
**CITY OF KELOWNA
MEMORANDUM**

Date: February 14, 2006
To: City Manager
From: Planning & Corporate Services Department
SUBJECT: SUPPLEMENTAL REPORT: A05-0011, A05-0014, AND A05-0015 (In response to Council Resolution #R1073/05/11/07)
REPORT PREPARED BY: NELSON WIGHT

1.0 RECOMMENDATION

THAT Agricultural Land Reserve Appeal No. A05-0011 (Dempster) for Lot A, Sec. 25, Twp. 26, O.D.Y.D. Plan 16423, located on McKenzie Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, NOT be supported by Municipal Council;

AND THAT Agricultural Land Reserve Appeal No. A05-0014 (Ivans) for Lot 1, Sec. 25, Twp. 26, O.D.Y.D. Plan KAP77946, located on McKenzie Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, NOT be supported by Municipal Council;

AND THAT Agricultural Land Reserve Appeal No. A05-0015 (Lee), Lot 7 Sec. 8 Twp. 26 O.D.Y.D. Plan 22958, located on Heimlich Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, NOT be supported by Municipal Council.

2.0 SUMMARY

Further to Council Resolution #R1073/05/11/07, Staff have sought and received comment from the City Solicitor and the Agricultural Land Commission (ALC). In reviewing those opinions, Staff considers that Council may now proceed with making a recommendation to the ALC with regard to the deferred applications: A05-0011 (Dempster), A05-0014 (Ivans), and A05-0015 (Lee).

3.0 BACKGROUND

On November 7, 2005, three agricultural land reserve appeals were brought before Council. They were applications to subdivide within the ALR, pursuant to Section 21(2) of the Agricultural Land Commission Act. The three owners were represented by legal counsel who submitted that:

1. The Approving Officer is rejecting the applications because they do not comply with the City's policy that discourages the subdivision of agricultural land into smaller parcels unless there is an agricultural benefit.
2. The purpose of s. 946 is to provide an opportunity for land owners to provide smaller parcels for family members and there is no legislative intent that the subdivision must provide an agricultural benefit. Section 946 has been employed frequently around the province.
3. Given the longevity of s. 946, the BC Supreme Court has decided that keeping the land in the family was in the public interest and that the approving officer cannot override the legislative intent behind s. 946 by applying the City's policy to discourage s. 946 subdivisions.

Council chose to defer the items, pending Staff's review with the ALC, and the City Solicitor, as per Council's resolution below:

R1073/05/11/07 THAT Council consideration of Agricultural Land Reserve Appeals No. A05-0011 (Dempster – 1325 McKenzie Road), A05-0014 (Ivans – 1355 McKenzie Road), and A05-0015 (Lee – 1998-2020 Heimlich Road) be deferred for staff to review/update the homesite severance policy, and to consult with the City Solicitor and the Agricultural Land Commission on the question of whether Section 946 of the Local Government Act supersedes City Planning policies.

Staff contacted the City Solicitor, who provided an opinion on the matter.

Staff contacted the ALC, who provided a letter of opinion on the matter (please see attached letter from the ALC, dated January 10, 2006).

4.0 POLICY AND REGULATION

4.1 City of Kelowna Strategic Plan

Objective: Sensitively integrate new development with heritage resources and existing urban, agricultural and rural areas.

Action towards this objective: – Evaluate the effectiveness of City policies and bylaws in preserving agricultural lands.

4.2 Kelowna 2020 – Official Community Plan

Subdivision – Discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

4.3 City of Kelowna Agriculture Plan

Parcel Size (Agricultural Land) – Discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

Isolated Development – In general, not support extensions to existing development or new development isolated within agricultural areas, regardless of ALR status.

5.0 PLANNING AND CORPORATE SERVICES DEPARTMENT COMMENTS

The ALC has addressed the issue of “sequence of approvals” and noted that these applications are being reviewed in accordance with the relevant legislation and procedural bylaws. That is, the approving officer has no authority to consider approval of a subdivision of land within the ALR prior to the ALC making a decision on that matter, pursuant to Section 18(b) of the *Agricultural Land Commission Act*.

The ALC letter identifies those circumstances in which it is appropriate for an approving officer to consider a subdivision under s. 946, as follows:

“The Commission encourages local government to use Section 946 of the Local Government Act to facilitate the creation of homesite severance subdivisions when such subdivision have been approved by the Commission in accordance with its Homesite Severance Policy. In these cases . . . Section 946 can provide a means for the local government to consider a parcel smaller than a zone allows without rezoning.”

In the case of A05-0011 (Lee) and A05-0015 (Dempster), one or more of the proposed lots would not meet the minimum parcel size of the existing A1 – Agriculture 1 zone. It should be

clarified that non-support of these applications is NOT based on this shortfall in area. Staff recognizes that the subdivision approving officer has some discretion under s. 946 of the LGA to consider parcels that do not meet the minimum area, as often happens when approving homesite severance subdivisions.

Staff does not support applications numbered A05-0011 (Dempster), A05-0014 (Ivans), and A05-0015 (Lee), because of the policy conflict with, in particular, Section 11.1.17 of the Kelowna 2020 – Official Community Plan, as noted below:

Subdivision – Discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

Staff considers that Council may now proceed with making a recommendation to the ALC with regard to the deferred applications: A05-0011(Dempster), A05-0014 (Ivans), and A05-0015 (Lee), as per the recommendation on the first page of this report, or the alternate recommendation below.

6.0 ALTERNATE RECOMMENDATION

THAT Agricultural Land Reserve Appeal No. A05-0011 (Dempster) for Lot A, Sec. 25, Twp. 26, O.D.Y.D. Plan 16423, located on McKenzie Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, be supported by Municipal Council.

THAT Agricultural Land Reserve Appeal No. A05-0014 (Ivans) for Lot 1, Sec. 25, Twp. 26, O.D.Y.D, Plan KAP77946, located on McKenzie Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, be supported by Municipal Council.

THAT Agricultural Land Reserve Appeal No. A05-0015 (Lee), Lot 7 Sec. 8 Twp. 26 O.D.Y.D. Plan 22958, located on Heimlich Road, Kelowna, B.C. for a subdivision within the Agricultural Land Reserve pursuant to Section 21(2) of the Agricultural Land Commission Act, be supported by Council.

Bob Shaughnessy
Subdivision Approving Officer

Approved for inclusion

R.L. (Ron) Mattiussi, ACP, MCIP
Director of Planning & Corporate Services

NW/nw

ATTACHMENTS

ALC Letter (2 pages)

Local Government Act Section 946 (2 pages)