Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *674378 British Columbia Ltd. v. The Owners, Strata Plan VIS5122*, 2022 BCCRT 1346

B E T W E E N :

674378 BRITISH COLUMBIA LTD., SUZANNE CHISHOLM, PAUL MCNALLY, ROY SMITSHOEK, PHOEBE GILDAY and JOHN SWIFT

APPLICANTS

A N D :

LISA JUSTINE COWAN, ROBIN TARN BASSETT, JINDRA CASPERSON, DON JENSEN, JOHN ALBRECHT, ANA RUTH ALBRECHT, FRANK NIELSEN, PAUL LALONDE, HILARY SMITH, WENDY ORD, CARLA PURVES, RICHARD OSBOURNE, JILL WAHL, FRED ANDERKA and GLEN SAMUEL

APPLICANTS

A N D :

The Owners, Strata Plan VIS5122

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about voting thresholds under the *Strata Property Act* (SPA). This decision addresses 2 related disputes about a vote held at a strata corporation special general meeting (SGM) in May 2022.

2. The applicants in dispute ST-2022-003000 are 674378 British Columbia Ltd., Suzanne Chisholm, Paul McNally, Roy Smitshoek, Phoebe Gilday, and John Swift . Each of these applicants owns or co-owns a strata lot in a bare land strata corporation, The Owners, Strata Plan VIS5122 (strata). For convenience, I refer to these applicants as the "Group A owners" in this decision. They are represented in this dispute by a lawyer, Jamie Bleay.

3. The applicants in dispute ST-2022-003654 are Lisa Justine Cowan, Robin Tarn Bassett, Jindra Casperson, Don Jensen, John Albrecht, Ana Ruth Albrecht, Frank Nielsen, Paul Lalonde, Hilary Smith, Wendy Ord, Carla Purves, Richard Osbourne, Jill Wahl, Fred Anderka, and Glen Samuel. Each of these applicants owns, co-owns, or formerly owned a strata lot in the strata. I refer to these applicants as the "Group B owners". They are represented by Ms. Cowan.

4. The strata is the respondent in both disputes. It is represented by a strata council member.

5. In these disputes, the Group A and Group B owners disagree about whether the strata should enter into an access licence agreement (ALA) with Parks Canada to eradicate deer and some invasive plants on Sidney Island, on which the strata is located.

6. The parties agree that at a May 5, 2022 SGM, the strata held a ¾ vote on a resolution to approve the ALA. The resolution only obtained 55.5% of votes in support, so it did not pass. The Group A owners say a ¾ vote was not required. They say either no vote was required, or only a majority vote.

7. As remedies in this dispute, the Group A owners request orders declaring that a majority vote was required (at most), that the strata's decision to require a ¾ vote was significantly unfair, and that the ALA was approved at the May 2022 SGM.

Alternatively, the Group A owners request an order that the strata hold another SGM, with a majority vote resolution to approve the ALA.

8. The Group B owners say a ¾ vote was required to approve the ALA. The Group B owners request an order that the strata uphold the results of the May 2022 vote, meaning that the ALA cannot be approved. The Group B owners also request an order that the strata must notify Parks Canada that the ALA was not approved.

9. The strata's position in both disputes is that it required no ownership vote to approve the ALA, as it is part of council's duty to repair and maintain common property (CP) under SPA section 72. The strata says the work listed in the ALA would not be a significant change in the use or appearance of CP, so a ¾ vote was not required under SPA section 71.

10. For the reasons set out in my reasons below, I find that a majority vote is required to authorize the deer eradication portion of the ALA. I find a ¾ vote may be required in future to authorize the plant removal portion of the ALA, but there is insufficient evidence before me to decide that issue at this time.

JURISDICTION AND PROCEDURE

11. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

12. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate which

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

13. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

14. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

15. Normally, the CRT will issue 2 separate decisions for related disputes involving different parties. However, as explained below, the issue is the same in both of these disputes. My reasons and findings in one dispute must necessarily be consistent with the other. So, I find it appropriate to resolve this dispute in 1 decision, with 1 set of evidence and submissions. The parties each had the opportunity to review and comment on all the materials I have relied on in this decision.

Significant Unfairness

16. As noted above, the Group A owners say it was significantly unfair for the strata to hold a ¾ vote to approve the ALA at the May 2022 SGM. For the following reasons, I decline to resolve this aspect of their claim.

17. First, given my conclusion and orders below, a finding of significant unfairness would not change the outcome of these disputes.

18. Second, as remedy, the Group A owners request an order declaring that the strata's decision to hold this vote was significantly unfair. However, as explained in prior CRT decisions such as *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, the CRT does not have jurisdiction to make declaratory orders.

19. For these reasons, I make no order about whether the strata's decision to hold a ¾ vote was significantly unfair.

Intervenors

20. Unusually, I also permitted 2 intervenors, Carl Olsen and Eric Pelkey, to provide submissions in this dispute. In most cases, allowing intervenors to participate would be inconsistent with the CRT's statutory mandate to provide parties with dispute resolution that is accessible, speedy, economical, informal and flexible. However, for the reasons set out in my October 6, 2022 preliminary decision, I permitted intervenors in this dispute, on a limited basis, even though the Group B owners objected. As set out in my written preliminary decision, there were extraordinary circumstances in this case. The 2 intervenors are members of the W̱SÁNEĆ First Nations, and the strata is located within W̱SÁNEĆ traditional territory. The intervenors argued that the CRT's decision will affect their interests in the environmental restoration of Sidney Island, and they should be consulted. In granting the intervenor applications, I relied on relevant case law, as well as the CRT's Reconcili(action) Plan. That plan says the CRT will create a dispute resolution process that is open and responsive to the historic and ongoing experience of Indigenous peoples by recognizing the historic relationship between colonial government structures and Indigenous peoples.

21. I address the content of the intervenors' submissions below.

ISSUE

22. The issues in this dispute are:

    a. Is any vote required to authorize the strata's participation in the ALA?

    b. Is the removal of plants under the ALA a significant change in the use or appearance of CP, requiring a ¾ vote under SPA section 71?

    c. Is the eradication of deer a significant change in the use or appearance of CP, requiring a ¾ vote under SPA section 71?

BACKGROUND

23. Generally, in civil claims, the applicant bears the burden of proving their claims on a balance of probabilities (meaning “more likely than not”). In this dispute, there are 2 sets of applicants with opposing positions. This means that whichever set of applicants proves their claim on a balance of probabilities will succeed.

24. I have read all the parties' and evidence and submissions, and the intervenors’ submissions. Below, I only refer to what is necessary to explain my decision.

25. The strata is a bare land strata corporation, created in 2001. The strata plan shows that it consists of 111 strata lots, plus a large amount of CP. The strata lots are located around the strata’s perimeter, with a large CP area in the centre.

26. The parties gave different evidence and submissions about the exact size of the strata and the CP land. The ALA says the strata takes up 81% of Sidney Island (1730 acres). The rest of the island is part of the Gulf Islands National Park Reserve (park). The evidence shows that the strata includes 1400 to 1500 acres of CP. I find these approximate figures are sufficient for the purposes of this decision.

27. The evidence confirms that many deer, including indigenous black-tailed deer and non-indigenous fallow deer, live on the island. The parties agree, and the evidence shows, that the fallow deer have a significant negative impact on the island’s vegetation and ecosystem. Since its inception, the strata has taken steps to control the deer population through both cull hunting and recreational hunting. I discuss hunting in more detail in my reasons below.

28. The evidence shows that the strata ownership, and local community and government groups, have discussed the ecology of Sidney Island for many years. Much of that discussion has focused on how to address the ecosystem damage caused by fallow deer. For example, in April 2020, the strata, the Islands Trust Conservancy, Parks Canada, and the Province of British Columbia signed a Memorandum of Understanding (MOU) to work cooperatively towards “collaborative restoration” of

Sidney Island. The project was called the Sidney Island Ecological Restoration Project (SIERP). The stated objectives of SIERP included:

- Eradicating fallow deer,
- developing a forest restoration strategy, including invasive plant management and native plant restoration, and
- developing a management strategy for black-tailed deer.

29. In August 2020, the SIERP steering committee established a Vegetation Working Group and a Deer Working Group, each composed of various community stakeholders. Strata representatives sat on these working groups. The working groups created a draft SIERP Design Plan, which was circulated to community members for comment. After receiving feedback, SIERP finalized the Design Plan in August 2021.

30. On February 6, 2022, the strata and Parks Canada signed the ALA. The ALA is a complex contract, which is 102 pages long including all attachments. Relevant parts of the ALA state:

- The most significant action to promote recovery of Sidney Island's ecosystems is the complete removal of fallow deer from the island.
- To further assist forest recovery, the Vegetation Working Group recommended planting and propagating culturally important native plants within deer enclosures, together with the removal of invasive plants, notably English Hawthorn.
- The Deer Working Group recommended multiple deer removal methods. The primary methods are aerial shooting and fenced zoning using teams with specially trained dogs to clear each zone before moving to the next.
- Parks Canada and the strata agreed to let Parks Canada and its contractors access the strata's CP to perform the work set out in the ALA, subject to a strata owners' approval vote.

31. The “work” of the ALA is defined in paragraph 1.24, as follows:

> “Work” means, the activities identified by the Deer Working Group and Vegetation Working Group as necessary to assist recovery of the Sidney Island forest ecosystem, including planting and propagation of native plants, management of invasive plants, and removal of fallow deer including biosecurity to prevent re-invasion.

32. The specifics about how and what work will be performed are not precisely set out in the ALA. Rather, Schedule D of the ALA sets out a Work Plan, which is a general outline. Paragraph 7.1 of the ALA says the parties acknowledge that the Work Plan is an “evolving document that will change over time in response to conditions on the ground”. Paragraph 7.1 also says the parties will meet monthly to discuss and revise the Work Plan.

33. I discuss the Work Plan further in my reasons below.

34. On May 5, 2022, the strata held an SGM to vote on several resolutions, including a ¾ vote resolution to approve the ALA. The SGM notice said the strata council decided to make the ALA approval a ¾ vote resolution because “the operations are substantial, and…the community would benefit from having a strong majority support for SIERP, allowing it to move forward cohesively.”

35. The SGM minutes show there were 55 votes in favour of the resolution, 44 votes against it, and 8 abstentions. No party has disputed this vote count, which equals 55.5% in favour. So, the ¾ vote resolution did not pass. The Group A owners and Group B owners then filed these CRT disputes.

PARTIES’ AND INTERVENORS’ POSITIONS

36. As noted above, the Group A owners say no vote, or only a majority vote, was required for the strata to approve the ALA. The Group B owners say a ¾ vote was required. As discussed below, the Group B owners made several arguments in support of this position. In particular, they argue that eradicating all the deer would be

a significant change in the use of CP, requiring a ¾ vote under SPA section 71, because it would end the longstanding use of the strata's CP for hunting.

37. The strata has taken different positions over time, depending on the composition of the strata council and differing legal advice. In these disputes, the strata says that either no vote was required to approve the ALA, or alternatively only a majority vote. In particular, the strata argued that the work contemplated in the ALA is repair and maintenance under SPA section 72, for which no vote is required.

38. Intervenors Carl Olsen and Eric Pelkey both submitted that the ALA should proceed. They say the work in the ALA should proceed, to protect Sidney Island's ecosystems. They say these ecosystems are being destroyed by the fallow deer, which are an invasive species.

39. Whether the ALA should proceed, and whether and how to protect ecosystems on Sidney Island, are not issues for me to decide in this dispute. The CRT has no authority to decide those questions. As noted above, the questions before me to decide are more narrow questions about voting requirements under the SPA. For that reason, I put limited weight on the intervenors' submissions.

REASONS AND ANALYSIS

Was an ownership vote required to authorize the strata's participation in the ALA?

40. For the following reasons, I find a majority vote, and not a ¾ vote, was required for the strata to approve the ALA.

41. As noted above, the strata and Group A owners argue that no vote was required to approve the ALA, because the work set out in the ALA is repair and maintenance as contemplated under the ALA, which the strata council has authority to approve without an ownership vote under SPA section 72.

42. SPA section 72 says the strata must repair and maintain CP and common assets. The Group A owners cited case law, confirming that "repair and maintain" can include restoration, replacement, and alterations to appearance.

43. SPA section 72 does not require the strata to obtain ownership approval for all repairs and maintenance. Rather, SPA section 3 says the strata corporation is responsible for managing and maintaining the CP and common assets of the strata corporation for the benefit of the owners. Section 4 says the powers and duties of the strata corporation must be exercised and performed by the strata council, unless the SPA, *Strata Property Regulation,* or the bylaws provide otherwise.

44. So, repair and maintenance decisions under SPA section 72 do not generally require an ownership vote, but instead are within the strata council's authority to decide.

45. If a maintenance or repair project involves spending money not accounted for in the annual operating budget, beyond a limited amount set out in SPA section 98(2), a strata ownership vote is required. These voting requirements are set out in SPA Part 6. A ¾ vote may be required in some circumstances, such as to approve a special levy. However, in this case, the ALA work will be fully paid by Parks Canada, and does not require any strata expenditure. The parties do not argue otherwise. So, I find no spending vote was required.

46. The parties also agree that SPA sections 80 and 82, about disposal of CP and personal property, do not apply. SPA section 80 requires a ¾ vote for disposal of CP. SPA section 82 says a ¾ vote is required to dispose of personal property owned by the strata if the property's market value is over a certain amount. The deer are not CP or common assets of the strata. Rather, as wildlife, deer are owned by the province, as set out in the *Wildlife Act.* And there is no suggestion that the plants removed from CP under the ALA would have any market value. So, I find SPA sections 80 and 82 are not triggered.

47. So, I find the only SPA provision which might require a ¾ vote to approve the ALA work is SPA section 71. Section 71 says the strata the strata corporation must not make a significant change in the use or appearance of CP unless the change is

approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

48. I find that immediate change is not necessary in this case, as the evidence shows that the parties have been discussing the ALA work for several years already. So, key the question in this case is whether the ALA work would be a significant change in the use or appearance of CP. Since the plant and deer eradication portions of the ALA are different, I have addressed them separately.

Will the removal of plants under the ALA be a significant change in the use or appearance of CP?

49. I find there is insufficient evidence at this time to determine whether the plant removal work will be a significant change in the appearance of CP.

50. The ALA does not specifically say what plants will be removed. As summarized above, it generally says that some non-native plants, notably English hawthorne, will be removed. Schedule D, which sets out the Work Plan, includes the following information:

    - The goal is to have a series of established, healthy patches of native vegetation across Sidney Island that will act as songbird habitat and seed sources.
    - Invasive English hawthorn (Crataegus monogyna) has been identified as a key threat to meadow plant communities. Parks Canada intends to fund hawthorn removal on CP and in the park starting in 2022.
    - Invasive Scotch broom also presents a threat to native plant communities. Complete removal of scotch broom is impractical, and efforts to control broom must be strategic and part of a long term commitment. Parks Canada intends to contract a third-party restoration specialist to develop a plan for Scotch broom control that identifies priority areas across Sidney Island to focus control efforts on, and takes into account the capacity of the strata and Parks Canada.

51. There are other documents in evidence, including email correspondence, that discuss approaches to removing broom and hawthorne from Sidney Island. None of these documents definitively say how much plant material will be removed, from where, or how. There is also limited evidence before me about how much of the strata's CP is currently populated with broom or hawthorne.

52. The strata's CRT submissions state that the vegetation restoration work set out in the ALA Work Plan is in draft form, and "will need to be revisited as options and methods for restoration are analyzed and developed." The strata submits:

> …to the extent that some of the Vegetation Restoration could be a significant change in the use or appearance of CP, the Strata Corporation will have an opportunity to bring resolutions to the owners.

53. The Group B owners submit that the removal of hawthorne, in particular, will result in a significant change to the use or appearance of CP. They submit that the removal will crate "scars", and will trigger increases in other plants such as scotch thistle, broom, and stinging nettle.

54. Based on the evidence before me, and the strata's submission, I find it is not yet clear whether the removal of hawthorne and broom will be a significant change in the use or appearance of CP. Again, it is unclear from the evidence how many plants will be removed, or from where. It is also unclear whether other non-indigenous plants will be removed. The strata admits these decisions have not been finalized.

55. For these reasons, I find it is too soon to determine whether the vegetation restoration portion of the ALA will be a significant change to the use or appearance of CP, requiring a ¾ vote under SPA section 71. I therefore make no findings about that in this decision.

Is the eradication of deer a significant change in the use or appearance of CP?

56. For the following reasons, I find the deer eradication set out in the ALA is not a significant change to the use or appearance of CP.

57. The parties agree that under the ALA, all fallow deer and black-tailed deer will be shot. The black-tailed deer are not considered invasive, but the Work Plan states that "retaining black-tailed deer during the removal operation will compromise the complete removal of fallow deer."

58. The parties disagree about whether the black-tailed deer will naturally repopulate over time, by swimming from other islands. The evidence also includes discussion about deliberate reintroduction of black-tailed deer in the future. I find this is not determinative of whether the deer eradication is a significant change to the use or appearance of CP, since repopulation will not occur quickly.

59. The Work Plan specifies that Parks Canada and its contractors will not enter any strata lots to hunt deer. However, the hunting contractors will use helicopters flying over the strata, and some contractors and hunting dogs will access CP to hunt deer and remove carcasses. Also, some temporary fencing will be used on CP to control deer movement. These activities are specifically permitted under the ALA.

60. In *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the BC Supreme Court set out a non-exhaustive list of factors to consider when deciding whether a change is significant:

    a. Is the change visible to other residents or the general public?

    b. Does the change affect the use or enjoyment of a unit or existing benefit of another unit?

    c. Is there a direct interference or disruption because of the changed use?

    d. Does the change impact the marketability or value of a strata lot?

    e. How many units are in the strata and what is the strata's general use?

    f. How has the strata governed itself in the past and what has it allowed?

61. There is no suggestion in the evidence that eradicating the deer will, in itself, significantly change the appearance of CP. The Group B owners argue that the lack

of deer will change the island's vegetation over time. However, those changes will be gradual, and are an indirect rather than direct result of eliminating the deer.

62. Also, I note that the deer themselves are not CP, and are free to move on, off, and around the CP. Again, the deer are the property of the province. As it relates to deer eradication, the ALA is only an access agreement. The fencing used will be temporary, and will therefore not be a significant change. Any limitations in access to CP by strata owners or guests, while the deer eradication is in progress, will be short-term and temporary. In short, the strata's CP is the land, not the deer. The deer eradication portions of the ALA will not change the land, or the things affixed to it. Since the CP is the land, and things affixed to the land, I find the deer eradication cannot be considered a significant change to CP for the purposes of SPA section 71.

63. The Group B owners argue that eradicating deer will significantly change the use and enjoyment of the strata's CP. Specifically, they argue that recreational deer hunting has always been permitted on the CP, and that eradicating all the deer will significantly change this use.

64. Applying the *Foley* criteria, I find that eliminating deer hunting is not a significant change to the use of CP.

65. Eliminating deer hunting is not a change that will be visible to other residents or to the general public. I note that under the strata's hunting rules, members of the public are not permitted to hunt on CP, except by invitation as an owner's guest, and only on a limited number of days per year.

66. Second, I find the Group B owners have not proved that the change affects the use and enjoyment of any strata lots. Hunting is not permitted on strata lots, and the Group B owners provided no evidence that any owners own their strata lots for the purpose of accessing CP hunting. The Group B owners argue that deer hunting is an "existing benefit" of being a strata owner. In support of that argument, they assert that there is a "hunting culture" that would be lost if all the deer were eradicated. I find the Group B owners have not proved the existence of a hunting culture in the strata, and have not proved that a significant number of owners in the strata hunt. They say that 92 to

100 deer have been harvested in each of the last 4 years. However, given that there are 111 strata lots in the strata, and given that some of the deer are killed for the specific purpose of culling, rather than recreation, I find that eliminating recreational hunting would not be a significant change to the use of CP. In making that finding, I also note that the strata rules specify that recreational hunting is only permitted 35 days per year. This means it is prohibited 90% of the time. This does not support the conclusion that eliminating deer hunting would be a significant change in the use of CP.

67. Under *Foley,* I must consider whether eliminating deer, or deer hunting, would cause a direct interference or disruption due to the changed use. I find there would be no direct interference or disruption. Again, deer hunting on CP is only permitted a small portion of the time, and much of the permitted hunting was for the specific purpose of limiting the deer population, which would no longer be necessary. The Group B owners raise safety and access concerns about the eradication hunting under the ALA, I find that the existence of recreational hunting on CP also raises safety and access problems, particularly for those not engaged in hunting.

68. The next *Foley* factor is whether the change impacts the marketability or value of a strata lot. The Group B owners provided some real estate data, showing strata lot sale prices from 2018 to 2022. I find that data does not show how strata lot prices would be affected by deer eradication. The Group B owners also provided an excerpt from an email from RO, who they say is the “top seller of properties on Sidney Island”. I accept that assertion, since the other parties do not dispute it. However, I place no weight on RO’s statement as it is incomplete, and the email signature has been removed. It is not clear what was edited out of the statement, or what question or questions RO was asked to respond to, or by whom.

69. The email from RO states, in part, that several people purchased in the strata “at least partially because of their ability to hunt fallow deer which is clearly evidenced by the number of new owners who are now involved in hunting.” RO also says a serious, qualified buyer did not complete a purchase because of the threat of deer eradication, since if he could not hunt he did not want to buy on the island.

70. In addition to the problems with the document's completeness set out above, I am not persuaded by RO's opinion. His statement is made up of hearsay about what other, unidentified people allegedly think or said. I also find the information is vague. For example, RO does not define "several people", and does not say how many new owners are involved in hunting, or how RO knows this fact. Without direct evidence from owners or prospective owners to corroborate this hearsay, I place no weight on RO's email.

71. For these reasons, I find the Group B owners have not proven that eradicating the deer will affect the value or marketability of any strata lots.

72. The next *Foley* factor requires consideration of the number of strata lots are in the strata, and the strata's general use. Again, there are 111 strata lots in the strata. There is no evidence before me indicating that a significant portion of the strata lot owners engage in hunting, particularly recreational hunting on CP. I find the evidence before me does not show that recreational hunting is a general use in the strata. As noted above, this activity is prohibited 90% of the time.

73. I find that the strata's 2022-2026 Community Plan is persuasive evidence about the strata's general use. The document states that it was created by a working group established by the strata council in 2020, and is based on survey date received from 74% of strata lot owners. Ecological health and diversity is identified as a goal, including management of the deer population. Recreational hunting is not specifically identified as a part of the Community Plan.

74. For these reasons, I find the number of strata lots and the strata's general use does not support the conclusion that eliminating recreational deer hunting will constitute a significant change in the use of CP.

75. The final *Foley* factor is how has the strata governed itself in the past, and what has it allowed. I find the evidence before me establishes that since it was created in 2001, the strata has take steps to limit the deer population. Documents such as the May 2011 annual general meeting (AGM) minutes establish that the strata has worked over time to reduce the deer population. A February 10, 2020 document titled Deer

Management on Sidney Island confirms that at times, professional cull hunters were hired for this purpose.

76. Given that the strata has engaged in efforts to reduce the deer population in the past, I find that allowing deer eradication under the ALA weighs against being a significant change in the use of CP. While the goal under the ALA is to eradicate all the deer, I find that this is not significantly different from the previous "aggressive" deer culls set out in the February 10, 2020 Deer Management document.

77. Thus, I find the *Foley* factors do not support the conclusion that eliminating recreational deer hunting is a significant change to the use of CP. Therefore, I find a ¾ vote to approve the ALA was not required under SPA section 71.

Previous Resolution

78. The Group B owners argue that the strata is bound by the previous resolution about the meaning of "significant change". The May 27, 2021 AGM minutes show that the owners passed a majority vote resolution stating, in part, as follows:

> …the Strata Corporation interprets compliance with Section 71 of the *Strata Property Act* regarding significant changes to the use or appearance of CP to include: Alterations not easily undone to CP that include, but not exhaustively, creating any new permanent vehicle access on CP, any permanent artificial structures, and any substantially-altered vegetation.
>
> For greater certainty, this includes any future forestry-related alterations to the CP.

79. For the following reasons, I find that this resolution does not determine whether a ¾ vote was required to approve the ALA. Specifically, I find that the wording of the SPA section 71, and the *Foley* factors set out above, are still determinative of whether a change is "significant". As stated in *Foley*, determining whether a change is significant will depend on the particular circumstances of each case. Therefore, a "blanket" resolution cannot be used to change the legal test about what is considered a significant change.

80. Also, the AGM minutes show that the May 2021 resolution was not passed specifically in relation to the ALA, or the deer eradication. Rather, the minutes state that the resolution was proposed by a group of owners, who were concerned about recent logging, clearing, and planting on the island. This does not support the conclusion that the strata owners decided that the ALA or deer eradication would be a significant change, and even if they had, that decision would not, in itself, override the legal test set out in *Foley.*

81. Even if I am wrong, and the May 2021 resolution is a binding determination of what constitutes a significant change to CP, I find the resolution does not mean that permitting the deer eradication work in the ALA is a significant change. The resolution states that "alterations not easily undone to common property" will be considered significant changes. I find that the deer eradication is not an alteration to CP. There is extensive case law on what constitutes an "alteration" under the SPA, mostly relating to changes to buildings. For the reasons explained earlier in this decision, I find that deer eradication is not an alteration or change to CP, as the deer are not CP, and removing the deer will not alter the CP itself.

82. So, I find that the May 2021 resolution does not mean the deer eradication work in the ALA is a significant change under SPA section 71.

83. For all of these reasons, I find that the deer eradication portion of the ALA is not a significant change under SPA section 71. So, a ¾ vote is not required to approve it.

Is any vote required to approve the ALA?

84. The strata and the Group A owners argue that no vote is required to approve the ALA. I disagree. The ALA, which was signed by 2 strata council members, specifically says that the agreement is subject to an owners' approval vote.

85. I cannot make a binding decision about the enforcement of the ALA, including whether the lack of an owners' approval vote would make the agreement void. That is not a matter that fits within the CRT's strata property jurisdiction, as set out in CRTA section 121. Also, it would be procedurally unfair to decide that issue, since Parks

Canada is not a party to this dispute. However, I find the ALA term requiring an owners' vote created a reasonable expectation among strata owners that they would have an opportunity to vote on whether to approve the ALA. I find it would be unreasonable, and significantly unfair, for the strata not to permit an owners' approval vote.

86. SPA section 50 says that at an AGM or SGM, matters are decided by majority vote unless a different voting threshold is required or permitted under the SPA or *Strata Property Regulation.* As explained above, I find a ¾ vote was not required under the SPA. So, the proper voting threshold under the SPA is a majority vote.

87. The strata and Group A owners argue that the May 2022 vote should be counted as a majority vote, and that the ALA should therefore be considered approved. I disagree, for 2 reasons.

88. First, as set out above, I find it is not yet clear whether the plant eradication portion of the ALA will require a ¾ vote, since the scope of the work is undetermined. The May 2022 ALA approval resolution did not distinguish between the plant eradication and the deer eradication portions of the ALA.

89. Second, the May 2022 SGM notice, and the discussion portion of the minutes, clearly state that the owners voted based on the understanding that the threshold to approve the resolution was ¾ of votes in support. By retroactively changing that to a majority vote, I find the voters' intentions could be undermined. For example, there is no way to know if the 8 abstainers might have cast a ballot in a majority vote.

90. For these reasons, I find the strata must hold a new AGM or SGM, and allow owners to vote on a majority vote resolution to approve the deer eradication portion of the ALA.

91. I dismiss the Group B owners' claims, and dispute ST-2022-003654. I allow the Group A owners' claims in part.

CRT FEES AND EXPENSES

92. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. No party claimed dispute-related expenses in this dispute.

93. I find that the Group A owners were only partially successful, as I have not made several of their requested orders. Also, their position in the dispute was essentially the same as the strata's, so I find it would be inappropriate in the circumstances to order reimbursement to the strata. Given the complex positions in these disputes, I order no reimbursement of CRT fees.

94. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the named applicants in either dispute.

ORDERS

95. I order that within 90 days of this decision, the strata must hold an AGM or SGM, and allow eligible voters to vote on a majority vote resolution to approve the deer eradication work in the ALA. The strata must follow the notice provisions in SPA section 45.

96. I dismiss the claims in dispute ST-2022-003654.

97. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kate Campbell, Vice Chair