



Agricultural Land Commission
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February 5, 2013

ALC File: #52591

Heinz and Jeanne Kraps
RR 5 - 9780 Stephenson Road
Ferne, BC
V0B 1M5

Dear Mr. and Mrs. Kraps:

Re: Request for Reconsideration

Please find attached the Minutes of Resolution #7/2013 as it relates to the above noted application. The Commission has also attached a sketch plan depicting the decision.

Further correspondence with respect to this application should be directed to Lindsay McCoubrey.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Brian Underhill', is written over a horizontal line.

Brian Underhill, Executive Director

Enclosures: Minutes of Resolution #7/2013
Sketch Plan

cc: Regional District of East Kootenay (File: P 711 116)

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MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on January 23, 2013 at the offices of the Commission located at #133 – 4940 Canada Way, Burnaby, B.C. as it relates to the Request for Reconsideration of Application #52591.

COMMISSION MEMBERS PRESENT:

Gordon Gillette	Vice-Chair (Acting Chair)
Jennifer Dyson	Vice-Chair
Sylvia Pranger	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner
Jerry Thibeault	Commissioner
Lucille Dempsey	Commissioner
Denise Dowswell	Commissioner

COMMISSION STAFF PRESENT:

Lindsay McCoubrey	Land Use Planner
Eamonn Watson	Land Use Planner
Colin Fry	Executive Director

REQUEST FOR RECONSIDERATION

The Commission received a letter dated November 26, 2012 and a further clarification letter dated January 16, 2013 requesting reconsideration of its decision. Through the decision, recorded as Resolution #290/2012, the proposal to subdivide the 42.3 ha subject property into one 2 ha lot and a 40.3 ha remainder was allowed subject to the adjustment of the subdivision line to exclude a portion of the hayfield and the registration of a covenant establishing appropriate fencing along with a minimum 10 metre buffer between the proposed parcel and the remainder of the property.

Owners: Heinz and Jeanne Kraps

Original Proposal: To subdivide the 42.3 ha property into one 2 ha lot and a 40.3 ha remainder.
(Submitted pursuant to section 21(2) of the *Agricultural Land Commission Act*)

Original Decision: Allowed subject to the adjustment of the proposed subdivision line to remove the area of the hayfield from the proposed 2 ha lot and the registration of a covenant establishing appropriate fencing and a minimum 10 metre buffer between the two lots.

Current Request: Remove the conditions of approval.

Legal: PID: 009-585-923
Lot 1, District Lot 4589, Kootenay District, Plan 15512, Except Part included in Plan 16715

Location: 9780 Stephenson Road, Fernie, BC

LEGISLATIVE CONTEXT FOR COMMISSION RECONSIDERATION

Section 33 (Reconsideration of decisions) of the *Agricultural Land Commission Act* states:

- 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) or part of the original decision was based on evidence that was in error or was false.

DECISION REGARDING THE REQUEST FOR RECONSIDERATION

The Commission believes that the applicant has provided evidence that was not available at the time of the previous decision. The reconsideration request noted that the field area included in the proposed 2 ha lot was 1.8% of the entire field and accounted for approximately 1.5 round bales per year. The applicant believes the size of the field area to be included with the 2 ha lot would not affect the viability of the remainder of the field, but would add capability to the small lot for small scale agriculture. The covenant establishing fencing and a buffer between the two lots was put in place to separate the non-agricultural residential lot from the remainder agricultural parcel. The applicant noted that retaining the small portion of the field in the 2 ha lot, created an area between the two lots that would be used for agriculture on both sides, negating the need for a fence and buffer.

It was moved by Commissioner Thibeault and seconded by Commissioner Johnson that there were no persons affected by the reconsideration and that the Commission reconsider Resolution #290/2012. The motion was carried unanimously.

COMMISSION CONSIDERATION

After considering the new information the Commission concluded as follows:

1. The proposed layout of the 2 ha lot does not significantly affect the remaining hayfield; and
2. The need for a fence and buffer through by registered covenant is unnecessary given the proposed layout of the two subdivided lots.

Conclusion: Removal of the conditions attached to Resolution #290/2012 is warranted.

IT WAS

MOVED BY: Commissioner Thibeault

SECONDED BY: Commissioner Johnson

THAT the request for removal of the conditions requiring the adjustment of the subdivision lot lines and the establishment of a covenant regarding fencing between the two lots and buffering requirements be approved.

AND THAT the approval is subject to the subdivision plan being completed within three years from the date of this decision;

AND FINALLY THAT 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 #7/2013

