The substantive elements of the oral presentation follow.

[36] Mr. Tomlinson is a long time Langley resident and grew up on a small mixed farm with his siblings and parents. The family farm had more than a single home and represented a generational farm where parents and children lived and worked together on a single property. Mr. Tomlinson, in 2016 after serving as an ALC Commissioner for four years, sought to re-create his previous experience on a generational farm and contacted ALC staff for affirmation that a generational farm with multiple dwellings could be accommodated in the Agricultural Land Reserve. It was very important for Mr. Tomlinson to ensure that everything was transparent and above board because of his previous experience as an ALC Commissioner.

[37] Mr. Tomlinson received written confirmation from the ALC dated May 6, 2016 that his proposed three dwelling generational farm with greenhouses and field crops constituted a bona

fide farm and that Langley was the entity that could permit additional dwellings as necessary for farm help.

[38] Subsequently, upon being provided with the ALC's May 6, 2016 letter, Langley issued building permits for multiple residences on the Telegraph Trail Property.

[39] Mr. Tomlinson submits that without the ALC's advice and confirmation, the Appellants would not have purchased the Telegraph Trail Property, improved it and brought it into production. The following activities have been undertaken based on the ALC's advice and Langley's regulations and permits.

- a) Purchase of the Telegraph Trail Property later in 2016 (approximately \$1.6 million);
- b) Extensive renovations were undertaken on the existing single family dwelling (\$165,000.00);
- c) A new second dwelling was constructed (\$385,000.00);
- d) An accessory building/barn with a second story suite was constructed on the northeast corner of the Telegraph Trail Property for \$400,000.00 (to be completed shortly).
- e) The existing manufactured home was removed;
- f) 1600 trees were recently planted (pyramidal cedars for hedging);
- g) Two greenhouses covering 4,000 sq ft are on order;
- h) Cleared and ploughed a 1.4 ha area for future planting of cedars, hops, fruit trees and hives for bee keeping;
- i) Installed a well and irrigation system (\$30,000.00);
- j) Purchased farm equipment.

[40] The Appellants' argument for setting aside the Order is that the Tomlinson family in good faith sought, and received, approval from the ALC for a multi-home generational farm.

[41] The Appellants assert that the question of whether the additional dwelling is necessary for farm use was solely for Langley to answer. One of the inputs that local government can solicit for interpretation as to what are considered necessary residences for farm use are comments from ALC staff (as per the ALC Policy L-09).



[42] The Appellants assert the Stop Work Order invalidates, without proper foundation, the building permit validly issued by Langley for a second dwelling. The only question for the local government to determine was whether the additional dwelling was necessary for farming uses. There was no need for the Appellants to apply for a non-farm use as the second dwelling is part of a bona fide generational farm.

[43] The Appellants assert the ALC cannot inflict severe prejudice upon the Appellants by calling into question the advice of a senior staff member of the ALC. The Appellants altered their financial circumstances and sold their homes on the advice provided by the ALC and confirmed by Langley. Requiring the removal of an additional dwelling is completely unjust and unfair.

ALC CEO Submission

[44] On September 24, 2018 the ALC CEO provided a written submission in support of the April 2018 Stop Work Order. The substantive elements of the written submission follow.

[45] The ALC C&E powers are not bound by a local government's decision to approve additional residences.

[46] Section 18(a) of the ALCA is a restriction on local government powers, and does not confer any new powers upon local governments. In order for Langley's approval to have been compliant with section 18, the additional residences had to be necessary for farm use such that it could issue approval. The actual determination made by Langley was that the proposed generational farm was a "bona-fide farm", a term which does not appear in the ACLA but does appear in the Langley's bylaw.

[47] It is clear that Langley's determination regarding "necessary for farm use" was not specific to a particular property. Properties in the ALR are not interchangeable and what is necessary for farm use on one property may not be necessary for farm use on another. Proposed farm uses themselves may be different. The Appellant Tomlinson may not have shared all of his correspondence with Regional Planner Pellet with Langley staff so that they were not aware that the proposal considered by Regional Planner Pellet was specific to the 48th Avenue Property. Langley's approval for two residences may not have been appropriate given that there was no



assurance that the farm development would have ever occurred after the dwellings were constructed.

[48] The Appellant Tomlinson communicated with ALC Regional Planner Pellet about an 18 acre property located on 48th Avenue and made specific statements about farming on that property indicating that it would comprise “4-5 greenhouses” and “crops like a Christmas tree farm, grapes and if too wet then livestock mixed farming”.

[49] CEO Grout asserts that both the type and scale of activities said to be intended were different. The 48th Avenue Property (approx. 18 acres) is larger and has different characteristics than the Telegraph Trail Property (approx. 8 acres). The Telegraph Trail Property is significantly forested. The farming plans associated with the properties also differed with the Telegraph Trail Property plans being much more limited in scope. As well, representations were made that the farming would include: “greenhouse future” structures and referred to future fruit trees and “plants shrubs”. In his email, Mr. Tomlinson stated that “we will also look into chickens and a possible Tilapia fish operation”. Later through his counsel, it was contemplated the operation would have two greenhouses, organic vegetable farming, beekeeping, fruit trees, and shrubbery for third party landscaping.

[50] There is no evidence to suggest that Mr. Pellett received any farm proposal or other information relating to the Telegraph Trail Property prior to the Stop Work Order.

[51] Regional Planner Pellet’s statements to one of the Appellants about a different property are not relevant to the question of whether the Telegraph Trail Property is compliant with the ACLA and Regulation.

[52] Planners such as ALC Regional Planner Pellett have no authority to approve or refuse applications for non-farm use. CEO Grout notes that the ALC had not granted any approval with respect to the Appellants’ activities at the Telegraph Trail Property. CEO Grout asserts that even if ALC Regional Planner Pellet’s statements about the 48th Avenue Property could be relevant to the Telegraph Trail Property, Mr. Pellett did not make a promise or assurance which was intended to affect the legal relationship between Mr. Tomlinson (or any of the Appellants) and the ALC.

[53] CEO Grout submits that the Appellant Tomlinson, as a former ALC member, is particularly knowledgeable about the ALCA's requirement that a non-farm use application to the ALC be brought for additional residential dwellings. As a former ALC member the Appellant Tomlinson heard and decided numerous applications including non-farm use applications for additional residential dwellings under section 20 of the ACLA.

[54] CEO Grout notes that the Appellants have recently planted 1600 trees, and asserts that growing of trees does not require farm help or extra farm help to be resident on-site. CEO Grout also points out that although the Appellants advise that they have cancelled orders for greenhouses and beehives due to the uncertainty created by the Stop Work Orders, there was nothing in the Stop Work Order that prohibited greenhouses or beehives, and further notes that neither of these activities require farm help or extra farm help to be resident on-site.

[55] CEO Grout further notes that the Stop Work Order required that the Appellants cease construction of the 1250 sq. ft. suite above the accessory building until the manufactured home on the Telegraph Trail Property was removed. The manufactured home has now been removed. CEO Grout notes that the accessory building was not "an existing building" under section 3(1)(b)(ii)(B) because the record shows it was newly-constructed.

Discussion and Findings:

[56] The Panel agrees with CEO Grout that Mr. Pellet's comments in 2016 do not prevent the ALC enforcement of the ALCA and Regulation on the Telegraph Trail Property.

[57] First, the Panel finds that the Appellants' representation that they appropriately approached the ALC staff to get advice for Langley in its determination of its section 18 (of the ALCA) responsibilities to be misguided. Although ALC Policy L-09 does suggest requesting advice of ALC staff, the purpose of the policy is not to receive "*a priori*" permission for dwellings in anticipation of agricultural development, but to query whether the current level of agricultural activities warrants an additional dwelling. Further, the Appellant Tomlinson, as a former member of the ALC, was aware of the separation of staff and ALC roles in respect of how decisions and approvals are provided.

[58] Second, the Panel accepts the ALC argument that the ALC C&E powers are not bound by a local government's decision to approve additional residences, and that the enforcement powers of the ALC are separate and distinct, and exercised in different contexts and for different purposes than the local government. ALC staff's 2016 statements to the Appellants about a different property (which was significantly larger) and upon which different activities in both type and scale were contemplated, are not relevant to the matter of compliance with the ALCA and Regulation on the Telegraph Trail Property.

[59] The Panel also finds that when originally inspected in February 2018, there was no agricultural activity occurring on the Telegraph Trail Property, even though there were multiple houses either occupied or under construction. The Panel accepts that the Appellants appear to be moving towards developing a farm on the 3.12 ha Telegraph Trail Property given the evidence provided of clearing, field improvements and current plantings.

[60] That said, the Panel does not consider the level of agricultural activity to date to require the labour of or residences for three families and therefore, because the owners have two single family dwellings on the Telegraph Trail Property, this is a contravention of the Act and Regulation, including section 3(1)(b) of the Regulation.

[61] Nor does the Panel consider the proposed additional agricultural activities (as outlined at the Appeal Hearing) i.e. the greenhouses and other crops, to require the presence of three families on the 3.12 ha Telegraph Trail Property and therefore, because the owners have two single family dwellings on the Property, this is a contravention of the Act and Regulation.

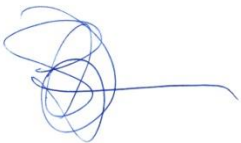
[62] The Panel considered the matter of the importation of fill referenced in the CEO Stop Work Order. The Panel noted that the importation of fill was ancillary to the construction of the dwellings. Now that the dwellings are completed the Panel does not consider it necessary to address the issue of fill.

[63] The Panel recognizes that two dwellings and the accommodation above the farm building are constructed (or nearly so), and that some agricultural development of the property is occurring and more is proposed.

[64] With regard to the existing Order, the Appeal Commissioners choose to refer the Order back to the ALC CEO for further consideration taking into account the Appeal Commissioners' findings and with the following direction:

- The ALC CEO should consider whether the Order should be maintained in its present form or whether there are additional and/or alternative compliance and enforcement measures required to address the fact that the Appellants knowingly and inappropriately solicited and utilized ALC senior staff advice to receive authorization from the local government for additional dwellings that were not necessary for farm help.

Appeal Panel:



Jennifer Dyson



Richard Mumford



Dave Merz



Dave Zehnder



Linda Michaluk

Appeal Decision Date: November 5, 2018