



MOBILE HOME PARKS

Stroshin v. Parksville (City) 2010 BCSC 350

Local governments that have mobile home parks, especially mobile home parks operating on the basis of non-conforming use, will benefit from the recent clarification from the BC Supreme Court as to how far the park owner or operator can go in replacing and upgrading the mobile units.

In *Stroshin v. Parksville (City) 2010 BCSC 350* the Stroshins were the owners of a mobile home park that had been in existence since the 1960s. The mobile home park was operating as a non-conforming use under the City's zoning bylaw. In recognition of the non-conforming use, the City routinely issued building permits for removal of older mobile homes and replacement with newer models. The City also authorized the addition of stairs and landings to the mobile homes.

A conflict arose when the City refused to authorize replacement of 12-foot mobile homes with larger 14-foot mobile homes and the addition of decks, carports and other non-essential ancillary structures.

The Court went into an in-depth discussion of the law of non-conforming use and concluded that:

- (a) replacement of 12-foot units with 14-foot units does not increase the intensity of operation of the mobile home park because at the end of the day the lands will still be used as a "mobile home park" with the same number of pads in the same manner as it always has been; and
- (b) a mobile home is a structure for the purpose of non-conforming use and, therefore, cannot be replaced or upgraded without losing non-conforming use protection.

Section 911 of the *Local Government Act* does not provide property owners with a right to replace non-conforming structures. Section 911(5) of the *Local Government Act* provides that a structural alteration or addition must not be made to a non-conforming structure unless such alteration is required by an enactment or permitted by a board of variance.

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Mobile homes
are not vehicles.
Their purpose is
the residence of
people.”

The decision in *Stroshin* sets a precedent that mobile home units cannot be replaced not only with larger units, but also with units of the same size. Acknowledging that this may be of significant effect on many residents of mobile home parks, Mr. Justice Wong said that the City had taken a reasonable position allowing replacement units of the same size to be brought onto the property and encouraged the parties to work towards a reasonable solution.

FORGETTING OR OMITTING A LEASE

City of Winnipeg v. Manufacturers Life Insurance Company [2009] SCCA No. 441

A recent decision of the Manitoba Court of Appeal illustrates the importance of keeping track of documents and disclosing all relevant documents in a real estate transaction.

The Supreme Court of Canada recently dismissed an appeal by the City of Winnipeg from a decision of the Manitoba Court of Appeal holding the City liable to 75% of a \$6,365,275.60 award for not disclosing a lease to a mortgagee.

In this case, two lots abutted a highway and were separated by a parcel of land owned by the City of Winnipeg. Winnipeg leased its land to the owner of the lots for use as parking and highway access. It also leased the same land to a landlocked commercial enterprise located behind one of the lots for parking and highway access. A developer bought the lots and took an assignment of the lease.



Winnipeg did not disclose any documents indicating to the mortgagee or the developer the existence of the second lease over its parcel of land. The development floundered and the mortgagee sold the land under power of sale. It suffered a deficiency due to the existence of the competing lease over Winnipeg's property and was successful in seeking the amount of the deficiency from Winnipeg.

PROPERTY TAXES

The City of Montreal v. Montreal Port Authority, 2010 SCC 14

Local governments that have federal property within their boundaries, or property owned by federal crown corporations, such as the Canadian Post Office, the Canadian Broadcasting Corporation, and the Vancouver Port Authority will benefit from the recent clarification regarding calculating the amount of money the federal government or the crown corporation must pay in lieu of property taxes.

In a recent decision in *The City of Montreal v. Montreal Port Authority*, 2010 SCC 14, the Supreme Court of Canada clarified the interpretation of the federal *Payment in Lieu of Taxes Act* ("PILT Act"). Generally, federal and provincial government property is immune from taxation by the other level of government. In the PILT Act, the federal government created a system to compensate Canadian municipalities for property taxes without undermining the general immunity. Under the PILT Act, federal crown corporations have some discretion to determine the effective tax rates which apply to property. The question arose as to how much discretion they have.

Montreal Port Authority and CBC argued that they could calculate their payments in lieu on the basis of a tax rate that preceded the last amendment to Montreal's tax system. LeBel J. for a unanimous Supreme Court of Canada unilaterally rejected this argument stating that:

As I have indicated, the two corporations certainly have a discretion. However, they cannot base their calculations on a fictitious tax system they themselves have created arbitrarily. On the contrary, those calculations must be

based on the tax system that actually exists at the place where the property in question is located. ... They cannot do so on the basis of a system that no longer exists. ... Indeed, the respondents' position would in practice mean that they would ... make increasingly complex and illusory theoretical calculations based on taxes that had long since disappeared.

UPCOMING CHANGES TO WATER AND SEWER LAWS

(a) Wastewater Systems Effluent Regulations

The Final Draft of the Wastewater Systems Effluent Regulations (the "Regulations"), to be enacted under the *Fisheries Act*, was published in the *Canada Gazette*, Part I on March 19, 2010 for more input from stakeholders and interested parties.

The Regulations will, over time, require more than 4,000 wastewater facilities across Canada to meet national effluent standards, the overarching goal being to stop

the direct release of raw sewage into Canadian waters.

The Regulations set national effluent quality standards for specified deleterious substances in effluent deposited from wastewater systems. The Regulations also specify conditions to be met in order to deposit effluent containing deleterious substances, such as requirements concerning toxicity, effluent monitoring requirements, and record-keeping and reporting requirements.

Full language of the Regulations may be found at www.gazette.gc.ca/rp-pr/pl/2010/2010-03-20/html/reg1-eng.html.

Interested parties may make representations with respect to the proposed Regulations to Randall Meades, Director General, Public and Resources Sectors, Department of the Environment, Gatineau, Quebec K1A 0H3, by fax to 819-953-7253 or by e-mail to ww-eu@ec.gc.ca by May 18, 2010.

(b) Water Act Modernization

The Provincial government is in the process of reviewing the *Water Act*, which was originally established in 1909 and plays a key role in sustainability of BC's water resources.

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More than 4000
wastewater
facilities to meet
new national
standards.”

The government has published a discussion paper titled "Water Act Modernization." The public has been invited to make comments to the Ministry of Environment with respect to the discussion paper by April 30, 2010.

Following the receipt of the comments, the government will draft the legislation (during summer-fall of 2010) and will introduce the bill for approval.

To submit any comments, you can go to www.livingsmart.ca/water-act/.

OPPORTUNITY TO CLEAN UP CONTAMINATED SITES

The Province is allocating \$700,000 this year to encourage brownfield site remediation and stimulate local land development and economic activity.


The B.C. Brownfield Renewal Funding Program will provide up to \$40,000 for preliminary site investigations and up to \$125,000 for other types of environmental

work. Eligible applicants include First Nations, local governments, non-profits, private companies and individuals. To date, 17 successful projects have received a total of approximately \$1.6 million in funding.

Applications will be accepted by the Province between April 16 and May 19, 2010. For more information on the Brownfield Renewal Funding Program, including program guide and application package, please visit: www.brownfieldrenewal.gov.bc.ca/financial.html or email brownfieldrenewal@gov.bc.ca.

The content of this Newsletter is intended to provide information on Bull, Housser & Tupper LLP, our lawyers and recent developments in the law. The information contained herein is summary in nature, and does not constitute legal advice. For additional details or advice concerning specific situations please contact Brian Taylor at 604.641.4856 or bet@bht.com, or any member of our Local Government Group.

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