



Agricultural Land Commission
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August 4, 2009

Reply to the attention of Brandy Ridout
ALC File: #H-38085

Derek McManus Law Corporation
Box 57, 450 Lakeshore Dr. NE
Salmon Arm, BC V1E 4N2

Dear Mr. McManus:

Re: Request for Reconsideration of Resolution #697/2008

Please find attached the Minutes of Resolution #501/2009 outlining the Commission's decision as it relates to the above noted application.

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

Enclosure: Minutes

BR
i/38085d2



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: #H-38085
Applicant: Blackwood Creek Farms Ltd
Proposal: To subdivide the 44.5 ha subject property into two lots - 17.1 ha and 27.4 ha - along a topographic break.
Legal: That part of the South ½ of the South ½, Lying to the West of the West Bank of Shuswap Lake of Section 32, Township 21, Range 8, W6M, Kamloops Division Yale District, EXCEPT Plan 4728 (PID: 003-723-003)
Location: Sunnybrae Canoe Point Road, Canoe Point area
Decision: Refused as proposed, however, the Commission would allow the subdivision of the 27.4 ha lot subject to the consolidation of two other lots owned by the applicant
Resolution # 697/2008

Discussion

The applicant made the following points, each of which was addressed by the Commissioners.

1. Incomplete onsite review and discussion.

It should be noted that Section 25(4) of the *Agricultural Land Commission Act* states "in deciding an application referred to in subsection (1), the commission may meet with the applicant or may make a decision on the basis of written representation only." As such, a site inspection is not required. The applicant was informed by e-mail that the site visit would last approximately 30 minutes. While limited by a schedule, the Commissioners spend as much time on a property as they feel is necessary. If a property can be viewed by vehicle more quickly/easily than on foot, this is done.

2. Information package provided by applicant – uncertain whether this was provided to Commissioners.

All information provided by the applicant before the site visit was presented to the Commissioners for their review before the site visit.

3. No grazing areas throughout as stated in decision.

The word "throughout" was used to describe the slopes, gullies and grazing areas. It was meant to indicate that the property contained all of these features, not that all features were in all areas of the property.

4. Agricultural Land Commission Staff Report not reviewed as suggested in decision.

As a standard procedure, receipt of the staff report is confirmed and the applicant is asked if it was correct at the start of every site visit.

5. Chair, Okanagan Panel, not present.

Roger Mayer, Chair of the Okanagan Panel, was present at the site inspection and attended the complete three day trip from October 6-8, 2008. The Chair of the Agricultural Land Commission, Erik Karlsen, was not at the site visit as he did not travel with the Okanagan Panel on its October 2008 trip.

6. Wrong applicant and inability to consolidate.

The Commission acknowledges that it mistakenly interchanged Blackwood Creek Farms Ltd. and Derek McManus, President of Blackwood Creek Farms Ltd. when it indicated that "five other properties in the area are owned by the applicant."

7. Characteristics of East-West slope.

The 4.8 ha lakeshore Peznick property was approved for subdivision (and later 3.4 ha was excluded) on the grounds that the land had limited capability for agriculture due to steep topography, small size, configuration and location. It was not based on topography alone but a combination of factors. In its discussions on the proposal on the subject property, the Commission noted that for the type of agriculture that is possible on lands such as the subject property, the break was not extreme enough to warrant subdivision.

8. Creek location not reviewed.

The creek is evident on available air photos.

9. Consolidation merits and fairness.

The applicant indicates that it is incorrect to conclude that consolidation benefits agriculture. It should be noted that consolidation was offered as an option that would reconfigure the existing lots to maintain the same number of parcels, not reduce the number of parcels. The Commission believed that creating an additional lot was not in the best interest of agriculture and so refused the application as proposed. However, it suggested a possible reconfiguration, indicating that it would be open to alternate configurations. It should also be noted that the Commission has refused subdivision proposals in the past but allowed an alternate subdivision where consolidation with a property not owned by the applicant was required.

10. Support of agriculture requires looking at more than just the land.

When making decisions on applications on properties in the ALR, the Commission considers what is best for the property in the long-term. Although it acknowledges Derek McManus' work on the property and surrounding properties in terms of agriculture, it does not believe it to be a reason to allow subdivision.

11. Non-agricultural pressures on land.

The Commission is aware that lakeshore areas in the province are under pressure for recreation.

12. Inconsistency causing unfairness to the applicant.

All applications are considered on their own merits.

13. Local knowledge of Regional District.

The Regional District has a different mandate than the Agricultural Land Commission and therefore different considerations when passing a Resolution on a proposal. The Agricultural Land Commission has agriculture as its prime concern.

14. Requests.

The Commission reconsidered the proposal to subdivide the 44.5 ha subject property into two lots - 17.1 ha and 27.4 ha - along a topographic break.

After reviewing all of the material provided with the reconsideration request and the file information, the Commission agreed to undertake a reconsideration based on #6 above as evidence not available at the time of the original decision had become available and all or part of the original decision was based on evidence that was in error or was false.

The Commission noted that it had refused the subdivision request on its own merits as it did not believe that creating an additional lot was in the best interest of agriculture. However, it had agreed to allow a reconfiguration of the subject property with adjacent lands to make parcels that would be beneficial to agriculture. If an alternate decision cannot be pursued for whatever reason, this does not affect the original decision to refuse the application as proposed. The Commission maintained the belief that creating an additional lot was not in the best interest of agriculture.

IT WAS

MOVED BY: Commissioner Sidhu
SECONDED BY: Commissioner Mayer

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 and all or part of the original decision was based on evidence that was in error or was false.

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 44.5 ha subject property into two lots - 17.1 ha and 27.4 ha - along a topographic break be refused.

CARRIED

Resolution #501/2009