



Agricultural Land Commission
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June 4, 2007

Reply to the attention of Jennifer Carson
ALC File: MM-37199

Stan Nickel and Associates
45715 Ontario Avenue
Chilliwack, BC V2P 6S8

Dear Mr. Nickel:

Re: Application to Subdivide land in the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 161/2007 outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

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

Erik Karlsen, Chair

cc: City of Chilliwack (ALR00163)
John and Ellen Mathies, 48255 Chilliwack Central Road, Chilliwack, BC V2P 6H3

Enclosure: Minutes

TP/37199d1



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission (the "Commission") on April 13, 2007 at Chilliwack, B.C.

| | | |
|-----------------|----------------|--------------------------|
| PRESENT: | Sylvia Pranger | Chair, South Coast Panel |
| | Michael Bose | Commissioner |
| | John Tomlinson | Commissioner |
| | Tony Pellett | Staff |

For Consideration

Application: # MM- 37199
Applicant: John and Ellen Mathies
Agent: Stan Nickel and Associates
Proposal: To subdivide a 19.2 ha parcel under the homesite severance policy, to create a 1.5 ha lot containing their home, and a remainder lot.
Legal: PID: 013-528-581
Parcel "E" (Reference Plan 3991), South West ¼ Section 34
Township 26 New Westminster District
Location: 48255 Chilliwack Central Road, Chilliwack

Site Inspection

A site inspection was conducted on April 13, 2007. Those in attendance were:

- Sylvia Pranger Chair, South Coast Panel
- Michael Bose Commissioner
- John Tomlinson Commissioner
- Tony Pellett Staff
- John and Ellen Mathies Owners
- Stan Nickel Agent

In preparation for the site inspection, John and Ellen Mathies acknowledged that, although the application form lists the subject property as the only lands in the City of Chilliwack owned by them or in which they have any interest, in fact:

- they own a parcel of land in the ALR elsewhere in Chilliwack;
- they are principals in Cannor Nurseries Ltd. which operates a nursery and retail garden centre on the subject property as well as owning several parcels of land within the City, including an immediately adjoining 14.2 ha parcel which accommodates the headquarters for the nursery business and over which the application proposes an easement to protect a tennis court (associated with the dwelling on the subject property) that encroaches across the common property line;
- they hold a mortgage interest on their son's farm elsewhere in Chilliwack;
- they have acquired land immediately across Chilliwack Central Road from the subject property, accommodating a residence for their daughter; and
- they have an unregistered interest in resolving an encroachment by the retail garden centre parking lot over a portion of the adjacent 8.3 ha parcel.

The applicants and agent confirmed that the staff report dated March 27, 2007 was received and no errors were identified.

During the site inspection, the members of the Commission pointed out that the proposed 1.5 ha lot extends far to the north of an asphalt driveway which clearly forms an essential part of the operation of Cannor Nurseries Ltd. Mr. Nickel advised that it had been his understanding that the Health Authorities require a minimum area of 1 ha for any new parcel relying on on-site sewage disposal, with any riparian protection area being in addition to the 1 ha minimum. The Commission pointed out that in practice, a homesite severance is a one-time subdivision off a parcel which exceeds 2 ha, thus achieving an average parcel size of more than 1 ha. The subject parcel occupies 19.2 ha, thus the average parcel size would be 9.6 ha regardless of the actual size of the homesite severance parcel. Based on this information, the applicants and agent agreed that (assuming a replacement septic field can be located to the east of the existing septic field) the more appropriate location for the north boundary of the homesite severance parcel would be the hedge which currently separates the yard of the house from the asphalt driveway, leaving the driveway for exclusive nursery use.

The members of the Commission then questioned the applicants as to biosecurity issues associated with having a dwelling on a separate parcel intruding into the nursery operational area, especially in view of the fact that there is no effective opportunity for a biosecurity barrier except along the south side of the asphalt driveway west of the existing septic field. The applicants stated that there would be no biosecurity issue because they intend to retain ownership of the nursery and to ensure that the dwelling is occupied by themselves or a member of their family. The members of the Commission pointed out that creation of a homesite severance parcel does not provide assurance that the parcel will be retained by the family for longer than five years, hence sale of the severed parcel separate from the nursery business (e.g. by future heirs) would pose a future biosecurity issue. The applicants reiterated that they have no concerns regarding biosecurity.

The applicants also mentioned to the Commission that they are preparing to live part-time on Vancouver Island and the rest of the time out of the country. At that time, the proposed homesite would be occupied by their daughter.

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.

The proposal was also weighed against the Commission's *Homesite Severance Policy*, the purpose of which is to provide a consistent approach to situations where property under application *per* subsection 21(2) of the *Agricultural Land Commission Act* 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 remain living on a homesite on the land. The policy contains a preamble stating that persons making use of the 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 are among the guidelines which apply to "homesite severance" applications:

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".

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.

Discussion

Assessment of Agricultural Capability

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The ratings are interpreted using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system, or the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system.

The agricultural capability of the soil of the subject property is dominantly Class 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.

Subclasses

- T topography (over most of the property, complex slopes varying from 3% to 5%)
- W excess water (over the north end of the property)

Assessment of Agricultural Suitability

The Commission assessed whether the 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. In fact, the applicants have established an outstanding agricultural business on the land, providing a valuable service to the community at large. While the possible loss of direct access to the retail garden centre could be damaging to the current farm business, it would not affect overall agricultural suitability.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. Regardless of whether the land remains in its current use as the headquarters and retail garden centre for a nursery business, the Commission is concerned that the location of the existing dwelling will eventually pose a serious impact on the biosecurity of agriculture unless that dwelling remains part of the farm parcel. The Commission appreciates the applicants' intention of ensuring that the dwelling continues to be owned and occupied by members of the family operating the agricultural business, and the Commission acknowledges that the proposal would have no real impact on the existing or potential agricultural use of surrounding lands. Nevertheless, the Commission believes that the only secure way to ensure the applicants' intention is to retain the existing dwelling as part of the farm parcel.

Assessment of Other Factors

The Commissioners also concluded that the proposed subdivision does not qualify for consideration under the *Homesite Severance Policy* as the proposed parcel is not for the applicants but instead the applicants' daughter.

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 adversely impact long term agricultural use of the property by compromising agricultural integrity.
4. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land and to encourage farming on agricultural land.

IT WAS

MOVED BY: Commissioner Tomlinson

SECONDED BY: Commissioner Bose

THAT in view of the foregoing assessment and conclusions, the application be refused.

CARRIED

Resolution # 161/2007



Staff Report
Application # MM – 37199
Applicant: John and Ellen Mathies

Agent: Stan Nickel and Associates

DATE RECEIVED: January 17, 2007

DATE PREPARED: March 27, 2007

TO: Chair and Commissioners – South Coast Panel

FROM: Jennifer Carson, Land Use Planner

PROPOSAL: To subdivide a 19.2 ha parcel under the *Homesite Severance Policy* to create a one (1) ha lot containing their home and a remainder lot. This application is made pursuant to section 21(2) of the *Agricultural Land Commission Act*.

BACKGROUND INFORMATION:

Local Government:

City of Chilliwack

Legal Description of Property:

PID: 013-528-581

Parcel E, South West 1/4, Section 34, Township 26, Reference Plan 3991, New Westminster District

Purchase Date:

April 1970

Location of Property:

48255 Chilliwack Central Road, Chilliwack

Size of Property:

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

Present use of the Property:

Nursery, residence, nursery related buildings

Surrounding Land Uses:

WEST: Agriculture
SOUTH: Chilliwack Central Road, Agriculture
EAST: Agriculture
NORTH: Agriculture and railway

Agricultural Capability:

Data Source: Agricultural Capability Map # 92H/4 e
The majority of the property is identified as having Prime Dominant ratings.

Official Community Plan and Designation:

OCP: None
Designation: AG - Agricultural

Zoning Bylaw and Designation:

Zoning: None
Designation: AL (Agriculture - Lowland)
Minimum Lot Size: 7.5 ha

PREVIOUS APPLICATIONS:

Application #09647-0

Applicant: Mathies, John and Ellen
Decision Date: December 20, 1979
Proposal: Use 0.2 ha area for agricultural sales (i.e.)nursery stock etc. on a year round basis.
Decision: Allowed.

LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:

Council:

The City of Chilliwack Council forwarded the application with a recommendation of support.

Local Government Staff:

Staff recommended that the City Council forward the application with a recommendation of support.

STAFF COMMENTS:

It is recommended that the Commission consider the following:

- It seems that the applicant qualifies for consideration under the *Homesite Severance Policy*. However, the Commission is waiting for proof of ownership and occupation of the property as a permanent place of residence since December 21, 1972.
- An onsite visit to the property would assist the Commission in ascertaining whether the homesite severance is appropriate and if approved, where it would be best located.

ATTACHMENTS:

1. Base Map
2. Agricultural Capability Map
3. Constituent Map
4. Aerial Photograph
5. Proposed Subdivision Layout

END OF REPORT



Signature

March 28/2007
Date