



Agricultural Land Commission
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December 16, 2009

Reply to the attention of Brandy Ridout
ALC File #T-38977

Tom Smithwick
Porter Ramsey LLP
200- 1465 Ellis Street
Kelowna, BC V1Y 2A3

Dear Mr. Smithwick:

Re: Request for Reconsideration

This is further to your letter of November 9, 2009 in which you asked the Provincial Agricultural Land Commission to reconsider Resolution #303/2009.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #1730/2009 outlining its latest decision. As agent, it is your responsibility to notify your clients accordingly.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

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

Erik Karlsen, Chair

cc: Regional District of North Okanagan (08-0730-F-ALR)

Enclosure: Minutes

BR/
38977d2



A meeting was held by the Provincial Agricultural Land Commission on November 27, 2009 at the Ministry of Agriculture and Lands Office, located at 200-1690 Powick Road, Kelowna, B.C.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Sid Sidhu	Commissioner
	Brandy Ridout	Staff
	Martin Collins	Staff

For Consideration

A letter from Tom Smithwick was received requesting that the Commission reconsider its decision recorded as Resolution #303/2009. It indicated that the condition is too onerous and could jeopardize a rather generous gift to a nature trust.

Application:	#T-38977
Applicant:	Tilman and Mae Nahm
Agent:	Browne Johnson & Associates
Original proposal:	To subdivide a 3.7 ha lot from the 14.1 ha subject property. The 3.7 ha area is divided from the remainder of the property by the railway and has never been used as part of the farm. The applicant intends to transfer the lot to the Nature Trust.
Original decision:	Refused as proposed, however, the Commission would allow the subdivision of the 3.7 ha lot subject to the registration of a covenant against the titles of the 10.4 ha remainder and the adjoining NW1/4, Section 31 prohibiting their separate sale, that the 3.7 ha lot be transferred to the Nature Trust upon subdivision and the subdivision must be completed within three years.
Current proposal:	To remove the requirement for a covenant to be registered against the title of the subject property and that of the NW1/4, Section 31 that prohibits their separate sale.
Legal:	PID: 004-695-062 That part of the North East ¼ of Section 31, Township 19, Range 8, West of the 6th, Kamloops Division Yale District Described as Follows Commencing; at the North West Corner of the Said 1/4 Section...
Location:	Old Sicamous Road, Grindrod

Site Inspection

A site inspection was not conducted for the original application or the reconsideration.

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

Discussion

The Commission recalled the e-mail that had been received from Brian Sansom, the applicants' agent, in response to an e-mail from ALC staff that had inquired as to the possibility of consolidation of the remainder with the NW1/4, Section 31 or inclusion of the non-ALR portion of the subject property that is cleared and used for agriculture. Mr. Sansom replied that he had spoken with Mr. Nahm regarding the two questions and that his client had indicated that "he would not be comfortable with modifying the existing ALR boundary from its present location but is prepared to consolidate the remainder of the property west of the rail tracks with the to the west." As such, the Commission believed that the applicant was amenable to the consolidation. As this is not the case, the Commission has no objection to removing the consolidation condition.

IT WAS

MOVED BY: Commissioner Mayer

SECONDED BY: Commissioner Sidhu

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 a covenant to be registered against the title of the subject property and that of the NW1/4, Section 31 that prohibits their separate sale be approved.

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 #1731/2009