



## CASE COMMENT

### ***Norgard v. Anmore (Village) 2009 BCSC 823***

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In its judgment of June 22, 2009, the BC Supreme Court made an order in the nature of *mandamus* to compel the Approving Officer for the Village of Anmore to approve an access route proposed as part of the petitioner's bare land subdivision application.

The Approving Officer's decision in respect of the proposed access route had already been the subject matter of two previous judicial review applications under the *Judicial Review Procedures Act* (JRPA). In this third JRPA application, the Court ultimately did not accept the Approving Officer's reasons for imposing the standards he did in respect of the required access route and agreed with the petitioner's assertion that the Approving Officer had failed to address the inadequacies of the reasons identified by the Court in its previous decisions on the issue.

While *mandamus* is available with respect to final applications to order an approving officer to consider a final application, it is generally not available to order an approving officer to approve or deny an application because the decision to approve or deny an application is a discretionary one. However, in the circumstances, the Court was prepared to order the approval of the access route, rather than directing the Approving Officer to reconsider the matter, because the Approving Officer's decision on this issue had now been the subject of three separate JRPA applications. Accordingly, the Court found that the administration of justice would not be served by ordering a further review hearing in this case. The court did not, however, order the approval of the new and final bare land subdivision, as there were further conditions to be satisfied before the application could be finalized.

Therefore, while an approving officer continues to have considerable discretion as to whether to approve or reject a subdivision application, applying the appropriate statutory considerations, the exercise of his or her discretion must be both reasonable and supportable. Further, the case law indicates that the courts continue to be reluctant to substitute their decision for that of an Approving Officer. However, what this case shows is that the courts will not, in the absence of supporting factual evidence, simply accept an approving officer's assertion that he or she applied the appropriate principles in the course of his or her consideration.