



**WOODWARD & Co.
LAWYERS LLP**

REPLY TO: HOLLY VEAR
Victoria Office
email: holly@woodwardandcompany.com

ASSISTANT: KATHLEEN MCKERRACHER
kathleen@woodwardandcompany.com

our file: 5322

July 15, 2014

Victoria Citizens Against Rodeo Entertainment (“VCARE”)
3123 Antrobus Crescent
Victoria, B.C V9B 5M8

Attention: Melissa de Meulles, Founder and Organizer of VCARE

Dear Ms. de Meulles:

Re: Langford Council’s Letter addressing the Luxton Pro Rodeo

We provide this letter further to your instructions that we review and assess two letters: (i) the City of Langford (“Langford”) Council’s letter dated May 28, 2014 to VCARE, and (ii) the letter from Bruce Collingwood of the firm Dinning Hunter Lambert and Jackson to the Langford Council, dated May 15, 2014 (the “Langford Legal Opinion”).

The Langford Legal Opinion forms the basis of the Langford Council’s position that the Luxton Pro Rodeo cannot be regulated because rodeo entertainment qualifies as a permitted use pursuant to the Luxton Fairgrounds’ zoning. According to the Langford Council’s position, the Luxton Pro Rodeo could continue as a lawful non-conforming use despite a zoning amendment that explicitly excluded rodeo entertainment.

This opinion seeks to address the following issues:

1. Is rodeo entertainment a permitted use under Langford’s P4 zoning?
2. Are there additional tools available to the Langford Council to allow their regulation/prohibition of rodeo entertainment?

VICTORIA OFFICE:
844 COURTNEY STREET, 2ND FLOOR
VICTORIA, BC V8W 1C4

TEL: 250-383-2356; FAX: 250-380-6560
WEBSITE: www.woodwardandcompany.com

WHITEHORSE OFFICE:
3059 3RD AVENUE, 2ND FLOOR
WHITEHORSE, YT Y1A 1E2

TEL: 867-633-5940
WEBSITE: www.woodwardandcompany.com

BRIEF SUMMARY

1. Is rodeo entertainment a permitted use under Langford's P4 zoning?

There is a compelling argument that rodeo entertainment is not a permitted use under the Luxton Fairgrounds' P4 zoning. As such, the Langford Council has a sound legal basis upon which to assert that allowing the Luxton Pro Rodeo to continue on the Luxton Fairgrounds would constitute a breach of the Langford Bylaw No. 300 ("Bylaw 300").¹ In fact, depending upon the manner in which the Luxton Pro Rodeo is insured, the Langford Council or the Metchosin Farmers' Institute is well advised to consider any liability risks in the event of an incident, i.e. loss of coverage due to an incident occurring pursuant to an unlawful use.

The lawful non-conforming use defence only applies to lawful or permitted uses; consequently, if the Langford Council amended Bylaw 300 to explicitly exclude rodeo entertainment, and rodeo is not considered a lawful use under the old bylaw, the non-conforming use defence would not apply.

2. Are there additional tools available to the Langford Council to allow their regulation/prohibition of rodeo entertainment?

The Langford Council may avoid the zoning question altogether and still regulate or prohibit rodeo entertainment through the municipality's animal control authority. Further research is required to determine if the Langford Council could address the rodeo issue through its business regulation authority. The defence of a lawful non-conforming is only available for zoning bylaws, which means the Metchosin Farmers' Institute must comply with a lawful animal control or business regulation bylaw.

DISCUSSION

1. Is Rodeo a Permitted Uses under P4 Zoning?

Bylaw 300 lists the permitted uses for P4 zoning, of which "agricultural fair ground" is the applicable permitted use for our purposes. The Langford Legal Opinion provides that a reasonable interpretation of the term "agricultural fair ground" could include rodeo entertainment based on the fact that the term is not defined, and that rodeo is not specifically excluded in Bylaw 300. Contrary to this position, there is a compelling argument that rodeo entertainment is not a permitted use under the P4 zoning.

"agricultural fair ground" is not a defined term in Bylaw 300; in the case of an undefined term, it should be interpreted purposively and within the context of the bylaw as a whole, which includes

¹ A Bylaw to Regulate the Use of Land, Buildings, and Structures and the Provision of Parking and Loading Spaces, Screening and Landscaping ("Bylaw 300").

consideration of the term's ordinary meaning.² In addition, the term's meaning should be informed from accompanying words,³ and subject to the presumption that every word in the enactment was included for a reason, and has a specific role to play.⁴

(a) Purposive and Contextual Reading of “Agricultural fair ground”

Despite the fact that “agricultural fair ground” is not a defined term in Bylaw 300, the term “agriculture” is defined as follows:

"Agriculture" means a use providing for growing, rearing, producing and harvesting of agricultural products; includes the storage and sale on an individual farm of the products harvested, reared, or produced on that farm and the storage of farm machinery and implements used on that farm; specifically excludes Intensive Agriculture and all manufacturing, processing, storage and repairs not specifically included in this definition;

The effect of a defined term being included in the larger term imposes certain restrictions on the manner in which “agricultural fair ground” may be interpreted; the term “fair” must be interpreted in a way that accounts for the intentional inclusion of a defined term, “agriculture”, or for our purposes, “agricultural”. In this sense, “fair” is restricted to uses that are associated with “agriculture”, as that term is defined in Bylaw 300.⁵

It is instructive to consider a B.C. Supreme Court decision, *Cowichan Valley (Regional District) v. Michaud*⁶ that held that “rodeo” does not qualify as “agriculture”, as that term was defined in a Cowichan Valley Regional District bylaw. The definition of “agriculture” in that case is fundamentally similar to the definition of agriculture in Bylaw 300:⁷

“Agriculture” means a use providing for the growing, rearing, producing and harvesting of agricultural products; includes the processing on an individual farm of the primary agricultural products harvested, reared, or produced on that farm and the storage of farm machinery, implements, and agricultural supplies, and repairs to farm machinery and implements used on that farm as well as the growing, rearing, or fur-bearing animals, poultry and other livestock.

Justice McKay in *Cowichan Valley (Regional District) v. Michaud* held that even the most liberal interpretation of the term “agriculture” would not include rodeo based on the fact that

² R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed, (Canada: LexisNexis 2008) at 24.

³ *Noscitur a sociis*.

⁴ R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed, (Canada: LexisNexis 2008) at 210.

⁵ Please note: the interpretation that follows focuses on “agricultural fair” as it is assumed that the addition of “ground” implies a physical location where an agricultural fair is held.

⁶ *Cowichan Valley (Regional District) v. Michaud*, [1985] B.C.J. No. 525.

⁷ *Cowichan Valley (Regional District) v. Michaud*, [1985] B.C.J. No. 525 at para. 8.

rodeo has nothing to do with rearing animals, in that case horses, but rather rodeo involved the use of horses in commercial ventures.⁸

While we note that the Langford Bylaw permits an “agricultural fair ground”, and not simply “agriculture”, the B.C. Supreme Court ruling is nevertheless helpful. The inclusion of “fair ground” adds a demonstration, exhibition or display element, but the class of things permitted to be on display is restricted to those that are agricultural in nature, as “agriculture” is defined in Bylaw 300.

It is helpful to also consider the ordinary, plain meaning of “rodeo” and “agricultural fair” to determine how those terms are commonly used and understood.

The Ordinary meaning of “rodeo”

The Oxford Dictionary defines rodeo as an exhibition or contest in which cowboys show their skills at riding broncos, roping calves, wrestling steers, etc.⁹

The commonly held understanding of the term “rodeo” is rooted in a cowboy performance for the purpose of entertainment. The Canadian Professional Rodeo Association approves an applicant rodeo based on the various categories of “performances” that a rodeo will host.¹⁰ Rodeo performances showcase a cowboy’s skills in timed events, which often involves risky manoeuvres that carry little to no resemblance of methods used on a working farm.

Rodeo performances are missing a direct link to the definition of “agriculture” in Bylaw 300 as it relates to animals, that is, as set out in *Cowichan Valley (Regional District) v. Michaud*, a connection to rearing animals.

The Ordinary meaning of “agricultural fair”

The ordinary meaning of an agricultural fair as it relates to farm animals consists of a demonstration or exhibition of animal care, husbandry and rearing.

The B.C. Association of Agricultural Fairs and Exhibitions (“BCAAFE”) seems representative of the commonly-held meaning of the term “agricultural fair” in British Columbia: the BCAAFE was incorporated in 1921,¹¹ and has since been providing resources and services for agricultural fairs in B.C. in order to increase awareness of B.C. agriculture.¹²

To qualify as an agricultural fair, the BCAAFE requires at least 10 of the following recognized agricultural categories to be represented: baking, canning/preserving, dairy products, field crops, eggs, honey, flowers, beef, fruits, draft horses, vegetables, llamas/alpacas, wine, rabbits, cavies,

⁸ *Cowichan Valley (Regional District) v. Michaud*, [1985] B.C.J. No. 525 at para. 8.

⁹ <http://www.oxforddictionaries.com/definition/english/rodeo>, viewed on July 12, 2014.

¹⁰ http://www.rodeocanada.com/pdfs/2014_Forms/Approval_Form_2014.pdf, viewed on July 12, 2014.

¹¹ B.C. Association of Agricultural Fairs and Exhibitions, <http://www.bcfairs.ca/about-us>. Visited on June 20, 2014.

¹² B.C. Association of Agricultural Fairs and Exhibitions, <http://www.bcfairs.ca/>. Visited on June 20, 2014.

waterfowl, dairy, goats, light horses, pigeons, poultry, sheep and swine.¹³ Notably, rodeo performances is absent from the qualifying list.

It is revealing that while the Luxton Fall Fair is listed as a qualifying agricultural fair on the BCAAFE calendar of events, the Luxton Pro Rodeo is not.¹⁴ Seeing as both events are hosted by the Metchosin Farmers' Institute, it follows that the Luxton Pro Rodeo does not qualify as an "agricultural fair" pursuant to the rules and criteria presented by the BCAAFE, which arguably reflects the common understanding of an agricultural fair.

Based on the above, a purposive and contextual interpretation of "agricultural fair" seems to favour a conclusion that rodeo entertainment is not a permitted use under Langford's P4 zoning.

(b) Is the Langford Council Precluded from Enforcing the Bylaw?

The Langford Council retains the right to enforce Bylaw 300 despite the fact that it has permitted the Luxton Pro Rodeo to continue over the years.¹⁵

(c) Lawful Non-Conforming Use Defence

Further to our opinion that rodeo entertainment most likely falls outside the scope of the permitted use of "agricultural fair ground", it follows that if the Langford Council chose to amend Bylaw 300 such that P4 zoning explicitly excludes rodeo performances, the Metchosin Farmers' Institute would not have access to section 911 of the *Local Government Act*. The analysis of whether a particular use qualifies under section 911 is subject to the condition that the use is lawful under the old bylaw.

2. Additional Tools that allow the Langford Council to Regulate/Prohibit Rodeo Entertainment

The Langford Council may avoid the zoning question altogether and still regulate or prohibit rodeo entertainment through its animal control and/or business regulation authority, to which section 911 of the *Local Government Act* (lawful non-conforming uses) does not apply.¹⁶ A number of B.C. municipalities that are subject to the same provincial legislation as Langford have enacted bylaws that have effectively banned rodeo entertainment within their borders.

(a) A municipality's authority to regulate or prohibit animals

The Langford Council is directly authorized by section 8(3)(k) of the *Community Charter* to regulate and prohibit in relation to animals, which includes limiting and restricting animals and

¹³ B.C. Association of Agricultural Fairs and Exhibitions. <http://www.bcfairs.ca/membership/fair-exhibition>. Visited on June 20, 2014.

¹⁴ <http://www.bcfairs.ca/schedule>, visited on July 12, 2014.

¹⁵ *Township of Langley v. Wood* (1999), 67 B.C.L.R. (3d) 97 (C.A.)

¹⁶ Section 911 of the *Local Government Act* only applies to bylaws enacted under Division 7 of Part 26 of the Act; consequently, bylaws enacted under other divisions of the Act do not have access to the application of section 911.

establishing rules respecting what must or must not be done in relation to animals.¹⁷ The broad definition of “animals” in the *Community Charter* includes all animals involved in the Luxton Pro Rodeo.

The City of Victoria, the Corporation of the District of Oak Bay, the District of North Vancouver and the District of North Vancouver have addressed the rodeo issue by enacting bylaws pursuant to their animal control authority provided at section 8(3)(k) of the *Community Charter*, and/or its predecessor, Part 22 of the *Local Government Act*.¹⁸

We have provided the relevant language of the City of Victoria’s animal control bylaw as an example:

16(1) A person must not operate or carry on a public show, exhibition, carnival or performance in which animals are required to perform tricks, fight or otherwise participate for the amusement or entertainment of an audience.

(2) Despite subsection (1), a person may operate or carry on:

- (a) An exhibition or performance involving horses or in which individuals ride horses or ponies;
- (b) An exhibition involving dogs;
- (c) A display or showing of animals in an agricultural fair or pet show; or
- (d) An event that is conducted in accordance with a permit issued by the Director of Parks, recreation and Culture;
 - if the person does not use or treat any animal in an inhumane manner for profit or advantage.

(b) A municipality’s authority to regulate business

It is possible that the Langford Council could regulate rodeo performances through its business regulation authority pursuant to section 8(6) of the *Community Charter*. The City of North Vancouver has regulated rodeo entertainment through a business regulation bylaw that uses essentially the same language as that used in the City of Victoria’s bylaw noted above.¹⁹

In order to provide a comprehensive answer on whether a business regulation bylaw would apply to the Metchosin Farmers’ Institute, we require more information on how profits from the Luxton Pro Rodeo are used. Generally, a municipality’s power to regulate in relation to business is more restrictive than the power to regulate or prohibit in relation to animals.

¹⁷ *International Bio Research (c.o.b. Pet Habitat) v. Richmond (City)* 2011 BCSC 471 at paras 34-35.

¹⁸ City of Victoria Animal Control Bylaw, No. 11-044, s. 16; the Corporation of the District of Oak Bay, Bylaw No. 4013, s. 25; the District of North Vancouver Bylaw 6423, s. 3.

¹⁹ City of North Vancouver Bylaw 7484, A Bylaw to provide for the granting of business Licences, to fix and impose License fees and regulate certain trades, occupations and businesses in the City of North Vancouver, section 503.

CONCLUSION & NEXT STEPS

The Langford Council has a number of available options with which to regulate or prohibit rodeo entertainment within its borders, including the Luxton Pro Rodeo held annually at the Luxton Fairgrounds.

There is a compelling argument that rodeo entertainment is not a permitted use under P4 zoning, and as such, the Langford Council may consider enforcing Bylaw 300 in its current form to the effect that the Luxton Pro Rodeo be prohibited from continuing on the Luxton Fairgrounds. Depending upon how the Luxton Fairgrounds are insured, both the Langford Council and the Metchosin Farmers' Institute are well advised to look into any liability risks associated with continuing to allow potentially unpermitted activities on the Luxton Fairgrounds.

Applying the same interpretation of the permitted uses under the P4 zoning, if the Langford Council chose to explicitly exclude rodeo entertainment by amending Bylaw 300, the lawful non-conforming use defence is not available, as that defence only applies to uses that are considered lawful under the pre-amended version of the bylaw.

The most straight forward course is for the Langford Council to amend its Animal Bylaw 1465 to regulate or prohibit animals that are used in rodeo entertainment pursuant to the Langford Council's broad authority under section 8(3)(k) of the *Community Charter*.

Please contact the undersigned if you have any questions.

Yours truly,
WOODWARD & COMPANY



Holly Vear
Encl: Schedule

SCHEDULE – Legislative References

Bylaw 300

Section 1.01 Definitions

“agriculture” means a use providing for growing, rearing, producing and harvesting of agricultural products; includes the storage and sale on an individual farm of the products harvested, reared, or produced on that farm and the storage of farm machinery and implements used on that farm; specifically excludes Intensive Agriculture and all manufacturing, processing, storage and repairs not specifically included in this definition;

Section 6.83.01 Permitted Uses

The following uses and no others are permitted in the Park and Open Space (P4) Zone:

...

(2) agricultural fair grounds;

...

Local Government Act, RSBC 1996, ch. 323

Part 26 - Division 7: Zoning and Other Development Regulation Non-conforming uses and siting *Zoning bylaws*

903 (1) A local government may, by bylaw, do one or more of the following:

...

(c) regulate within a zone

(i) the use of land, buildings and other structures,

...

911 (1) If, at the time a bylaw under this Division is adopted,

(a) land, or a building or other structure, is lawfully used, and

(b) the use does not conform to the bylaw,

the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the bylaw.

(2) The use of land, a building or other structure, for seasonal uses or for agricultural purposes is not discontinued as a result of normal seasonal or agricultural practices, including

(a) seasonal, market or production cycles,

(b) the control of disease or pests, or

(c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

Community Charter, SBC 2003, ch. 26

Fundamental Powers

8(3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:

(k) animals;

(6) A council may, by bylaw, regulate in relation to business.

(7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter

(a) are separate powers that may be exercised independently of one another,

(b) include the power to regulate, prohibit and impose requirements, as applicable, respecting persons, property, things and activities in relation to the matter, and

(c) may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*.

(8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:

(a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;

(b) to prohibit persons from doing things with their property;

(c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

Schedule to the *Community Charter* – Definitions and Rules of Interpretation

1. In this Act and in a bylaw or resolution under this Act:

“animal” means any member of the animal kingdom, other than a human being;

“business” means

(a) carrying on a commercial or industrial activity or undertaking of any kind, and

(b) providing professional, personal or other services for the purpose of gain or profit,

but does not include an activity carried on by the Provincial government, by corporations owned by the Provincial government, by agencies of the Provincial government or by the South Coast British Columbia Transportation Authority or any of its subsidiaries.

“regulate” includes authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters being regulated;