



Agricultural Land Commission
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November 17, 2005

Reply to the attention of Gordon Bednard

Michael Batenchuk
29374 Fraser Hwy
Abbotsford, BC - V4X 1H1

Dear Sir:

Re: Application # MM-36242
Lot 6, Section 22, Township 13, New Westminster District, Plan 7057

The Provincial Agricultural Land Commission (the "Commission") has now concluded its review of your application to subdivide one (1) lot of approximately 0.6 ha from the property in accordance with its *Homesite Severance Policy* (copy attached). The application was submitted pursuant to section 21(2) of the *Agricultural Land Commission Act* (the "ALCA").

The Commission wishes to thank you for taking the time to meet with its representatives on October 18, 2005 at the property. The Commission found the meeting and site visit informative.

The Commission writes to advise that it refused the proposed 0.6 ha homesite lot as it was felt that was excessive for a retirement property, however the Commission approved a 0.4 ha homesite lot subject to:

- the subdivision being in substantial compliance with the attached plan – the lot to be from the road to the back of the truck shelter, and from the eastern boundary of the property to the western side of the access road, in front of, but not including the barn,
- the construction of a fence – 4-6 ft tall, cedar board or chain link, on the east, west and south sides of the homesite lot,
- that the homesite lot not be sold for five (5) years except in the case of estate settlements. The Commission requires your commitment in this regard which can be done by signing below and returning to our office a copy of the letter. The Commission requires your commitment prior to it approving deposit of the subdivision plan.
- that you obtain Commission approval for a change in the location of the homesite deemed necessary by other approval agencies.
- compliance 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. The Commission suggests you contact the City of Abbotsford at your earliest convenience.

The decision noted above is recorded as Resolution # 611/2005.

If you wish to proceed on this basis please undertake the following steps:

1. Commence approval procedures of other agencies that must approve the subdivision.
2. Construct the fence according to the requirement set out.
3. Have a surveyor prepare the subdivision plan.
4. Obtain recent State of Title Certificate for the property.
5. Prepare a "Transfer of an Estate in Fee Simple" document indicating the transfer of the remainder of the property from you to the purchaser.
6. Prior to approaching the Registrar of Land Titles to register the subdivision please submit the following to this office:
 - a) evidence that the fence has been constructed
 - b) two (2) paper prints of the plan of subdivision
 - c) the State of Title Certificate
 - d) a copy of the "Transfer of an Estate in Fee Simple" document
 - e) your signed commitment that the homesite lot will not be sold for five (5) years except in the case of estate settlements.

When the fencing has been completed to the Commission's satisfaction and all the required documentation has been received the Commission will authorize the Registrar of Land Titles to accept the application for deposit of the subdivision plan.

Please quote your application number in any future correspondence.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:



Erik Karlsen, Chair

cc: City of Abbotsford Attn: Melissa Pryce file # 3040-20/A05-001

Enclosure:

Sketch Plan
Homesite Severance Policy

GB/eg
I/36242d1

I/we being the registered owner(s) of the property which is the subject of Application #MM-36242 and for whom the homesite lot was approved, hereby agree not to sell, transfer, or otherwise dispose of the homesite lot for five (5) years from the date of registration of the subdivision plan creating the homesite lot, save and except for estate purposes following the death of the owner, or any one of the owners, if there are more than one.

Owner's Name (Please Print)

Signature

Owner's Name (Please Print)

Signature

Witnessed By (Please Print Name)

Occupation of Witness

Signature of Witness

Date

HOMESITE SEVERANCE

The purpose of this policy is to provide a consistent approach to situations where property under application has been the principal residence of the applicant as owner-occupant since December 21, 1972 and the applicant wishes to dispose of the parcel but retain a homesite on the land.

An application under Sec. 21(2) of the Agricultural Land Commission Act is required.

Persons making use of this policy should understand clearly that:

- a. no one has an automatic right to a "homesite severance";
- b. the Commission shall be the final arbiter as to whether a particular "homesite severance" meets good land use criteria; (see #4 below)
- c. a prime concern of the Commission will always be to ensure that the "remainder" will constitute a suitable agricultural parcel. (see #5 below).

Without limiting the generality of the foregoing, the following guidelines apply to "homesite severance" applications.

1. A *once only* severance may be permitted where the applicant submits documentary evidence that he or she has continuously owned and occupied the property as his or her principal place of residence since 21 December 1972.
2. Where an applicant for a "homesite severance" has had a previous subdivision application approved by the Commission resulting in the creation of a separate parcel, the Commission may consider the previous approval as having fulfilled the objectives of the Homesite Severance Policy and may deny any further consideration under the Homesite Severance Policy.
3. An application for a "homesite severance" will be considered only where the applicant submits documentary evidence showing a legitimate intention to sell the remainder of the property upon the approval of the "homesite severance" application. [An interim agreement for sale, a prospective buyer's written statement of intent to purchase, a real estate listing, or some other written evidence of pending real estate transaction would be acceptable as documentation.]

In considering the application, the Commission may make its approval subject to sale of the remainder within a specified period of time.

A Certificate of Order authorizing the deposit of the subdivision plan will be issued to the Registrar of Land Titles only when a "transfer of estate in fee simple" or an "agreement for sale" is being registered concurrently.

4. There will be cases where the Commission considers that good land use criteria rule out any subdivision of the land because subdivision would compromise the agricultural integrity of the area, and the Commission must therefore exercise its discretion to refuse the "homesite severance".

Homesite Severance

Agricultural
Land
Commission

Where the Commission decides to allow a "homesite severance", there are two options:

- a. the existing homesite may be created as a separate parcel where it is of a minimum size compatible with the character of the property (plus a reasonable area, where required, for legal access purposes); or
 - b. where the location of the existing homesite is such that the creation of a parcel encompassing the homesite would, in the Commission's opinion, create potential difficulty for the agricultural operation or management of the "remainder", the Commission may, as it deems appropriate, approve the creation of a parcel elsewhere on the subject property.
5. The remainder of the subject property after severance of the homesite must be of a size and configuration that will, in the Commission's opinion, constitute a suitable agricultural parcel. Where, in the Commission's opinion, the "remainder" is of an unacceptable size or configuration from an agricultural perspective, there are three options:
- a. the Commission may deny the "homesite severance";
 - b. the Commission may require that the "remainder be consolidated with an adjacent parcel; or
 - c. the Commission may require the registration of a covenant against the title of the "remainder" and such a covenant may prohibit the construction of dwellings.
6. A condition of every "homesite severance" approved by the Commission shall be an order stipulating that the homesite is not to be resold for five years except in the case of estate settlements. Prior to the issuance of a Certificate of Order authorizing deposit of the subdivision plan, the owner shall file with the Commission a written undertaking or standard notarized contractual commitment to this effect.
7. Where a "homesite severance" application has been approved by the Commission, local governments and approving officers are encouraged to handle the application in the same manner as an application under Section 996 of the *Municipal Act* insofar as compliance with local bylaws is concerned.

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

Minutes of a meeting held by the Provincial Agricultural Land Commission (the "Commission") on October 18, 2005 at Aldergrove, B.C.

PRESENT: Carol Paulson Commissioner
Walter Dyck Commissioner

ABSENT: Peter Dhillon Chair

STAFF: Gordon Bednard, Regional Research Officer
Tony Pellett, Planner

For Consideration

- Gordon Bednard presented his staff report dated October 11, 2005 regarding application #MM- 36242.

Site Inspection

A site inspection was conducted on October 18, 2005. Those in attendance were:

- Commissioners Paulson & Dyck
- Agricultural Land Commission Staff: Gordon Bednard, Regional Research Officer and Tony Pellett, Planner
- Michael Batenchuk

The Commission toured the site of the proposed homesite lot.

Commission Discussion

The Commission considered the size of the proposed homesite lot to be excessive, but would approve a smaller lot of approximately 0.4 ha to encompass the area from the road to behind the truck shed, and from the eastern property boundary to the west side of the access road in front of the barn.

IT WAS

MOVED BY: Commissioner Carol Paulson
SECONDED BY: Commissioner Walter Dyck

THAT the staff report be received and the application be refused as presented, however, the Commission would allow a smaller lot as described above, subject to fencing of the homesite lot and all other provisions of the Homesite Severance Policy.

This alternate approval is subject to compliance with any other enactment, legislation or decision of any agency having jurisdiction.


CARRIED

Fraser Highway

139 m



Barn 

Barn 

± 0.4 ha



House



Shop



shop
Truck
Shel.

29374 Fraser Hwy

6 ha

434 m

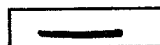
Agricultural Land Commission

Application: MM-36242

Resolution # 611/2005



Subject property.



Approved 0.4 ha lot pursuant to the
Homesite Severance Policy.



Staff Report
Application # MM – 36242
Applicant: Michel Batenchuk

DATE PREPARED: October 11, 2005

TO: Chair and Commissioners – South Coast Panel

FROM: Gordon Bednard, Regional Research Officer

PROPOSAL: To subdivide a 0.6 ha lot from the 7 ha subject property, around the existing dwelling, under the Homesite Severance Policy.

This application is made pursuant to section 21(2) of the *Agricultural Land Commission Act*.

BACKGROUND INFORMATION:

Applicants appear to qualify for homesite severance having provided proof of ownership prior to 1972.

Local Government:

City of Abbotsford

Legal Description of Property:

PID: 011-218-452

Lot 6, Section 22, Township 13, New Westminster District, Plan 7057

Purchase Date (m/d/y):

02/01/1958

Location of Property:

29374 Fraser Highway, Abbotsford

Size of Property:

7.0 ha (The entire property is in the ALR).

Present use of the Property:

residential, hay, 3 shops and a barn

Surrounding Land Uses:

WEST: Rural residential and hobby farms of same size as subject, in ALR
SOUTH: Larger forested and farmed properties in ALR
EAST: Rural residential and hobby farms of same size as subject, in ALR
NORTH: Fraser Highway, rural residential and hobby farms beyond, in ALR

Agricultural Capability:

Data Source: Agricultural Capability Map # 92G/1d
The majority of the property is identified as having Prime Dominant ratings. (class 3 and 4)

Official Community Plan and Designation:

Agricultural

Zoning Bylaw and Designation:

Agriculture One zone

PREVIOUS APPLICATIONS:
NONE

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Forwarded with no recommendation from council, AAC

Agricultural Advisory Committee: support

STAFF COMMENTS:

Size of the proposed lot seems larger than would be normally considered for a homsite severance and the Commission may wish to discuss this with the applicant during the onsite to see if there is a practical reason (septic field ?) for the proposed size.

Notwithstanding the above, staff recommends allowance with standard HSS conditions and fencing and vegetative screening. Subdivision to be registered concurrent with sale of balance of property.

END OF REPORT

Signature

Date