

LexisNexis® Agricultural Law *NetLetter*

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditor rights, animals, grain, import/export and other matters in an agricultural context.

Tuesday, June 21, 2016

Issue 350

Issues added on the 7th and 21st of every month.

HIGHLIGHTS

- * A Justice of the Supreme Court of British Columbia has concluded that the application by a farmer in an Agricultural Land Reserve is exempt from a municipality's usual authority to regulate zoning and building permits by virtue of the specific provisions in the Local Government Act (British Columbia), the Farm Practices Protection (Right to Farm) Act (British Columbia) and the Regulations thereunder, and the Agricultural Land Commission Act (British Columbia) and the Regulations thereunder. The Court concluded that a farmer who intended to construct an addition to a barn for intended agricultural purposes was exempt from normal zoning and building permit requirements whether the municipality felt the farmer needed the additional building space or not. The decision explains some aspects of the complex regulation of agricultural land use in British Columbia. (Turney v. Langley (Township), [CALN/2016-015](#), [\[2016\] B.C.J. No. 1238](#), British Columbia Supreme Court)

NEW CASE LAW

Turney v. Langley (Township);

[CALN/2016-015](#),

Full text: [\[2016\] B.C.J. No. 1238](#);

[2016 BCSC 1099](#),

British Columbia Supreme Court,

C.E. Hinkson C.J.S.C.,

June 15, 2016.

Agricultural Land Use -- British Columbia -- Building Permit Exemptions.

Albert James Turney ("Turney") applied to the Supreme Court of British Columbia for a declaration that his application for a building permit for the construction to an existing barn on his property complied with the provisions of the Township of Langley, British Columbia (the "Township") for farm businesses.

In April of 2004, Turney purchased a 7.5 acre property in the Township (the "Property").

The Property is in the Agricultural Land Reserve and was assessed as a "farm" for tax assessment purposes.

The Property was zoned "Rural Zone RU-1" pursuant to the Township's Zoning Bylaw which permits residential, agricultural and accessory building uses. There was a single family dwelling, a 3,000 square foot barn, a 1,500 square foot shed and attached garage on the Property.

Approximately 5.5 acres of the Property had been operated as a hay farm.

Turney deposed that he purchased the Property to live in it and to operate a farm with his adult grandchildren.

Turney also deposed that in both 2014 and 2015 he did not own the farming equipment needed to harvest or bale hay, so he hired a local farmer to do so. He then sold the hay.

In October of 2015, Turney began the construction of an addition to the barn.

Turney deposed that he did so in order to expand his farming operation. The addition would add approximately 3,600 square feet to the barn which Turney deposed he required for storage for his farming equipment, trailer, additional farming equipment including a new trailer, and that he intended to raise livestock including chickens, pigs and ducks.

Turney also deposed that he anticipated his first hay crop would yield approximately 600 bales of hay and that the crop would take up most of the space in the existing barn, and that he required more space for the equipment and livestock he proposed to acquire.

Turney also deposed that he did not obtain a building permit for the addition to the barn as he believed that a permit was not required because the Property was in the Agricultural Land Reserve and had farm status.

When the construction of the addition to the barn came to the attention of the Township, the Township issued a Bylaw Offence Notice because Turney did not have a building permit. The Township took the position that the RU-1 zoning limits the maximum total building area for accessory buildings to 2,152 square feet.

The Township directed Turney to remove the addition by no later than November 27, 2015. A stop work order was also issued.

Turney submitted a Bylaw Notice Dispute on November 26, 2015 explaining why he had not applied for a permit.

On February 23, 2016, the Township rejected his Dispute Notice and directed that the stop work order would remain in effect. The Township requested the immediate removal of the addition.

Decision: Hinkson, J. granted a declaration that Turney was exempt from the application of the Local Government Act (British Columbia) based on his use of the property as a farm and that he was permitted, pursuant to the Township's Zoning Bylaw, to construct a building that did not cover more than 33% of the lot area of the Property, so long as the proposed construction set out in the permit conformed with all respects of the Township's Building Code and other Bylaws [at para. 42].

Hinkson, J. declined to issue an Order for mandamus so the Township could assess whether the building complied with the National Farm Building Code of Canada and other building requirements [at para. 43 to 45].

Hinkson, J. considered the legislative scheme under British Columbia law which limited the Township's ability to regulate the zoning and use of farm lands at para. 19 to 28.

Hinkson, J. observed that although s. 479 of the Local Government Act (British Columbia) authorized the Township to enact zoning bylaws by regulating the use of land:

[20] ...s. 481(2) of the Local Government Act limits the application of s. 479 by providing that a local government must not exercise the powers under that section to prohibit or restrict the use of land for a farm business in a farming area unless the local government receives the approval of the minister responsible for the administration of the Farm Practices Protection (Right to Farm) Act, [R.S.B.C. 1996, c. 131](#) [FPPA]. Section 481(3) allows that same minister to make regulations that define areas and circumstances in which approval under (2) is not required, and the conditions under which such exceptions will be granted. Such an exception has not been made with respect to the Township's jurisdiction.

[21] The Right to Farm Regulation, B.C. Reg. 261/97 provides that s. 481 of the Local Government Act applies to the Township.

[22] Section 455 of the Local Government Act provides that the terms "farm business", "farm operation" and "farmer" all have the same meaning as those terms in the FPPA. The terms are defined in the FPPA as follows:

"farm business" means a business in which one or more farm operations are conducted, and includes a farm education or farm research institution to the extent that the institution conducts one or more farm operations;

"farm operation" means any of the following activities involved in carrying on a farm business:

(a) growing, producing, raising or keeping animals or plants, including mushrooms, or the primary products of those plants or animals;

...

(c) using farm machinery, equipment, devices, materials and structures;

...

(e) conducting any other agricultural activity on, in or over agricultural and;

"farmer" means the owner or operator of a farm business;

[23] The term "farming area" is defined in s. 455 of the Local Government Act in part as:

an area of land

(a) that is in an agricultural land reserve as defined in the Agricultural Land Commission Act,

(b) that is designated as a farming area under the Farm Practices Protection (Right to Farm) Act,

[24] Section 1 of the Agricultural Land Commission Act, [S.B.C. 2002, c. 36](#) [LCA] defines farm use as:

"farm use" means an occupation or use of land for farm purposes, including farming of land, plants and animals and any other similar activity designated as farm use by regulation, and includes a farm operation as defined in the Farm Practices Protection (Right to Farm) Act;

[25] Section 2 of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation, B.C. Reg. 171/2002, made pursuant to the ALCA, provides in part that:

(1.1) The activities designated under this section as farm uses for the purposes of the Act must not be prohibited

(a) by any local government bylaw except a bylaw under section 917 of the Local Government Act,

and includes that:

(2) The following activities are designated as farm use for the purposes of the Act:

(c) storing, packing, preparing or processing farm products, if at least 50% of the farm product being stored, packed, prepared or processed is

(i) produced on the farm,

... or

(iii) feed required for farm production purposes on the farm;

(o) the construction, maintenance and operation of farm buildings including, but not limited to, any of the following:

...

(ii) a farm building or structure for use in an intensive livestock operation or for mushroom production;

...

[27] Section 201.6 of the...Zoning Bylaw provides that:

1) Except for commercial greenhouses, buildings and structures shall not cover more than 33% of the lot area

...

3) Accessory buildings and structures not used for agricultural or farm purposes shall not exceed a total of 200 m² of ground floor building area.

[28] Section 5.2 of the Township's Building Bylaw No. 4642 provides in part that:

5.2 The Building Inspector may issue a Permit for Construction where:

a) a valid and subsisting application has been made (the "Permit Application");

b) the proposed Construction set out in the Permit Application conforms in all respects with this Bylaw, the Building Code and all other application enactments including other Township bylaws;

Hinkson, J. rejected the Township's submission that the existing buildings were more than sufficient for "current or likely farm use" concluding, at para. 36, 38 and 42 as follows:

[36] Be that as it may, the petitioner has explained the seasonal nature of the farming in which he intends to engage, and why he has not yet begun farming activity involving livestock. The real question, as I have stated above, is whether the property is being used or is intended to be used as a farm business.

...

[38] The petitioner has made clear his intention to farm the property in this year and beyond in his petition, and I find it likely that the Township, through its staff, was aware that that was his stated intention when his building permit application was rejected. I therefore find that it was unlawful for the Township or its Building Inspector to refuse the building permit sought by the petitioner on the basis that he would not farm the property as he said he would.

...

[42] As the petitioner has based his application for a building permit on the use of the property as a farm, he is exempted from the application of s. 479 of the Local Government Act, and permitted, pursuant to 201.6 of the Township's Zoning Bylaw, to construct a building that does not cover more than 33% of the lot area of the property, so long as his the proposed construction set out in his permit application forms in all respects with Section 5.2 of the Township's Building Bylaw No. 4642, the Building Code, and all other applicable enactments including other Township bylaws.

CREDITS

This NetLetter is prepared by Brian P. Kaliel, Q.C. of Miller Thomson LLP, Edmonton, Alberta.



For more information about the LexisNexis® Quicklaw® service,
call 1-800-387-0899 or email service@lexisnexis.ca.

For more information about LexisNexis products or services, visit www.lexisnexis.ca.

Design and compilation © 2016 LexisNexis Canada Inc. All rights reserved. Unless otherwise stated, copyright in the content rests with the author(s). LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under licence. Quicklaw is a registered trademark and *NetLetter* is a trademark of LexisNexis Canada Inc. Other products or services may be trademarks, registered trademarks or service marks of their respective companies. Use of this *NetLetter* is subject to the LexisNexis Canada Inc. Terms and Conditions of Data File Usage.