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Court challenge to pecking order of local zoning versus PMFL

A Galiano Island owner of forestlands has commenced a lawsuit in the Supreme Court of BC in an effort to obtain a building permit to construct a residence on the Island. While a residence is a permitted use upon rezoning under several local land use bylaw options, the owner has chosen to seek an Order requiring the CRD to issue a permit pursuant to the provisions of the *Private Managed Forest Land Act*.

The building permit application was made under the *PMFL Act* but was refused by the CRD (building permit authority) on the basis that the land in question was in Galiano's F1 zone which does not permit construction of a residence.

It is the practice of the CRD to check local land use bylaws before issuing a building permit. In this case the Islands Trust informed the CRD that the land in question was not in a zone that allowed a residence. The applicant was informed of the and, among other submissions, says this is an improper delegation of authority by the CRD to the Islands Trust.

The Residents & Owners Association of Galiano (ROAG) was granted intervener status in the action over the strenuous objections of the petitioner's lawyer. While the petitioner submitted that the application for a building permit under the *PMFL Act* only affected one owner and was none of the of community's business, the judge recognized the ramifications if such an Order was granted. Intervener status allows the Association to make submissions at the court hearing respecting the impact upon the community of any Order made.

One of the Orders sought is that a residence is an outright use permitted under the *PMFL Act*. In an affidavit filed by the ROAG it was demonstrated that the effect of such an Order would be to grant such outright use to all lands within the PMFL and to any forestlands which owners, in the future,

choose to place in the PMFL. Local planning tools would be lost.

The hearing was set for June 16, 2009 in Victoria at which time counsel appeared on behalf of the Galiano Local Trust Committee asking that they be added as a party to the action. Being a party permits much wider latitude of submissions than being an intervener. This application was also opposed but was granted by the Judge who held that the Islands Trust should have been named a party in the first place, as it is their bylaws that are being tested.

The Galiano land use bylaws in question became law in 2000, three years before the *PMFL Act*.

Since the passage of the *PMFL Act* in 2003 it has been widely accepted that the *PMFL Act and Regulations* do not trump any local land use bylaws unless amendments are made to them that would have the effect of restricting a forest management activity.

In fact, Minister George Abbott wrote, in a December 18, 2004 letter which is now part of the case: 'This prohibition as clarified is intended to apply to the adoption of new bylaws and should not invalidate bylaws that are already in place. We believe that the *PMFLA and Regulations* do not have the effect of overriding Galiano's restriction on dwellings in the Forest Zone.'

So, despite the clear wording of Section 21 of the *PMFL Act* that only *future changes* to local land use bylaws must not restrict PMFL uses and the confirmation of that interpretation by the Minister, a court challenge has been now made to this position.

The hearing of the case is scheduled to be heard in the Supreme Court of BC in Victoria on August 24 and 25. ☞

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