



**Agricultural Land Commission**  
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November 23, 2007

Reply to the attention of Jennifer Carson  
ALC File: O-37443

Hendrik Malenstyn  
6556 - 60th Avenue  
Delta, BC  
V4K 4E2

Dear Mr. Malenstyn:

**Re: Application to Subdivide land in the Agricultural Land Reserve**

Please find attached the Minutes of Resolution # 378/2007 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

  
Erik Karlsen, Chair

cc: The Corporation of Delta (LU02001)

Enclosure: Minutes



**A meeting was held by the Provincial Agricultural Land Commission on November 6, 2007 in Delta, B.C.**

<b>PRESENT:</b>	Sylvia Pranger	Chair, South Coast Panel
	Michael Bose	Commissioner
	John Tomlinson	Commissioner
	Tony Pellett	Staff
	Jennifer Carson	Staff

### **For Consideration**

Application: # O- 37443  
Applicant: Hendrik (John) Malenstyn  
Proposal: Subdivision for a Relative: The proposal is for the creation of two lots on the 3.4 ha lot under homesite severance. One lot at approximately 0.3 ha for the applicant's son and the remaining 3.1 ha portion would continue to be used for farming.  
Legal: PID: 011-912-812  
Lot 5, New Westminster District, Except The East 70.41 Feet;  
Section 12, Township 6, Plan 779  
Location: 6620 - 60th Avenue, Delta

### **Site Inspections**

A site inspection was conducted on July 10, 2007. Those in attendance were:

- Sylvia Pranger Chair, South Coast Panel
- Michael Bose Commissioner
- John Tomlinson Commissioner
- Tony Pellett Staff
- Jennifer Carson Staff
- Ken Malenstyn Applicant's son

The Commissioners and Staff met with the applicant's son on the subject property to discuss the application. Ken Malenstyn showed the Commissioners the area proposed for subdivision. The applicant and Mrs. Malenstyn still operate the farm. The subject property is currently used for growing beans. There are three adjacent properties (two 4 ha lots and one 3.6 ha lot) which make up the farm as well as a 7 ha property across the road. It was explained that the applicant wanted to allow his son to have financial freedom which would come with the subdivision.

Ken Malenstyn indicated that he was interested in hooking up to the City sewer system if possible as that would reduce the need for the septic field and therefore reduce the size of the proposed lot. While Ken Malenstyn helps out on the farm he also has his own business to run. The property has been part of a dairy farm and the feasibility of farming cranberries has also been explored. The applicant intends to continue farming on the balance of the subject property.

When asked by the Commissioners whether consolidation of two of the larger properties would be considered in return for the residential lot, Ken Malenstyn mentioned that his father would be unlikely to agree to consolidation. Mr. John Malenstyn, the applicant, confirmed this information in a subsequent telephone discussion with Commission Staff.

A second site inspection was conducted on September 24, 2007 as the Commission wished to discuss the proposal with the applicant who was unable to attend the first meeting. Those in attendance were:

- Sylvia Pranger                      Chair, South Coast Panel
- Michael Bose                        Commissioner
- John Tomlinson                     Commissioner
- Tony Pellett                         Staff
- Jennifer Carson                    Staff
- Maureen Malenstyn               Applicant
- John Malenstyn                     Applicant
- Ken Malenstyn                     Applicant's son

During this second meeting on the property, the Commission walked with the applicant and his family to the location of the proposed subdivision. Many of the items that had been discussed at the previous meeting were mentioned. It was discussed that the son's house was built with the future intent of both Mr. and Mrs. Malenstyn forgoing their right under the *Homesite Severance Policy* in favour of subdividing a small lot around their son's house. The house was sited as close to the corner of the existing farm as possible so as not to compromise the farm use of the balance of the property. However, due to issues with the GVRD and Fraser Health Authority who are not permitting Ken Malenstyn to hook his house up to the City sewer, the existing septic field needs to be subdivided with the house. Mr. and Mrs. Malenstyn reiterated that they are willing to forgo their rights to a homesite severance in lieu of the Commission permitting their son to have the homesite severance instead. Consolidation of the larger lots in lieu of the creation of the smaller lot was also brought up by the Commission; however, Mr. Malenstyn indicated that he did not think that this was necessary.

### **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 improved ratings for the agricultural capability of the soil of the subject property are

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 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.

#### Subclasses

N salinity  
W excess water

#### **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.

#### **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 subject property is only 3.6 ha, the Commission believes that it would be detrimental to agriculture to create a residential subdivision. The Commission also noted that Ken Malenstyn is not farming the property. The Commission believes the proposal as presented would adversely impact existing or potential agricultural use of surrounding lands.

#### **Assessment of Other Factors**

While the Commission can appreciate that the applicant has made plans for the future of his property attempting to reduce the impact on agriculture as much as possible, the Commission cannot consider the application as a subdivision under the *Homesite Severance Policy* as the proposed parcel will not be the principal residence of the owner as required in the Policy. It is important to note that the homesite severance does not necessarily accommodate transfers of the homesite severance to other family members.

For reference the Policy states the following:

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 Section 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;
- c. a prime concern of the Commission will always be to ensure that the "remainder" will constitute a suitable agricultural parcel.

## **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 impact agriculture.
4. That while the applicant qualifies for consideration under the *Homesite Severance Policy*, the proposed subdivision does not satisfy the requirements of the policy.
5. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

## **IT WAS**

**MOVED BY:** Commissioner Pranger

**SECONDED BY:** Commissioner Bose

THAT the application be refused as proposed.

However, the Commission may be in the position to revisit the matter should you wish to submit a revised proposal that:

- Creates the smallest lot possible surrounding Ken Malenstyn's home.
- Connects Ken Malenstyn's lot to the municipal sewer system.
- Consolidates the balance of the property with the property immediately adjacent to the west.

## **CARRIED**

**Resolution # 378/2007**