



Agricultural Land Commission Appeal Decision, ALC File 50961

Appellants: Sarabjit Brar
Gurpreet S. Brar,
Gurpreet K Brar and
Chamkaur Brar

Appeal pursuant to section 55 of the *Agricultural Land Commission Act* of the September 22, 2017 Order issued by Kim Grout, Chief Executive Officer of the Agricultural Land Commission

Introduction

- [1] On September 22, 2017, an Order (the “Order”) of the Chief Executive Officer (“CEO”) of the Agricultural Land Commission (the “ALC”) was served on Sarabjit Brar, Gurpreet S. Brar, Gurpreet K Brar and Chamkaur Brar, of 1895 Townline Road, Abbotsford, BC in relation to *PID 024-531-090: Lot “B” Plan LMP 42227, Part SE ¼, Section 13, Township 13, New Westminster District* (the “Property”). The Order required the removal of the unauthorized fill from the Property and the land’s remediation.
- [2] On November 17, 2017 the ALC received a Notice of Appeal from Sarabjit Brar, Gurpreet S. Brar, Gurpreet K Brar and Chamkaur Brar of the Order pursuant to section 55 of the *Agricultural Land Commission Act* (“ALCA”).
- [3] On February 16, 2018, the Appeal Panel provided direction regarding procedure related to the Appeal Hearing and applicable timelines (the “February 16, 2018 Directions”). The February 16, 2018 Directions included timelines for the submission of additional information and representations.
- [4] On March 5, 2018, further to the February 16, 2018 Directions, the Appeal Panel received a written request from the Appellants’ counsel, Gurpreet Badh, requesting a delay in the

hearing of the appeal, which was at that time Scheduled for March 7, 2018, in order to give time to prepare an appropriate submission. The hearing was delayed.

[5] An Appeal Submission dated April 16, 2018 was received from the Appellants' counsel.

[6] The appeal process included an oral hearing heard by the Appeal Panel. The oral hearing occurred on April 25, 2018 at the ALC Offices located in Burnaby, BC (the "Oral Hearing"). The Appeal Panel consisted of Frank Leonard (ALC Chair) and ALC Vice Chairs Richard Mumford, Gerry Zimmermann, Linda Michaluk, and Dave Merz.

[7] Following the Appeal Hearing additional information was requested from both the ALC CEO and the Appellant (see below for details) and opportunity was provided for rebuttal.

[8] Although Frank Leonard was present at the Appeal Hearing, he was not present at the Appeal Decision.

Background

[9] The Order relates to a property located at 1895 Townline Road, Abbotsford, BC (as defined above, the "Property"). The legal description of the Property is:

PID 024-531-090:

Lot "B" Plan LMP 42227, Part SE ¼, Section 13, Township 13, New Westminster District.

[10] The Property is 2 ha and is located within a designated agricultural land reserve ("ALR") as defined in section 1 of the ALCA.

[11] The involvement of Compliance and Enforcement ("C&E") staff of the ALC with the Property began on June 16, 2017 (the following are timeline highlights).

- On June 16, 2017 a complaint was received from a member of the public that topsoil was being stripped, the ground compacted and acres of gravel were being spread at 1895 Townline Road.

- An August 4, 2017 site inspection undertaken by ALC C&E Officer David Assels revealed that soil removal and deposition of fill had taken place on both the Property and the adjoining 1913 Townline Road.
- Stop Work Orders were issued on August 8 and August 9, 2017. Additionally, owners of both properties were issued Notices of Contravention requesting the following information:
 - The total volume of soil removed from the property.
 - The total volume of material brought into the property.
 - Any and all invoices/load slips related to the Fill Project.
 - The contact information of all contractors/agents Qualified Professional involved in the Fill Project.
 - Any reports completed by a qualified professional that related to the Fill Project.
- A letter dated August 20, 2018 from Chamkaur Brar indicated that no soil was removed from the Property, though it was graded slightly, and that the amount of gravel deposited on the Property was 1,700 cubic meters, and that the intention was to start a nursery farm for blueberries and other plants.
- On September 22, 2017 the CEO issued the Order requiring the removal of the unauthorized fill and that the subsequent remediation of the Property must be overseen by a Qualified Environmental Professional (QEP).
- On November 17, 2017, the Appellants submitted a Notice of Appeal of the Order.
- On April 25, 2018 the Appeal Panel conducted the Oral Hearing.

The Order

[12] Among the various materials the Appeal Panel had before it was a copy of the Order together with the documents referenced therein. These documents comprised the "ALC Documents Package" to which the Appellants were provided electronic access on February 16, 2018 as part of this Appeal.

[13] On September 22, 2017 the CEO issued the following Order:



“Accordingly and in the circumstances, pursuant to Section 52(1) of the Act as Chief Executive Officer of the Commission I hereby Order Sarabjit Brar; Gurpreet S. Brar, Gurpreet K. Brar and Chamkaur Brar and their agents, representatives, employees and any other person acting on their behalf, to remove all fill, including, but not limited to, any material brought on land in the Agricultural Land Reserve other than materials exempted by Regulation.

In addition the Property must be remediated to ensure that soil agricultural capability is similar to or better than before the fill was imported onto the Property:

The above requirements must be completed by December 15, 2017, unless prior to that time, I agree in writing to vary this remediation order.”

Notice of Appeal

[14] Section 55(1) of the ALCA permits an appeal from certain specified orders, including an order made under sections 50 and 52 of the ALCA. Section 55(1) states as follows:

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.

[15] On November 17, 2017 the ALC received a Notice of Appeal of the Order from the Appellants.

Written Evidence and Written Submissions

[16] The submissions included with the Notice of Appeal received November 17, 2017, and the April 16, 2018 Appeal Submission (together, the “Appeal Submissions”) submitted by Gurpreet Badh, the Appellants’ counsel, indicate the following:

1. The Appellants purchased the Property in June 2017 for the purpose of starting a nursery for blueberries and other plants.
2. The Appellants began to deposit gravel on the Property to facilitate the nursery operation. After receiving information dated August 8, 2017 from ALC C&E Officer Assels outlining his concerns with the apparent removal of soil and deposit of gravel,

- the Appellants provided correspondence dated August 20, 2017 indicating that a nursery farm operation was proposed for the Property and that no topsoil had been removed.
3. The Appellants indicate that in the inspection report Officer Assels has alleged that soil removal and deposition of fill had taken place on both 1895 and 1913 Townline Road, and that the usage of the Property as a blueberry nursery was not consistent with local standard berry farming practices.
 4. The Appellants indicate that the Order is not valid in law, because it is based on inconclusive and unsubstantiated evidence, and on an unreliable inspection report which is contrary to the allegations on which the said Order has been made.

Oral Hearing

[17] The appeal process included the Oral Hearing which was held on April 25, 2018 at the ALC Offices at #201, 4940 Canada Way, Burnaby, BC.

[18] The individuals attending the Oral Hearing included, for the Appellants, Gurpreet Badh, and Chamkaur Brar.

[19] During the Oral Hearing, oral submissions were made pursuant to the Appeal Submission of April 16, 2018 (as noted above).

Relief Requested on Appeal

[20] 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.*

[21] The order sought by the Appellants is as follows, as set out in the Appeal Submission dated April 16, 2018:

“The Chief Executive Officer has failed to establish a case of Non-Farm Use and relied on speculative evidence to arrive at her decision and the Remediation Order should therefore be set aside.”

Additional Information Requested

[22] In a letter dated May 14, 2018 the Appeal Panel requested that the CEO of the ALC provide the following information.

- *Whether (and to what extent) gravel deposition is commonly used to provide a bed for potted plants in nursery operations in Abbotsford, or nearby local communities;*
- *Evidence that topsoil may have been removed from the Property (as alleged in C & E August 8, 2017 correspondence);*
- *An accurate calculation of the amount of gravel fill material deposited on the Property (in total cubic meters – and to what depth).*

[23] In addition the Appellants were prompted via a May 14, 2018 letter to provide examples of nursery operations which were underlain with gravel.

[24] A letter dated May 22, 2018 was received from the Appellants' counsel, Gurpreet Badh, which provided a list of the addresses of sixteen (16) nursery facilities which were operated on gravel beds. Numerous photographs of these facilities were provided (but not cross referenced to the addresses).

[25] A letter dated May 24, 2018 was received from the CEO of the ALC responding to the May 14, 2018 letter from the Appeal Panel. The response indicated:

- Sand and gravel are often used in nursery beds for drainage and weed free surfaces, but is usually a mixture of 10 – 15 cm of sand covered with geotechnical fabric and then an additional 10 – 15 cm of crushed gravel. An irrigation mainline is also generally buried with lateral lines on the surface. An analysis of test pits on the subject property indicated that geotechnical fabric was not installed. Also container nurseries are not listed as a permitted non-farm use or a farm use in the ALC Regulation, and therefore a request is processed as a Notice of Intent or a non-farm use application.
- It was confirmed that there is no evidence that topsoil was removed from the Property.
- A site visit on May 23, 2018 by ALC staff (Glavas and Assels) confirmed that that an estimated 3,580 cubic meters had been deposited on the Property.



[26] A letter dated July 11, 2018 was received from the Appellants' counsel, Gurpreet Badh, in response to the ALC CEO's May 14, 2018 letter. The letter:

- indicated that the Appellants were interrupted in their setting up of the container nursery;
- indicated that the Courts have indicated that the term "farm operation" needs to be given a broad meaning, the *Farm Practices Protection (Right to Farm) Act* ("FPPA") defines a "farm operation" as the growing, producing, raising or keeping of animals or plants, and the ALCA references the FPPA when defining "farm use".
- concurred with the ALC staff assessment that no topsoil had been removed from the Property, but disagreed with the staff assessment as to the amount of gravel deposited, claiming 1/3 of the estimated amount.

Appeal Panel's Findings:

[27] The Appeal Panel makes the following observations and findings as to the claims and statements of the Appellants:

- 1) The Appeal Panel finds there was no evidence presented to show that soil was removed from the Property, and as a result, confirms that no soil was removed from the Property.
- 2) The Appeal Panel finds that the amount of gravel deposited on the Property to be of a depth and coverage inconsistent with other existing nurseries. In addition there was no evidence of irrigation infrastructure or geotechnical matting that is typical of container nurseries (geotechnical fabric; buried irrigation lines) as referenced in the ALC CEO's letter. It was also noted that, in contrast to the Property, many of the photographs provided by the Appellants of container nurseries showed inconsistent coverage of the parcel with gravel, and with significant infrastructure for irrigation. The Appeal Panel notes that the Appellant did not offer any reply or rebuttal to the CEO's assertion in the May 14 letter regarding the usual nature of nursery operations, that being, the depth of gravel, buried irrigation infrastructure and geotechnical fabric.
- 3) The Appeal Panel finds the gravel deposition and the lack of infrastructure on the Property to be more the nature of a pad for other uses rather than a container nursery.
- 4) The Appeal Panel finds the Appellant's disagreement with ALC staff as to the amount of gravel deposited on the property to be not believable because ALC staff visited the property and took measurements and dug several test pits to specifically ascertain the total amount of gravel deposited.

- 5) The Appeal Panel does not find the argument that the Appellants had been interrupted in their construction of the container nursery and therefore unable to bring it to completion to be compelling because neither irrigation lines nor geotechnical cloth were evident and are generally installed before placing the gravel fill is completed.
- 6) The Appeal Panel finds that it cannot be reasonably assumed that the deposit of gravel on the Property is typical for the construction of a container nursery.
- 7) The Appeal Panel notes that it was not provided with any information indicating that the landowners had any previous experience with the development or operation of a container nursery, nor was any business plan provided.
- 8) The Appeal Panel notes that the land has soil capability ratings indicating that a very wide range of crops could be grown on the Property.
- 9) The Appeal Panel finds that the presence of fill on the Property represents a significant erosion of agricultural potential for soil based agriculture.
- 10) The Appeal Panel finds the Order to be suitable and appropriate given the soil capability ratings of the Property, and the agricultural development of similar capability nearby lands in the ALR.

Conclusion

[28] Having received and considered the information submitted as part of the appeal, the Appeal Panel is satisfied that the Order is appropriate.

[29] The Appeal Panel confirms the Order under s. 55(2)(a) of the ALCA except for the fact that, as a practical matter, the deadline in the Order for completing the requirements has passed. Given the circumstances in this case, the Appeal Panel is satisfied that the Appellants should be given time to comply at this point. It therefore refers the Order back to the CEO with the direction that she consider and set a new deadline for the steps set out in the Order, with a view to what would be a reasonable time for compliance in the present circumstances and taking into account of the possibility that the Appellants may wish to file a non-farm use application.



Appeal Panel:

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Richard Mumford

A handwritten signature in black ink, appearing to read 'D. Merz', written in a cursive style.

Dave Merz

A handwritten signature in black ink, appearing to read 'L. Michaluk', written in a cursive style.

Linda Michaluk

A handwritten signature in black ink, appearing to read 'G. Zimmermann', written in a cursive style.

Gerry Zimmermann

Appeal Decision Date: August 27, 2018