



Agricultural Land Commission
133-4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

October 30, 2008

Reply to the attention of Jennifer Carson
ALC File: # F - 38050

Paul and Dianne Stooshnoff
RR1 - Group 7 - Comp 7
Winlaw, BC V0G2J0

Dear Mr. & Mrs. Stooshnoff:

Re: Reconsideration of Application to Subdivide in the Agricultural Land Reserve

This is in response to your correspondence received June 27, 2008 requesting reconsideration of Agricultural Land Commission Resolution # 260/2007 which refused your subdivision application.

Your request and the file material were reviewed by the Kootenay Panel at its September 30, 2008 meeting. It was determined that your submission did not contain new evidence that was unavailable at the time of its original decision, nor did you provide evidence that the decision was based on information that was in error or false. Your submission does not meet the requirements of section 33 and therefore reconsideration is not appropriate.

The Commission attaches for your review its recently adopted bylaw which clarifies its position regarding reconsiderations.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:


Erik Karlsen, Chair

Enclosure/bylaw

cc: Regional District of Central Kootenay (A0811Hs-20319-400)

JC/
I38050m2



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on June 23, 2007 at the Fairmont Vancouver Airport Hotel, 3111 Grant McConachie Way, Richmond, BC.

PRESENT:

Erik Karlsen	Chair
Grant Huffman	Vice Chair
Monika Marshall	Vice Chair
Bill Norton	Vice Chair
Sylvia Pranger	Vice Chair
Lorne Seitz	Vice Chair
Roger Mayer	Vice Chair

For Consideration

Proposed bylaw to establish the procedure for determining whether a request for reconsideration of a Commission decision is appropriate and a time limit for submission of reconsideration requests.

Purpose of the bylaw:

To clearly define when a request is appropriate and the time period an applicant has following a decision of the Commission to request a reconsideration under Section 33 of the *Agricultural Land Commission Act*.

Authority to create bylaws:

Pursuant to section 9 of the *Agricultural Land Commission Act*, SBC 2002, Chapter 36 the Commission may pass resolutions and bylaws it considers necessary or advisable for the management and conduct of its affairs, the exercise of its powers and the performance of its duties and functions.

Background:

The ALC is an administrative tribunal responsible for administering the Agricultural Land Reserve (ALR), a provincial land use zone in favour of agriculture. The purposes of the ALC are:

- preserve agricultural land;
- to encourage farming on agricultural land in collaboration with other communities of interest; and
- 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 *Agricultural Land Commission Act* sets out processes for land use decisions involving the inclusion or removal of land from the ALR, non-farm uses and subdivisions of land within the ALR and reconsideration of decisions. The Act is supported by the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, which details procedures for applications and defines permitted land uses and land subdivisions within the ALR.

Section 33 of the legislation defines when a reconsideration of a decision is appropriate.

Agricultural Land Commission Act

- S33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that
- (a) evidence not available at the time of the original decision has become available,
 - (b) all or part of the original decision was based on evidence that was in error or was false, or
 - (c) a recommendation by a facilitator under section 13 relating to a dispute warrants a reconsideration of the original decision.
- (2) The commission must give notice of its intention to reconsider a decision under subsection (1) to any person that the commission considers is affected by the reconsideration.
- (3) If a local government, a first nation government or an authority makes a decision in a matter delegated to it under an agreement entered into under section 26(1), subsections (1) and (2) of this section apply as if the local government, first nation government or authority were the commission.

The purpose of section 33 is to allow the ALC to revisit decisions if they were fundamentally flawed due to the consideration of incorrect information or, if subsequent to a decision, compelling information is provided that would have significantly contributed to the ALC's understanding of the facts during its original deliberation. Section 33 is not intended to provide an applicant or landowner with an opportunity to periodically revisit the ALC's decision in perpetuity. A revised proposal does not constitute new information

The legislation and regulation make no reference to a timeframe for requesting a reconsideration. However, the Commission is concerned that reconsideration requests are not meeting the intent of Section 33 of the legislation and requests for reconsideration are being submitted for applications decided by the Commission many years ago. Decisions made by the Commission years ago were made in the context of the land use activity and land use planning at the time. Significant changes to the environment in which a decision is made occurs over intervening years making it more appropriate for the Commission to make a decision on an entirely new application rather than a reconsideration.

IT WAS

MOVED BY: Commissioner Roger Mayer
SECONDED BY: Commissioner Lorne Seitz

THAT in consideration of the Commission's statutory responsibilities as they relate to reconsideration of decisions stipulated in the *Agricultural Land Commission Act* and the *Administrative Tribunals Act*

AND THAT pursuant to section 9 of the *Agricultural Land Commission Act*, SBC 2002, Chapter 36, the Commission may pass resolutions and bylaws it considers necessary or advisable for the management and conduct of its affairs, the exercise of its powers and the performance of its duties and functions

AND FURTHER THAT the Commission believes it is necessary

1. That Commissioners review and determine all reconsideration requests.
2. That the ALC adopt the position that revised proposals will not constitute new information.
3. That the ALC establish a time limit of one (1) year from the date of the original decision for the submission of a request for reconsideration.
4. That the ALC advise applicants of the time limit for reconsideration when communicating decisions that have not been approved as proposed.
5. That the ALC adopt the position that if within one (1) year of the decision the applicant sells the property that was the subject of the application, the new owner(s) cannot submit a request for reconsideration.
6. That the ALC adopt the position that only decisions made on or after January 1, 2006 can be the subject of a request for reconsideration.
7. That the ALC adopt the position that upon receipt of a reconsideration request involving a decision made on or after January 1, 2006 and before the adoption of the bylaw, the one (1) year time limit for further reconsideration will commence from the date the ALC renders its decision regarding the initial request for reconsideration.

THEREFORE BE IT RESOLVED that:

The bylaw as written be adopted.

CARRIED

RESOLUTION #382/2008