



## CASE COMMENT

### ***Wood v. Langley (Township) 2009 BCSC 1244***

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The BC Supreme Court's recent decision in *Wood v. Langley (Township) 2009*, BCSC 1244 considers the effect of an official community plan (OCP) on privately held lands, as well as the issue of how lands are to be "designated" as being covered by an OCP.

The facts in this case were relatively straightforward. In June 2000, the Township of Langley (Township) adopted an OCP called the Southwest Gordon Estate Neighbourhood Plan (Neighbourhood Plan). The Neighbourhood Plan included the proposed relocation of a watercourse known as Jeffries Brook through the petitioner's property and the re-establishment of the watercourse as fish habitat. The relocation and restoration work was to be done at the petitioner's expense in the future as a condition of any rezoning. The petitioner expressed opposition to the plan at the public hearing and subsequently brought an application pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, to determine whether the Township had the statutory power to use the Neighbourhood Plan to force the petitioner to re-align and enhance Jeffries Brook on his land.

The main issue turned on whether the petitioner's land was actually "designated" as being covered by the plan, in accordance with section 875 of the former *Municipal Act*, R.S.B.C. 1996, c. 323. Section 875 provided that an OCP applied to land that was "designated in the plan as being covered by the plan." The legislation was silent, however, as to how such a designation should be made.

In this case, the realignment of Jeffries Brook on petitioner's land was contemplated in the Neighbourhood Plan. However, the petitioner's land was not actually included in the boundary description in the plan, nor was it included in the boundaries of the maps annexed to the plan. In the face of this inconsistency, the Township urged the court to give the interpretation of the lands within the plan a "liberal interpretation with a view to furthering the policy objectives of the Plan" and to not take an overly "technical or pedantic approach". The court disagreed, however, and instead considered what a "reasonable person" would conclude when reviewing the Neighbourhood Plan. In the court's opinion, a reasonable person reviewing the introductory language of the Plan and the attached plans would conclude that the petitioner's land was not included. Accordingly, the court held that the Neighbourhood Plan, in its present format, had no legal effect on the petitioner's land.

Section 876 of the *Local Government Act*, R.S.B.C. 1996, c. 323, now provides that an OCP "must designate the area covered by the plan". As with the former provision, the statute is silent as to how land must be "designated". However, in light of this decision, it would be prudent for local governments to ensure that all lands intended to be covered by an OCP are expressly included in the language describing the plan area, as well as within the boundaries of the relevant plans annexed to the OCP. To the extent that they are not, a local government may, at any time, amend the plan to eliminate any potential inconsistency, provided it first adheres to the public hearing requirement set out in section 890 of the *Local Government Act*.