



Agricultural Land Commission
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September 12, 2016

ALC File: 55004

Roger Borrett
3665 Hart Road
Kelowna, BC V1W 4G6

Dear Sir:

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

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #343/2016) as it relates to the above noted application. A sketch plan depicting the decision is also attached.

Please send two (2) paper copies or one (1) electronic copy of the final survey plan to this office. When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the plan.

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

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per: 

Colin J. Fry, Director of Policy and Planning

Enclosures: Reasons for Decision (Resolution #343/2016)
Sketch plan

cc: City of Kelowna (File A16-0006)

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AGRICULTURAL LAND COMMISSION FILE 55004

REASONS FOR DECISION OF THE OKANAGAN PANEL

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

Applicant:

**Roger Borrett
(the “Applicant”)**

Application before the Okanagan Regional Panel:

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



THE APPLICATION

[1] The legal description of the properties involved in the application are:

a. Parcel Identifier: 018-078-192 (8.9 ha)

Lot 2, Section 10, Township 26, Osoyoos Division Yale District Plan
KAP48949

b. Parcel Identifier: 028-739-353 (2.6 ha)

Lot B, Section 10, Township 26, Osoyoos Division Yale District, Plan
KAP92586

(the "Properties")

[2] The Properties total 11.5 ha in area.

[3] The Properties have the civic addresses of 3665 and 3671 Hart Road, Kelowna.

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

[5] The Properties are 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 amend the boundary between the Properties to create a 4.3 ha parcel and a 7.2 ha parcel. In addition, the Applicants are requesting to eliminate the existing covenant on PID 028-739-353 (restricting the location of the home), and replace it with a similar covenant on a 0.2 ha portion of the proposed 7.2 ha parcel adjacent to McCullough Road.

The Applicants' home is presently located on Lot 2 (8.9 ha). There is no home on Lot B (2.6 ha). The proposed boundary amendment will result in the Applicants' home being located on the proposed westerly 4.3 ha parcel. No home will occupy the proposed easterly 7.2 ha parcel.

The Proposal along with supporting documentation is collectively the application (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 within the context of s. 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; 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

[9] 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

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

[10] The City of Kelowna (the “City”) resolved to forward the Application to the Commission with its support.



[11] The City's Agricultural Advisory Committee supports the Application.

[12] The Panel reviewed a previous application involving the Property:

Application ID: 50352
(Borrett, Sept 2009)

To subdivide a 0.25 ha lot from the 3.2 ha property as per the Commission's *Homesite Severance Policy*.

Refuse as proposed, but allowed subdivision subject to consolidation of the remnant with the adjoining property to the east (owned by the applicant's son). The decision was also subject to buffering/fencing conditions and the *Homesite Severance Policy*. Resolution #783/2009.

First Reconsideration
(December 2009)

To subdivide a 0.25 ha lot without the necessity of consolidation of the remainder with the adjoining property.

Allow the subdivision of a 0.25 ha lot without consolidation. The Commission required the registration of a covenant restricting a replacement home to a 0.2 ha area adjacent to Hart Road, and compliance with the remaining previous conditions. Resolution #1807/2009

Second Reconsideration
(September 2010)

To subdivide a 0.65 ha *Homesite Severance Policy* lot from the 3.2 ha property. The 0.65 ha area comprises the homesite and former ravine area (now filled) which has poor agricultural capability. The applicant intends to register the covenant required by Resolution #1807/2009.

Allow subject to the covenant, fencing/buffering, and



compliance with the *Homesite Severance Policy*.

Resolution

#2643/2010

Application ID: 7435
(Borrett, 1980)

To subdivide a 0.3 ha lot from the subject property under the Commission's *Homesite Severance Policy*.

Allowed as proposed.

First Reconsideration
(July 1980)

To subdivide the 2 ha property into two 1 ha lots.

Refuse as proposed.

FINDINGS

[13] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings identified on BCLI map sheet 82E.083 for the mapping units encompassing the Properties are 20% (*3A) and 80% (5:3A - 3*3AP - 2*3A).

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

The limiting subclasses associated with this parcel of land are A (aridity) and P (stoniness).

The Panel confirms that the BCLI ratings indicate that the Properties have good capability for agricultural development.

[14] The Panel had no objection to the Proposal because:

- No additional lots are created;

- Both of the proposed lots are a suitable size from an agricultural perspective;
- The new home on the 7.2 ha parcel is restricted to a 0.2 ha area adjacent to road access. This represents a benefit to agriculture because there will be no long driveway to disrupt the current planting scheme.

DECISION

[15] For the reasons given above, the Panel approves the Proposal to subdivide a 4.3 ha parcel and a 7.2 ha parcel from the Properties and release the 0.2 ha homesite covenant area from the property with Parcel Identifier: 028-739-353.

[16] The Proposal is approved subject to the following conditions:

- a. the subdivision being substantial compliance with the plan submitted with the Application;
- b. the registration of a covenant prohibiting the construction of a residence on the 7.2 ha parcel, with the exception of the 0.2 ha area on the northeast corner, fronting McCullough Road.
- c. the subdivision plan being completed within three (3) years from the date of release of this decision; and
- d. Approval for non-farm use is granted for the sole benefit of the Applicant and is non-transferable.

[17] 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.

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

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

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

[19] Decision recorded as Resolution #343/2016.



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 #343/2016. The decision is effective upon release.

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

Colin J. Fry, Director of Policy and Planning

September 12, 2016

Date Released