



Agricultural Land Commission
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March 15, 2023

ALC File: 65049

Joe Brons
2671 33rd St South
Gold Creek Subdivision

DELIVERED ELECTRONICALLY

Dear **Error! Reference source not found.:**

Re: Reasons for Decision - ALC Application 65049

Please find attached the Reasons for Decision of the Kootenay Panel for the above noted application (Resolution #91/2023). As agent, it is your responsibility to notify the applicants accordingly.

Under section 33 of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:

- No previous request by an affected person has been made, and
- The request provides either:
 - Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or
 - Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision's release, as per [ALC Policy P-08: Request for Reconsideration](#).

Please refer to the ALC's [Information Bulletin 08 – Request for Reconsideration](#) for more information.

Please direct further correspondence with respect to this application to ALC.Kootenay@gov.bc.ca

Yours truly,

A handwritten signature in cursive script, appearing to read 'Martin Collins', is written in black ink.

Martin Collins, Regional Planner

Enclosure: Reasons for Decision (Resolution #91/2023)

cc: Regional District of East Kootenay. Attention: Krista Gilbert

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**AGRICULTURAL LAND COMMISSION FILE 65049
REASONS FOR DECISION OF THE Kootenay Panel**

Non-Adhering Residential Use Application Submitted Under s.20.1(2) of the Agricultural
Land Commission Act

Applicants: Joseph Brons
Marie Brons

Agent: Joe Brons

Property: Parcel Identifier:016-028-155
Legal Description: Lot 22, District Lot 5247,
Kootenay District Plan 1088
Civic: Gold Creek Subdivision 2671 33rd St
South, Cranbrook BC
Area: 2 ha (entirely within the ALR)

Panel: Jerry Thibeault, Kootenay Panel Chair
Danna O'Donnell
Wayne Harris

OVERVIEW

- [1] The Property is located within the Agricultural Land Reserve (“ALR”) as defined in s. 1 of the *Agricultural Land Commission Act* (“ALCA”).
- [2] The Applicants are applying to the Agricultural Land Commission (the “Commission” or “ALC”) under s. 17(3) of the ALCA to construct an 111 m² second residence above a new shop on the Property (the “Proposal”).
- [3] Section 25(1.1) (b) of the ALCA states that in making a determination regarding an application for a non-adhering residential use, the Commission must not grant permission for an additional residence unless the additional residence is necessary for farm use.
- [4] The issue the Panel considered is whether the Proposed Additional Residence is necessary for farm use.
- [5] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 6 of the ALCA:
- 6 (1) 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; and,
 - (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.

(2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this Act:

(a) the size, integrity and continuity of the land base of the agricultural land reserve;

(b) the use of the agricultural land reserve for farm use.

EVIDENTIARY RECORD

[6] The Proposal, along with related documentation from the Applicants, Agent, local government and Commission is collectively referred to as the “Application”. All documentation in the Application was disclosed to the Agent in advance of this decision.

BACKGROUND

[7] The Applicant purchased the Property in February 2021.

[8] The Regional District of East Kootenay (“RDEK”) staff report states that the building permit was “initially issued as a temporary dwelling for occupancy during construction. At the time of building permit issuance the owners had confirmed that when the principal dwelling was built the additional dwelling would be decommissioned and converted to an accessory structure”.

[9] The RDEK zoning designation for the Property is RR-2 - Rural Residential small holdings zone which permits a single family dwelling and a secondary suite within a detached garage to a maximum of 90 m². If the Application is approved, a development variance permit would be required.

[10] At its meeting of May 7, 2022, the Board of the Regional District of East Kootenay resolved to forward the application with a recommendation of support.

ANALYSIS AND FINDINGS

Issue: Whether the Additional Residence is necessary for a farm use.

[11] There is an existing 334 m² principal residence on the 2 ha property. The Property is used for a rural residence, and a small home-based construction business is operated out of an existing shop on the Property.

[12] The Applicants propose to retain the 111 m² additional residence above their shop. The additional residence is intended for the Applicants' parents to assist with childcare and future agricultural activities.

[13] On February 22, 2019 Bill-52 amended the ALCA to restrict residential speculation and non-farm development in the ALR and included section 25(1.1) (b) that states that in deciding a non-adhering residential use application, the Commission must not grant permission for an additional residence unless the additional residence is necessary for farm use.

[14] The Property does not have any farming activity but the Applicant submits that they have plans to use the land for farming and that their parents who will reside in the proposed 111 m² dwelling will plant a large vegetable garden and raise animals such as pigs, chickens, horses, and goats.

[15] To assess agricultural capability on the Property, the Panel referred in part to agricultural capability ratings. The ratings are identified using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system. The improved

agricultural capability ratings applicable to the Property are Class 3 and Class 4, more specifically 80% Class4PT and 20% Class:3T).

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.

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

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

[16] Based on the agricultural capability ratings, the Panel finds that the Property has mixed prime and secondary agricultural capability, and could be used for a range of agricultural activities with standard farm management practices.

[17] The Panel referred to ALC Policy L-26: Non-Adhering Residential Use Applications ("Policy L-26"), which outlines general guidelines for the ALC's consideration of additional residences. Policy L-26 states that in considering whether an additional residence is necessary for a farm use, the Commission will assess the scale and intensity of the farm operation. Where an applicant can demonstrate that the scale and intensity of the farm operation has exceeded the labour capacity of the owner/residents, the Commission may determine that an additional residence would be necessary to support the farm operation. Although the Applicant submits that they plan to raise animals and plant a large vegetable garden, Policy L-26 states that the Commission may not be supportive of housing proposals which "intend" to expand or intensify the farm operation unless it considers there to be a satisfactory mechanism to ensure that expansion is undertaken after the new housing is constructed. Given that there is no agricultural activity on the Property, the Panel finds that the proposed

residence is not necessary for farm use based on the current or proposed agricultural activities as described in the Application.

DECISION

[18] For the reasons given above, the Panel refuses the Proposal to retain the 111 m² additional residence on the Property.

[19] These are the unanimous reasons of the Panel.

[20] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

[21] Resolution #91/2023
Released on March 15, 2023

A handwritten signature in black ink, appearing to read 'Jerry Thibeault'.

Jerry Thibeault , Panel Chair

On behalf of the Kootenay Panel