



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

June 25, 2012

Reply to the attention of Liz Sutton
ALC File: S-38893

Gene and Gloria Martini
P.O. Box 152
Errington, BC V0R1V0

Dear Mr. and Mrs. Martini:

Re: Request for Reconsideration

Please find attached the Minutes of Resolution #191/2012 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Brian Underhill, Executive Director

Enclosure: Minutes of Resolution #191/2012

cc: JE Anderson & Associates
1A - 3411 Shenton Road, Nanaimo, BC V9T 2H1
Attention: Mr. David Wallace
Regional District of Nanaimo (File: 6635 04 0903)
6300 Hammond Bay Road, Nanaimo, BC V9T 6N2

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PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on May 14, 2012 in the Main Boardroom of the Operating Engineers Building located at #402 – 4333 Ledger Avenue, Burnaby, B.C.

COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Gordon Gillette	Vice-Chair
Sylvia Pranger	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner
Jerry Thibeault	Commissioner
Lucille Dempsey	Commissioner
Denise Dowswell	Commissioner
Jim Collins	Commissioner

COMMISSION STAFF PRESENT:

Martin Collins	Regional Planner
Gordon Bednard	Land Use Planner
Colin Fry	Executive Director

REQUEST FOR RECONSIDERATION

The Commission received a letter dated February 16, 2012 requesting a meeting with the Commission to discuss a reconsideration of its decision recorded as Resolution #1907/2009, by which, the proposal to subdivide land in the ALR was refused.

Application: #S-38893

Applicants: Gene and Gloria Martini

Original Proposal: To subdivide the 2.7 ha property into one (1) 1.1 ha lot and one (1) 1.6 ha lot.

Original Decision: Refused as proposed on May 25, 2009 (Resolution #235/2009).

2nd Decision: Refused as proposed on reconsideration on December 18, 2009 (Resolution #1907/2009).

3rd Decision: Note: In a June 1, 2010 letter from Mr. David Wallace of JE Anderson & Associates the proposal was amended to a subdivision into one (1) 0.77 ha lot and one (1) 2.0 ha lot. The reconsideration request of the amended proposal was denied on December 7, 2010.

Current Request: Reconsideration of the proposal as amended on June 1, 2010 to subdivide the property into one (1) 0.77 ha lot and one (1) 2.0 ha lot.

Legal: PID: 003-757-366
Lot 1, District Lot 139, Nanoose District, Plan 18583

Location: Southwest corner of the intersection of Ruffles and Leffler Roads, Errington

MEETING WITH APPLICANTS

The Commission members recorded above met with Mr. and Mrs. Martini and their agent, Mr. David Wallace of JE Anderson & Associates, Surveyors & Engineers on Monday, May 14, 2012. The majority of the meeting was given over to the Martinis to provide them with the opportunity to present their arguments in support of the reconsideration request.

LEGISLATIVE CONTEXT FOR RECONSIDERATION

Section 33 of the *Agricultural Land Commission Act* provides:

- 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.
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DECISION REGARDING THE REQUEST FOR RECONSIDERATION

The Commission believes Mr. and Mrs. Martini have provided evidence that was not available at the time of the previous decisions.

As a result, it was moved by Commissioner Johnson and seconded by Commissioner Dyson that there were no persons affected by the reconsideration and that the Commission reconsider Resolution #1907/2009. The motion was unanimously approved.

CONCLUSIONS REGARDING THE RECONSIDERATION

After considering the information provided by the Martinis and Mr. Wallace at the meeting, and after reviewing the file, the Commission concluded as follows:

1. The fact that there is a second dwelling on the property is not an argument to subdivide land in the ALR. Section 18(a)(ii) of the *Agricultural Land Commission Act* provides:

- 18 Unless permitted under this Act,
- (a) a local government, a first nation government or an authority, or a board or other agency established by a local government, a first nation government or an authority, or a person or agency that enters into an agreement under the *Local Services Act* may not
 - (ii) approve more than one residence on a parcel of land unless the additional residences are necessary for farm use

While it is recognized that construction of the dwelling commenced in or about 2003 and likely did not require the involvement of the Regional District of Nanaimo, the Commission draws this section of the legislation to your attention to show you that only one (1) dwelling is permitted per property in the ALR unless additional dwellings are needed for farm help or are permitted by regulation. Based on the information available there is no farm activity occurring on the property and the property is not designated "Farm Class" by BC Assessment. Furthermore, the applicants have provided no evidence to show the second dwelling is consistent with section 3(1)(b) of BC Regulation 171/2002 (Agricultural Land Reserve Use, Subdivision and Procedure Regulation).

Conclusion: The second dwelling was not constructed for farm purposes and required the approval of the Commission as a non-farm use.

2. The Commission noted the applicants referred to section 946 of the *Local Government Act* (LGA) as a factor in support of the request to subdivide the subject property. Section 2 of the *Agricultural Land Commission Act* (ALCA) establishes primacy of the ALCA over other legislation. More specifically:
- 2(1) This Act and the regulations are not subject to any other enactment, whenever enacted, except the *Interpretation Act*, the *Environment and Land Use Act* and the *Environmental Management Act* and as provided in this Act.

The LGA is subordinate to the ALCA and as such section 946 in no way compels the Commission to approve a subdivision involving ALR land. The Commission recognizes section 946 as a tool available to local government to accommodate a subdivision for a relative where the proposed lot is smaller than the minimum lot size specified in a zoning bylaw. If a subdivision for a relative involves land in the ALR, the local government can only use section 946 if an ALR application for subdivision has first been approved by the Commission. The Commission's consideration of subdivision proposals will be done in accordance with the purposes of the Commission provided in section 6 of the ALCA:

- 6 The following are the purposes of the commission:
- (a) to preserve agricultural land;
 - (b) to encourage farming on agricultural land in collaboration with other communities of Interest.
 - (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Conclusion: The consideration of Section 946 of the LGA in support of the subdivision proposal is inconsistent with the purposes of the Commission.

3. The improved agricultural capability ratings identified on BC Land Inventory (BCLI) map 92F.029 are Class 2 and 3.

Class 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.

Class 3 – Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.

The subclass limitations associated with the improved agricultural capability ratings are:

A	soil moisture deficiency	D	undesirable soil structure
W	excess water	P	stoniness

The unimproved rating is Class 4 limited by excess water and soil moisture deficiency. While both the unimproved and improved ratings identify excess water as a limitation, the improved ratings suggest proper agricultural management practices can alleviate the limitation. The August 6, 2009 report prepared by Mr. Adam Compton of Streamline Environmental Consulting Ltd. identified the excess water issue. Mr. Compton noted that farming activities are exempt from the Riparian Areas Regulation.

Conclusion: The land has good agricultural capability and no evidence has been provided to suggest the published BCLI ratings are inaccurate. Moreover, no evidence has been provided to show what agricultural management practices have been pursued to alleviate the excess water.

IT WAS

MOVED BY: Commissioner Miles

SECONDED BY: Commissioner Dyson

THAT the decision by Resolution #1907/2009 to refuse the subdivision application be confirmed.

CARRIED

Resolution #191/2012