



**Agricultural Land Commission**  
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October 30, 2009

Reply to the attention of Brandy Ridout  
ALC File #V-38950

Joe Wurz  
Tree to Me Agricultural Products  
981 Wildwood Lane  
West Vancouver, BC - V7S2H7

Dear Mr. Wurz:


**Re: Request for Reconsideration**

This is further to your letter of August 18, 2009 in which you asked the Provincial Agricultural Land Commission to reconsider Resolution #460/2009.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #1148/2009 outlining its latest decision.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Erik Karlsen, Chair

cc: Regional District of Okanagan-Similkameen (G09-07080.100)  
BC Assessment, Penticton

Enclosure: Minutes

BR/  
38950d2



A meeting was held by the Okanagan Panel of the Provincial Agricultural Land Commission on October 5, 2009 at the offices of the Regional District of North Okanagan located at 9848 Aberdeen Road, District of Coldstream.

PRESENT: Roger Mayer Chair, Okanagan Panel
Erik Karlsen Chair, ALC
Martin Collins Staff

For Consideration

A letter from Joe Wurz was received requesting that the Commission reconsider its decision recorded as Resolution #460/2009. It requested that:

- 1. The second floor plan not be altered based on the following reallocation of the various living spaces:
a. the two bedroom living space be re-designated as "one secondary suite within a single family dwelling" in accordance with Section 3(1)(b)(i) of the Regulation.
b. the one bedroom suite labelled as "Manager Suite" be allowed in lieu of the provisions of Section 3(1)(b)(ii) of the Regulation that allows "one manufactured home...for use by a member of the owner's immediate family."
2. The requirement for registration of a covenant for the purpose of prohibiting the construction of any structure on the 15.2 ha remainder be rescinded. As the farm develops, there will inevitably be a requirement for buildings in support of farm use. Section 2(3) specifically states buildings are a part of farm use.
3. The requirement for the registration of a covenant for the purpose of prohibiting the occupation of the three seasonal worker units to anything other than temporary farm help be rescinded. The need for a covenant of this nature is not logical. On the basis that the provisions of the Act and Regulations constitute a law, enforcement does not require a covenant.

Application: # V - 38950
Applicant: Tree to Me Agricultural Products
Agent: Joe Wurz, President
Original proposal: To develop a 0.7 ha portion of the 15.9 ha subject property as a market garden (with a footprint of 875 m2) and a 1,125 m2 parking area. The ground floor of the proposed structure would be a public market, packing/storage/preparation area, and loading bay. The second floor would contain an office, a 3-bedroom supervisor's suite, four bed and breakfast rooms, three seasonal worker units and one manager's suite.
Original decision: Allowed subject to conditions including the registration of a no-build covenant on the remainder.
Legal: PID: 025-651-498
Location: Lot 1, Section 31, Township 52 and of District Lot 232S, Similkameen Division Yale District, Plan KAP73404
1217 Highway 3A, Keremeos

### **Site Inspection**

A site inspection was conducted for the original application on June 15, 2009. Those in attendance were:

- Roger Mayer                      Chair, Okanagan Panel
- Gordon Gillette                Commissioner
- Brandy Ridout                 Staff
- Martin Collins                 Staff
- Sean Wurz                      Applicant

### **Commissioner Eligible to Vote**

Commissioner Karlsen was not present at the site inspection. It was confirmed that a summary of the site inspection was provided thus establishing the Commissioner's eligibility to vote on the application.

### **Context**

The proposal was considered under Section 33 of the Agricultural Land Commission Act (the "Act") which states:

- 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.

The Commission believed that the applicant had introduced information that warranted consideration and so reconsidered the application.

### **Discussion**

With regard to the supervisor's suite and the manager's suite, the Commission discussed the need for residents on the farm property. It believed that if the supervisor's suite was to be the living space of the farmer of the property, a covenant would have to be registered prohibiting additional structures from the property. The Commission would consider the supervisor's suite to be the one residence allowed per parcel in the ALR. With regard to the manager's suite, the Commission had no objection to allowing it in lieu of the provisions of Section 3(1)(b)(ii) of the Regulation if the mobile home that is currently on the property was removed once the building was complete.

The Commission considered the request to remove the requirement for registration of a covenant for the purpose of prohibiting the construction of any structure on the 15.2 ha remainder be rescinded. It reiterated its concern with the level of site coverage on the property due to the large footprint of the proposed building and accompanying parking lot. It believed that the proposed structure should be able to contain most of the space required for the operation of the farm. However, relief could be granted for each

proposed structure if the Commission deemed it to be necessary for the farm use of the property.

The Commission had no objection to the rescission of the requirement for the registration of a covenant for the purpose of prohibiting the occupation of the three seasonal worker units to anything other than temporary farm help be rescinded as the Act can be enforced if the units are not used for farm help.

**IT WAS**

**MOVED BY:** Commissioner Mayer  
**SECONDED BY:** Commissioner Karlsen

THAT for the purposes of Section 33(2) of the *Agricultural Land Commission Act*, there are no persons it considers affected by the reconsideration.

AND THAT the request to allow the supervisor's suite be allowed subject to the registration of a covenant for the purpose of prohibiting the construction of any structure on the remainder.

AND THAT the request to allow the one bedroom suite labelled as "Manager Suite" in lieu of the provisions of Section 3(1)(b)(ii) of the Regulation that allows "one manufactured home...for use by a member of the owner's immediate family" be allowed subject to the submission of a \$10,000 letter of credit to ensure that the mobile home currently on the property is removed once the proposed building is complete.

AND THAT the request to rescind the requirement for registration of a covenant for the purpose of prohibiting the construction of any structure on the remainder be refused. However, relief can be granted for each proposed structure if the Commission deems it to be necessary for the farm use of the property.

AND THAT the request to rescind the requirement for the registration of a covenant for the purpose of prohibiting the occupation of the three seasonal worker units to anything other than temporary farm help be approved.

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 #1148/2009**