



# Civil Resolution Tribunal

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File: ST-2022-001347

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wolf v. The Owners, Strata Plan EPS 1433*, 2022 BCCRT 1354

**B E T W E E N :**

MICHAEL WOLF

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS 1433

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This dispute is about common property (CP) alterations. The applicant, Michael Wolf, co-owns a strata lot in the respondent bare land strata corporation, The Owners, Strata Plan EPS 1433 (strata). Mr. Wolf says the strata has allowed the owner of strata lot 25 (SL25) and an owner of strata lot 1 (SL1) in a neighbouring strata corporation, The Owners, Strata Plan VIS5021 (VIS5021), to build driveways that

have altered the strata's CP. Mr. Wolf says the changes are significant changes under section 71 of the *Strata Property Act* (SPA) which have not been approved by the owners. Mr. Wolf seeks an order for the strata to remove the driveways and restore the CP back to its original condition. Mr. Wolf also seeks an order that the strata put up barriers to prevent "recurrence of this activity".

2. The strata says any changes made to CP from SL1 and SL25's driveway work are not significant changes under SPA section 71, so no owner vote was required. I infer the strata asks that Mr. Wolf's claims be dismissed.
3. Mr. Wolf is self-represented. A strata council member represents the strata. SL25's owner, SL1's owner, and VIS5021 are not parties in this dispute.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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 that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
6. 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.

7. 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.

### ***Preliminary Issue***

8. In their submissions, Mr. Wolf alleges that a bylaw amendment approved by the owners at the June 2022 annual general meeting is not enforceable under SPA section 121. This bylaw amendment allows the strata council to provide approval to owners seeking to construct, enlarge, or otherwise change driveways on CP. Mr. Wolf says this bylaw is not enforceable because it contravenes SPA section 71.
9. This bylaw amendment received owner approval after Mr. Wolf applied to the CRT for dispute resolution. As a result, the Dispute Notice does not raise issues about this bylaw amendment. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims or remedies, Mr. Wolf did not do so. I find the purpose of the Dispute Notice is to define the issues and provide notice to the respondent of the claims against it. So, I find the bylaw amendment validity issue is not properly before me and I make no findings about it.

## **ISSUES**

10. The issues in this dispute are:
  - a. Are the SL1 and SL25 driveways a significant change to CP under SPA section 71?
  - b. If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant, Mr. Wolf must prove their claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

## ***Background***

12. The strata plan in evidence shows the strata is a bare land strata created in June 2014. On August 19, 2015, the strata rescinded all previous bylaws and filed a complete set of new bylaws with the Land Title Office (LTO). I find these bylaws apply to this dispute. The strata filed later amendments to these bylaws with the LTO that I find are not relevant here. I discuss the relevant bylaws below.
13. The following facts are undisputed. The strata is made up of 27 large strata lots located on Mount Tuam on Salt Spring Island. The strata lots vary in size between 5 and 78 acres. Skywater Drive, a CP road, connects the 27 strata lots. An unpaved, CP emergency access dirt road (EA road) is located between strata lot 24 and SL25.
14. VIS5021 is a neighbouring strata corporation also located on Mount Tuam. In December 2020, SL1 developed a driveway covering a part of the strata's CP. It is unclear exactly when but at some time in the past 6 years, SL25 built 3 driveways over CP to connect SL25 with the EA road.
15. The evidence includes 2 easements registered with the LTO that grant SL1 access over sections of Skywater Drive and adjoining CP that run alongside SL1. The first easement was registered as charge number ET053023 with the LTO on May 14, 2002. The second easement was registered as charge number CA3954693 with the LTO on September 11, 2014. Both of these easements run with the land. The easements allow owners of SL1 access to SL1 via portions of the strata's CP covered under the respective easements.
16. The strata says SL1's driveway that is at issue in this dispute is allowed under easement ET053023. A sketch plan in evidence, created by Polaris Land Surveying Inc. on January 14, 2021, shows the disputed SL1 driveway is located within the area included in easement ET053023. However, Mr. Wolf says that despite this easement, SL1's driveway is still a significant change to CP that was not approved by the owners. Similarly, Mr. Wolf says that SL25's 3 driveways that connect to the EA road and have been approved by the strata council are also significant changes under SPA section 71.

**Are the SL1 and SL25 driveways a significant change to CP under SPA section 71?**

17. SPA section 71 says a strata corporation must not make significant changes in the use or appearance of CP unless the change is approved by a resolution passed by a  $\frac{3}{4}$  vote or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. Section 71 also governs changes made by an owner that have been authorized by a strata corporation (see *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333). I find section 71 also applies to CP changes made by non-owners that have been allowed by the strata, like the SL1 driveway.
  
18. The criteria for determining what is a significant change in use and appearance under SPA section 71 was set out by the BC Supreme Court in *Foley* at paragraph 19 as follows:
  - a. A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;
  - b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of a unit or units;
  - c. Is there a direct interference or disruption as a result of the changed use?
  - d. Does the change impact on the marketability or value of the unit?
  - e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
  - f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA?
  
19. I will now consider each of these criteria as they apply to the SL1 driveway.

### SL1 Driveway

20. Mr. Wolf says the SL1 driveway is clearly visible as it is allegedly at the strata's entrance and is viewed by all owners, visitors and potential strata lot purchasers. The strata says the strata lots are all large acreages. So, the strata says that adding or altering a driveway over such a large area has no visible significance so long as the driveways are constructed following accepted standards.
21. While I accept the SL1 driveway is visible to anyone driving along that part of Skywater Drive, based on the size of the individual strata lots, I find it unlikely that the driveway is visible to other owners from their strata lots. Given the driveway's location, I also find it likely that the driveway is not visible to the general public other than those travelling along that portion of Skywater Drive. There is no evidence before me about how frequently non-owners travel on this part of Skywater Drive and encounter the driveway. However, the strata says any kind of traffic is extremely rare. On balance, I find it unproven that SL1's driveway is any more visible or looks significantly different than any other driveway along Skywater Drive.
22. Other than the parties' assertions, there is no evidence before me of how the CP was used by owners before SL1's driveway was installed and how that use has changed. Mr. Wolf says the SL1 driveway has changed the CP's affected use because strata lot owners can no longer freely stop or park their vehicles on this CP or enjoy a walk without avoiding the driveway and entering onto the roadway. The strata says that there has been no impact on the use or enjoyment of this part of the CP. It says there are no sidewalks or footpaths anywhere along Skywater Drive. It further says all pedestrians use the paved road as a walking path.
23. Photographs in evidence provided by Mr. Wolf of the SL1 driveway area show no sidewalks or footpaths. So, I find it likely that pedestrians use the paved road as a walking path as the strata asserts. The strata also says owners have plentiful off-road parking on their own large strata lots and parking along the roadside is "practically unheard of and largely infeasible" due to the roadway's width. Mr. Wolf provided no evidence that owners used to park in this area before the SL1 driveway was put in, so I accept the strata's submissions on this point.

24. Mr. Wolf also says the SL1 driveway causes an interference or disruption because it is dangerous. They say the driveway is situated at the corner of the top of a steep stretch of road where any vehicle suddenly exiting the driveway could impact strata lot owners driving on that section of Skywater Drive. The strata disagrees and says the road system is functional as always and the SL1 driveway does not pose a change in the flow of traffic and is not dangerous or a hazard. The strata says using Mr. Wolf's criteria for danger, most if not all driveways along the mountainous terrain could be described as dangerous, including Mr. Wolf's own driveway. While a photograph in evidence shows a "Caution – Steep Grade" sign located across from the SL1 driveway, I do not find this establishes that the driveway itself poses a danger or otherwise is an interference or disruption to others.
25. Mr. Wolf says the SL1 driveway has negatively impacted the strata lots' market value. The strata disagrees and says strata lots have been sold at higher values since SL1's owner put in the driveway. Neither party provided any evidence in support of their respective assertions about market value. So, I give the parties' submissions on this point little weight.
26. Mr. Wolf further says the SL1 driveway impacts all 27 strata lots. The strata disagrees, It says that given the large size of each strata lot and since the strata lots are spaced far apart, the SL1 driveway, like all other driveways, does not present an issue. The strata also notes that Mr. Wolf is the only strata lot owner that has taken issue with the SL1 driveway, which Mr. Wolf does not dispute. So, I find it unlikely that the SL1 driveway impacts all 27 strata lots in any significant way.
27. In its submissions, the strata says the strata council has always maintained control of CP alterations such as driveways under bylaw 5. Bylaw 5 says an owner must obtain the strata's written approval before making an alteration to CP. The strata says that while the SL25's owner initially put in the driveways without approval, it first fined SL25 and then approved the driveways subject to certain conditions. Mr. Wolf does not dispute this, so I accept the strata has permitted driveway additions in the past.

28. Mr. Wolf says that for all of the strata's CP roads, there is a varying distance from the road surface and shoulder extending to the 27 strata lots' property lines. Mr. Wolf says this "generous buffer" contributes to and otherwise constitutes the strata's "rural elegance" described in the developer's promotional materials and in the bylaws. Mr. Wolf argues the SL1 driveway disrupts this rural elegance.
29. The developer's promotional materials are not in evidence. However, based on the preamble to the strata's bylaws, I accept that the bylaws' primary objective is to maintain and enhance the CP road system's rural elegance and to respect the views from the building sites on each strata lot. Bylaw 1 defines "road system" as including Skywater Drive among 5 other roads.
30. As mentioned above, Mr. Wolf's evidence includes photographs of the SL1 driveway. I find these photographs show a fairly inconspicuous driveway covered with grey gravel that connects with Skywater Drive. Mr. Wolf says this gravel, which they say is white and not grey, has replaced the natural roadside that was established by the developer when the strata lots were first sold. Other than Mr. Wolf's description of this section of the CP previously being a natural roadside, there is no photographic or other evidence before me showing what the CP looked like prior to S1's driveway installation. Based on the photographs before me, I find it unproven that the SL1 driveway disrupts the rural elegance that the strata's bylaws seek to protect.
31. Weighing the *Foley* criteria mentioned above and based on the evidence before me, I find Mr. Wolf has failed to prove on a balance of probabilities that SL1's driveway is a significant change to the use or appearance of CP. So, I find a ¾ vote under SPA section 71 was not required to approve SL1's driveway and I dismiss this part of Mr. Wolf's claim.

### SL25 Driveways

32. I find the same reasoning applies to SL25's 3 driveways.
33. While Mr. Wolf says the SL25 driveways are viewed by all owners, visitors and potential buyers, it is undisputed that the EA road is for emergencies in the event the



main roads become blocked. Evidence shows the EA road also has a gate at the end that the strata says is locked. Based on the above, I find the SL25 driveways are only infrequently visible to strata lot owners and others traveling on the EA road.

34. Other than the parties' assertions, there is no evidence of how the SL25 driveways have changed the CP's use for the other owners.
35. Mr. Wolf also asserts the SL25 driveways are dangerous. However, I find this unproven on the evidence before me. Similarly, as with the SL1 driveway, there is no evidence before me that the SL25 driveways have affected the market value of SL25 or other strata lots.
36. The limited evidence before me includes photographs of the SL25 driveways where they meet the EA road. As with the SL1 driveway, I find these photographs show the SL25 driveways are fairly inconspicuous. There is no photographic evidence before me showing what the CP looked like before the SL25 driveways were put in. Weighing the *Foley* criteria, I find it unproven that the SL25 driveways are a significant change under SPA section 71. So, I dismiss Mr. Wolf's claims.
37. Even if I had found the SL1 and SL25 driveways were a significant change to CP, I would not have granted the orders Mr. Wolf seeks. As noted by the court in *Foley*, the proper remedy when a strata corporation makes a significant change without a valid vote under SPA section 71 is for the owners to vote on whether to keep the change. So, had I found the SL1 or SL25 driveways were a significant change under SPA section 71, I would have ordered the strata to consider a  $\frac{3}{4}$  vote instead of ordering the strata to remove the driveways and put up barriers.

## **CRT FEES AND EXPENSES**

38. Under section 49 of the CRTA, 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. I see no reason in this case not to follow that general rule. Since Mr. Wolf was unsuccessful, I dismiss their claim for reimbursement of their paid

CRT fees. The strata did not pay any CRT fees and neither party claims any dispute-related expenses.

39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Wolf.

## **ORDER**

40. I dismiss Mr. Wolf's claims and this dispute.

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Nav Shukla, Tribunal Member