



Agricultural Land Commission
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May 20, 2008

Reply to the attention of Simone Rivers
ALC File: ZZ-12279

Mike and Darlene Lecky Lecky
29385 Dewdney Trunk Road – RR # 7
Mission B.C. V4P 1B6

Dear Mr. and Mrs. Lecky:

Re: **Request to Discharge a Restrictive Covenant in the Agricultural Land Reserve**

Please find attached the Minutes of Resolution # 265/2008 outlining the Commission's decision as it relates to the above noted application.

Should you wish to proceed on the basis of the decision outlined herein please provide the Commission with a draft covenant including the required sketch plan. When the Commission had determined that the covenant meets the intent of its resolution it will authorize concurrent discharge of the old covenant with registration of the new covenant.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Simone Rivers', is written over the printed name 'Erik Karlsen, Chair'.
Erik Karlsen, Chair

cc: Thompson-Nicola Regional District (re: DL 1835, KDYD, Except Plan 17438, H788 and KAP72657)

Enclosure: Minutes/



A meeting was held by the Provincial Agricultural Land Commission on April 30, 2008 at the offices of the Ministry of Agriculture and Land, Kamloops, B.C.

PRESENT: Grant Huffman Chair, Interior Panel
 Holly Campbell Commissioner
 Gordon Gillette Commissioner
 Simone Rivers Staff

For Consideration

Application: # ZZ- 12279
Applicant: Mike and Darlene Lecky
Proposal: Discharge of a restrictive covenant that prohibits building a residential dwelling on the portion of the property located on the east side of Highway 5.
Legal: PID: 008-336-768
 District Lot 1835, Kamloops Division Yale District, Except Plan 17438, H788 and KAP72657
Location: Near Chu Chua - North of Kamloops and west of the North Thompson River.

Site Inspection

A site inspection was conducted on April 29, 2008. Those in attendance were:

- Grant Huffman Chair, Interior Panel
- Holly Campbell Commissioner
- Gordon Gillette Commissioner
- Simone Rivers Staff
- Mike and Darlene Lecky Current Property Owners

The Commission viewed the subject property and saw that the land on the west side of the highway had less agricultural capability than the land on the east side. It also noted that the property was fragmented into three parts.

The applicants pointed out the portion of the property on which they wished to build their home. It was located on a rocky outcropping that rose from the North Thompson River and bisected the property at that location.

Context

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

1. to preserve agricultural land
2. to encourage farming on agricultural land in collaboration with other communities of interest, and
3. to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

The Act provides processes for landowners, local governments and First Nations to apply to the Commission to remove land from or to include land into the ALR or to subdivide or use land in the ALR for non-farm purposes.

Discussion

The Commission discussed the history of the application, which dates back to 1981. Previously, the Commission allowed subdivision of the subject property subject to the registration of a no-build covenant on the portion of the property east of the highway as this represents the area of highest agricultural capability. The site visit confirmed that this was the case. However, the Commission also noted that the current landowners proposed to put their dwelling on the least capable portion of the east side. This area consists of a rock outcropping which runs through the northern tip of the property. After viewing the property the Commission did not believe that the proposed dwelling would have a negative impact on the agricultural capability of the east side of the property if located where the applicants proposed. However, the Commission understands that the covenant is in place in order to ensure the preservation of the high capability lands east of the highway and to this end, would require a new covenant be placed on the property that restricts the location of a dwelling.

IT WAS

MOVED BY: Commissioner Gillette

SECONDED BY: Commissioner Huffman

THAT the request to remove the restrictive covenant be approved.

AND THAT the approval is subject to the following conditions:

- the replacement of the no-build covenant with a new restrictive covenant that delineates the location of the homesite in order to restrict the portion of the property on which the land owners can build (the "home plate")
 - The home plate must be located on the north end of the property as proposed.
 - The location of the home plate must meet all TNRD requirements with respect to setbacks and floodplain
 - The size of the home plate is restricted to 0.4 ha in size. All residential improvements including the dwelling must be located within this 0.4 ha area. Accessory farm residential facilities also must to be located within this 0.4 ha area including but not necessarily limited to:
 1. attached or detached garages or carports
 2. decorative landscaping
 3. artificial ponds not serving farm drainage or irrigation needs
 4. septic tanks and other related facilities, excluding sewerage disposal fields
 5. residential related recreation amenities such as but, not limited to, art installations, swimming pools and tennis courts.
- The Covenant must include a sketch showing the approved home plate that meets the above requirements and has been prepared by a surveyor in order to confirm the property boundary so that the homeplate does not encroach onto the floodplain.

- the replacement covenant must be completed with three (3) years of the date of this decision.

This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

CARRIED
Resolution # 265/2008