



Agricultural Land Commission
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July 6, 2006

Reply to the attention of Brandy Ridout
ALC File #G-36717

Gordon Ivans
1310 McKenzie Road
Kelowna, BC V1P 1C4

Dear Mr. Ivans:

Re: Application to subdivide in the Agricultural Land Reserve

Please find attached the Minutes of Resolution #317/2006 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', is written over a light blue horizontal line.

Erik Karlsen, Chair

cc: City of Kelowna (#A05-0014)

BR/lv/Encl.: Minutes
36639d1

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on June 28, 2006 in Kelowna, BC.

PRESENT: Sue Irvine Chair, Okanagan Panel
 Sharon McCoubrey Commissioner
 Sid Sidhu Commissioner
 Brandy Ridout Staff

For Consideration

Application # G – 36639
Applicant(s) Gordon Ivans
Proposal To subdivide the 4 ha property into two 2 ha lots for the applicant's children.
Legal PID: 026-294-877
 Lot 1, Section 25, Township 26, Osoyoos Division Yale District, Plan
 KAP77946
Location 1310 McKenzie Road, Kelowna

Site Inspection

A site inspection was conducted on June 28, 2006. Those in attendance were:

- Commissioners: Sue Irvine, Sharon McCoubrey and Sid Sidhu
- Staff: Brandy Ridout
- Applicant: Gordon Ivans

Mr. Ivans had not received the staff report dated June 14, 2006. It was provided to him during the site visit and he did not identify any errors.

Discussion

As Section 946 of the *Local Government Act* is irrelevant to the Commission's consideration of whether or not subdivision of ALR land is appropriate, the Commission considered the application in terms of its impact on agriculture.

The Commission believed that subdivision would negatively impact the subject property in the long-term as it would narrow the range of agricultural options available to the owner of the property. As two smaller lots, the agricultural activities that can take place are more limited. In addition, subdivision enables the construction of a homesite on the newly created lot and results in the removal of a portion of the property from agricultural use.

IT WAS

MOVED BY: Commissioner Irvine
SECONDED BY: Commissioner McCoubrey

THAT the application be refused

CARRIED
RESOLUTION #317/2006



Staff Report
Application # G – 36639
Applicant: Gordon Ivans
Location: East Kelowna

DATE RECEIVED: April 27, 2006

DATE PREPARED: June 14, 2006

TO: Chair and Commissioners – Okanagan Panel

FROM: Brandy Ridout, Regional Research Officer

PROPOSAL: To subdivide the 4 ha property into two 2 ha lots for the applicant's children.

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

BACKGROUND INFORMATION:

This application is similar to several recent applications in Kelowna that propose to subdivide a 2 ha lot for a family member. The impetus for the application is the existence of section 946 of the *Local Government Act*, which permits the subdivision of a lot for a landowner's relative, subject to conditions. Section 946 subdivision does not require that a subdivision be supported by local government bylaw(s). The applicant indicates that Section 946 supersedes local government bylaws and policies and therefore the City does not have any discretion whether or not to permit the application. Regardless of this, the *Agricultural Land Commission Act* is "not subject to any other enactment, whenever enacted, except the Interpretation Act, the Environment and Land Use Act and the Environmental Management Act and as provided in this Act."

In a letter from the Commission to the City of Kelowna dated January 10, 2006, the subject of Section 946 is commented on:

While the Commission has developed a policy concerning homesite severances on ALR lands, it is under no obligation to approve subdivisions to provide a residence for a relative.

The Commission encourages local governments to use Section 946 of the Local Government Act to facilitate the creation of homesite severance subdivisions when such subdivisions have been approved by the Commission in accordance with its Homesite Severance Policy. In these cases, it is the Commission's understanding that Section 946 can provide a means for the local government to consider a parcel smaller than a zone allows without rezoning.

This application is submitted for the purposes of providing home sites for the applicant's children. In 2004 the Commission allowed the applicant a homesite severance subdivision of 2 ha from the adjoining property to the west.

BACKGROUND INFORMATION (continued):

Local Government:

City of Kelowna

Legal Description of Property:

PID: 026-294-877

Lot 1, Section 25, Township 26, Osoyoos Division Yale District, Plan KAP77946

Purchase Date:

October 1977

Location of Property:

1310 McKenzie Road, Kelowna

Size of Property:

4 ha (The entire property is in the ALR)

Present use of the Property:

Partially replanted to orchard, contains a single family dwelling and a cottage.

Surrounding Land Uses:

WEST: Orchard in the ALR

SOUTH: Rural residence with horses

EAST: Rangeland in the ALR

NORTH: Orchard property in the ALR

Agricultural Capability:

Data Source: Agricultural Capability Map # 82E.084

The majority of the property is identified as having prime dominant ratings.

Official Community Plan and Designation:

The Kelowna 2020 OCP

Designation: Rural/Agricultural

Zoning Bylaw and Designation:

Designation: A1 Agriculture

Minimum lot size: 2 ha

PREVIOUS APPLICATIONS:

Application #22451-0

Applicant: L.O.R.A.

Decision Date: August 24, 1988

Proposal: Exclude 186 parcels of land totalling 1220 ha.

Decision: Refused because the lands had good agricultural capability.
Decision to refuse upheld by ELUC.

RELEVANT APPLICATIONS:

Application #34759-0

Applicant: Gordon Ivans

Decision Date: April 2, 2003

Proposal: To subdivide a 2 ha lot comprising the ravine and homesite from the 6 ha subject property under the *Homesite Severance Policy*. The new lot would encompass one of the two dwellings on the property as well as small areas of active orchard.

Decision: Allowed the application subject to *Policy* conditions as well as a covenant on the title of the newly created agricultural remnant property limiting the residential footprint to the existing residential area.

Application #34759-1 Reconsideration

Applicant: Gordon Ivans

Decision Date: September 24, 2004

Proposal: That the Commission reconsider its condition of approval in Resolution #138/2003 requiring the registration of a covenant against the title of the remainder of the property restricting residential accommodation to one single dwelling on the existing residential footprint with said footprint not to exceed 0.2 ha.

Decision: Allowed.

Application #36392-0

Applicant: Michael & Kelly Hill

Decision Date: January 19, 2006

Proposal: To subdivide the 5.2 ha property into two lots of approximately equal size.

Decision: Refused - on the grounds of reduced agricultural capability.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

The City of Kelowna: Forwarded without a recommendation.

Kelowna's Agricultural Advisory Committee: Did not support the application because it was for family purposes and did not have an agricultural rationale.

STAFF COMMENTS:

Staff recommends that the Commission consider the following.

- The proposed subdivision may narrow the range of agricultural options available to the property. On balance, 2 ha parcels tend to be less likely to be used for agriculture than 4 ha parcels.
- The proposed subdivision, if allowed, could precipitate similar applications in the ALR in Kelowna. As the majority of agricultural properties are 4 ha or larger in the ALR, it is likely that allowing this application could have significant implications for the agricultural land base in Kelowna.
- Section 946 of the *Local Government Act* is irrelevant to the Commission's consideration of whether or not subdivision of ALR land is appropriate.

END OF REPORT

Signature

Date


