



**Agricultural Land Commission**  
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August 1, 2007

Reply to the attention of Brandy Ridout  
ALC File: # G - 37415

Frank Schell  
2270 Hollywood Road  
Kelowna, BC V1X 4P6

Dear Mr. Schell:

Re: Application to subdivide land in the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 357/2007 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:

Erik Karlsen, Chair

cc: City of Kelowna (#A06-0025)

Enclosure: Minutes

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## MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

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A meeting was held by the Provincial Agricultural Land Commission on July 20, 2007 in Vernon, BC.

**PRESENT:** Sue Irvine Chair, Okanagan Panel  
Monika Marshall Chair, Kootenay Panel  
Erik Karlsen Chair, ALC  
Brandy Ridout Staff

**ABSENT:** Sid Sidhu Commissioner

### For Consideration

**Application:** # G - 37415  
**Applicant:** Frank Schell, Executor for the Estate of Steven Feth  
**Agent:** Benson Edwards LLP  
**Proposal:** To subdivide a 0.3 ha lot in lieu of a homesite severance from the 4 ha property. Carrie Feth's father Steven Feth died four years ago, but qualified for consideration under *Homesite Severance Policy*, having purchased the property in 1967.  
**Legal:** PID: 012-394-262  
Lot 10, Section 36, Township 26, ODYD, Plan 425  
**Location:** 1304 Morrison Road, Kelowna

### Site Inspection

A site inspection was conducted on July 20, 2007. Those in attendance were:

- Sue Irvine Chair, Okanagan Panel
- Monika Marshall Chair, Kootenay Panel
- Erik Karlsen Chair, ALC
- Brandy Ridout Staff
- Frank Schell Executor for the Estate of Steven Feth
- Michael Dirk Lawyer

Mr. Schell confirmed that the staff report dated July 5, 2007 was received and no errors were identified.

### 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**

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 majority of the soil of the subject property is 70% Class 1 and 30% Class 3 with limitations of soil moisture deficiency and stoniness.

Class 1 – Land in this class either has no or only very slight limitations that restrict its use for the production of common agricultural crops.

Class 3 – Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.

### **Assessment of Agricultural Suitability**

The Commission assessed whether 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. As the Commission believes subdivision of small lots in the ALR to be deleterious to agriculture, it is not eager to allow their creation. The *Homesite Severance Policy* allows special consideration for farmers who have owned their land before December 21, 1972.

The Commission recognized that while Steven Feth purchased the property in 1967, he passed away in 2003. The Estate or heirs are not eligible to request a subdivision pursuant to the *Homesite Severance Policy*.

### **Conclusions**

1. That consideration pursuant to the *Homesite Severance Policy* is not applicable.
2. That the land under application has agricultural capability and is appropriately designated as ALR.
3. That the land under application is suitable for agricultural use.
4. That the proposal will impact agriculture.
5. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

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Application # G-37415

**IT WAS**

**MOVED BY:** Commissioner Marshall

**SECONDED BY:** Commissioner Irvine

THAT the application to subdivide a 0.3 ha lot in lieu of a homesite severance from the 4 ha property be refused.

**CARRIED**

**Resolution # 357/2007**



**Staff Report**  
**Application # G – 37415**  
**Applicant: Frank Schell (executor for the estate of Steven Feth)**  
**Agent: Benson Edwards LLP**  
**Location: Kelowna**

**DATE RECEIVED:** May 8, 2007

**DATE PREPARED:** July 5, 2007

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

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

**PROPOSAL:** To subdivide a 0.3 ha lot in lieu of a homesite severance from the 4 ha property. Carrie Feth's father Steven Feth died four years ago, but qualified for consideration under *Homesite Severance Policy*, having purchased the property in 1967.

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

**BACKGROUND INFORMATION:**

In 2004, the Commission allowed a subdivision, in lieu of homesite severance, for Kathy Feth based on her deceased father's qualification for consideration under the *Homesite Severance Policy*. Kathy Feth (who is the sister of the deceased Steven Feth) indicated that her and Steven's father had been severely injured in a 1985 accident and was not able to conclude his affairs before he died. She claimed that he would likely have, but was not able to, apply for homesite severance.

**Local Government:**

City of Kelowna

**Legal Description of Property:**

PID: 012-394-262  
Lot 10, Section 36, Township 26, Osoyoos District Land District, Plan 425

**Purchase Date:**

June 1967 (purchased by Steven Feth)

**Location of Property:**

1304 Morrison Road, North East Rutland, Kelowna

**BACKGROUND INFORMATION (continued):**

**Size of Property:**

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

**Present use of the Property:**

Three homes - a 1,500 sq ft 1973 home, a 900 sq ft home (40 years or older), and an 1,100 sq ft home moved onto the property in the late 1970's. The remainder of the land is fallow.

**Surrounding Land Uses:**

**WEST:** 4 ha property cultivated for ground crops  
**SOUTH:** non ALR, and ALR small holdings  
**EAST:** Small residential lots in the ALR,  
**NORTH:** 4 ha farm parcel in the ALR, in hay production

**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:**

OCP Designation: Agriculture

**Zoning Bylaw and Designation:**

Zoning Designation: A1 - Agriculture Zone  
Minimum Lot Size: 4.0 ha (Except 2.0 ha within the ALR)

**PREVIOUS APPLICATIONS:**

No previous applications have been considered on the subject property.

**RELEVANT APPLICATIONS:**

**Application #35153-0**

**Applicant:** Kathy Feth  
**Decision Date:** March 3, 2004  
**Proposal:** To subdivide a 1 ha lot from the 4 ha subject property.  
**Decision:** Refused on the grounds subdivision would reduce the agricultural capability of the property.

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**Application #35153-1**

**Applicant:** Kathy Feth  
**Decision Date:** September 24, 2004  
**Proposal:** To subdivide a 0.2 ha lot from the 4 ha property in lieu of subdivision of a homesite lot under the *Homesite Severance Policy*. The applicant claims that her father was unable to apply for Homesite Severance because he was infirm mentally and physically, and he wife was also incapable of applying because she did not have a working command of English.  
**Decision:** Allowed subject to the standard Homesite Severance conditions, including fencing/buffering the homesite.

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**LOCAL GOVERNMENT RECOMMENDATIONS/COMMENTS:**

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

**City of Kelowna Agricultural Advisory Committee:** Support.

**City of Kelowna staff:** Support, citing precedent.

**STAFF COMMENTS:**

- The death of the landowner generally eliminates their qualification for consideration under the *Homesite Severance Policy*. However, the Commission did allow the subdivision in lieu of Homesite Severance for the sister of the deceased (Kathy Feth) on the grounds that their father (who owned his property prior to 1972) was debilitated by a severe injury for a long time before he died, and because the landowner's spouse did not have a working command of English.
- No information has been submitted indicating that Stephen Feth was unable to apply for Homesite Severance prior to his death.
- Staff does not support, in principle, permitting subdivision in lieu of Homestie Severance to the children of deceased landowners because the intent of the policy was to benefit the retiring farmer(s) who owned the land prior to the establishment of the Agricultural Land Reserve.
- Should the Commission see fit to allow the subdivision, it is recommended that the homesite lot be decreased to 0.2 ha to be consistent with the previous decision in the area and that one of the remaining older homes be demolished.

**ATTACHMENTS:**

- ALC Context map (1:20,000)
- Applicant's sketch plan

**END OF REPORT**

  
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Signature

  
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Date