



**Agricultural Land Commission**  
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April 12, 2007

Reply to the attention of Brandy Ridout  
ALC File: # #G - 37164

Allan and Annette Lipkovits  
1720 Morrison Road  
Kelowna, BC V1X 4W3

Dear Mr. and Mrs. Lipkovits:

**Re: Application to subdivide in the Agricultural Land Reserve**

Please find attached the Minutes of Resolution # 103/2007 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik Karlsen, Chair

cc: City of Kelowna (#A006-0020)  
Wade and Lesley Schmidt - 898 Moyer Road, Kelowna, BC V1X 4R7

Enclosure: Minutes

BR/lv  
37164d1



## MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on March 29, 2007 in Vernon, BC.

**PRESENT:**

Sue Irvine	Chair, Okanagan Panel
Sid Sidhu	Commissioner
Monika Marshall	Commissioner
Brandy Ridout	Staff
Martin Collins	Staff

### For Consideration

Application: # G- 37164  
Applicant: Allan and Annette Lipkovits  
Proposal: To undertake a boundary line adjustment between the 0.8 ha (Lot A) and 3.2 ha (Lot 12) subject properties to create a 0.9 ha lot and a 3.1 ha lot in order that one of the existing houses from the larger property be on the smaller property. The owners of the smaller property have requested permission to use the house as a rental unit.

Legal:

1. PID: 012-394-301  
Lot 12, Section 36, Township 26, Osoyoos Division Yale District, Plan 425, EXCEPT Plan 8676
2. PID: 009-787-429  
Lot A, Section 36, Township 26, Osoyoos Division Yale District, Plan 8676

Location: 1680 and 1720 Morrison Road and 898 Moyer Road, Kelowna

### Site Inspection

A site inspection was conducted on March 28, 2007. Those in attendance were:

- Sue Irvine Chair, Okanagan Panel
- Sid Sidhu Commissioner
- Monika Marshall Commissioner
- Brandy Ridout Staff
- Martin Collins Staff
- Allan Lipkovits Applicant
- Wade Schmidt Owner of Lot A

During the site inspection the applicant explained the current situation of the property. It was discussed that the property had been jointly purchased in 1998 by the applicants and their in-laws. The applicants lived in the old house until they built the new house in 2001. When the in-laws decided to move onto the property in 2005, they applied for another building permit, agreeing at that time to demolish or make uninhabitable the old house.

It was also discussed that Mr. Schmidt is mainly interested in acquiring the 0.1 ha of land to acquire the existing house. It was noted that the house would be rented out to the person who currently kept horses on his property.

## **Context**

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

1. to preserve agricultural land
2. to encourage farming on agricultural land in collaboration with other communities of interest, and
3. 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.

## **Discussion**

### **Assessment of Agricultural Capability**

The agricultural capability of the soil of the subject property is Class 3 (Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both) with a limitation of undesirable soil structure. Class 3 is considered prime agricultural capability.

### **Assessment of Agricultural Suitability**

The Commission assessed whether external factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture. The Commission does not believe there are external factors that render the land unsuitable for agricultural use.

### **Assessment of Impact on Agriculture**

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land.

The Commission noted that the Agricultural Advisory Committee (AAC) had supported the proposal because it was viewed to be no detriment to the agricultural potential of the subject properties. The Commission acknowledged that the third house on the property could be rendered uninhabitable rather than demolished, thus preventing that portion of the property from being returned to agricultural use. However, it could see no rationale for a second dwelling on Lot A as the amount of agricultural activity on the property did not warrant an additional dwelling for farm help. As such, if the house was moved onto Lot A, it would exacerbate the problem of additional dwellings in the ALR that are not necessary for farm use.

It was noted that the presence of the two new large homes on the relatively small property (Lot 12) had removed a large amount of land from potential agricultural use. It also noted that the citing of the two new houses did not appear to take into account agricultural concerns. If the location of the 1964 house was not suitable for agriculture because of drainage issues, as indicated by the applicant to the AAC, it should have been used for the citing of any new dwelling.

The Commission believed the proposal would negatively impact existing or potential agricultural use of the subject properties.

### **Assessment of Other Factors**

The Commission did not believe that a second dwelling for farm help was necessary on the 3.2 ha subject property in central Kelowna where the haying was contracted to someone who lives off the property. As such, the Commission was concerned that the City of Kelowna is not assessing the need for farm help on an individual basis but rather is defaulting to the number of dwellings permitted by the zoning bylaw or using farm status as the only requirement.

Foreseeing a possible future subdivision application as the property in co-owned, the Commission believed it pertinent to note that it does not consider joint ownership or financial reasons when considering subdivision requests.

### **Conclusions**

1. That the land under application has agricultural capability and is appropriately designated as ALR.
2. That the land under application is suitable for agricultural use.
3. That the proposal will negatively impact agriculture.
4. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

### **IT WAS**

**MOVED BY:** Commissioner Irvine

**SECONDED BY:** Commissioner Sidhu

THAT the application to undertake a boundary line adjustment between the 0.8 ha (Lot A) and 3.2 ha (Lot 12) subject properties to create a 0.9 ha lot and a 3.1 ha lot in order that one of the existing houses from the larger property be on the smaller property (for use as a rental unit) be refused.

### **CARRIED**

**Resolution # 103/2007**



**Staff Report**  
**Application # G – 37164**  
**Applicants: Allan & Annette Lipkovits**  
**(and Dennis & Lucille Weninger)**  
**Location: Kelowna**

**DATE RECEIVED:** January 12, 2007

**DATE PREPARED:** March 26, 2007

**TO:** Chair and Commissioners – Okanagan Panel

**FROM:** Brandy Ridout, Land Use Planner

**PROPOSAL:** To undertake a boundary line adjustment between the 0.8 ha (Lot A) and 3.2 ha (Lot 12) subject properties to create a 0.9 ha lot and a 3.1 ha lot in order that one of the existing houses from the larger property be on the smaller property. The owners of the smaller property have requested permission to use the house as a rental unit.

This application is made pursuant to section 20(3) and 21(2) of the *Agricultural Land Commission Act*.

**BACKGROUND INFORMATION:**

The owners of Lot 12 have indicated that they manage the irrigation of the property (twice daily) and contract out the cutting/baling of the hay (three times per year). The residents of the new second dwelling on the property will be taking over the irrigation of the property as the applicants both work full time off the farm.

The owners of Lot 12 have maintained farm status since they purchased the property in 1998. Approximately 800 bales of hay have been produced each year since that time.

**Local Government:**

City of Kelowna

**Legal Description of Properties:**

1. PID: 012-394-301  
Lot 12, Section 36, Township 26, Osoyoos Division Yale District, Plan 425, Except Plan 8676
2. PID: 009-787-429  
Lot A, Section 36, Township 26, Osoyoos Division Yale District, Plan 8676

**Purchase Date:**

Lot A: September 2002  
Lot 12: October 1998

**BACKGROUND INFORMATION (continued):**

**Location of Properties:**

1680 and 1720 Morrison Road and 898 Moyer Road, Kelowna

**Size of Properties:**

Lot A: 0.8 ha (the property is in the ALR)  
Lot 12: 3.2 ha (the property is in the ALR)

**Present use of the Properties:**

Lot A: one residence and hay  
Lot 12: three residences (one with a delayed demolition permit) and hay (90% of the property)

**Surrounding Land Uses:**

**WEST:** Hay  
**SOUTH:** Hay  
**EAST:** Orchard  
**NORTH:** No apparent use

**Agricultural Capability:**

Data Source: Agricultural Capability Map # 82E.094  
The majority of the property is identified as having Prime Dominant ratings.

**Official Community Plan and Designation:**

Kelowna 2020 – Official Community Plan  
Designation: Rural/Agricultural

**Zoning Bylaw and Designation:**

Designation: Agriculture 1  
Minimum Lot Size: 2.0 ha when in ALR

**PREVIOUS APPLICATIONS:**

**Application #22451-0**

**Applicant:** L.O.R.A.  
**Decision Date:** August 24, 1988  
**Proposal:** To exclude 186 parcels of land totaling 1220 ha in area.  
**Decision:** Refused. Decision to refuse upheld by ELUC.

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**Application #26539-0**

**Applicant:** Helge & Margaret Smestad  
**Decision Date:** September 10, 1992  
**Proposal:** To subdivide the 3.2 ha subject property into two lots (0.2 ha and 3 ha). The applicants are not eligible for consideration under the *Homesite Severance Policy*.  
**Decision:** Refused due to agricultural capability and impact.

**LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:**

**City of Kelowna Council:** Forwarded the application with a recommendation of support.

**LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS (continued):**

**Agricultural Advisory Committee:** Support because it has no detriment to the agricultural potential of the subject properties.

**City of Kelowna Staff:** Recommended that the application be supported by council.

**STAFF COMMENTS:**

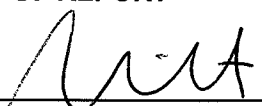
Staff suggests the Commission consider the following:

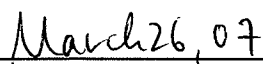
- The building permit for the new second dwelling on Lot 12 was issued with the understanding that the old second dwelling would be demolished or rendered uninhabitable upon the completion of the new house.
- The applicant states that the land where the old second dwelling is located is not suitable for agriculture and would not be reverted to agriculture if the house was demolished. As such, if a second dwelling was in fact necessary for farm help, staff believes that the older house should have been demolished and a new house built in the same location.
- Allowing the proposal to shift the lot lines to allow the older house to be moved to the adjacent property would exacerbate the problem of additional dwellings in the ALR that are not necessary for farm use.
- It would appear that the City of Kelowna, in two instances, has approved a second dwelling on this property (in 2000 and 2005). Staff is concerned that the level of agricultural activity on Lot 12 does not warrant a second dwelling for farm use.
- Staff is unclear as to how the City of Kelowna rationalized another substantive house for farm help on Lot 12 when the applicant has indicated that the harvesting of the hay crop is done by someone who lives off the property. Documentation was requested from the City but had not been received by the time this Staff Report was finalized.
- This application leads staff to be concerned that the City of Kelowna is not assessing the need for farm help on an individual basis but rather is defaulting to the number of dwellings permitted by the zoning bylaw or using farm status as the only requirement. Section 18 of the *Agricultural Land Commission Act* states that local governments may not (i) permit non-farm use of agricultural land or permit a building to be erected on the land except for farm use, or (ii) approve more than one residence on a parcel of land unless the additional residences are necessary for farm use. Policy #9 interprets Section 18 of the *Act*.
- Staff questions the legality of a second dwelling on Lot 12.

**ATTACHMENTS:**

- ALR Base Map #82E/14
- ALR Constituent Map #13
- Sketch of proposal
- Planning & Development Services Department report
- Policy #9
- Air photo

**END OF REPORT**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

## Ridout, Brandy ALC:EX

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**From:** Holly Campbell [hcampbell@campbellco.ca]  
**Sent:** Thu, March 22, 2007 9:18 AM  
**To:** Ridout, Brandy ALC:EX  
**Subject:** Re: Hay questions

Hi Brandy,

The type of hay and quality and weight of the bales are considerations.

For grass hay, I think they are doing well with 800 60-70 lb bales on 8 acres of class 3. If they're putting up alfalfa, they should get more.

We sell our top quality 65 lb grass and grass/alfalfa bales for \$6.00/bale.

Hope this helps.

Holly.

Date sent: Wed, 21 Mar 2007 11:01:22 -0700  
From: "Ridout, Brandy ALC:EX" <Brandy.Ridout@gov.bc.ca>  
To: <hcampbell@campbellco.ca>  
Subject: Hay questions

Hi Holly,

Just wondering if you could provide your opinion on the farm use of a property...

The property is in Kelowna, class 3, 8 acres, irrigated twice/day, 3 cuts/year, 800 bales/year.

Just wondering if these figures seem reasonable and how much a person could expect to make on 800 bales/year.

Thanks for your help,  
Brandy

Brandy Ridout  
Land Use Planner  
The Agricultural Land Commission  
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