



Agricultural Land Commission
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November 28, 2016

ALC File: 54641

Stephan Klafki
8450 Kaisner Road
Sparwood, BC V0B 2G3

Dear Mr. Klafki:

Re: Application to Subdivide Land in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #404/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached. As agent, it is your responsibility to notify your clients accordingly.

Reconsideration of a Decision as Directed by the ALC Chair

Please note that pursuant to [s. 33.1 of the *Agricultural Land Commission Act*](#), the Chair may direct the executive committee to reconsider any 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 s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

Reconsideration of a Decision by an Affected Person

We draw your attention to [s. 33\(1\) of the *Agricultural Land Commission Act*](#) which provides a person affected the opportunity to submit a request for reconsideration.

- 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.

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

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "Riccardo Peggi". The signature is fluid and cursive, with the first name being more prominent.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #404/2016)
Sketch plan

cc: Regional District of East Kootenay (File: P 715 126)

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AGRICULTURAL LAND COMMISSION FILE 54641

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicants:

**Donald Jubinville
Elaine Jubinville
(the “Applicants”)**

Agent:

**Stephan Klafki
(the “Agent”)**

Application before the Kootenay Regional Panel:

**Sharon Mielnichuk, Panel Chair
Harvey Bombardier
Ian Knudsen**



THE APPLICATION

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

Parcel Identifier: 016-449-347

The East ½ of the Northwest ¼ of District Lot 8450, Kootenay District, Except Part included in SRW Plan 14540.

(the “Property”)

[2] The Property is 31.9 ha in area.

[3] The Property is located at 5683 Highway 43, between Sparwood and Elkford.

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

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

[6] Pursuant to s. 21(2) of the *ALCA* the Applicants are applying to subdivide a 2 ha parcel from the Property for family members (the “Proposal”). The Proposal along with supporting documentation is collectively (the “Application”).

RELEVANT STATUTORY PROVISIONS

[7] The Application was made pursuant to s. 21(2) of the *ALCA*

21(2) An owner of agricultural land may apply to the commission to subdivide 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 Agent in advance of this decision.

[11] The Panel reviewed two previous applications involving the Property:

Application ID: 53300
(Jubenville, 2014)

To use 0.43 ha of the Property to operate a crusher and a portable asphalt plant. The application was approved by Resolution #401/2013 and subject to the terms and conditions of Resolution #203/2013.



Application ID: 52704
(Jubenville, 2011)

Notice of Intent – To extract up to 300,000 m³ of gravel from an approximately 3 ha area of the Property. The application was approved for 7 years subject to terms and conditions. Resolution #203/2013.

SITE VISIT

[12] On June 23, 2016, the Panel conducted a walk-around site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[13] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Agent on August 3, 2016 (the “Site Visit Report”).

FINDINGS

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

[14] 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. The improved agricultural capability rating identified on CLI map sheet 82G/15 for the mapping unit encompassing the Property is Class 4; more specifically (4X).

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

The limiting subclass associated with this parcel of land is X (combination of soil factors).

[15] The Panel reviewed the CLI ratings and the Site Visit Report and finds that the Property has moderate capability for agriculture.

[16] The Applicant provided the following rationale with regards to the Proposal supporting agriculture:

The proposal will support agriculture in both, short and long term. Currently the main parcel provides hay for the farm's livestock and for sale, along with a large family garden. The main parcel has previously run a small herd of cattle, along with chickens and depending upon market conditions will be considered again. The 2 ha lot will continue to be developed to support 2 horses and the raising of a few Steers (sic) yearly. The small field on the proposed 2 ha will be further developed to provide feed for the livestock.

The Panel finds that the subdivision will not have a negative effect on the agricultural use of the Property as it is presently operated as two distinct agricultural ventures.

[17] The Application provided the following reasons with respect to the Property's suitability for subdivision:

The reasons the parcel is suitable for subdivision are as follows. The proposed 2 ha lot is a stand-alone area of the original 31 ha and does not contribute to the main parcel's farm use. The 2 ha area consists of a residence, outbuildings, garden, fenced livestock area, along with a small field. The proposed lot configuration would not affect the integrity of the main parcel as the 2 ha location is located in the NW corner of the parcel and has its own separate road access along with utilities.

The Panel finds that the proposed smaller lot is separated from the remainder of the Property and subdivision will not affect the agricultural use of either lot.

[18] The Panel notes that a single family house currently exists in the area proposed to be subdivided. The Panel finds that the subdivision will not result in any new houses to be constructed. Furthermore, the Panel finds that the areas of the Property currently function as two distinct operations so the subdivision will not have a negative effect on the agricultural use of the Property.



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

[19] The Application did not provide any evidence or rationale regarding any economic, cultural and social values that may be pertinent to the Application.

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

[20] The RDEK Board forwarded the Application with support. The RDEK Advisory Planning Committee for Area “A” also supports the Application.

[21] The Panel gave consideration to regional and community planning objectives 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.

Weighing the factors in priority

[22] The Panel does not find the Proposal will negatively affect the agricultural uses of the Property due to the isolation of the proposed smaller lot from the remainder of the Property.

[23] 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

[24] For the reasons given above, the Panel approves the Proposal to subdivide the Property into two parcels of 2 ha and 29.9 ha.

[25] The Proposal is approved subject to the following conditions:

- a. the subdivision being in substantial compliance with the plan submitted with the Application
- b. submission of two (2) paper copies or one (1) electronic copy of the final survey plan to the Commission; and
- c. the subdivision plan being completed within three (3) years from the date of this decision.

[26] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan.

[27] 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.

[28] These are the unanimous reasons of the Kootenay Panel of the Agricultural Land Commission.

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

[30] This decision is recorded as Resolution #404/2016 and is released on November 28, 2016.

CERTIFICATION OF DECISION



Sharon Mielnichuk, Panel Chair, on behalf of the Kootenay Panel

END OF DOCUMENT

Parents address 5683 Hwy 43
Our address 8450 Kaiser Rd.

ALC Application 54641
Approved Subdivision
ALC Resolution #404/2016

Approved 29.9 ha remainder

Approved 2.0 ha parcel

