



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

June 29, 2010

Reply to the attention of Brandy Ridout
ALC File: 51212

John Tietzen
Inland Manor Ltd.
213 - 1891 Springfield Road
Kelowna, BC V1Y 5V5

Dear Mr. Tietzen:

Re: Application to Exclude land from the Agricultural Land Reserve

Please find attached the Minutes of Resolution #2521/2010 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'BU', is written over the printed name of the signatory.

Brian Underhill, Executive Director

Enclosure: Minutes

cc: City of Kelowna (File A09-0011)

BR/
51212d1

Discussion

Assessment of Agricultural Capability

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The agricultural capability of the soil of the subject property was interpreted using BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system as improvable to Class 2. Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.

Assessment of Agricultural Suitability

The Commission assessed whether factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture. The Commission noted that the parcel is separated from urban development by a four lane road and that farm and rural uses predominate on adjoining ALR land. As such, the Commission does not believe there are factors that render the land unsuitable for agricultural use.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. It was very concerned that exclusion and commercial development represented a high intensity intrusion into this farm area. The Commission expressed concern that if urban development crosses Gordon Drive it will negatively impact adjacent ALR lands. In addition, urban uses would result in trespass, litter and complaints about farm practices, particularly if a restaurant operation is developed. For example typical farm practices such as pesticide use or manure spreading would not be supported by the restaurant users.

Assessment of Other Factors

The Commission considered the facts presented with regard to the eligibility of the property for exemption under Section 23(1) of the *Agricultural Land Commission Act*: "Restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the Land Registry Act, R.S.B.C. 1960, c. 208, less than 2 acres in area."

With regard to the "less than 2 acre" requirement, Lot 7 is identified on a 1908 subdivision plan as 2 acres (although its dimensions are described as 312.8 feet by 278.5 feet, which is equal to 87,114.8 square feet while 2 acres is equal to 87,120 square feet). Subsequent road widening appears to have reduced the property in size to approximately 1.7 acres.

With regard to the "separate certificate of title", Lot 7 shared a title with the adjoining parcel – Lot 8 on December 21, 1972. The Commission reviewed information and an opinion from Paul L Mitchell Q.C. of Pushor Mitchell LLP dated May 28, 2010 about the shared title. The correspondence indicated that Lot 7 and the adjoining Lot 8 had their own titles until 1961 when a previous owner of both lots (Mr. Risso) died. According to Mr. Mitchell, the decision to place the two lots on a single title was made unilaterally by the Land Title Office, without reference to the landowner or his heirs, for administrative

efficiency. Mr. Mitchell concludes that there is no justifiable reason why the two lots were combined onto a single title, and that this represents a breach of natural justice. While acknowledging Mr. Mitchell's position, the Commission is guided by the *Act*. The property does not meet the requirements of Section 23(1) of the *Act* and so based on information currently available, is subject to the *Act* and Regulations. The Commission believes the property is suitable for agricultural uses and should not be removed from the ALR.

The Commission also noted that the exclusion proposal is not consistent with the City of Kelowna OCP or the City's Agriculture Plan and that City Council, City planning staff, and the City's Agricultural Advisory Committee do not support the proposal.

Conclusions

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land under application is suitable for agricultural use.
3. That the proposal will have a negative impact on agriculture.
4. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

IT WAS

MOVED BY: Commissioner Mayer
SECONDED BY: Commissioner Gillette

THAT the application to exclude 0.7 ha from the ALR be refused.

AND THAT the applicant be advised of the provisions of Section 33 of the *Agricultural Land Commission Act* which provides an applicant with the opportunity to submit a request for reconsideration.

- S.33 (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.*
- (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.*

AND THAT the applicant be advised that a revised proposal does not constitute new information and will not be considered as a basis for reconsideration and the time limit for submitting a request for reconsideration is one (1) year from the date of the decision letter.

CARRIED
Resolution #2521/2010