



Agricultural Land Commission
133-4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

April 15, 2010

Reply to the attention of Brandy Ridout
ALC File V-38877

Mark Wendenburg
4203 ValleyView Road
Penticton, BC, V2A8V8

Dear Mr. Wendenburg:

Re: Request for Reconsideration

This is further to your letter of November 15, 2009 in which you asked the Provincial Agricultural Land Commission to reconsider Resolution #241/2009.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #2405/2010 outlining its latest decision.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

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

Erik Karlsen, Chair

Enclosure: Minutes

BR/
38877d2



A meeting was held by the Provincial Agricultural Land Commission on March 16, 2010 at the Ministry of Agriculture and Lands Office, located at 200-1690 Powick Road, Kelowna, B.C.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Gerry Zimmermann	Commissioner
	Brandy Ridout	Staff
	Martin Collins	Staff

For Consideration

A letter from Mark Wendenburg was received requesting that the Commission reconsider its decision recorded as Resolution #241/2009. It indicated that it is unrealistic for future generations to have a no-build covenant placed on the property because there are portions of the property that are not worthy of agricultural use and the property is so close to Penticton.

Application:	#V-38877
Applicant:	Edith Wendenburg
Agent:	Mark Wendenburg
Legal:	That Part of Block 237 Outlined Red on Plan B4253; District Lot 190, Similkameen Division Yale District Plan 466, EXCEPT Plans 6527 and 11149 (PID: 012-323-993)
Location:	4201 Valleyview Road, Penticton
Proposal:	To subdivide a 1.4 ha lot from the 11.2 ha subject property under the <i>Homesite Severance Policy</i> .
Original decision	<p>Allowed on the grounds that the area proposed for subdivision has limited agricultural potential, subject to the following conditions:</p> <ul style="list-style-type: none"> • The subdivision be in substantial compliance with the plan submitted with the application. • The registration of a covenant against the 9.8 ha remainder limiting the number of residences to one. • Compliance with the <i>Homesite Severance Policy</i>. • Commission approval is obtained for an increase in the size of the homesite lot or a change in its location deemed necessary by other approval agencies. <p>Approval for a homesite severance subdivision is granted for the sole benefit of the applicant and is non-transferable.</p>
Resolution	#241/2009
Reconsideration request	To remove the requirement for the registration of a no-build covenant on the agricultural remainder limiting the number of dwellings to one.

Site Inspection

A site inspection was conducted for the original application on June 15, 2009. Those in attendance were:

- Roger Mayer Chair, Okanagan Panel
- Sid Sidhu Commissioner
- Gordon Gillette Commissioner

- Brandy Ridout Staff
- Edith Wendenburg Applicant
- Mark Wendenburg Agent

A site inspection was not conducted for the reconsideration request.

Context

The proposal was considered under Section 33 of the Agricultural Land Commission Act (the "Act") which states:

- S33(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, or
 - (c) a recommendation by a facilitator under section 13 relating to a dispute warrants a reconsideration of the original decision.

The Commission believed that the applicant had provided evidence that was not available at the time of the original decision and so reconsidered the application.

Discussion

The Commission considered the reason that it had required a no-build covenant on the agricultural remainder. It recalled that as there was already a house on the proposed remainder and limited areas that could be used for agriculture, it believed the registration of a no-build covenant against the 9.8 ha lot would preserve the most land for agricultural use and prevent the future request for an additional subdivision. The Commission considered the applicant's request to remove the no-build covenant requirement. It believed that the covenant was necessary to preserve as much of the agricultural land on the property as possible, however, it believed that if the covenant was only registered against the ALR portion of the property, the agricultural use of the property would be maintained. As such, the Commission refused the request to remove no-build covenant from the agricultural remainder altogether but would allow the requirement to be modified to only include the ALR portions of the agricultural remainder.

IT WAS

MOVED BY: Commissioner Mayer
SECONDED BY: Commissioner Zimmermann

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

AND THAT the request to remove the requirement for the registration of a no-build covenant on the agricultural remainder limiting the number of dwellings to one be refused. However, the Commission would allow the requirement to be modified to the registration of a covenant against the ALR portion of the 9.8 ha remainder limiting the number of residences to one.

AND THAT the other conditions of Resolution #241/2009 still apply.

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 #2405/2010