



Agricultural Land Commission
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August 4, 2009

Reply to the attention of Brandy Ridout
ALC File: #T-37924
Your file: 30160-001

James D. Cotter
Nixon Wenger Lawyers
4th Floor, CIBC Building
3201-30th Avenue
Vernon, BC V1T 2C6

Dear Mr. Cotter:

Re: Request for Reconsideration of Resolution #252/2008

Please find attached the Minutes of Resolution #500/2009 outlining the Commission's decision as it relates to the above noted application. As agent it is your responsibility to notify your clients accordingly.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Erik Karlsen', is written over the 'Per:' label.

Erik Karlsen, Chair

cc: Regional District of North Okanagan (07-0265-D-ALR)

Enclosure: Minutes

BR
i/37924d2



MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on June 17, 2009 at the Ministry of Agriculture and Lands office, located at 4607 - 23rd St, Vernon, BC.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Sid Sidhu	Commissioner
	Gordon Gillette	Commissioner
	Brandy Ridout	Staff

For Consideration

Application: #T-37924
Applicant: Vincenzo and Marinella d'Errico
Original: To subdivide the 37 ha subject property into five (5) lots of 7.4 ha for
Proposal: hobby farms or other uses as permitted under the current zoning.
Decision: Refused
Legal: PID: 005-213-959
Location: Lot 1, District Lot 17, Osoyoos Division Yale District, Plan 37372
2545 Highway 6, Lumby

In a letter dated May 22, 2009, the applicants' lawyer submitted that the Commission was in error in finding that the reconsideration request did not meet the requirements of Section 33 of the *Agricultural Land Commission Act*.

The Commission recalled that it had reviewed a reconsideration request and the file material at its March 26, 2009 meeting. At that time, it was determined that the submission did not contain new evidence that was unavailable at the time of its original decision, nor was evidence provided that the decision was based on information that was in error or false. As such, the submission was determined not to meet the requirements of Section 33 of the *Act* and a reconsideration was not appropriate.

The May 22, 2009 letter indicated that new information originally submitted October 22, 2008 had included:

- The evidence of Jack Hoekstra
- A letter from Rich Fairburn confirming support
- A map showing the agricultural uses and sizes of surrounding properties
- Information about surrounding properties under 8 ha with agricultural activities taking place

And that the decision was based on information that was in error or false:

- Subdivision would lead to pressure to further subdivide
- That subdivision was not supportive of agriculture
- That the proposed subdivision is inconsistent with the objectives of the *Act*

Discussion

The Commission revisited the information that was provided on October 22, 2008 and compared it to the file information and determined that the package contained new information in that the information was provided in written form. The Commission had been informed by the applicant during the site visit that the property was leased to a

neighbour and the number of cattle had been reduced over the past years and had been advised of the Director's support of the application but had not received either in written form.

The map of agricultural uses and lot sizes was not new information as the Commission was familiar with the agricultural operations and lot sizes in the area when the decision was made.

With regard to the submission that the decision was based on information that was in error or false, the Commission wished to address the three points outlined in the May 22, 2009 letter.

It is indicated that the finding by the Commission that subdivision would lead to pressure to further subdivide the smaller properties was in error as the applicant had suggested as part of the subdivision process to register a covenant on title for preventing further subdivision. The Commission was aware of this suggestion and also that further subdivision could not be allowed except through a new application and its own approval. However, neither of these facts completely prevent the potential for subdivision pressure that arises when a property is permitted to be subdivided once.

As a second point, it is indicated that the finding that subdivision of the larger south facing hillside parcel into smaller 7 ha lots in the Coldstream Valley is not supportive of agriculture, is false. It is submitted that there are numerous properties in the immediate vicinity which are less than 8 ha and yet are farmed at a much greater intensity and have much more agricultural value than the subject property. The Commission believes that there are factors other than size that influence the level of farming on a given property, such as an owner's interest in agriculture and vicinity to markets. In addition, creating additional lots allows for the construction of additional homes, driveways, septic fields, garages, etc. – all of which remove agricultural land from production. Subdivision of additional lots also introduces concerns about rural residential intrusion into this farm area. Considering a number of factors, in this case, the Commission believed that subdivision of the subject property was not supportive of agriculture.

Finally, it is indicated that the Commission's finding that the proposed subdivision is "inconsistent with the objectives of the *Agricultural Land Commission Act* to preserve agricultural land" is in error. The presumption of the Commission that subdivision is contrary to agricultural goals is not based in fact and is contrary to the factual use being made of agricultural properties in the surrounding area. The Commission believes that a variety of parcel sizes is necessary for agriculture as it provides an opportunity for a variety of agricultural operations to take place. In addition to the considerations above, in this case, it believes that the subject property is more useful to agriculture in its present configuration.

IT WAS

MOVED BY: Commissioner Mayer

SECONDED BY: Commissioner Sidhu

THAT for the purposes of Section 33(1) of the *Agricultural Land Commission Act*, evidence not available at the time of the original decision has become available.

THAT for the purposes of Section 33(2) of the *Agricultural Land Commission Act*, there are no persons it considers affected by the reconsideration.

THAT the application to subdivide the 37 ha subject property into five (5) lots of 7.4 ha for hobby farms or other uses as permitted under the current zoning be refused.

CARRIED
Resolution #500/2009