



To: General Purposes Committee

Date: August 25, 2020

From: Wayne Craig
Director, Development

File: AG 20-891572

Re: Application by Dagneault Planning Consultants Ltd. for an Agricultural Land Reserve Subdivision at 3031 No. 7 Road

Staff Recommendation

That the application by Dagneault Planning Consultants Ltd. for an Agricultural Land Reserve Subdivision at 3031 No. 7 Road be forwarded to the Agricultural Land Commission.

for
Wayne Craig
Director, Development

WC:sds
Att. 8

REPORT CONCURRENCE

CONCURRENCE OF GENERAL MANAGER

Staff Report

Origin

Dagneault Planning Consultants Ltd., on behalf of the property owners David May & Mayland Farms Ltd. (Director: Kim May), has submitted an Agricultural Land Reserve (ALR) subdivision application at 3031 No. 7 Road in order to subdivide the homesite from the larger agricultural parcel. A location map and aerial photograph are provided in Attachment 1.

The subject ALR subdivision application is proposing to utilize the Agricultural Land Commission's (ALC) Homesite Severance Policy (Policy L-11) (Attachment 2). The purpose of the Policy is to provide a list of guidelines to consider for situations where the property has been the principal residence of the applicant as owner-occupant since December 21, 1972, and the applicant wishes to dispose of the parcel, but retain a homesite on the land. More information regarding the Policy's guidelines and a comparison with the subject application is provided in the "Analysis" section of this report.

The subject ALR subdivision application is part of the applicant's farm succession planning and the purpose is to transfer the remainder parcel to the applicant's children, the next generation of farmers.

As per the *Agricultural Land Commission Act (ALCA)*, the ALR subdivision application may not proceed to the ALC unless authorized by a resolution of the local government.

Findings of Fact

A Development Application Data Sheet providing details about the development proposal is attached (Attachment 3).

Surrounding Development

To the North: Across a City-owned Road Right-of-Way, an agricultural operation on an approximately 3.24 hectare (8 acre) lot zoned "Agriculture (AG1)".

To the South & West: Agricultural operation on an approximately 23.75 hectare (58.69 acre) lot zoned "Agriculture (AG1)".

To the East: Single-family dwelling on a lot zoned "Agriculture (AG1)", and across No. 7 Road, an agricultural operation on an approximately 15.6 hectare (38.56 acre) lot zoned "Agriculture (AG1)".

Related Policies & Studies

Official Community Plan

The Official Community Plan (OCP) land use designation for the subject site is "Agriculture (AGR)", which comprises of those areas of the City where the principal use is agriculture and food production, but may include other land uses as permitted under the *Agricultural Land Commission Act (ALCA)*. The proposed ALR subdivision application would comply with this

designation. The subject property is also currently zoned “Agriculture (AG1)”, which permits a wide range of farming and compatible uses.

The City’s OCP and Agricultural Viability Strategy also contain policies limiting subdivision of agricultural land into smaller parcels, except where possible benefits to agriculture can be demonstrated. The possible benefits to agriculture as a result of the subject ALR subdivision application are further discussed in the “Analysis” section of this report.

Food Security and Agricultural Advisory Committee

The Food Security and Agricultural Advisory Committee (FSAAC) reviewed and supported the subject ALR subdivision application at its meeting held on June 18, 2020. An excerpt from the June 18, 2020 FSAAC meeting minutes is provided in Attachment 4.

Analysis

ALC Homesite Severance Policy

The ALC’s Homesite Severance Policy (Policy L-11) provides guidelines for situations where the property has been the principal residence of the applicant as owner-occupant since December 21, 1972, and the applicant wishes to dispose of the parcel, but retain a homesite on the land. The guidelines contained in the Policy are summarized below, along with staff comments regarding the subject application in **bold italics**:

- Documentary evidence that the applicant has continuously owned and occupied the property as a principal residence since December 21, 1972.

The applicant has provided documentary evidence that the property owner was part of a trust which purchased the property prior to December 21, 1972. The subject property became the applicant’s principal residence in 1988 upon receiving clear title and completion of the existing single-family dwelling. ALC staff have advised that although the applicant has not occupied the property since December 21, 1972, the applicant can still apply under the Policy, as the applicant’s eligibility is subject to the discretion of the Commission. Regardless, eligibility and consistency with the Policy does not grant the applicant an automatic right to approval.

- Where an applicant has had a previous subdivision application approved by the Commission, the Commission may deny further subdivision under the Homesite Severance Policy.

Two previous subdivision applications associated with this property have been approved by the ALC in 1984 (Resolution #1074/84 & #1460/84) and 1988 (Resolution #266/88) to create the current configuration of lots in the surrounding area. The purpose of the previous subdivision applications was also related to farm succession planning and transferring parcels to the next generation of farmers in order to farm with title.

- Documentary evidence showing a legitimate intention to sell the remainder of the property upon approval of the application.

The purpose of the application is to transfer the remainder parcel to the property owner's children. The property owner has provided a letter (Attachment 5) indicating the intent to transfer the remainder parcel to the property owner's child. Should the application be forwarded by Council and approved by the ALC, the property owner will complete the documentation required by the ALC to ensure the remainder parcel is formally transferred.

- Consideration of the agricultural integrity of the area as a result of the subdivision, including the minimum size compatible with the character of the homesite and the potential difficulty for the agricultural operation or management of the remainder.

The proposed subdivision would result in a 1.29 hectare (3.2 acre) homesite and a 6 hectare (14.83 acre) remainder parcel. The proposed subdivision plan is provided in Attachment 6. The property is currently farmed and has farm status as per BC Assessment. The applicant has indicated that the remainder area is currently in forage crops and the intention is to replant the area into cranberry production. The applicant has indicated that replanting cranberries is costly, and credit is traditionally used to finance the process. In this case, the Agrologist has provided an approximate cost estimate of \$414,000 in improvements, which includes irrigation and drainage lines, plant stock, and labour costs. It is important to obtain title in order to secure the credit necessary to finance the proposed agricultural improvements. No agricultural activity is currently conducted or proposed on the homesite.

- Consideration of the remainder to ensure it is of a size and configuration that will constitute a suitable agricultural parcel.

The applicant has submitted an Agrologist Report in support of the application (Attachment 7), which indicates the remainder parcel will be part of the larger farm operation which will ensure that it becomes a viable farm unit. The larger farming operation currently includes cranberry fields of a much smaller size than the subject property (as small as 2 acres). The Report also indicates the remainder parcel is already farmed and there are no impediments to the continued farming of this parcel by the next generation. The Commission will ultimately determine if the size and configuration of the proposed subdivision constitutes a suitable agricultural parcel.

- Condition of the homesite severance approval includes that the homesite is not to be sold for five years except in the case of the death of the owner.

ALC staff have advised that a written undertaking or other legal documentation satisfactory to the Commission is required prior to approval of the ALR subdivision application, to ensure the homesite is not sold for five years except in the case of the death of the owner. The applicant is aware and agrees to this commitment.

- Where a homesite severance is approved by the Commission, a separate subdivision application is required to be submitted to the City.

The applicant is aware that should the ALC approve the ALR subdivision application, a separate City subdivision application is required to be submitted to the City.

Agricultural Operation

The applicant has indicated the parcel is part of a large holding that includes 32 parcels (including the surrounding parcels). All parcels are currently part of an intensive farming operation associated with cranberry production. This is not proposed to change, but the purpose of the subject application is to allow the continuation of the farming operation by the next generation of farmers.

The existing farm access road along the north property line is used as farm access to the parcel. No changes to the existing farm access are proposed at this time.

The applicant has also submitted an Agrologist Report in support of the application (Attachment 7).

Proposed Subdivision Application

The proposed subdivision would result in a 1.29 hectare (3.2 acres) homesite and a 6 hectare (14.83 acre) remainder parcel. The septic field for the single-family dwelling is located to the west of the home and is within the proposed boundaries of the homesite.

Should the ALR subdivision application be approved by Council and the ALC, a subsequent City subdivision application will be required prior to subdivision approval. The City's OCP contains policies limiting subdivision of agricultural land into smaller parcels, except where possible benefits to agriculture can be demonstrated. If the proposed subdivision is approved, it would create the potential for additional residential development. In response, staff have asked the applicant to register a legal agreement on title prior to approval of the City subdivision, to ensure no residential development is permitted on the remainder parcel (no build covenant), which the property owners have agreed to.

The proposed homesite has been designed to accommodate the existing residential uses on-site, including the existing house, septic field, and the need to maintain driveway access from No. 7 Road. The proposed subdivision would result in a legal non-conforming building on the homesite (the existing single-family dwelling), as it would not comply with the current "Agriculture (AG1)" zoning, including floor area, farm home plate area, and setbacks. As per the Local Government Act, the existing single-family dwelling may only be repaired, extended or altered to the extent that these works involve no further contravention of the bylaw, and if removed, the new single-family dwelling would be required to be constructed according to the current regulations of the "Agriculture (AG1)" zone.

Financial Impact

None.

Conclusion

Dagneault Planning Consultants Ltd., on behalf of David May & Mayland Farms Ltd., has submitted an Agricultural Land Reserve (ALR) subdivision application at 3031 No. 7 Road in order to subdivide the homesite from the larger agricultural parcel.

The subject application is proposing to utilize the Agricultural Land Commission's (ALC) Homesite Severance Policy in order to transfer the remainder parcel to the next generation of farmers for the purposes of cranberry production. It is recommended that the ALR Subdivision Application be forwarded to the Agricultural Land Commission (ALC).

The list of ALR Subdivision Considerations is included in Attachment 8, which has been agreed to by the applicant (signed concurrence on file).



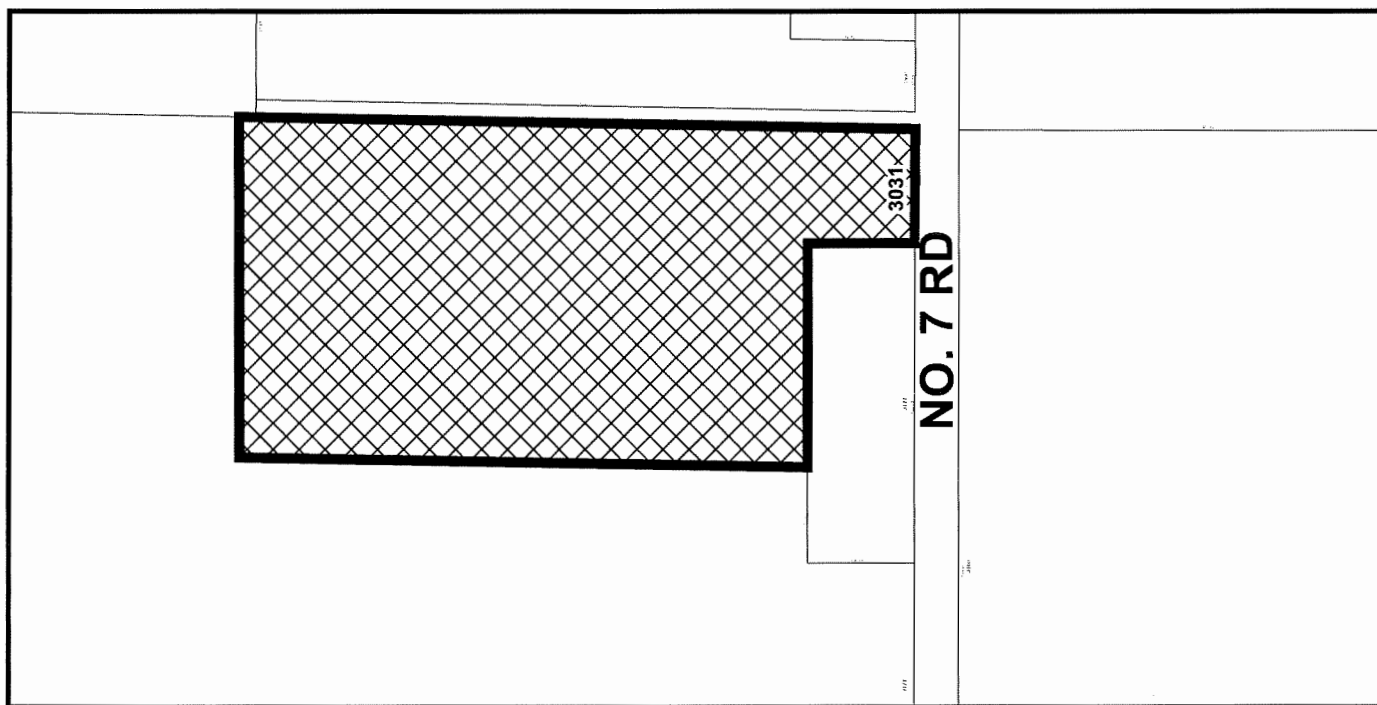
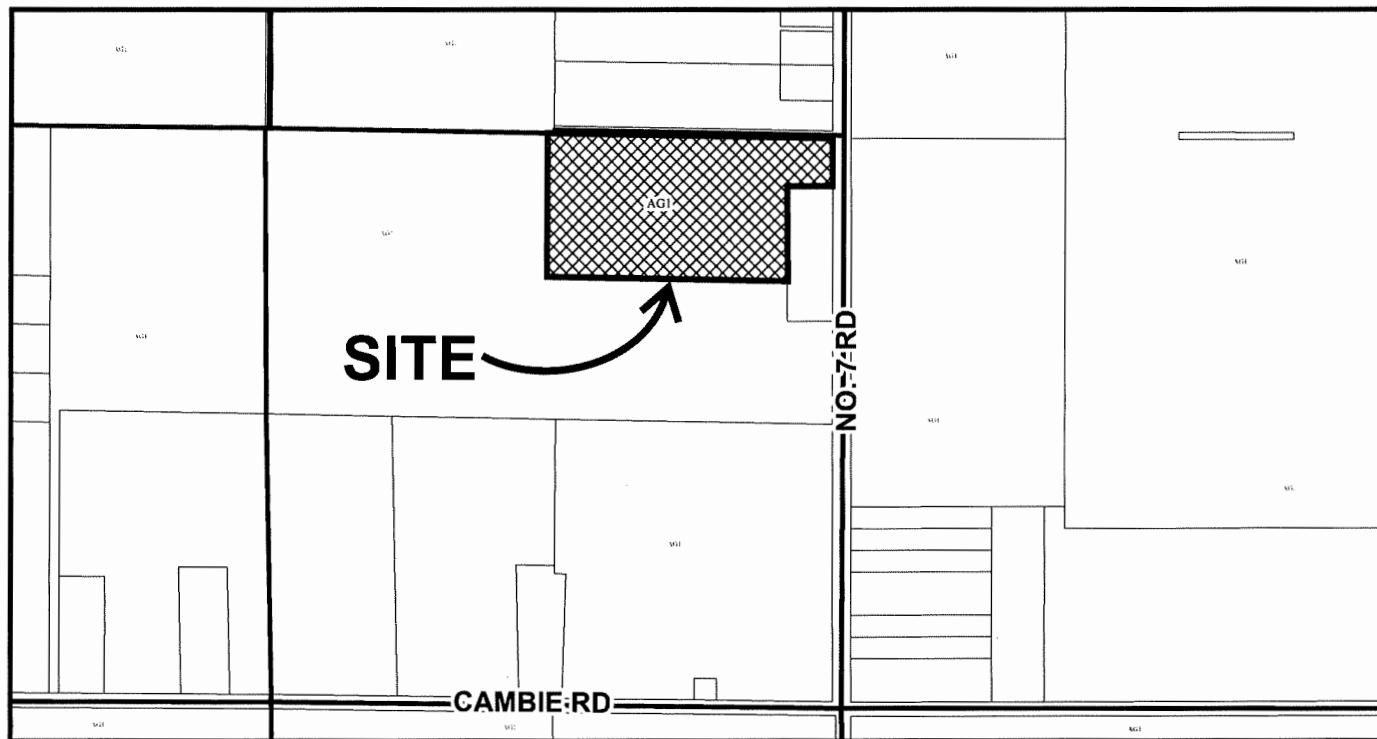
Steven De Sousa
Planner 1

SDS:rg

- Attachment 1: Location Map & Aerial Photo
- Attachment 2: Agricultural Land Commission's Homesite Severance Policy (Policy L-11)
- Attachment 3: Development Application Data Sheet
- Attachment 4: Excerpt from the June 18, 2020 FSAAC Meeting Minutes
- Attachment 5: Letter from the Property Owner regarding Transfer of the Remainder Parcel
- Attachment 6: Proposed Subdivision Plan
- Attachment 7: Agrologist Report
- Attachment 8: ALR Subdivision Considerations



City of Richmond



	<h2>AG 20-891572</h2>	Original Date: 02/25/20 Revision Date: Note: Dimensions are in METRES
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City of
Richmond



**SUBJECT
PROPERTY**

3031

NO. 7 RD

CAMBIE RD




AG 20-891572

Original Date: 02/25/20

Revision Date:

Note: Dimensions are in METRES

 <p>Agricultural Land Commission Act</p>	<p style="text-align: right;">Policy L-11 January 2016</p> <p style="text-align: center;">HOMESITE SEVERANCE ON ALR LANDS</p>
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This policy is intended to assist in the interpretation of the [Agricultural Land Commission Act, 2002](#), including amendments as of September 2014, (the "ALCA") and BC Regulation 171/2002 ([Agricultural Land Reserve Use, Subdivision and Procedure Regulation](#)), including amendments as of August 2016, (the "Regulation"). In case of ambiguity or inconsistency, the ALCA and Regulation will govern.

The purpose of this policy is to provide a consistent approach to situations where property under application has been the principal residence of the applicant as owner-occupant since December 21, 1972 and the applicant wishes to dispose of the parcel but retain a homesite on the land.

A subdivision application under Section 21 (2) of the ALCA is required.

Persons making use of this homesite severance policy (the "Homesite Severance Policy") must understand the following:

- a. there is no automatic right to a homesite severance;
- b. the Agricultural Land Commission (the "Commission") shall be the final arbiter as to whether a particular homesite severance meets good land use criteria; (see #4 below)
- c. a prime concern of the Commission will always be to ensure that the "remainder" will constitute a suitable agricultural parcel. (see #5 below).

Without limiting the generality of the foregoing, the following guidelines apply to homesite severance applications.

1. A once only severance may be permitted where the applicant submits documentary evidence that he or she has continuously owned and occupied the property as his or her principal place of residence since December 21, 1972.
2. Where an applicant for a homesite severance has had a previous subdivision application approved by the Commission resulting in the creation of a separate parcel, the Commission may deny any further subdivision under the Homesite Severance Policy.
3. An application for a homesite severance will be considered only where the applicant submits documentary evidence showing a legitimate intention to sell the remainder of the property upon the approval of the homesite severance application. (An interim agreement for sale, a prospective buyer's written statement of intent to purchase, a real estate listing, or some other written evidence of a pending real estate transaction may be acceptable as documentation)

In considering the application, the Commission may make an approval subject to sale of the remainder within a specified period of time.

An order of the Commission authorizing the deposit of the subdivision plan will be issued to the Registrar of Land Titles only when a transfer of estate in fee simple or an agreement for sale is being registered concurrently.

4. There will be cases where the Commission considers that good land use criteria rule out any subdivision of the land because subdivision would compromise the agricultural integrity of the area, and the Commission will therefore exercise its discretion to refuse the homesite severance.

The following two options apply to a homesite severance:

- a. the existing homesite may be created as a separate parcel where it is of a minimum size compatible with the character of the property (plus a reasonable area, where required, for legal access purposes); or
 - b. where the location of the existing homesite is such that the creation of a parcel encompassing the homesite would, in the Commission's opinion, create potential difficulty for the agricultural operation or management of the remainder, the Commission may, if it deems appropriate, approve the creation of a homesite severance parcel elsewhere on the subject property.
5. The remainder of the subject property after severance of the homesite must be of a size and configuration that will, in the Commission's opinion, constitute a suitable agricultural parcel. Where, in the Commission's opinion, the remainder is of an unacceptable size or configuration from an agricultural perspective, there may be three options:
 - a. the Commission may deny the homesite severance;
 - b. the Commission may require that the remainder be consolidated with an adjacent parcel; or
 - c. the Commission may require the registration of a covenant against the title of the remainder and such a covenant may prohibit the construction of dwellings.
 6. A condition of every homesite severance approved by the Commission shall be an order stipulating that the homesite is not to be sold for five years except in the case of the death of the owner. Prior to the issuance of a Certificate of Order authorizing deposit of the subdivision plan, the owner shall file with the Commission a written undertaking or other legal documentation satisfactory to the Commission setting out this commitment.
 7. Where a homesite severance application has been approved by the Commission, local governments and approving officers are encouraged to handle the application in the same manner as an application under Section 514 of the [Local Government Act](#) insofar as compliance with local bylaws is concerned.

Unless defined in this policy, terms used herein will have the meanings given to them in the ALCA or the Regulation.

RELATED POLICY:

ALC Policy L-17 *Activities Designated Permitted Non-Farm Use in the ALR: Lease for a Retired Farmer – Zone 2*



AG 20-891572

Attachment 3

Address: 3031 No. 7 Road

Applicant: Dagneault Planning Consultants Ltd.

Planning Area(s): East Richmond

	Existing	Proposed
Owner:	David May (50%) & Mayland Farms Ltd. (Director: Kim May) (50%)	Homesite: No change Remainder: Garrett May
Site Size:	7.29 ha (18.03 ac)	Homesite: 1.29 hectare (3.2 acres) Remainder: 6 hectare (14.83 acre)
Land Uses:	Single-family residential & agriculture	Homesite: Single-family residential Remainder: Agriculture
OCP Designation:	Agriculture (AGR)	No change
Zoning:	Agriculture (AG1)	No change
Number of Units:	1	No change

	Bylaw Requirement	Existing	Variance
Floor Area Ratio:	Max. 400 m ² (4,306 ft ²)	Approx. 619.8 m ² (6,671 ft ²) (legal non-conforming)	None permitted
Farm Home Plate Area:	Max. 1,000 m ² (10,764 ft ²)	Approx. 12,900 m ² (138,854 ft ²) (legal non-conforming)	None
Setback – Farm Home Plate:	Max. 75 m	Approx. 180.4 m (legal non-conforming)	None
Setback – Single Detached Housing Building:	Max. 50 m	Approx. 152.3 m (legal non-conforming)	None
Setback – Front Yard (East):	Min. 6.0 m	Approx. 134.8 m	None
Setback – Side Yard (North):	Min. 6.0 m	Approx. 30.9 m	None
Setback – Side Yard (South):	Min. 1.2 m	Approx. 24.5 m	None
Setback – Rear Yard (West):	Min. 10.0 m	Approx. 28.1 m	None
Height:	Max. 9.0 m (2 storeys)	Approx. 7.8 m (2 storeys)	None

**Excerpt from the Meeting Minutes of the
Food Security and Agricultural Advisory Committee (FSAAC)**

**Thursday, June 18, 2020 – 7:00 p.m.
Rm. M.2.002 (Webex)
Richmond City Hall**

ALR Subdivision Application – 3031 No. 7 Road

Steven De Sousa, Planner 1, introduced the subdivision application and provided the following comments:

- The purpose of the application is to subdivide the homesite from the remainder parcel for the purposes of farm succession planning;
- The property is currently farmed as forage crops and has farm status, and the intention is to transition the remainder parcel to cranberry production for the next generation of farmers;
- The application proposes to make use of the ALC's Homesite Severance Policy, which includes a number of guidelines, including an assessment of the agricultural integrity of the area as a result of the subdivision;
- Despite the ALC's policy, there is no automatic right to a homesite severance approval; and
- Should the application be approved by Council and the ALC, the applicant has agreed to register a legal agreement on title to ensure that no residential development is permitted on the remainder parcel.

The property owner noted that the main purpose of the application is for farm succession planning and to transfer the remainder parcel to his children.

Discussion ensued regarding the requirement of the restrictive covenant prohibiting residential development on the remainder parcel.

As a result of the discussion, the applicant indicated that the children are all currently housed, but need title in order to farm, and the proposal will maintain the agricultural integrity of the land.

The Committee passed the following motion:

That the Food Security and Agricultural Advisory Committee support the ALR Subdivision Application at 3031 No. 7 Road (AG 20-891572).

Carried Unanimously



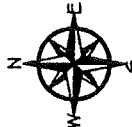
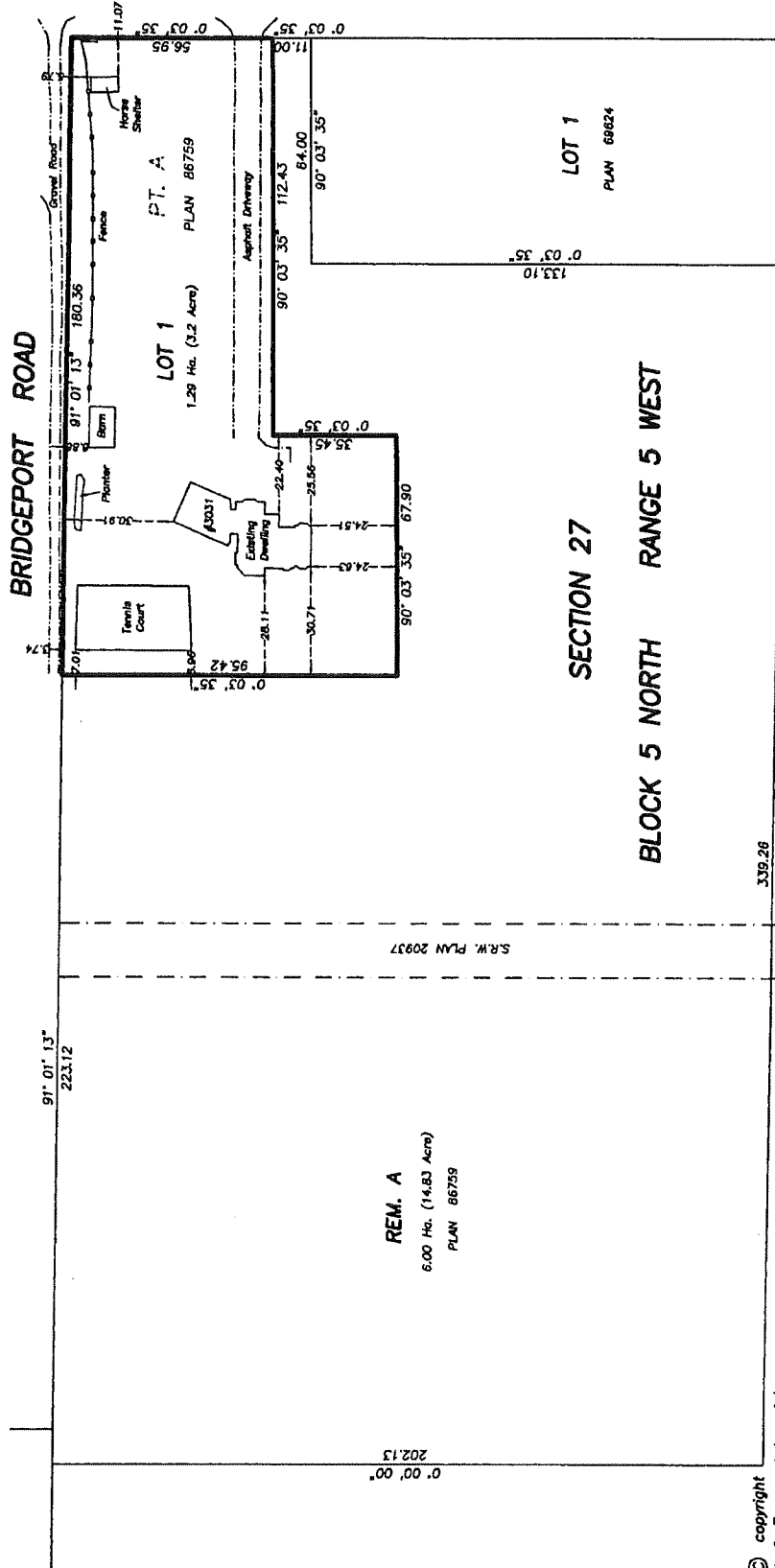
2611 No.7 Rd. Richmond BC V6V-1R3 Phone: 604-278-1663

To whom it may concern:

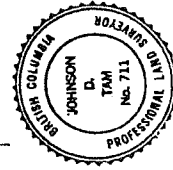
Regarding the succession process of Mayland Farms, Mayland Farms requests approval of the subdivision at **3031 No. 7 Road Richmond B.C V6V 1R3**. The transfer of ownership of this property will be from Mr. David and Kim May and inherited by Mr. Garrett May.

David and Kim May
Mayland Farms Ltd.

**SKETCH PLAN OF PROPOSED SUBDIVISION OF PART OF LOT A SECTION 27
BLOCK 5 NORTH RANGE 5 WEST NEW WESTMINSTER DISTRICT PLAN 86759**



CERTIFIED CORRECT:



Jonathan D. Tam
 JOHNSON C. TAM, B.C.L.S., C.L.S.
 October 9th, 2019.

SECTION 27
 BLOCK 5 NORTH RANGE 5 WEST

REM. NORTH 20 CHAINS SECTION 27

SCALE: 1:1250



ALL DISTANCES ARE IN METRES AND DECIMALS
 THEREOF UNLESS OTHERWISE INDICATED

© copyright
 J. C. Tam and Associates
 Canada and B.C. Land Surveyor
 115 - 8833 Odlin Crescent
 Richmond, B.C. V6X 3Z7
 Telephone: 214-8928
 Fax: 214-8929
 E-mail: office@jctam.com
 Website: www.jctam.com
 Job No. 7404
 Drawn By: KA

DWG No. 7404-PRO-SUB

Bearings and distances are derived from Plan 86759



R.G. (Bob) Holtby, MSc, PAg. Principal

An Opinion on an Application for a Homesite Severance in the Agricultural Land Reserve

Client: Mayland Farms Ltd. and
David May

Date: January 10, 2020

1.0 Introduction

David May is the owner of Mayland Farms Ltd which, in turn, owns, amongst others, two properties that he wishes to subdivide to put his succession plan for his four children into effect.

The application to the Agricultural Land Commission is a companion application to one to adjust boundaries for four lots which would be reduced to three and to subdivide a parcel into two. The first application is being made directly to the City of Richmond under Section 10 (1)(c) of the *Agricultural Land Reserve General Regulation*. The latter application will be made through the ALC Portal

The succession plan involves six parcels as shown in Figure 1:

Figure 1: Lots Proposed for Succession Plan



Lots 1 to 4 are the subject of the application to the City of Richmond. Lot 5 is proposed for subdivision under the Homesite Severance Policy, the current application. Lot 6 is a subdivision to make the division equitable and will be the subject of another application to the ALC. The applicant owns other lots as detailed in the application.

2.0 Qualifications

I am a licensed Agrologist and have been a full member of the B.C. Institute of Agrologists since 1971 (except 2001-2002). I am a graduate from the University of British Columbia with a Bachelor of Science degree in 1967, specializing in Agriculture Economics, and a Master of Science degree in 1972, specializing in Farm Management. My thesis for my Master's degree was entitled *Resource Allocation for the Median Peace River Farm in British Columbia*

I have been involved in the work of the Agricultural Land Commission since 1974 when the reserve boundaries were proclaimed. At that time, I was District Agriculturist for the British Columbia Ministry of Agriculture in Prince George. In October 1978 I entered private practice and have provided professional opinions for clients who have sought amendments to the Agricultural Land Reserve boundaries, subdivision within the ALR,

or who have needed assistance in compliance with requests or orders from the Commission.

I have also written and spoken of the need to address the unintended consequences of the provincial land use policy.

All agricultural assessments, whether they are for feasibility or management purposes, start with the soils. Past that point one needs an understanding of plant science, animal science and farm management to properly assess the farming potential of any site. I have demonstrated that understanding throughout my career.

During my years in both public and private practice, Courts and Review Boards have accepted me as an expert regarding farming practices in British Columbia. Consequently, I feel qualified to provide an assessment of a proposal under the *Agricultural Land Commission Act*. My qualifications and experience allow me to comment on the value of agricultural land and the practices of farming on that land.

Consequently, I believe I am qualified to comment on the two main purposes of the Agricultural Land Commission. That is: to preserve the agricultural land reserve; and to encourage farming of land within the agricultural land reserve in collaboration with other communities of interest.

I have been a member of the Environmental Appeal Board and the Forest Appeals Commission. Following these appointments, I have received training in Administrative Law and the Rules of Natural Justice.

Since the inception of the Application Portal, I have been identified in the application as the “Agent.” The reader should note that I do not act as an agent in the normal use of the term. That is, I have no fiduciary responsibility to the applicant.

Section 3 of the Code of Ethics of the BC Institute of Agrologists includes the paragraph:

ensure that they provide an objective expert opinion and not an opinion that advocates for their client or employer or a particular partisan position.

Given the complexity of the Portal, it is more expeditious for me to enter the data and forward correspondence than to expect the applicants to learn the procedure for what may be a one-time process.

I have requested that the Commission use the term “Consultant” rather than “Agent” as it describes the work performed. Given the refusal to amend the title, I am content in the understanding that I am acting in concert with the requirements of my profession whatever term is used.

3.0 Subdivision Proposal

Lot 5 is described as:

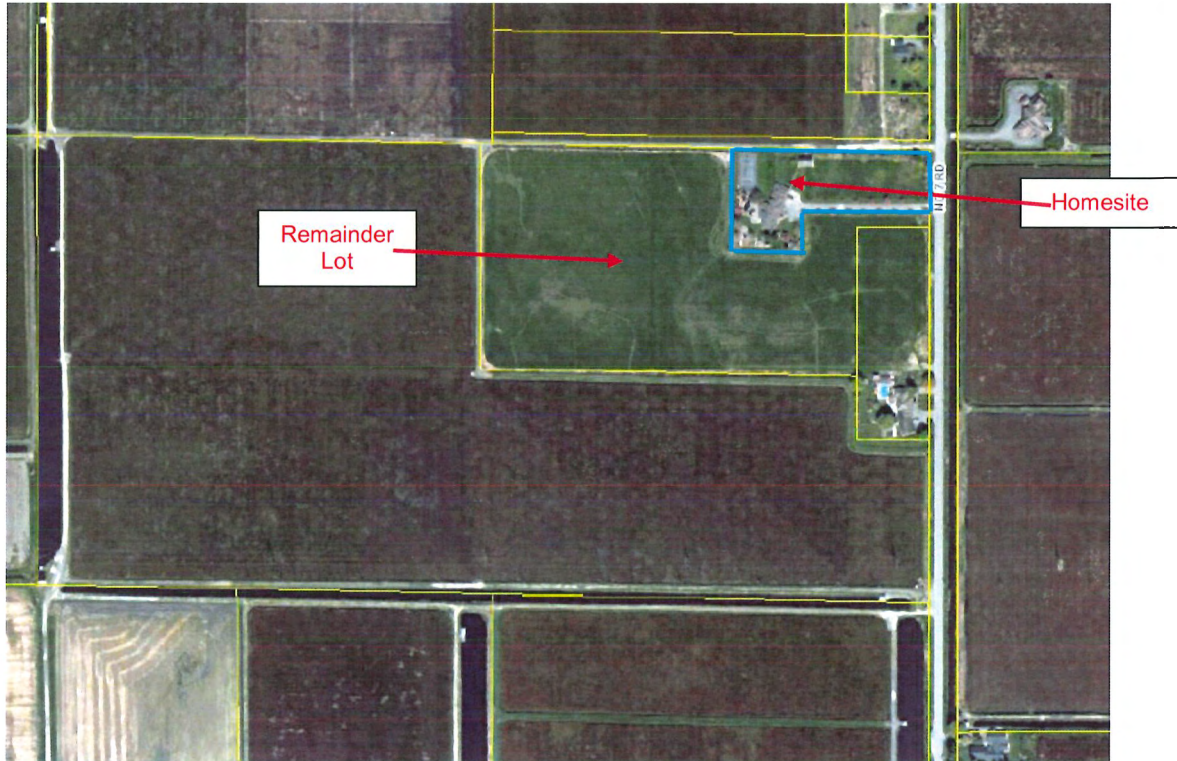
Lot A Section 27 Block 5 North Range 5 West New Westminster District
Plan 86759; PID 016-473-591; located at 3031 No 7 Road containing
18.02 acres or 7.29 hectares.

An aerial view is shown in Figure 2:

The lot contains 18.02 acres or 7.29 hectares. The proposal subdivides a 3.2 acre (1.3 hectare) homesite leaving the remainder with 14.82 acres or 5.98 hectares. The

subdivision includes an approximate 35 foot (11 metre) wide panhandle to allow access to the remainder land.

Figure 2: Aerial View of Lot 5



On May 14, 1971, Fredrick Duncan Henry May established a trust¹ entitled “The Duncan May Children Trust” and named Ralph Norman May, John Randall May, and John Samuel Savage as Trustees.

The beneficiaries of the Trust were his children, namely Hugh Randall May, John Ronald May, Duncan Spence May, David Walter May, and Richard Glen May. The applicant is formally named David Walter May.

On May 17, 1971, the Trustees purchased in the name of the Trust the following land² from the Commercial Peat Company Ltd.:

The North Twenty (20) Chains³ of Section Twenty Seven (27), Block 5 North (B5N), Range Five West (R5W), save and except the East (E) Thirty-Three (33) feet thereof, and save and except portion outlined in red on Plan with Bylaw Filed 56297, Title No. 488752E, New Westminster District.

This land is shown in Figure 3.

¹ The Trust Document is attached to the application.

² The Deed Transfer is attached to the application.

³ One Chain is 66 feet or four rods. 20 chains equals 1320 feet or a quarter of a mile.

Figure 3: Land Purchased in 1971



There were two applications to the Agricultural Land Commission decided in 1984 (Resolution #1074/84) and 1988 (Resolution #266/88) that left the land in the configuration shown in yellow in Figure 3. Other lots were created and consolidated following those applications.

During the period of the application and the implementation of the succession plan, the parcel ownership varied according to the following table:

Date	Owner	Title No.	Legal Description
May 25, 1971	Ralph May, John May, and John Savage in trust	722387E	N 20 chains, Sec 27, Block 5N, Range 5 W except E 33 chns and Plan Bylaw 56297
November 16, 1982	May Bros Farms Ltd.	RD170379E	
May 23, 1985	Mayacres Farms Ltd.	Y80698E	
September 9, 1990	Mayacres Farms Ltd.	AD211793	Lot A, Sec 27, Blk 5N Range 5 W, NW District, Plan 86759
November 26, 1990	Fredrick Duncan May	AD267043	
December 3, 1990	Mayland Farms Ltd.	AD274139	
December 20, 1990	Mayland Farms Ltd and David Walter May	AD287826	

Policy L-11 restricts a Homesite Severance to properties where:⁴

⁴ Section 1, Policy L-11, Homesite Severance on ALR Lands.

A once only severance may be permitted where the applicant submits documentary evidence that he or she has continuously owned and occupied the property as his or her principal place of residence since December 21, 1972. 2

As the above table shows, David May has had an ownership interest in the subject parcel since 1971 and built his house while the previous applications were in process. Once the applications were approved, he was able to gain title which he subsequently split between himself and his company.

Section 3 of the Policy states:⁵

3. An application for a homesite severance will be considered only where the applicant submits documentary evidence showing a legitimate intention to sell the remainder of the property upon the approval of the homesite severance application. (An interim agreement for sale, a prospective buyer's written statement of intent to purchase, a real estate listing, or some other written evidence of a pending real estate transaction may be acceptable as documentation) In considering the application, the Commission may make an approval subject to sale of the remainder within a specified period of time.

An order of the Commission authorizing the deposit of the subdivision plan will be issued to the Registrar of Land Titles only when a transfer of estate in fee simple or an agreement for sale is being registered concurrently.

In my opinion, the policy envisions an arms length sale of the remainder property. In this case, however, the remainder property will be transferred as a non-arms length transaction to a family member under the succession plan. Consequently, a "transfer of estate in fee simple" will be available to complete the subdivision.

The makeup of the succession plan is dependent on the approval of this and other applications.

Section 5 of the Policy states:⁶

5. The remainder of the subject property after severance of the homesite must be of a size and configuration that will, in the Commission's opinion, constitute a suitable agricultural parcel. Where, in the Commission's opinion, the remainder is of an unacceptable size or configuration from an agricultural perspective, there may be three options:

- a. the Commission may deny the homesite severance;
- b. the Commission may require that the remainder be consolidated with an adjacent parcel; or
- c. the Commission may require the registration of a covenant against the title of the remainder and such a covenant may prohibit the construction of dwellings.

The remainder parcel will be part of the succession plan which will ensure that it becomes part of a viable farm unit. The applicant has no objection to a "no build" covenant on the parcel.

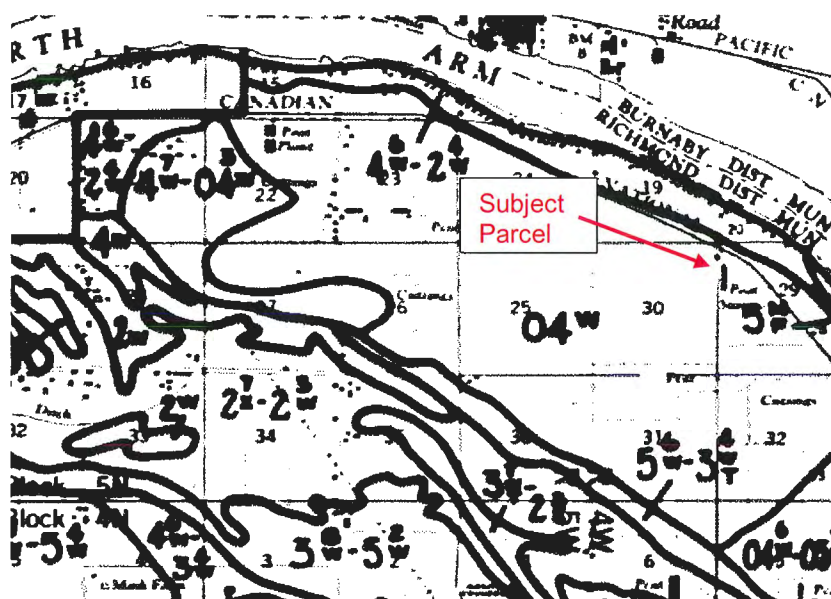
⁵ Ibid, Section 3

⁶ Ibid, Section 5

4.0 Agricultural Capability of the Subject Parcels

The parcels under application are part of the Peat Soils area of East Richmond as shown in Figure 5:

Figure 4: Canada Land Inventory Classifications of the Subject Parcels



As is shown, the parcel is on the organic soils. The parcel has been farmed for some time and is clearly arable.

In my opinion, there is no soils impediment to the continued farming of this parcel by the next generation.

5.0 Local Government Concerns

According to the Property Information provided by the City of Richmond, the property is zoned AG1. According to the Zoning Bylaw:

14.1.8 Subdivision Provisions/Minimum Lot Size

1. Subdivision of land in the Agricultural Land Reserve shall not be permitted unless approved by the Provincial Agricultural Land Commission. Where the approval of the Provincial Agricultural Land Commission is not required, the minimum lot area shall be 2.0 ha.

The noted approval is the subject of the present application. The Homesite severance is proposed as 3.2 acre (1.3 hectare).

6.0 The Bases for Providing an Opinion

Amendments to the *Agricultural Land Commission Act* in 2019 have changed the purposes of the Agricultural Land Commission. As a consequence, the framework for my Opinion must change.

The previous purposes were provided in Section 6 of the *Act*:

- (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

The new purposes are:

- (a) to preserve the agricultural land reserve;
- (b) to encourage farming of land within the agricultural land reserve 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 land within the agricultural land reserve and uses compatible with agriculture in their plans, bylaws and policies.

The standards of review for decisions and processes of administrative bodies (including the ALC), as outlined in the Supreme Court of BC are as follows:⁷

[56] The standard of review for issues of procedural fairness is correctness:
Murray Purcha & Son Ltd. v. Barriere (District), 2019 BCCA 4 at paras. 3, 23–29.

[57] The standard of review for substantive decisions is reasonableness:
Boundary Bay Conservation Committee v. British Columbia (Agricultural Land Commission), 2008 BCSC 946 at paras. 88–91;
Walters v. Agricultural Land Commission, 2016 BCSC 1618 at para. 124.

In adjudicating a previous case, the Court of Appeal made the following statement which provides input into the issue of “correctness” in the procedure of the ALC:⁸

I cannot find the Commission took into account irrelevant considerations, failed to take into account relevant considerations, or that it acted without evidence.

The concept of “reasonableness” has been defined by the Supreme Court of Canada as follows:⁹

Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

As a non-lawyer, my understandings of the changes and rulings are as follows:

⁷ *R.N.L. Investments Ltd. V. Provincial Agricultural Land Commission*, 2019 BCSC 1191, Paragraphs 56 and 57

⁸ *Brentwood Pioneer Holdings Ltd. v. British Columbia (Provincial Agricultural Land Commission)*, – 1998/08/27, Paragraph 38

⁹ *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9

- There is an equivalence in the Act¹⁰ "agricultural land means land that is included in the agricultural land reserve" This equivalence may or may not be true. If not, there are provisions in the Act (Section 30) to remove the land from the ALR.

As I have written elsewhere, it has been some 45 years since the ALR boundaries were proclaimed following the Canada Land Inventory classifications. Yet, discrepancies still exist. I believe that the ALC and the Ministry of Agriculture have an ethical obligation to ensure that the land within the ALR is actually capable of the Farm and Non-Farm activities to which it is restricted.

- Where an application does not request for removal of land from the ALR, that purpose of the Commission is satisfied.
- The procedures of the Commission must be correct. Those procedures do not allow taking into account irrelevant considerations, failing to take into account relevant considerations, or acting without evidence. An example of an irrelevant consideration, in my opinion, is the question in the application: "Does the proposal support agriculture in the short or long term? Please explain." Such a question is not part of the Purposes of the ALC as mandated by the Legislature.
- The concept of "to encourage farming" has been retained as part of the purposes of the Commission. In my experience I have not seen any decisions of the Commission that use this purpose as a reason for a decision. My search of decisions of the Supreme Court of BC and the BC Court of Appeals resulted in no cases where this purpose was used as a review of a Commission Decision. I cannot find any policy of the Commission which provides guidance on encouraging farming.
- The term "Communities of Interest" is not defined. I believe that it should include non-farm activities that provide to the overall family income without limiting the productivity of the farm. Activities such as logging, or construction would fit into this category.
- I believe that it is time to utilize the purpose of encouraging farming as part of the adjudication of applications to the Commission. I believe that it is correct to do so and conversely, incorrect to not do so.
- The object of the third purpose of the Commission in both Acts require the Commission to encourage local governments to accommodate farm use. I assume that the Zoning Bylaws and Official Community Plans reflect that accommodation.

7.0 What is Farming and How to Encourage it?

The Act does not describe "Farming" but does describe "Farm Use" as follows:

- (a) means an occupation or use of agricultural land for
 - (i) farming land, plants, mushrooms, truffles or animals,
 - (ii) a farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*, or
 - (iii) a purpose designated as a farm use by regulation, and

¹⁰ *Agricultural Land Commission Act*, Definitions

(b) does not include a residential use or a soil or fill use;

The Farm Practices Protection (Right to Farm) Act defines “Farm Business” as:

... a business in which one or more farm operations are conducted, and includes a farm education or farm research institution to the extent that the institution conducts one or more farm operations;

“Farm Operations” under the latter Act are defined as:

... any of the following activities involved in carrying on a farm business:

- (a) growing, producing, raising or keeping animals or plants, including mushrooms, or the primary products of those plants or animals;
- (b) clearing, draining, irrigating or cultivating land;
- (c) using farm machinery, equipment, devices, materials and structures;
- (d) applying fertilizers, manure, pesticides and biological control agents, including by ground and aerial spraying;
- (e) conducting any other agricultural activity on, in or over agricultural land;

and includes

- (f) intensively cultivating in plantations, any
 - (i) specialty wood crops, or
 - (ii) specialty fibre crops prescribed by the minister;
- (g) conducting turf production
 - (i) outside of the agricultural land reserve, or
 - (ii) in the agricultural land reserve with the approval under the Agricultural Land Commission Act of the Provincial Agricultural Land Commission;
- (h) prescribed types of aquaculture;
- (i) raising or keeping fur bearing animals or game, within the meaning of a regulation made under the Animal Health Act, by a person licensed or permitted to do so under that Act;
- (k) processing or direct marketing by a farmer of one or both of
 - (i) the products of a farm owned or operated by the farmer, and
 - (ii) within limits prescribed by the minister, products not of that farm, to the extent that the processing or marketing of those products is conducted on the farmer's farm;

but does not include

- (l) an activity, other than grazing or hay cutting, if the activity constitutes a forest practice as defined in the Forest and Range Practices Act;
- (m) breeding pets or operating a kennel;

(n) growing, producing, raising or keeping exotic animals, except types of exotic animals prescribed by the minister

And finally, "Farmer" is defined as:

... the owner or operator of a farm business

In summary, a farm is a business in which farming operations are conducted. A business is generally defined as "any activity or enterprise entered into for profit."¹¹ As an undergraduate, I was taught that the purpose of farming is to make a profit.

Therefore, to encourage farming, the ALC must permit activities that generate an expectation of profit.

8.0 Summary and Conclusion

As I have concluded above, the duty of the Commission is to fulfill the purposes as provided by the Legislature. Again, these are:

The following are the purposes of the commission:

- (a) to preserve the agricultural land reserve;
- (b) to encourage farming of land within the agricultural land reserve in collaboration with other communities of interest;

The first purpose is binary. The decision either preserves the Agricultural Land Reserve or it doesn't. The application for subdivision of the lot preserves all land in the agricultural land reserve.

In my opinion, the subdivisions and passing of titles to the next generation of farmers encourages farming on the land, particularly because of the acquisition of titles by the next generation of farmers. With titles, the new farmers can continue to fully utilize the land for farming and have a reasonable expectation of profit. Accordingly, Section 6(b) of the purpose of the Commission will be fulfilled.

In my opinion, the application meets the criteria for the Homesite Severance Policy since David May has maintained a chain of ownership interest in the property since purchase in 1971. Permitting the severance allows the remainder parcel to be in the land inventory for the succeeding children who will farm it actively with title.

I remain available to discuss my findings and opinions in this report.

Respectfully submitted,



R.G. (Bob) Holtby, P.Ag.

January 10, 2020

¹¹ Law.com <http://dictionary.law.com/Default.aspx?typed=business&type=1>



City of
Richmond

ALR Subdivision Considerations

Development Applications Department
6911 No. 3 Road, Richmond, BC V6Y 2C1

Address: 3031 No. 7 Road

File No.: AG 20-891572

Prior to Subdivision* approval, the applicant must complete the following requirements:

1. Registration of a legal agreement on title to ensure no residential development is permitted on the remainder parcel (no build covenant).

Note:

- * This requires a separate application.
- Where the Director of Development deems appropriate, the preceding agreements are to be drawn not only as personal covenants of the property owner but also as covenants pursuant to Section 219 of the Land Title Act.

All agreements to be registered in the Land Title Office shall have priority over all such liens, charges and encumbrances as is considered advisable by the Director of Development. All agreements to be registered in the Land Title Office shall, unless the Director of Development determines otherwise, be fully registered in the Land Title Office prior to enactment of the appropriate bylaw.

The preceding agreements shall provide security to the City including indemnities, warranties, equitable/rent charges, letters of credit and withholding permits, as deemed necessary or advisable by the Director of Development. All agreements shall be in a form and content satisfactory to the Director of Development.

- Additional legal agreements, as determined via the subject development's Servicing Agreement(s) and/or Development Permit(s), and/or Building Permit(s) to the satisfaction of the Director of Engineering may be required including, but not limited to, site investigation, testing, monitoring, site preparation, de-watering, drilling, underpinning, anchoring, shoring, piling, pre-loading, ground densification or other activities that may result in settlement, displacement, subsidence, damage or nuisance to City and private utility infrastructure.
- Applicants for all City Permits are required to comply at all times with the conditions of the Provincial *Wildlife Act* and Federal *Migratory Birds Convention Act*, which contain prohibitions on the removal or disturbance of both birds and their nests. Issuance of Municipal permits does not give an individual authority to contravene these legislations. The City of Richmond recommends that where significant trees or vegetation exists on site, the services of a Qualified Environmental Professional (QEP) be secured to perform a survey and ensure that development activities are in compliance with all relevant legislation.

[Signed copy on file]

Signed

Date