

CANADA / JUDGMENT

Fraser–Fort George (Regional District) v. Stander

2025 BCSC 381

COURT

Supreme Court of British Columbia

DECIDED

7 March 2025

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2025 BCSC 381 Fraser-Fort George (Regional District) v. Stander

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fraser-Fort George (Regional District) v. Stander,

2025 BCSC 381

Date: 20250307

Docket: 2058676

Registry: Prince George

Between:

Regional District of Fraser-Fort George

Plaintiff

And

Thomas Stander

Defendant

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiff:

M.R. McCarthy

Counsel for the Defendant:

D.M. Marcotte, K.C.

Place and Date of Hearing:

Prince George, B.C.

October 10, 2024

Place and Date of Judgment:

Prince George, B.C.

March 7, 2025

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Introduction

- [1] These are reasons for judgment on an application by the plaintiff for numerous orders relating to a property located at 8570 Chilcotin Road, Prince George, B.C. (the "Lands") and the defendant's use of the Lands. The orders sought by the plaintiff are intended to prohibit the defendant from contravening two Regional District of Fraser-Fort George bylaws: the Zoning Bylaw No. 2892,2014 (the "Zoning Bylaw") and the Unsightly Premises Regulation Bylaw No. 3194,2020 (the "Unsightly Premises Bylaw").
- [2] Specifically, the following are, in part, the orders the plaintiff seeks:
- a) Declarations that the defendant is contravening the Zoning Bylaw and the Unsightly Premises Bylaw;
 - b) A declaration that the defendant's use of the Lands is not a lawful non-confirming use;
 - c) A permanent injunction that the defendant is restrained and enjoined from using the Land in contravention of the Zoning Bylaw and the Unsightly Premises Bylaw; and
 - d) A mandatory injunction that, within 90 days of the order, the defendant must:

- i. Remove from the Lands any items stored or placed on the Lands contrary to the Zoning Bylaw and the Unsightly Premises Bylaw, including all mechanical or metal parts which are stored in unenclosed places, and motor vehicles in excess of ten, no more than two of which may be derelict vehicles (collectively, the "Stored Materials"); and
 - ii. Bring the Lands and the use of the Lands within full compliance of the Zoning Bylaw and the Unsightly Premises Bylaw.
- [3] The plaintiff also seeks costs of this application.

Facts

- [4] As there was little debate over the facts stated in the Notice of Application ("NOA"), a number of the following paragraphs are a recitation the facts as stated in the NOA.
- [5] The plaintiff, the Regional District of Fraser-Fort George (the "Regional District") is a regional district duly incorporated pursuant to the Local Government Act, R.S.B.C. 2015, c. 1 [LGA]. The plaintiff has the power to regulate zoning and land use within its jurisdiction, including the Lands, pursuant to Part 14 of the LGA.
- [6] The defendant is the occupier of the Lands. The Lands are located within Electoral Area D of the Regional District and are within the plaintiff's authority and jurisdiction. Pursuant to the Zoning Bylaw, the Lands are zoned Rural Residential ("RR1").
- [7] The plaintiff alleges that the defendant uses or allows the Lands to be used as a storage yard or facility, a vehicle storage yard or facility, an unroadworthy vehicle storage yard, and as an outdoor storage, in contravention of the Zoning Bylaw. Section 5(1) of the Zoning Bylaw states that any use of lands is prohibited unless the use is specified as a permitted use in the Zoning Bylaw. The Zoning Bylaw does not permit use of lands zoned as RR1 as a storage yard, a vehicle storage yard or facility, an unroadworthy vehicle storage yard, or for outdoor storage.
- [8] On July 22, 2019, a Bylaw Enforcement Officer ("BEO") attended the Lands to inspect the state of compliance with the bylaws (the "First Inspection"). The BEO noted there were a large number of vehicles present on the Lands, some of which were in obvious states of disrepair or otherwise missing parts. Photographs were taken during the First Inspection displaying numerous vehicles on the Lands as well as wooden pallets and other forms of rubbish on the Lands.
- [9] The plaintiff then sent the defendant a letter by registered mail on August 2, 2019, which confirmed the inspection on July 22, 2019 and that the defendant was in contravention of the Zoning Bylaw. The letter demanded that the contraventions be rectified by September 10, 2019.
- [10] On December 2, 2019, counsel for the plaintiff wrote a letter to the defendant advising him to rectify the contraventions.

- [11] On May 15, 2020, the BEO and the manager of Inspection Services and Sustainability Practices (the "Manager"), attended the Lands (the "Second Visit"). They observed the following on the Second Visit:
- a) at least 134 vehicles present on the Lands;
 - b) at least 37 vehicles with significant damage which were not contained in a fully enclosed building or a fully enclosed compound;
 - c) many of the vehicles on the Lands were surrounded by tall grass and covered in moss; and
 - d) several piles of vehicle parts and other materials present on the Lands, including: mufflers, tires, wheels, hubcaps, bumpers, vehicle doors, vehicle parts, wood and plastic pallets, metal tanks, scrap wood, tarps, barrels, snow mobile or jet ski bodies, scrap metal, and traffic cones.
- [12] On November 16, 2020, the BEO and the Manager attended the Lands again (the "Third Visit"). They observed that the condition of the Lands and the items on the Lands were substantially the same as the Second Visit. The plaintiff made requests of the defendant after the Second Visit to rectify the Lands such that they were in compliance with the Zoning Bylaw. It was apparent after the Third Visit that the contraventions persisted.
- [13] Since 2018, the plaintiff has sent a series of letters to the defendant requesting he bring the Lands into compliance with the Zoning Bylaw. The letters stated that, if required, action would be taken at his expense to enforce compliance. These correspondences were delivered by registered mail, e-mail, and hand delivered.
- [14] A further inspection was conducted by the BEO on July 6, 2022 (the "Fourth Visit"). The non-compliance persisted at that time. The BEO observed at least 165 vehicles which appeared to be derelict vehicles pursuant to the Unsightly Premises Bylaw, as well as multiple piles of materials which were substantially similar to those which had been observed on the Second Visit and the Third Visit.
- [15] The defendant initially argued that the Lands were the location of his home and that as a homeowner, he had to be able to use his home as he sees fit unless his usage is in clear violation of an applicable statute or bylaw. It is clear that he is able to use the home on the Lands as a residence.

Law

The Zoning Bylaw

- [16] Section 1(1)(a) of the Zoning Bylaw provides that no person shall use or permit the use of any land, building, or structure in contravention of the Zoning Bylaw.
- [17] Further, s. 2(3) of the Zoning Bylaw provides that:

- (3) Any person who violates any of the provisions of this Bylaw, or who suffers or permits any act or thing to be done in contravention of this Bylaw, or who neglects to do or refrains from doing any act or thing which is required to be done under this Bylaw, commits an offence and is liable to the penalties imposed under this Bylaw.
- [18] Permitted uses of land, buildings, or structures are those which are specified in the Zoning Bylaw. Any use not specified as a permitted use is prohibited: s. 5(1).
- [19] The permitted uses for RR1 zone are set out in ss. 18(2) and (3):
- (2) The following uses of land, buildings and structures are permitted uses:
- (a) Agriculture;
- (b) Open Space Recreation [See s. 10.0];
- (c) Residential-Single Family;
- (d) General Permitted Uses [See s. 5.0]; and
- (e) Buildings and structures accessory to the permitted uses.
- (3) Where a Residential-Single Family use is established, the following secondary uses of land, buildings or structures are permitted:
- (a) Homecraft [See s. 9.0];
- (b) Home Occupation [See s. 8.0]; and
- (c) Secondary Suite.
- [20] A "Homecraft" means a use carried on from a dwelling unit or an accessory building as a business by the occupants of the dwelling unit, as set out in s. 9 of the Zoning Bylaw: s. 4(23).
- [21] Section 9(2) sets out the uses of a Homecraft:
- (2) A Homecraft use is limited to one or more of the uses listed below:
- (a) logging/trucking/building trades contractor;
- (b) mechanical repair and servicing of trucks, farm and logging equipment, excluding bodyworks;
- (c) mechanical and upholstery repair and servicing of automobiles and bikes, excluding bodyworks;
- (d) manufacture of furniture or other wood products, and sale of such products manufactured on the premises;
- (e) processing and sale of meat/produce grown or raised primarily on the premises;

- (f) meat cutting and wrapping with associated smokehouse, excluding the slaughter of animals on-site, unless otherwise permitted. A maximum of two employees are permitted
- (g) taxidermy;
- (h) repair and servicing of household appliance and furniture; and
- (i) any use listed as a Home Occupation use.

The Unsightly Premises Bylaw

- [22] Section 1(16) of the Unsightly Premises Bylaw states that "unsightly" includes real property visible to a person standing in a public place or any other real property having one or more of the following characteristics:
- a) the presence of more than two derelict vehicles, unless on real property which is permitted to have an appropriate vehicle related business or contained in a fully-enclosed building or a fully enclosed compound;
 - b) the presence of graffiti;
 - c) the storage or accumulation of rubbish on any real property which is not contained in the appropriate rubbish receptacle or facility;
 - d) buildings or structures that are collapsed or in a state of significant disrepair; or
 - e) any similar conditions of disrepair, dilapidation, or deterioration.
- [23] The Unsightly Premises Bylaw also defines "derelict vehicle" as any vehicle defined in the Motor Vehicle Act, R.S.B.C. 1996, c. 318, or part thereof, which is physically wrecked, disabled or damaged; not capable of operating under its own power; or does not have number plates attached.
- [24] The Unsightly Premises Bylaw prohibits any owner or occupier of real property from allowing or permitting the real property to become or remain unsightly: s. 3(1). Further, it prohibits any person from depositing or throwing rubbish in any open space other than in an appropriate rubbish receptacle or facility and prohibits allowing or permitting rubbish to collect or accumulate in any open space on the real property, other than in an appropriate rubbish receptacle or facility: ss. 3(2)-3(3).
- [25] The Unsightly Premises Bylaw provides the following relevant definitions under s. 1:
- (1) "Appropriate Rubbish Receptacle or Facility" means a receptacle or facility that (a) is designed and intended to receive rubbish of the kind in question; and (b) complies with all applicable land use regulation bylaws and land use permit.
 - (8) "Fully-Enclosed Building" means a lawfully constructed building that is enclosed so that its interior is not visible to persons who are outside the building.

- (11) "Open Space" means anywhere, whether public or private, other than inside a fully enclosed building.
- (12) "Public Place" includes any place typically open or accessible to public, or to which members of the public are entitled or permitted to have access without payment, and includes without limitation any highway, park or campground, civic buildings, areas around civic buildings, and any lands or property owned by the Regional District, the Province of British Columbia, or the Government of Canada, and any improvement on those lands.
- (15) "Rubbish" includes, but is not limited to,
- a) anything that is discarded or disused;
 - b) anything that is completely or substantially destroyed, damaged or dismantled;
 - c) filth; or
 - d) noxious, offensive or unwholesome matter.

Statutory Injunctive Relief

- [26] The Regional District is statutorily authorized under s. 274(1) of the Community Charter, S.B.C. 2003, c. 26 and s. 420 of the LGA to enforce or prevent or restrain the contravention of a bylaw. The Regional District may apply to this Court for an order in the nature of a mandatory or prohibitive injunction.
- [27] The Regional District must prove on a balance of probabilities that the breach of the relevant bylaw occurred. Once this is proven, this Court has limited discretion to deny the statutory injunction to enforce a public right: *Sunshine Coast (Regional District) v. Vanderhaeghe*, 2024 BCCA 169 at para. 87.

Analysis

- [28] I have reviewed all the evidence and the submission of the parties in this application. My reasons will focus on the evidence and the submissions which I found were key to my determination.
- [29] At all material times, there were many derelict vehicles on the Lands, at times totalling over 100. Stored vehicles are not a permitted use in RR1 unless they are part of a Homecraft. Homecraft is a secondary use allowable in the RR1 zone. However, the defendant noted in his evidence that the vehicles and other materials stored on the Lands are not related to any business activity. In his affidavit, the defendant characterizes his interest and activities relating to vehicles as a hobby and not as a business. The activities he engages in on the Lands relating to the vehicles are therefore not a Homecraft use and are in contravention of the Zoning Bylaw.

- [30] With respect to the Unsightly Premises Bylaw, the first question is whether the Lands fit the prescribed definition of "unsightly". The defendant submitted that my interpretation of "unsightly" should be governed by its definition in *Regina v. Fillmore*, 1973 CanLII 2485 (NS SC), 17 C.C.C. (2d) 68. I do not give any weight to this submission. The term "unsightly" must be interpreted in accordance with its definition in the Unsightly Premises Bylaw itself. Fillmore relates to a bylaw from another jurisdiction, the wording of which is different than the one at bar.
- [31] Based on the definition in s. 1(16), the Lands are unsightly. There are more than two derelict vehicles and there is rubbish accumulated and stored on the Lands. Based on the pictures of the Lands exhibited, many of the vehicles are in a damaged condition and appear undrivable.
- [32] There were submissions relating to whether the Lands could be considered "fully enclosed" such that the derelict vehicles and rubbish were not visible. The defendant submitted that the trees surrounding the Lands, together with various structures on the Lands, amounts to a "fully enclosed compound". A "fully enclosed compound" is defined in s. 1(9) of the Unsightly Premises Bylaw as a "place enclosed by a lawfully constructed fence, wall, or other similar barrier so that its interior is not visible to persons who are outside the place." Notwithstanding that, counsel agreed that a person standing outside the Lands would be able to see piles of debris, auto parts and tires, and multiple vehicles, I do not accept that the combination of trees and some structures on the Lands meets the definition of a "fully enclosed compound." The defendant did not advance any evidence of lawfully constructed fences, walls or other similar barriers.
- [33] The defendant also made submissions related to the differences between the Lands and other properties. The Unsightly Premises Bylaw clearly sets out that a property's unsightliness is irrespective of other properties in the neighbourhood: s. 1(16). That is the clear intent of the bylaw.
- [34] There is little judicial discretion to decline a statutory injunction once a breach of a bylaw has been found, which I do find in this case: *Central Saanich (District) v. Johal*, 2017 BCSC 1230 at para. 9. On this basis, I give no weight to the defendant's submission that the breaches are minimal. Even if the Court had a wider discretion to decline to grant a statutory injunction once a breach is found, I cannot agree that, on the evidence, the breaches are in fact minimal in nature.
- [35] The defendant submitted that if the Court was persuaded to grant the mandatory injunction, the Court should pronounce an order that would allow the defendant to install a lawfully constructed fence surrounding the Lands. This position was stated only in oral submissions and was not contained in any of the defendant's written materials. Plaintiff's counsel did not have a response to this late proposal and did not have instructions from the Regional District on how to proceed, as it had not been anticipated.

- [36] The plaintiff had been seeking a solution to this problem with the defendant, and before him the defendant's father, for a number of years without a positive response. There are clear breaches to both the Zoning Bylaw and the Unsightly Premises Bylaw. Further, this Court could not grant the relief sought by the defendant in this final submission, as it would have required the Court to approve an apparent violation of the Agricultural Land Commission Act, S.B.C. 2002, c. 10 [ALC].
- [37] The Lands, in this case, are "agricultural land" as defined in the ALC and agricultural land may only be excluded from the agricultural land reserve pursuant to ss. 29.1(2)(b) and 30(1) (a) of the ALC, both sections requiring a decision of the Agricultural Land Commission or s. 45(1) of the ALC and a decision of the Lieutenant Governor in Council, following receipt of the recommendations of the "board" as defined under s. 39 of the ALC. None of the mentioned sections have been followed nor relied upon by the defendant. No section of the ALC provides any jurisdiction to this Court. This Court has no authority nor jurisdiction to order or permit the construction of a fence around the Lands.

Orders

- [38] As stated orally in open court at the close of submissions, the statutory injunctions and other orders sought by the plaintiff are granted, including costs. I make the following declarations:
- a) The Lands are non-compliant with the Zoning Bylaw and the Unsightly Premises Bylaw.
 - b) The defendant is contravening the Zoning Bylaw by using the Lands or allowing the Lands to be used for storage of vehicles, vehicle and/or machine parts, and other materials.
 - c) The defendant is contravening the Unsightly Premises Bylaw by allowing the Lands to become and/or remain unsightly and by allowing the collection or accumulation of rubbish in open, unenclosed space on the Lands.
 - d) The defendant's use of the lands is not a lawful non-conforming use.
- [39] I make the following orders:
- a) The defendant, and any other persons acting on his behalf or to whom notice on this order has been given, by themselves, their servants or agents, are restrained and enjoined from using the Lands in contravention of the Zoning Bylaw and the Unsightly Premises Bylaw.
 - b) The defendant must remove any items stored or placed on the Lands contrary to the Zoning Bylaw and the Unsightly Premises Bylaw, including all mechanical or metal parts which are stored in unenclosed places, and motor vehicles in excess of ten, no more than two of which may be derelict, from the Lands within 90 days of the date of this.
 - c) The defendant must bring the Lands and the use of the Lands within full compliance of the Zoning Bylaw and the Unsightly Premises Bylaw within 90 days of the date of this order.

- d) If the defendant fails to bring the Lands and the use of the Lands into compliance with the Zoning Bylaw and the Unsightly Premises Bylaw within 90 days of the date of this order, the Regional District, by its employees, agents, and/or contractors is authorized to enter onto the Lands and remove the Stored Materials, at the cost of the defendant.
- e) The defendant and his agents and servants are prohibited from interfering with, hindering, or obstructing the Regional District or its employees, agents, and/or contractors in the exercise of the performance of such tasks and functions as authorized by this Court.
- f) If the Regional District, by its employees, agents, and/or contractors enters onto the Lands to remove the Stored Materials, the Stored Materials may be disposed of or placed for sale by the Regional District, at its discretion, with any proceeds of sale applied to the reimbursement of the Regional District for the cost of removal, storage, and sale of the vehicles, and with the surplus, if any, paid to the defendant.
- g) The defendant shall pay costs to the plaintiff, pursuant to Appendix "B" of the Supreme Court Civil Rules as a matter of ordinary difficulty forthwith after assessment thereof.

"Ball, J."

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Prepared on 27 October 2026 · Esheria