



**Agricultural Land Commission**  
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July 27, 2016

ALC File: 54181

**(SENT VIA ELECTRONIC MAIL)**

James Thorner  
756 Sundown Lane  
Baynes Lake, BC V0B 1T4

Dear Mr. Thorner:

**Re: Application to Conduct a Non-Farm Use in the Agricultural Land Reserve (ALR)**

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #281/2016) as it relates to the above noted application. A sketch plan depicting the decision has been attached.

Please note that pursuant to s. 33.1 of the *Agricultural Land Commission Act*, the Chair may direct the executive committee to reconsider this panel decision if, within 60 days from the date of this decision, he considers that the decision "may not fulfill the purposes of the commission as set out in section 6 or does not adequately take into account the considerations set out in section 4.3". I can advise you that in this case, the Chair has already reviewed the decision and has instructed me to communicate to you that he does not intend to exercise that authority in this case.

Further correspondence with respect to this application is to be directed to Laurel Eyton at (Laurel.Eyton@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

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

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #281/2016)  
Sketch plan

cc: Regional District of East Kootenay (File: P 715 204) **(SENT VIA ELECTRONIC MAIL)**

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**AGRICULTURAL LAND COMMISSION FILE 54181**

**REASONS FOR DECISION OF THE KOOTENAY PANEL**

**Application submitted pursuant to s. 21(2) of the *Agricultural Land Commission Act***

**Applicant:**

**James Thorner  
(the “Applicant”)**

**Application before the Kootenay Regional Panel:**

**Sharon Mielnichuk, Panel Chair  
Ian Knudsen**



## **THE APPLICATION**

[1] The legal description of the property involved in the application is:

Parcel Identifier: 011-601-027

Lot 2,, Block 20 District Lot 132, Kootenay District, Plan 1181  
(the "Property")

[2] The Property is 2.0 ha in area.

The Property has the civic address 756 Sundown Lane, Baynes Lake.

[3] The Property is located within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[4] The Property is located within Zone 2 as defined in s. 4.2 of the *ALCA*.

[5] Pursuant to s. 20(3) of the *ALCA* the Applicant is applying to use an existing 60 m<sup>2</sup> secondary suite located within a constructed 178 m<sup>2</sup> shop, for residential use by the Applicant's mother-in-law (the "Proposal"). The Proposal along with supporting documentation is collectively (the "Application").

[6] On November 18, 2015, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the Kootenay Regional Panel (the "Panel").

## **RELEVANT STATUTORY PROVISIONS**

[7] The Application was made pursuant to s. 20(3) of the *ALCA*

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land.

[8] The Panel considered the Application pursuant to its mandate in s. 4.3 of the *ALCA*:

4.3 When exercising a power under this Act in relation to land located in Zone 2, the commission must consider all of the following, in descending order of priority:

- (a) the purposes of the commission set out in section 6;
- (b) economic, cultural and social values;
- (c) regional and community planning objectives;
- (d) other prescribed considerations.

[9] The purposes of the Commission set out in s. 6 are as follows:

6 The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest; and
- (c) 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.

### **EVIDENTIARY RECORD BEFORE THE PANEL**

[10] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Previous application history
4. Agricultural capability map, ALR context map and satellite imagery

All documentation noted above was disclosed to the Applicant in advance of this decision.



[11] The Panel reviewed a previous application involving the Property:

Application ID: 53378  
(James Thorner, 2013)

Application to subdivide a 2.0 ha parcel into two 1.0 ha parcels. The Commission previously agreed to a 1.0 ha minimum lot size in Baynes Lake area as noted in the Planning Files 46406 and 46418. Approved by Resolution #368/2013.

### **SITE VISIT**

[12] The Panel did not in the circumstances of this Application consider it necessary to conduct a site visit to the Property.

### **FINDINGS**

#### **Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture**

[13] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system, 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings identified on CLI map sheet 82G/3 for the mapping units encompassing the Property are Class 3, 4 and 6; more specifically (5:3MT - 4:4TM - 1:6T).

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

Class 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.

Class 6 - land is important in its natural state as grazing land. These lands cannot be cultivated due to soil and/or climate limitations.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), and T (topographic limitations).

[14] The Panel reviewed the CLI ratings and find that the Property has good to moderate agricultural capability.

[15] The Panel reviewed the Application in comparison to the permitted uses under s. 3(1)(b.1)(ii) of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, B.C. Reg. 171/2002 (the “ALR Regulation”) which allows without an application to the Commission, for a parcel located in Zone 2, the residential use of:  
*ii) either:*

*(A) One manufactured home, up to 9 m in width, for use by a member of the owner’s immediate family, or*

*(B) accommodation that is constructed above an existing building on the farm and that has only a single level.*

[16] The Panel notes that the Proposal deviates from the permitted uses under s. 3(1)(b.1)(ii) of the ALR Regulation in that the proposed secondary suite is not constructed above an existing building that has only a single level; but instead the proposed secondary suite falls within the footprint of an existing building.

*Section 4.3(b) of the ALCA: Second priority to economic, cultural and social values*

[17] The Applicant did not provide any evidence or rationale regarding any economic, cultural and social values that are pertinent to the Application.

*Section 4.3(c) of the ALCA: third priority to regional and community planning objectives*

[18] The Regional District of East Kootenay (the “RDEK”) resolved:

*“That the Agricultural Land Commission be advised that the RDEK supports the Thorner ALR non-farm use application for a secondary suite within the first story of the detached garage on property at 756 Sundown Lake in Baynes Lake.”*

[19] The Property is zoned as RR-2, Rural Residential (Small Holding) Zone, which has a minimum parcel size of 2 ha. The RDEK, in their report, note that “*secondary suites within the upstairs of a detached garage are permitted*” within the RR-2 zoning.

*Weighing the factors in priority*

[20] The Panel notes that the proposed Non-Farm Use falls entirely within an existing building, and that the proposed Non-Farm Use is very close to a permitted use under the ALR Regulation.

[21] The Panel believes that, given the proposal is limited to the footprint of an existing building; there will be minimal negative impact on agriculture.

[22] The Panel gave consideration to economic, social and cultural values and regional and community planning objectives planning as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision given the Panel’s finding following its review of the agricultural considerations.

**DECISION**

[23] For the reasons given above, the Panel approves the Proposal to use an existing 60m<sup>2</sup> secondary suite located within a constructed 178m<sup>2</sup> shop, for residential use by the Applicant’s mother-in-law.

[24] The approved Application is subject to the following conditions:

- a. The non-farm use must be limited to the existing footprint within the existing building.
- b. The non-farm use is granted only for use by the Applicant’s mother-in-law, as proposed.
- c. Approval for non-farm use is granted for the sole benefit of the Applicant and is non-transferable.

[25] 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.

[26] Panel Chair **Sharon Mielnichuk** concurs with the decision.  
Commissioner **Ian Knudsen** concurs with the decision.

[27] Decision recorded as Resolution #281/2016.

A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

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Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #281/2016. The decision is effective upon release.



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**Colin J. Fry, Director of Policy and Planning**

**July 27, 2016**

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**Date Released**



ALC Application #54181  
(Applicant - Thorner)  
Resolution #281/2016

# Plot Plan

756 Sundown Lane  
LOT 2, BLOCK 20, D.L. 132, PLAN 1181, K.D.  
5.0 acres (2.02 ha.)

Sterling Road

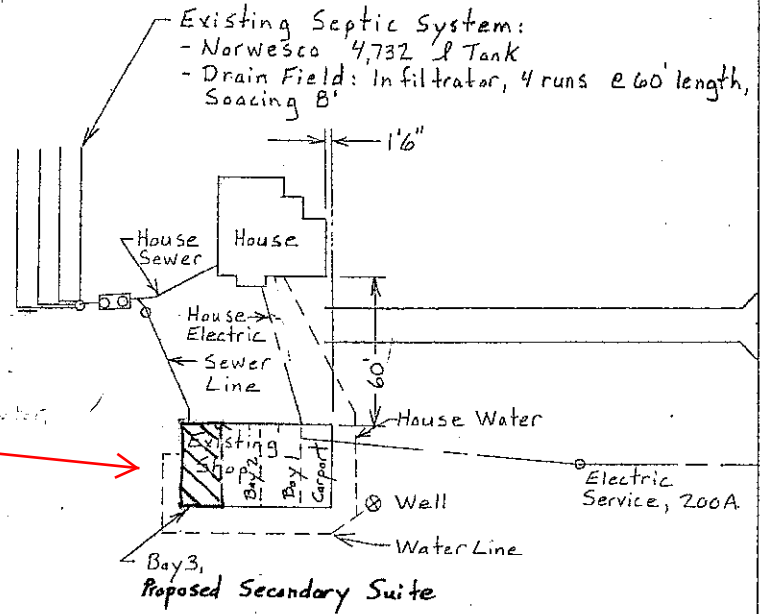
Sundown Lane

Powerline

330'

660'

Non-Farm Use of secondary suite  
within footprint of existing shop  
Approved by Resolution #281/2016.



Scale: 1" = 50'  
By: J. Thorner