



Agricultural Land Commission
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Burnaby, British Columbia V5G 4K6
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www.alc.gov.bc.ca

April 28, 2011

Reply to the attention of Terra Kaethler
ALC File: # 37800

Larry and Sherry Saunderson
2966 Cameron Taggart Rd
Cobble Hill, BC V0R1L6

Dear Sir/Madam:

Re: Reconsideration Request

This correspondence is in response to your letter dated March 31, 2011 requesting reconsideration of the Agricultural Land Commission Resolution # #5/2008.

The Commission writes to inform you that on June 26, 2009, it passed a bylaw which placed a time limit on requests for reconsideration. As of January 10, 2010, the Commission no longer reviews reconsideration requests for decisions made prior to June 22, 2008. As the Commission's decision on your application was made on January 17, 2008 and sent by letter on February 7, 2008, the Commission writes to advise that any future consideration for proposals on your land must be by way of a new application.

For more information on the application process please refer to our website www.alc.gov.bc.ca or contact your Local Government.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Brian Underhill', written over a white background.

Brian Underhill, Executive Director

cc: Cowichan Valley Regional District (2-B-07ALR)

TKI Encl. #054N/2009
37800m1



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on June 26, 2009 at the Fairmont Vancouver Airport Hotel, 3111 Grant McConachie Way, Richmond, BC.

PRESENT:

Erik Karlsen	Chair
Grant Huffman	Vice Chair
Barry Minor	Vice Chair
Bill Norton	Vice Chair
Sylvia Pranger	Vice Chair
Lorne Seitz	Vice Chair
Roger Mayer	Vice Chair

FOR CONSIDERATION

Proposed amendment to the Reconsideration Bylaw adopted June 23, 2008 by Resolution #382/2008. The proposed amendment is intended to eliminate confusion about how the time limit applies to reconsideration requests involving decisions made during the period of January 1, 2006 to June 22, 2008. The proposed amendment will also establish a closure date for submitting a reconsideration request for decisions made during January 1, 2006 to June 22, 2008.

Subsequent to adoption and implementation of the bylaw it became apparent that some further clarification of the provisions of the bylaw are needed to ensure that requests from applicants are received and dealt with in a fair and consistent manner.

Original 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 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.

ORIGINAL ADOPTION OF THE BYLAW

Therefore acting pursuant to section 9 of the *Agricultural Land Commission Act*, SBC 2002, Chapter 36, the Commission passed Resolution #382/2008 on June 23, 2008 adopting the ALC Reconsideration Bylaw as follows:

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; and
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.

PROPOSED AMENDMENT

That the bylaw be amended to replace the conditions stipulated in Resolution #382/2008 with the following:

Page 4 – Minutes Resolution #004N/2009
Re: Amendment to Reconsideration Bylaw #382/2008

1. Effective June 23, 2008 the time limit for submitting a reconsideration request is one (1) year from the date of the Commission's decision letter. There is no limit on the number of reconsideration requests that can be made during the reconsideration period;
2. Applicants receiving a Commission decision during the period of January 1, 2006 to June 22, 2008 are eligible to submit a request for reconsideration;
3. As of January 1, 2010 all Commission decisions that were received by applicants during the period of January 1, 2006 to June 22, 2008 will no longer be eligible for reconsideration;
4. If the applicant(s) sell or transfer the property within one (1) year of the Commission's decision, the new owner(s) is not eligible to submit a request for reconsideration;
5. Revised proposals do not constitute new information and therefore are not grounds for reconsideration;
6. ALC Panels will determine if a request meets the criteria for reconsideration as stipulated in Section 33 of the *Agricultural Land Commission Act*; and
7. Effective June 23, 2008 all applicants receiving decisions subsequent to this date will be advised of the time limit and criteria for reconsideration in all decisions that are not unconditionally approved as proposed. If the Commission approves the application but establishes terms and/or conditions for approval this application is not considered to be approved as proposed.

IT WAS

MOVED BY: Commissioner Barry Minor
SECONDED BY: Commissioner Grant Huffman

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

THEREFORE BE IT RESOLVED that Bylaw #382/2008 (Reconsiderations) be amended as proposed.

CARRIED
RESOLUTION #004N/2009