



AGRICULTURAL LAND COMMISSION FILE 53994

REASONS FOR DECISION OF THE OKANAGAN PANEL

Application submitted pursuant to s. 21(2) of the Agricultural Land Commission Act

Applicants:

**Reg Smith
Lynne Smith
(the “Applicants”)**

Application before the Okanagan Regional Panel:

**Gerry Zimmermann, Panel Chair
Jim Johnson
Greg Norton**



THE APPLICATION

[1] The legal description of the property involved in the application is:

Parcel Identifier: 013-585-258

The South East ¼ of Section 14, Township 41 Osoyoos Division Yale District,

Except Plan 28906

(the "Property")

[2] The Property is 42.2 ha in area with 38.2 ha being in the ALR.

[3] The Property has the civic address 1092 Creighton Valley Road.

[4] The Property is located within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Property is located within Zone 1 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 21(2) of the *ALCA* the Applicants are applying to subdivide the Property into two ~20 ha parcels, as well as offering to include the 4 ha non-ALR portion of the Property into the ALR (the "Proposal"). The Proposal along with supporting documentation is collectively (the "Application").

[7] On May 25, 2015 the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the Okanagan Regional Panel (the "Panel").

RELEVANT STATUTORY PROVISIONS

[8] The Application was made pursuant to s. 21(2) of the *ALCA*:

21(2) An owner of agricultural land may apply to the commission for a subdivision of agricultural land.

[9] The purposes of the Commission set out in s. 6 are as follows:

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; and
- (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.

EVIDENTIARY RECORD BEFORE THE PANEL

[10] The Panel considered the following evidence:

- 1. The Application
- 2. Local government documents

On January 21, 2015 the Regional District of North Okanagan (the “RDNO”) resolved to forward the Application with a recommendation that the Commission conduct a site visit.

- 3. Agricultural capability map, ALR context map and satellite imagery.

SITE VISIT

[11] On June 4, 2015, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[12] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the Applicants on July 28, 2015 (the “Site Visit Report”).

FINDINGS

Section 6 of the ALCA: First priority to agriculture

[13] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system. The improved agricultural capability rating identified on CLI map sheet 82 L/2 for the Property is Class 4 more specifically (4PT).

Class 4 - land is capable of a restricted range of crops. Soil and climate conditions require special management considerations.

The limiting subclasses associated with the Property are P (stoniness) and T (Topography).

[14] The Panel confirmed that portions of the Property have capability for agriculture while other portions are non-arable hillside.

[15] The Panel was concerned about the negative impacts to the agricultural potential of the Property arising from subdivision. The Proposal would sever the improved agricultural area, reducing the agricultural options available for both resultant parcels, and increasing the likelihood that one or both of the parcels would be used wholly for residential purposes. It is the Panel's experience that smaller lots are less likely to be used for agriculture and offer owners a narrower range of farming options.

[16] The Panel noted the Proposal, if approved, would retain the majority of the best agricultural land on one parcel, but did not believe there was merit in subdividing a rural residential parcel in this large lot area. The Panel did not believe a subdivision of the Property would preserve agricultural land or encourage farming.

However, the Panel believes that significant portions of the Property have limited agricultural value (hillside areas) and that an ALR boundary review of the Property and the surrounding area might be appropriate.



[17] The Panel did not consider the proposed inclusion of the 4 ha non-ALR portion of the Property into the ALR to have agricultural merit as the area is non-arable hillside.

DECISION

[18] For the reasons given above, the Panel refuses the Proposal to subdivide the Property into two ~20 ha parcels.

[19] Panel Chair **Gerald Zimmermann** concurs with the decision.

Commissioner **Jim Johnson** concurs with the decision.

Commissioner **Greg Norton** concurs with the decision.

[20] 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.

[21] Decision recorded as Resolution #97/2016.

A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #97/2015. The decision is effective upon release.



Colin J. Fry, Chief Tribunal Officer

March 24, 2016

Date Released