



Agricultural Land Commission Appeal Decision, ALC File 78340

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

Appellants: William Wright, Daniel Cunningham, Randy Laws

BEFORE:

Jennifer Dyson, ALC Chair
Dave Merz, ALC Vice Chair
Richard Mumford, 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: Donna & Randy Laws, William Wright, Larry Laws

Appeal

[1] A Stop Work Order dated April 30, 2018 (“Stop Work Order”) made by Roland Persinovic, an Agricultural Land Commission (“ALC”) Compliance and Enforcement (“C&E”) Officer, was served on William Wright, Daniel Cunningham and Randy Laws (collectively, the “Appellants”), the owners of PID 000-035-866 – *Lot 8, Block 29, Plan VIP2261 Comox Land District*, located at 2212 Coleman Road in Courtenay (the “Property”). The Stop Work Order halted the construction of a further dwelling on the Property.

[2] On May 8, 2018 the ALC received a Notice of Appeal from the Appellants pursuant to section 55 of the *Agricultural Land Commission Act* (“ALCA”).

[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 the Stop Work Order be reversed.

The Appeal Process

[5] As noted above, on May 8, 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 July 26, 2018.

[6] On August 14, 2018, the Appeal Commissioners provided direction regarding procedure related to the Appeal Hearing and applicable timelines (the “August 14, 2018 Directions”). The August 14, 2018 Directions included timelines for the submission of additional information and representations.

[7] On August 14, 2018, the Appellants were provided electronic access to the information that was before the ALC C&E Officer Assels when he made the Stop Work Order under appeal, and to a further copy of the Stop Work Order itself (“ALC Documents Package”). The same information including additional ALR maps was also sent in a link to the Appellants on Monday, September 24, 2018.

[8] The Appeal was conducted by way of an oral hearing which was attended by the Appellants noted above. C & E Officer Persinovic did not attend the hearing (it is presently not the practice of C&E officials to attend hearings) and did not submit any additional materials.

Background

[9] The Stop Work Order relates to the property located at 2212 Coleman Road, Courtenay, BC (as defined above, the “Property”). The legal description of the Property is:

PID 000-035-866 – Lot 8, Block 29, Plan VIP2261 Comox Land District



[10] The Property is 22.9 ha in area and is located within a designated agricultural land reserve (“ALR”) as defined in section 1 of the ALCA.

[11] ALC involvement on the subject property began in November 3, 2016 when a non-farm use application was received from the Appellants for a further dwelling.

- The ALC Island Panel conducted a walk around site visit on February 1, 2017.
- The ALC Island Panel refused the application for a further dwelling on March 29, 2017 (by Resolution #76/2017) on the grounds the Property had good agricultural capability; there were already two dwellings on the Property; and that the Property did not yet have adequate levels of agricultural activity to necessitate an additional dwelling for farm help.

[12] Involvement of C&E staff of the ALC with the Property began in 2018. Timeline highlights follow.

- On April 26, 2018 C&E Officer Roland Persinovic visited the Property with CVRD staff and spoke with the Appellants, advising them that the further home under construction was refused by ALC Resolution #76/2017. The Appellants indicated that they were aware of the ALC decision but felt that it was unfair and intended to proceed with construction of the home anyway and appeal any subsequent orders.
- A letter dated April 30, 2018 from C&E Officer Roland Persinovic indicated that the further dwelling was being constructed in contravention of the ALCA and regulation and that the owners must “*Cease the activity immediately and not continue if and until permitted under application decision.*”

Appellants’ Submission

[13] The Appellants did not provide any written submission, but made an oral presentation at the September 27, 2018 Appeal Hearing. The substantive elements of the oral presentation are as follows:



[14] Multiple (3) families own the Property, and reside on the Property, and all (9 persons) of the family members live in the single family dwelling constructed in the 1990's.

[15] A 1950's single family dwelling exists on the Property as a third residence (~1700 sq ft) but is currently uninhabited and is used for storage.

[16] The 22.9 ha Property is mostly forested (less than 50%) and is also significantly affected by watercourses.

[17] There is a replanted tree farm (15 years) on a portion of the Property.

[18] The Appellants are currently developing the Property for agriculture, and have turkeys, chickens, eggs and pigs which they sell offsite: A 4,000 sq ft garden of about is cultivated for domestic uses.

[19] When they purchased the Property the Appellants believed that they were permitted two single family dwellings, because two dwellings existed on the Property. They were surprised to learn when they applied to the Regional District for a building permit to replace the 1950's dwelling that they were required to submit an ALR non-farm use application. The Appellants were upset with the decision by the ALC Island Panel to refuse the application and decided to proceed with constructing the planned further dwelling anyway.

[20] The Appellants indicate that the current residential building which is under the stop work order occupies .005% of the Property.

[21] The Appellants indicate that it is their intention to continue developing the Property for agriculture, including clearing more land and bringing on more livestock.

Discussion and Findings:

[22] The Appeal Commissioners find the Stop Work Order to be appropriate for the reasons stated below.

[23] The Appeal Commissioners confirm the Appellants' representation that they have begun to develop the Property for agriculture since the Property was purchased in 2015 and they intend to intensify agricultural development.

[24] The Appeal Commissioners are also sympathetic to the Appellants' argument that the existence of two homes on the Property when they purchased the Property raised their expectations that two homes would be permitted in the long term. The Appeal Commissioners believe that had the Appellants desired to renovate the existing older residence that there would have been no objection from the Comox Valley Regional District nor any requirement for an ALC non-farm application for an additional dwelling.

[25] However, there are two important countervailing considerations.

[26] First, construction has occurred, which has resulted in three dwellings on the Property. The Appeal Commissioners are not prepared to endorse three dwellings on the Property (the pre-existing 1950's dwelling is currently used for storage) because they do not consider the pre-existing dwelling to be necessary or supportive of farm activity either in its storage capacity or its latent residential potential. The Appeal Commissioners are concerned that continued existence of the pre-existing dwelling (if renovated) may be used to justify three habitable dwellings on the Property.

[27] Second, this issue has already come before the ALC Island Panel and it refused the Appellants' application for a further dwelling by Resolution #76/2017.

[28] In the circumstances, therefore, the Appeal Commissioners confirm the Stop Work Order.

[29] As a practical matter this leaves a question of what happens next on the Property. The Appeal Commissioners offer the following comments in this regard.

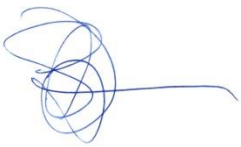
- As noted above, the Appeal Commissioners heard the Appellants' argument that the presence of two original dwellings raised the Appellants' expectations that two dwellings would be permitted on the Property. If the pre-existing 1,700 sq ft dwelling currently used for storage were removed from the Property (including removal of the foundation and remediation of the site to an agricultural standard), the property would return to its

original two dwelling state, and the circumstances of the C & E enforcement action would change.

- The CEO of the ALC might consider her options with respect to next steps in the Compliance and Enforcement action to potentially rescind or vary the Stop Work Order under section 51 of the ALCA if the 1950's dwelling were removed in the manner stated above. However, It would be for the Chief Executive Officer to determine whether to proceed with an amended Order.
- The Appeal Commissioners are very troubled by the manner in which the Appellants proceeded in this case, notably the Appellants' disregard for the ALC's decision to refuse the additional dwelling by Resolution #76/2017.
- The Appellants also had available to them the option of seeking judicial review of the Island Panel's decision in B.C. Supreme Court.

[30] Nothing in this decision is intended to constrain the ability of the C&E department or the Chief Executive Officer to consider whether further or other C&E measures, including the possibility of a penalty, would be appropriate

Appeal Commissioners:



Jennifer Dyson



Richard Mumford



Dave Merz



Dave Zehnder

Appeal Decision Date: November 7, 2018

