



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

April 19, 2010

Reply to the attention of Brandy Ridout
ALC File T-35894

Jason Gedig
1132 Stevens Rd
West Kelowna, BC
V1Z 1G1

Dear Mr. Gedig:

Re: Request for Reconsideration

This is further to your e-mail of February 2, 2010 in which you asked the Provincial Agricultural Land Commission to reconsider Resolution #74/2006.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #2410/2010 outlining its latest decision. As agent, it is your responsibility to notify your client accordingly.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:


Erik Karlsen, Chair

cc: Township of Spallumcheen (#05-0009-SPL-ALR)

Enclosure: Minutes

BR/
35894d3



A meeting was held by the Provincial Agricultural Land Commission on March 16, 2010 at the Ministry of Agriculture and Lands Office, located at 200-1690 Powick Road, Kelowna, B.C.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Gerry Zimmermann	Commissioner
	Brandy Ridout	Staff
	Martin Collins	Staff

For Consideration

A letter from Peter Nicholson was received requesting that the Commission reconsider its decision recorded as Resolution #74/2006. It indicated that the building envelope on the Lots 1 and 2 were too small if the 30 m no-build covenant was enforced.

Application	T-35894
Applicant	925 Investments
Agent:	Peter Nicholson
Legal	PID: 011-501-359 Lot 3, District Lot 104, Osoyoos Division of Yale District, Plan 1677, EXCEPT Plan 34292
Location	Adjacent to and east of the Spallumcheen Golf Course
Original proposal	To exclude approximately 19 ha of the 44 ha property for a rural residential housing development (17 - 1 ha lots).
Original decision	Refused as proposed, allowed the exclusion of 15 ha due to limited agricultural capability but refused the exclusion of 4 ha as it was believed to be good capability agricultural land.
Resolution	193/2005
Reconsideration request	To reconsider the application to allow the exclusion of 2 ha of the originally refused 4 ha area.
Reconsideration decision	The request to exclude 2 ha of the 4 ha area previously refused for exclusion be approved on the grounds that the 2 ha were less suited for agriculture than originally believed, subject to: <ul style="list-style-type: none"> ▪ The construction of a fence along the ALR boundary as outlined in the attached Schedule D fencing specifications (D.4 wire fabric fence). The fence may be constructed after the subdivision/exclusion provided a financial security is provided that will ensure that the fencing is completed, and ▪ The registration of a covenant against the titles of the two lots prohibiting the construction of a dwelling within 30 meters of the ALR boundary.
Resolution	74/2006
Current request	To reduce the no-build covenant area from 30 m to 15 m on Lots 1 and 2. The agent indicated that even a 10 metre reduction on the north-south boundary of Lots 1 and 2 would be useful.

Site Inspection

A site inspection was not conducted for the reconsideration.

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 provided evidence that was not available at the time of the original decision and so reconsidered the application.

Discussion

The Commission reviewed the information that had been submitted with the reconsideration request – namely an air photo indicating a 15 and 30 metre no-build covenant area, photos of Lots 1 and 2, and sketch plans of the building envelope areas on Lots 1 and 2 with a 15 and 30 metre no-build area and areas with over 30% slope.

With regard to Lot 1, the Commission noted that the main concern was that the building envelope was 1,142 m² due in part to the fact that a 20 metre wide right-of-way had been required instead of the originally planned 8 metre right-of-way. With regard to Lot 2, the Commission noted that the slope between the lot and the agricultural remainder was over 30%. The Commission did not believe that a reduction of the no-build area to 15 metres would be beneficial to the agricultural use of the adjacent property. However, as per the issues noted above regarding slope and building envelope, it would reduce the no-build covenant along the north-south boundary of Lots 1 and 2 to 20 metres.

IT WAS

MOVED BY: Commissioner Mayer
SECONDED BY: Commissioner Zimmermann

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 reduce the no-build covenant area from 30 m to 15 m on Lots 1 and 2 be refused. However, the Commission would allow the no-build covenant area to be reduced from 30 m to 20 m on the north-south boundary lines of Lots 1 and 2.

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 2410/2010