



Agricultural Land Commission Appeal Decision, ALC File 58735

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

Appellants: Ram S. Gill, Pal K. Gill, Karamjit S. Gill and Gurpreet S. Gill,

BEFORE:

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: Karamjit Gill, John Paul, Pal Gill

Appeal

[1] A remediation order dated September 25, 2017 made by Kim Grout, Agricultural Land Commission (“ALC”) Chief Executive Officer (“ALC CEO”), pursuant to section 52(1) of the *Agricultural Land Commission Act* (“ALCA”) (the “Remediation Order”), was served on Ram S. Gill, Pal K. Gill, Karamjit S. Gill and Gurpreet S. Gill (the “Appellants”), the owners of PID 011-440-538 Parcel A (M90533E), Plan NWP9813, Sublot 1, Part SE ¼, Section 27, Township 13, New Westminster Land District (“the Property”) - 3535 Ross Road, Abbotsford, BC. The Remediation Order required that a Qualified Professional oversee the removal of all unauthorized fill from the Property, and that the property be remediated to an agricultural capability equal or better than prior to filling.

[2] On November 8, 2017 the Appellants appealed the Remediation Order.

[3] The Appeal Commissioners have 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.*

[4] The Appellants are requesting that the Remediation Order be reversed.

The Appeal Process

[5] As noted above, on November 8, 2017 the Appellants submitted an appeal to the ALC pertaining to the Remediation Order.

[6] On September 6, 2018, the Appellants were provided with electronic access to a further copy of the Remediation Order as well as to the information that was before the ALC CEO when the Remediation Order was made (“ALC Documents Package”). The Appellants were also provided with direction regarding procedure related to the Appeal Hearing, and timelines for the submission of additional information and representations (the “September 6, 2018 Directions”).

[7] The Appeal was conducted by way of an oral hearing on September 27, 2018 at the ALC Burnaby office and was attended by the Appellants and Mr. John Paul, PAg. In accordance with present practice, the ALC CEO did not attend the hearing, and did not submit any additional materials.

Background

[8] The Remediation Order relates to the property located at 3535 Ross Road, Abbotsford, BC (as defined above, the “Property”). The legal description of the Property is:

PID 011-440-538 Parcel A (M90533E), Plan NWP9813, Sublot 1, Part SE ¼ , Section 27, Township 13, New Westminster Land District

[9] The Property is 0.93 ha in area and is located within a designated agricultural land reserve (“ALR”) as defined in section 1 of the ALCA.

[10] In January 2017, the Appellants and others filed an application with the ALC to permit the deposit of ~35,000 cubic meters of fill (comprising a combination of structural fill and topsoil) on the subject Property and two other adjoining properties on Ross Road (ALC file: 54100). The application was refused on March 31, 2017, by the ALC South Coast Panel in Resolution #80/2017 because the constraints regarding drainage and topography did not preclude the Property's use for agricultural purposes.

ALC C & E involvement with the Property

[11] On July 12, 2017, C & E Officer David Assels inspected the Property and issued a stop work order on filling that was observed to be underway (the "Stop Work Order"). Officer Assels was advised that even though the landowners were aware of the ALC decision to refuse the deposit of fill, up to 500 truck loads of fill had already been placed on the Property. On September 11, 2017, the ALC received a Notice of Appeal on the Stop Work Order on behalf of the Appellants pursuant to section 55 of the ALCA. Since the Notice of Appeal was received past the 60 day deadline set in the ALC Regulation (s. 37(2)) the Appeal was not accepted.

[12] Subsequently on September 25, 2017 the ALC CEO issued a Remediation Order which indicated the following:

"remove all fill, including, but not limited to any material brought on land in the Agricultural Land Reserve other than material exempted by the Regulation. The Property must be subsequently remediated to ensure that the agricultural capability of the soil is equal or better than prior to filling"

The Remediation Order required the remediation to be completed by December 15, 2017; the ALC CEO extended the deadline to July 15, 2018 following a request from the Appellants.

Appellants' Submission

[13] A report dated July 9, 2018, from John Paul, P.Ag. on behalf of the Appellants, responded to the Remediation Order. The report indicates that the remediation is almost complete subject to the City of Abbotsford providing a permit to add topsoil originating from the property to the west; that unauthorized fill has been removed and the remaining fill has been regraded to

eliminate steep slopes; and, with the addition of topsoil, the agricultural capability of the Property will be improved from Class 4 to Class 2. The Appellants have applied to the City of Abbotsford to add topsoil from the adjoining Property to the fill material but have not received a response to date.

[14] The Appellants and Mr. Paul made an oral presentation at the September 27, 2018, Appeal Hearing. The substantive elements of the oral presentation follow:

- The Appellants have owned the Property since 2011 and wanted to farm the land, but were unable to due to steep slopes and poor drainage in the gully near the west side of the Property.
- The Appellants deposited fill in 2017 so that they could have a consistent and gently sloping property that could be farmed. The property to the west has available topsoil to finish the project (to a depth of 20 inches).
- The Appellants were aware of the ALC's decision to refuse the deposit of fill but were advised by the City that the City would not stand in the way of the Appellants undertaking the fill project.
- The Appellants did not receive any money for the fill that was placed on the Property.
- The Appellants merely wanted to improve the Property from an agricultural perspective and want to complete the project.
- Mr. Paul clarified that the portion of unauthorized fill that has been removed from the Property was a small amount of gravel material and that the remaining fill material, in his professional opinion, is suitable substrate on which to place topsoil.
- Mr. Paul indicated that it would be minor matter to transfer topsoil from the adjoining property development to finish the fill and remediation project on the Property as per his July 9, 2018 report.
- The Appellants are prepared to pay a fine for ignoring the ALC's decision to refuse the fill project and proceeding anyway.
- Mr. Paul agrees that a fine should be paid, but that it should only be a single dollar because of the unreasonableness of the original ALC decision to refuse the fill project.

Discussion and Findings:

[15] The Appeal Commissioners are very concerned with the Appellants' apparent disregard of the South Coast Panel decision to refuse the filling of the Property. The ALC South Coast Panel's determination reflected both long experience with the potential for fill projects to not be concluded in a satisfactory manner, and its uncertainty whether filling the Property would result in the use of the property for agriculture given the current soil conditions, parcel size and location, and other factors. The Appeal Commissioners accept, however, that the Appellants were provided with and heeded incorrect advice which may have contributed to the Appellants' actions.

[16] The Appeal Commissioners are very concerned about the Appellants' representation that the City of Abbotsford provided advice to the Appellants that was contrary to the ALC decision to refuse the fill project.

[17] The Appeal Commissioners do not concur with the July 9, 2018 report from Mr. Paul that the remediation is almost complete. The vast majority of the structural fill which was deposited on the Property in defiance of the ALC Resolution #80/2017 to refuse the fill application remains on the Property.

[18] The Appeal Commissioners also confirm that the current manner of fill placement is unsatisfactory in that topsoil was not stripped and stockpiled prior to filling, and because no "offsite" topsoil has yet been distributed on the surface of the structural fill that would permit cultivation. If the ALC had permitted filling of the property, conditions of approval for a project of this nature would typically have required an examination and approval of the proposed fill material, stripping and then replacing the existing topsoil on top of the fill material.

[19] The Appeal Commissioners accept that the Appellants appear to be sincere in attempting to improve the current soil conditions on the Property and resolving the problem of illegal fill.

[20] The Appeal Commissioners note that the Remediation Order which is the subject of this appeal has two elements that are summarized as: the fill is to be removed; and the Property remediated to an agricultural capability which is equal to or better than the pre-fill situation.

[21] The Appeal Commissioners understand that certain information provided at the Appeal Hearing (i.e., availability nearby of high capability topsoil to mitigate the negative impacts of filling) did not appear to be before the ALC CEO when she made the Remediation Order. In the opinion of the Appeal Commissioners, this information is relevant to the question of what should be done with respect to compliance and enforcement at this stage and going forward.

[22] The Appeal Commissioners accept that removing the fill could be counterproductive in terms of the agricultural capability of the Property.

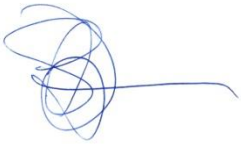
[23] It would be important in this regard to determine the fill is not contaminated and is suitable as substrate on which to place an appropriate volume of topsoil to ensure that the agricultural capability of the Property is equal to or better than prior to filling. If the fill is found to be suitable, the Appeal Commissioners are of the view that the fill should remain in place. It is up to the Appellants to establish to the ALC CEO that the fill is suitable if they wish the ALC CEO to consider varying the Remediation Order on this basis.

[24] The Appeal Commissioners, therefore, refer the Remediation Order back to the ALC CEO with the following directions:

- that the ALC CEO provide to the Appellants the opportunity for them to prove to the ALC CEO's satisfaction:
 - the nature of the fill and its placement - i.e. whether or not it is contaminated, and whether or not it is suitable substrate on which to place topsoil; and
 - assuming that the fill, in the opinion of the ALC CEO, is suitable substrate, the quality and quantity of topsoil necessary to ensure *that the agricultural capability of the soil is equal or better than prior to filling.*

- that the ALC CEO consider varying the Remediation Order taking into account the comments made by the Appeal Commissioners in this decision, the information that the Appellants provide pursuant to the above, and any other relevant information and considerations, including whether there are other (i.e. additional and/or alternative) compliance and enforcement measures that may be appropriate to address the fact that the Appellants knowingly disregarded the ALC South Coast Panel's decision to refuse the placement of fill.

Appeal Commissioners:



Jennifer Dyson



Richard Mumford



Dave Merz



Dave Zehnder



Linda Michaluk

Appeal Decision Date: November 9, 2018