



Agricultural Land Commission
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August 10, 2006

Reply to the attention of Brandy Ridout
ALC File #G-36640

Colin Lee
1998 Heimlich Road
Kelowna, BC - V1W4A8

Dear Mr. Lee:

Re: Application to subdivide in the Agricultural Land Reserve

Please find attached the Minutes of Resolution #393/2006 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your clients accordingly.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', written over a white background.

Erik Karlsen, Chair

cc: City of Kelowna - A05-0015

BR/eg/Encl.: Minutes

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on August 1, 2006 at the Ministry of Agriculture and Lands office located at 4607 - 23rd Street, Vernon, BC.

PRESENT:	Sue Irvine	Chair, Okanagan Panel
	Sharon McCoubrey	Commissioner
	Sid Sidhu	Commissioner
	Brandy Ridout	Staff

For Consideration

Application # G – 36640
Applicants Gillian Lee & Carolyn Lee
Proposal To subdivide a 0.8 ha lot from the 2.8 ha property for the applicant and a relative. There are presently two homes on the property, and the parcel lies between a pre-ALR small lot subdivision and four 0.8 ha lots north of Heimlich Road.
Legal PID: 004-231-091
Lot 7, Section 8, Township 26, Osoyoos Division Yale District, Plan 22958
Location 1998 and 2020 Heimlich Road, just east of Mission Creek

Site Inspection

A site inspection was conducted on July 31, 2006. Those in attendance were:

- Commissioners: Sue Irvine, Sharon McCoubrey and Sid Sidhu
- Staff: Brandy Ridout
- Applicants: Gillian Lee & Carolyn Lee
- Agent: Colin Lee

Mr. Lee confirmed that he had received the staff report dated July 26, 2006 and did not identify any errors.

Discussion

As Section 946 of the *Local Government Act* is irrelevant to the Commission's consideration of whether or not subdivision of ALR land is appropriate, the Commission considered the application in terms of its impact on agriculture.

The Commission noted that the property has been managed as two separate operations since its purchase in 1981 and that the reason for the subdivision request at this time is to allow the division of the dual-interest in the property.

The applicants indicated that there are restrictions to agricultural development of the property, including, a high water table, heavy clay soils, a large gravel deposit, a large peat area, a drainage ditch, small parcel size, and a large gas pipeline right of way bisecting the property. The Commission noted that agriculture was taking place on the property and that the factors listed by the applicants were limitations to agriculture but did not preclude its occurrence.

The Commission believed that it would not be beneficial to agriculture to officially divide the property. The Commission noted that the subject property had agricultural capability and that it would be negatively impacted by subdivision as the range of agricultural options available to the owner of the smaller properties would be reduced. In addition, the existence of two homes is not considered a rational for subdivision as additional homes should only be built on properties in the ALR for farm help.

IT WAS

MOVED BY: Commissioner Sidhu

SECONDED BY: Commissioner Irvine

THAT the application be refused

CARRIED

RESOLUTION #393/2006



Staff Report
Application # G – 36640
Applicant: Gillian Lee & Carolyn Lee
Agent: Colin Lee

DATE RECEIVED: April 27, 2006

DATE PREPARED: July 26, 2006

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Regional Research Officer

PROPOSAL: To subdivide a 0.8 ha lot from the 2.8 ha property for the applicant and a relative. There are presently two homes on the property, and the parcel lies between a pre-ALR small lot subdivision and four 0.8 ha lots north of Heimlich Road.

This application is made pursuant to section 21(2) of the *Agricultural Land Commission Act*.

BACKGROUND INFORMATION:

This application is similar to several recent applications in Kelowna that propose to subdivide a 2 ha lot for a family member. The impetus for the application is the existence of section 946 of the *Local Government Act*, which permits the subdivision of a lot for a landowner's relative, subject to conditions. Section 946 subdivision does not require that a subdivision be supported by local government bylaw(s). The applicant indicates that Section 946 supersedes local government bylaws and policies and therefore the City does not have any discretion whether or not to permit the application. Regardless of this, the *Agricultural Land Commission Act* is "not subject to any other enactment, whenever enacted, except the Interpretation Act, the Environment and Land Use Act and the Environmental Management Act and as provided in this Act."

In a letter from the Commission to the City of Kelowna dated January 10, 2006, the subject of Section 946 is commented on:

While the Commission has developed a policy concerning homesite severances on ALR lands, it is under no obligation to approve subdivisions to provide a residence for a relative.

The Commission encourages local governments to use Section 946 of the Local Government Act to facilitate the creation of homesite severance subdivisions when such subdivisions have been approved by the Commission in accordance with its Homesite Severance Policy. In these cases, it is the Commission's understanding that Section 946 can provide a means for the local government to consider a parcel smaller than a zone allows without rezoning.

BACKGROUND INFORMATION (continued):

Gillian Lee and her brother Colin Lee bought the property together in 1981 and constructed a second home as the City of Kelowna allows two family homes per parcel. The property was effectively separated by a cross fence and each family undertook its own activities. Now, 25 years later Carolyn and Colin Lee want to downsize and Gillian wants to remain in her home.

The applicant indicates there are restrictions to agricultural development, among them, a high water table, heavy clay soils, a large gravel deposit, a large peat area, a drainage ditch, small parcel size, and a large gas pipeline right of way bisecting the property.

Local Government:

City of Kelowna

Legal Description of Property:

Lot 7, Section 8, Township 26, Osoyoos Division Yale District, Plan 22958 (PID: 004-231-091)

Purchase Date:

June 1981

Location of Property:

1998 and 2020 Heimlich Road, just east of Mission Creek

Size of Property:

2.8 ha (The entire property is in the ALR)

Present use of the Property:

Rural residence with two homes and rural outbuildings. Agricultural activity includes raising chickens, ducks, egg production, and horse boarding.

Surrounding Land Uses:

- WEST:** 0.8 ha rural residence in the ALR
- SOUTH:** 1.8 ha property in the ALR - in pasture use
- EAST:** non ALR small lot subdivision
- NORTH:** Approx. 6 ha pasture property in the ALR

Agricultural Capability:

Data Source: Agricultural Capability Map # 82E.083
The majority of the property is identified as having prime dominant ratings (organic class 2).

Official Community Plan and Designation:

City of Kelowna 2020 OCP, Designation: Rural/Agricultural.
However, policies in the OCP indicate that subdivisions smaller than 1 ha will not be supported.

Zoning Bylaw and Designation:

Zoning Bylaw No. 8000, Designation: A1 Agriculture
Minimum lot size: 2 ha

PREVIOUS APPLICATIONS:

Application #19242-0

Applicant: Colin Lee & Ken Kitsch

Decision Date: July 23, 1985

Proposal: To subdivide the 2.8 ha property into two lots of 1.4 ha for mortgage and family purposes. Two homes presently exist on the property.

Decision: Refused - because of concern about an overall reduction in agricultural potential.

Application #19242-1

Applicant: Colin Lee & Ken Kitsch

Decision Date: January 28, 1986

Proposal: To subdivide the 2.8 ha property into two lots of equal size to provide each of the two owners with their own titles. One owner is in financial difficulty and as they each own a half interest, it is possible that both will have to move if one cannot make his payments.

Decision: Refused - noting that both landowners were aware of ALR subdivision restrictions when they purchased the property.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

The City of Kelowna: Forwarded the application without comment.


The Agricultural Advisory Committee: Did not support the application for subdivision because it is for family reasons and not for reasons that would provide a benefit for agriculture.

STAFF COMMENTS:

Staff recommends that the Commission consider the following:

- A similar two-lot subdivision has been refused twice previously by the Commission on the grounds of reduced agricultural capability.
- The proposed subdivision may narrow the range of agricultural options available to the property. On balance, smaller parcels tend to be less likely to be used for agriculture than larger parcels.
- Two homes/dual ownership has not, in the past, been deemed to be a suitable rationale for subdivision.
- The Commission has recently refused similar applications in the Kelowna area.
- Section 946 of the *Local Government Act* is irrelevant to the Commission's consideration of whether or not subdivision of ALR land is appropriate.

END OF REPORT



Signature



Date