



Agricultural Land Commission
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January 21, 2009

Reply to the attention of Terra Kaethler
ALC File: J-38420

Gar Clapham
PO Box 22 - 3377 Shawnigan Lake Road
Cobble Hill, BC V0R1L0

Dear Mr. Clapham:

Re: Reconsideration Request for Non-Farm Use in the Agricultural Land Reserve

Please find attached the Minutes of Resolution # 1/2009 outlining the Commission's decision as it relates to the above noted application.

Please send a copy of the draft covenant to this office for review. If acceptable, we will advise you to submit the covenant to be registered for execution.

When the Commission confirms that all conditions have been met, it will authorize the commencement of the construction of the second dwelling.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

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

Erik Karlsen, Chair

Enclosure: Minutes/Sketch Plan

cc: Cowichan Valley Regional District (1-C-08-ALR)
BC Assessment

TK/
i/38420d2.doc



A meeting was held by the Provincial Agricultural Land Commission on January 14, 2009 in Campbell River, B.C.

PRESENT:	Lorne Seitz	Chair, Island Panel
	David Craven	Commissioner
	Jennifer Dyson	Commissioner
	Terra Kaethler	Staff
	Roger Cheetham	Staff

For Consideration

Application: # J- 38420-1
Applicant: Gar Clapham
Proposal: To reconsider the application to approve a dwelling of up to 800 square feet on a foundation consistent with the requirements of the local government and to remove the condition that the occupancy be limited to the applicant's mother and that the dwelling be removed when it is no longer occupied.
Legal: PID: 008-892-547
Location: Lot 1, Section 10, Range 5, Shawnigan District, Plan 45892
3377 Shawnigan Lake Road

Site Inspection

No site inspection was conducted.

Discussion

The Commission reviewed the applicant's request for reconsideration and the original file material. The Commission determined that the applicant's submission met the requirements of *Section 33* of the *Agricultural Land Commission Act* (the "Act") and as such, that reconsideration was warranted.

The Commission determined that it was prepared to revise its original decision on two accounts as requested by the applicant. It was prepared to increase the size of the dwelling to 800 square feet, based on the original proposal. In addition, it was prepared to remove the condition for a temporary foundation to meet the local government building code requirements.

In regards to the applicant's third request, that no restrictions be placed on occupancy or permanency of the dwelling, the Commission's view remained unchanged. The Commission believed that, due to the small size of the property and the lack of demonstrated agricultural activity on the property, a permanent second dwelling was not warranted on the subject property.

As such, the Commission confirms the original decision that the second dwelling be allowed for the applicant's mother only and that it is to be removed once the dwelling is no longer occupied by the applicant's mother. The Commission was of the view that this condition is necessary to decrease any negative impact of the proposal on existing or potential agricultural use of the subject property or surrounding lands. Without this condition, any

landowner in the ALR might consider that second dwellings could exist on any property, whether there is an agriculture rationale or not.

Further, the Commission believed that the applicant had several other options available, including the building of a secondary suite or the placement of a modular home for a family member, which are permitted uses under the *Agricultural Land Commission Act Regulations*, should he wish to do so.

IT WAS

MOVED BY: Commissioner Seitz

SECONDED BY: Commissioner Dyson

THAT the reconsideration request met the requirements of Section 33 of the *ALC Act*;

AND THAT the approval is subject to the following revised conditions:

- That the second dwelling be limited to a maximum of 800 square feet and in the location proposed in the application.
- That the second dwelling be placed on a foundation in accordance with the local government building code.
- That a covenant be registered on the title of the property to ensure that the residential use of the second dwelling be limited to the applicant's mother.
- That the covenant also include notation that the second dwelling and its foundation be removed from the property when it is no longer occupied by the applicant's mother and that the soils be returned to their original condition.
- Approval for non-farm use is granted for the sole benefit of the applicant and is non-transferable.

AND THAT the applicant be advised of the provisions of Section 33 of the *Agricultural Land Commission Act* which provides an applicant with the opportunity to submit a request for reconsideration.

- S.33 (1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that*
- (a) evidence not available at the time of the original decision has become available,*
 - (b) all or part of the original decision was based on evidence that was in error or was false.*
- (2) The commission must give notice of its intention to reconsider a decision under subsection (1) to any person that the commission considers is affected by the reconsideration.*

AND THAT the applicant be advised that a revised proposal does not constitute new information and will not be considered as a basis for reconsideration and the time limit for submitting a request for reconsideration is one (1) year from the date of the decision letter.

This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

CARRIED

Resolution # 1/2009