



Agricultural Land Commission
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December 21, 2009

Reply to the attention of Brandy Ridout
ALC File: #50351

Elmo and Emma Rantucci
2620 Sexsmith Road
Kelowna, BC V1V 2G6

Dear Mr. and Mrs. Rantucci:

Re: Request for Reconsideration

This is further to your letter of October 15, 2009 in which you asked the Provincial Agricultural Land Commission to reconsider Resolution #785/2009.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #1766/2009 outlining its latest decision.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Erik Karlsen, Chair

Enclosure: Minutes

BR/
50351d2



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on November 27, 2009 at the Ministry of Agriculture and Lands Office, located at 200-1690 Powick Road, Kelowna, B.C.

PRESENT: Roger Mayer Chair, Okanagan Panel
Sid Sidhu Commissioner
Brandy Ridout Staff
Martin Collins Staff

For Consideration

A letter from the applicants was received requesting that the Commission reconsider its decision recorded as Resolution #785/2009. It indicated that:

- 1. GEID requires a minimum of 1.01 acres in order to supply irrigation water.
2. The east boundary of the approved homesite lot excludes part of the existing septic field.
3. A row of blue spruce buffering the existing homesite would be within 3 feet of the proposed east boundary.
4. The new house was placed in the uncultivated part of the property which could not be farmed because of the topography.
5. The eastern portion would not enhance the remainder as it would be narrow and an acutely angled, making is difficult to use for agriculture.
6. Their son will be purchasing the remainder and will maintain the present agricultural use. With regard to fencing, they would like to continue the agricultural activity as it is now maintained, including land that would be in the homesite lot. They are prepared to post a bond for future fencing.

Application: 50351
Applicant: Elmo & Emma Rantucci
Original proposal: To subdivide a 0.5 ha lot from the 3 ha subject property under the Homesite Severance Policy.
Original decision: Refused as proposed, the Commission would allow the subdivision of a 0.3 ha homesite lot subject to the following conditions: Fencing and buffering on the north, east and west boundaries of the 0.3 ha lot and registration of a covenant against the title of the 2.7 ha remainder prohibiting the construction of a second dwelling.
Current proposal: To allow the 0.5 ha homesite lot and not fence/buffer until a later date to allow the area in the homesite that is currently cultivated to continue to be cultivated.
Legal: PID: 011-844-485
Lot 18 Block 15 Section 3 Township 23 Osoyoos Division Yale District Plan 1068
Location: 2620 & 2590 Sexsmith Road, Kelowna

Site Inspection

A site inspection was not conducted for the original application or 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 addressed each of the applicants' points:

1. With regard to irrigation water, as the 0.3 ha lot would be a homesite, the Commission did not believe that crop irrigation would be necessary.
2. The approval sketch was drawn based on information provided that outlined the septic field area. If the approved homesite lot does not accommodate the entire field, the Commission will allow a slightly larger lot.
3. The Commission was unclear as to why the distance the existing hedge is away from the proposed eastern boundary is a concern. However, the Commission will allow the mature vegetation to be included in the homesite lot.
4. The Commission was aware that the new house was placed in the uncultivated part of the property which could not be farmed because of the topography.
5. The Commission noted that the triangular area in the southern end of the property had been accessed around the house when it was part of the subject property and believed that if the homesite lot was small enough, it could still be accessed to be farmed in association with the agricultural remainder.
6. The Commission recalled that the purpose of the *Homesite Severance Policy* is to allow a retiring farmer to subdivide off his/her homesite and see the remainder so that it can continue to be farmed. As such, the Commission believed that as much of the area in production should be retained with the remainder as possible and the homesite fenced and buffered.

IT WAS

MOVED BY: Commissioner Mayer

SECONDED BY: Commissioner Sidhu

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 subdivision of a 0.5 ha homesite lot be refused.

AND THAT the increase in size of the homesite to accommodate the septic field and established buffer on the eastern boundary of the homesite lot be allowed, subject to the conditions of Resolution #785/2009.

AND THAT the request to fence and buffer the homesite lot in the future be approved. The Commission must approve a fencing and buffering plan, receive a quote for the fence and buffer installation and materials, and receive a letter of credit for the amount of installation and materials before the subdivision plan will be authorized for deposit.

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 1766/2009