



Agricultural Land Commission
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October 28, 2016

ALC File: 54838

Novalee and Darren Reeves
1975 1st Ave South
Cranbrook, BC V1C 6Y3

Dear Mr. and Mrs. Reeves:

Re: Application to Subdivide Land in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #358/2016) as it relates to the above noted application.

Reconsideration of a Decision as Directed by the ALC Chair

Please note that pursuant to [s. 33.1 of the *Agricultural Land Commission Act*](#), the Chair may direct the executive committee to reconsider any panel decision if, within 60 days from the date of this decision, he considers that the decision may not fulfill the purposes of the commission as set out in s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

Reconsideration of a Decision by an Affected Person

We draw your attention to [s. 33\(1\) of the *Agricultural Land Commission Act*](#) which provides a person affected the opportunity to submit a request for reconsideration.

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.

For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

Page 2 of 2

Further correspondence with respect to this application is to be directed to Riccardo Peggi at (Riccardo.Peggi@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Riccardo Peggi, Land Use Planner

Enclosure: Reasons for Decision (Resolution #358/2016)

cc: Regional District of East Kootenay (File: P 716 203)

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AGRICULTURAL LAND COMMISSION FILE 54838

REASONS FOR DECISION OF THE KOOTENAY PANEL

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

Applicant:

**Novalee Reeves
Darren Reeves
(the “Applicants”)**

Application before the Kootenay Regional Panel:

**Ian Knudsen, Acting Panel Chair
Harvey Bombardier**



THE APPLICATION

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

Parcel Identifier: 010-405-607

Lot 2, District Lot 316, Kootenay District Plan14685, Except Plan EPP4774
(the "Property")

[2] The Property is 7.8 ha in area.

[3] The Property has the civic address 8741 Derosier Road, South of Jaffray on Lake
Kooacanusa .

[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 2 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 7.8 ha
Property into four (4) approximate 2 ha lots for recreation uses (the "Proposal"). The
Proposal along with supporting documentation is collectively the "Application".

RELEVANT STATUTORY PROVISIONS

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

21(2) An owner of agricultural land may apply to the commission to subdivide agricultural
land.

[8] The Panel considered the Application pursuant to its mandate in s. 4.3 of the *ALCA*:

4.3 When exercising a power under this Act in relation to land located in Zone 2, the
commission must consider all of the following, in descending order of priority:

- (a) the purposes of the commission set out in section 6;
- (b) economic, cultural and social values;
- (c) regional and community planning objectives;
- (d) other prescribed considerations.

[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
3. Previous application history
4. Agricultural capability map, ALR context map, and satellite imagery
5. *Soil and Agricultural Capability and Suitability Assessment, Lot 2, DL 316, Kootenay District, Plan 14685, Moran Road*, Prepared for Novalee and Darren Reeves and prepared by David Struthers, PAg VAST Resource Solutions Inc., dated April, 2016 (the "Struthers Report").
6. *Re. Novalee and Darren Reeves Property, Moran Road, Jaffray BC*, letter to Ross Blackwell from Mike Malmberg, MSc, PAg, CPRM, dated October 29, 2008 (the "Malmberg Letter").

All documentation noted above was disclosed to the Applicant in advance of this decision.



[11] At its meeting of June 10, 2016, the Regional District of East Kootenay resolved to forward the Application to the Commission.

[12] The Panel reviewed two previous applications involving the Property:

Application ID: 42608
Legacy File: 36425
(Reeves, 2006)

To subdivide the 11.1 ha property into two lots of 8.1 ha and 3.0 ha. At the time, the proposed 3.0 ha was being used by an adjacent property owner as horse pasture. The neighboring property owner expressed interest in buying the 3.0 ha lot if it was subdivided. There was no agricultural activity on the subject property at the time of application. The Commission approved the application subject to the consolidation of the 3.0 ha lot with the adjacent lot to the west. Approved by ALC Resolution #95/2006.

Reconsideration Request

The applicant requested a reconsideration of Resolution #95/2006 in 2008 to remove the condition that the 3.0 lot be consolidated with the adjacent property to the west. The adjacent landowner had chosen not to act on the obtainment of the 3.0 ha lot. The Commission found that the Applicant did not provide any evidence that was not available at the time of the original decision, nor did they provide any evidence that the decision was based on false evidence.

Reconsideration Request

The applicant requested a reconsideration of Resolution #95/2006 in 2009 to remove the condition that the 3.0 lot be consolidated with the adjacent property to the west. The request included a report from Mr. Mike Malmberg, a professional agrologist, in which it was noted that the

property has severe limitations to the range of crops that can be grown on the property. The Commission approved the reconsideration request to remove the condition requiring the consolidation with the adjacent lot to the west by Resolution #164/2009.

Note: Resolution #164/2009 resulted in the current configuration of the Property.

Application ID: Lancaster
Legacy File: 36316
(Lancaster, 1985)

To subdivide the 41.8 ha property into a 33.9 ha lot and a 7.9 ha lot. The Area B Director concluded that the proposed 7.9 ha lot is in a rugged area of the property. Furthermore, the Commission found that a large parcel to the southeast was allowed subdivision in 1984 as no grazing leases are available since the flooding of the Libby Pondage. An opinion from the District Agriculturalist Malmberg in 1981 stated that it would be possible to have a self-contained unit for 50-1050 cows in 100 irrigated acres with intensive management but no holdings in the East Kootenay area are operated in such an intensive fashion. Most require some dry land range. Approved by ALC Resolution #295/1985.

Application ID: 25996
Legacy File: 09602
(Reay, 1981)

To subdivide the 53.4 ha property into a 12.9 ha lot and a 41.8 ha lot. Approved by ALC Resolution #231/1981.

SITE VISIT

[13] The Panel, in the circumstances of the Application, did not consider it necessary to conduct a site visit to the Property based on the evidentiary record associated with the Application.

FINDINGS

Section 4.3(a) and Section 6 of the ALCA: First priority to agriculture

[14] 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 ratings identified on CLI map sheet 82G/06 for the mapping units encompassing the majority of the Property are Class 4, Class 5 and Class 6; more specifically (5:4MP – 4:5P – 1:6T). The mapping unit encompassing the eastern edge of the Property is unimprovable Class 6; more specifically 6T.

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

Class 5 - land is capable of production of cultivated perennial forage crops and specially adapted crops. Soil and/or climate conditions severely limit capability.

Class 6 - land is important in its natural state as grazing land. These lands cannot be cultivated due to soil and/or climate limitations.

The limiting subclasses associated with this parcel of land are M (moisture deficiency), P (stoniness) and T (topographic limitations).

[15] In addition, the Panel received the Struthers Report, dated April, 2016. The Struthers Report concluded the following:

- a. *The overall unimproved CLI agricultural capability rating for the property is Class 5, with limitations for low water holding capacity, adverse soil characteristics and stoniness. Improvements to capability are not considered feasible due to the combined influence of these limitations.*
- b. *Considering the range of crops adapted to the region, the subject property has limited suitability for soil bound agricultural production other than unimproved native foraging for seasonal, low carrying capacity grazing. When crop suitability and productivity are considered in relation to the combined impact of the limitations that affect the property, improvements to agricultural suitability are not practical.*

- c. *The feasibility of non-soil bound agriculture uses is limited by soil and site characteristics, cost-effective access to necessary inputs and resources, potential conflicts with adjoining land uses, and availability of water.*
- d. *The proposed subdivision of the subject property would do little to change its agricultural use or capability, would have a negligible impact on agriculture and a low probability of conflicting with current and/or foreseeable future uses of adjoining lands.*

[16] Further, the Panel also received the Malmberg Letter, dated October 29, 2008. The Malmberg Letter stated that *“the coarse, stony and gravelly nature of the soils on this property present major and severe limitations to the range of crops that can be grown and level of production achievable”*.

[17] The Panel reviewed the CLI ratings, the Struthers Report and the Malmberg Letter and find that the Property has agricultural limitations.

[18] The Panel finds that the introduction of smaller residential parcels into an area of large agricultural parcels would be inconsistent with the objective of the *Agricultural Land Commission Act* to preserve and encourage agriculture. The introduction of residential parcels would increase the residential use of agriculturally designated land and may lead to further pressures for subdivision.

Section 4.3(b) of the ALCA: Second priority to economic, cultural and social values

[19] The Applicants did not provide any evidence or rationale regarding any economic, cultural and social values that are pertinent to the Application.

Section 4.3(c) of the ALCA: third priority to regional and community planning objectives

[20] The Property is designated as “Rural Resource” in the RDEK’s Official Community Plan (the “OCP”) for the area. The Property is zoned as “Rural Residential (RR-8)” by the RDEK’s zoning bylaw. The minimum parcel size requirement within the RR-8 zone is 8 ha, and the proposed lot sizes do not meet this requirement.

[21] The RDEK Planning Staff states that “*although the application is supported by an agrologist report, it does not identify opportunities to improve agricultural capacity or provide a net benefit to agriculture. The proposed development introduces smaller lots to an agricultural area and is not consistent with the OCP*”.

[22] The Panel finds that the Proposal is not consistent with the RDEK’s zoning and OCP designation for the Property. The Panel finds the minimum lot size required by the RDEK Zoning Bylaw to be appropriate for the area.

Weighing the factors in priority

[23] Despite the CLI ratings, and the findings of the Struthers Report, and Malmberg Letter suggesting the Property has some agricultural limitations, the Property is located in an area of larger agricultural holdings. The Panel finds that the introduction of smaller residential parcels in a predominantly agricultural area may create further pressures for subdivision in the area as well as introducing non-farm uses into the area which may conflict with agricultural uses.

[24] The Applicants did not provide any evidence or rationale regarding any economic, cultural and social values that are pertinent to the Application.

[25] The Panel finds the minimum lot size of 8 ha required by the RDEK Zoning Bylaw to be appropriate for the area.

DECISION

[26] For the reasons given above, the Panel refuses the Proposal.

[27] These are the unanimous reasons of the Kootenay Panel of the Agricultural Land Commission.



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

[29] This decision is recorded as Resolution #358/2016 and is released on October 28, 2016.

CERTIFICATION OF DECISION

A handwritten signature in black ink, appearing to read 'IKN', is written over a horizontal line.

Ian Knudsen, Acting Vice Chair, on behalf of the Kootenay Panel

END OF DOCUMENT