

Lauri Feindell

From: Shannon Duong
Sent: June 27, 2023 3:43 PM
To: Lauri Feindell
Subject: FW: ALC Resolution #122/2023 - Condition E (Zoning Amendment)
Attachments: 2800.28v20230512.pdf; 65148d1 (Mulrooney).pdf

Representation from the ALC for C2023.006-ZONE.

Cheers,
Shannon

From: ALC Referrals ALC:EX <ALC.Referrals@gov.bc.ca>
Sent: Tuesday, June 27, 2023 3:16 PM
To: Shannon Duong <sduong@rdos.bc.ca>
Cc: 'belenko@mcelhanney.com' <belenko@mcelhanney.com>
Subject: ALC Resolution #122/2023 - Condition E (Zoning Amendment)

Hello Shannon,

ALC staff have reviewed the proposed zoning amendment for 3692 Fruitvale Way (C2023.006-ZONE).

ALC Resolution #122/2023 permitted the continued operation of a dining and catering service within the existing residence on the property, subject to conditions. Condition (e) of Resolution #122/2023 stated:

- (e) if rezoning of the Property is required by the local government, the Commission requires the zoning change to be specific to the Property and limit the type of non-farm use permitted to the Dining and Catering Services specified in this decision. No broad zoning changes are permitted and the draft amendment bylaw must be reviewed and approved by the ALC prior to first reading of the bylaw.

On June 22, 2023, you provided the draft bylaw zoning amendment. ALC staff have now had a chance to review the draft language and can confirm that the language is consistent with ALC Resolution #122/2023.

Please note the other conditions relating to ALC Resolution #122/2023 remain in effect and must be complied with. I have cc'd the Applicant on this email for their reference.

Please let me know if you require any additional information.

Sincerely,



Claire Buchanan, MRM (she/her)
Regional Planner - Okanagan | Agricultural Land Commission
201 – 4940 Canada Way, Burnaby, BC, V5G 4K6
T 236.468.2034
claire.buchanan@gov.bc.ca | www.alc.gov.bc.ca

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March 31, 2023

ALC File: 65148

McElhanney Ltd. (Attn: Brad Elenko)
DELIVERED ELECTRONICALLY

Dear Brad Elenko:

Re: Reasons for Decision - ALC Application 65148

Please find attached the Reasons for Decision of the Okanagan Panel for the above noted application (Resolution #122/2023). As the agent, it is your responsibility to notify the applicants accordingly.

Please note that the submission of a \$150 administrative fee may be required for the administration, processing, preparation, review, execution, filing or registration of documents required as a condition of the attached Decision in accordance with s. 11(2)(b) of the ALR General Regulation.

Under section 33.1 of the *Agricultural Land Commission Act* ("ALCA"), the Chair of the Agricultural Land Commission (the "Commission") has 60 days to review this decision and determine if it should be reconsidered by the Executive Committee in accordance with the ALCA. You will be notified in writing if the Chair directs the reconsideration of this decision. The Commission therefore advises that you consider this 60 day review period prior to acting upon this decision.

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.Okanagan@gov.bc.ca

Yours truly,

A handwritten signature in black ink, appearing to read "Dimitri", written in a cursive style.

Dimitri Giannoulis, Land Use Planner

Enclosures: Reasons for Decision (Resolution #122/2023)
 Schedule A: Decision Map

cc: Regional District of Okanagan-Similkameen (File C2022.008-ALC). Attention:
Shannon Duong

65148d1



**AGRICULTURAL LAND COMMISSION FILE 65148
REASONS FOR DECISION OF THE OKANAGAN PANEL**

Non-Farm Use Application Submitted Under s.20(2) of the Agricultural Land
Commission Act

Applicants:

Michael Mulrooney
Deborah Day
Susan Shillitto

Agent:

McElhanney Ltd. (Brad Elenko)

Property:

Parcel Identifier: 008-139-121
Legal Description: Lot 2, District Lot 2450S,
Similkameen Division Yale District Plan 19063
Civic: 3692 Fruitvale Way, Oliver, BC
Area: 0.37 ha (entirely within the ALR)

Panel:

Gerald Zimmermann, Okanagan Panel Chair
Joseph Deuling

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] A business called Backyard Farm Chef’s Table began operating on the Property in 2015 (the “Business”). The Business includes a dining service (the “Dining Service”) and a catering service (the “Catering Service”). The Dining and Catering Services did not receive the necessary authorizations from the Agricultural Land Commission (the “Commission” or “ALC”) or the Regional District of Okanagan Similkameen (“RDOS”).
- [3] The Applicants are applying to the Commission under s. 20(2) of the ALCA to continue operating the Business within an existing ~200 m² residence, including an associated ~50 m² patio and ~200 m² unsurfaced parking areas, as identified on ‘Schedule A: Decision Map’ (the “Proposal”).
- [4] 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

- [5] The Proposal, along with related documentation from the Applicants, Agent, local government, third parties, and Commission is collectively referred to as the “Application”. All documentation in the Application was disclosed to the Agent in advance of this decision.
- [6] On February 13, 2023, the Panel conducted a videoconference meeting with the Agent (the “Applicant Meeting”). An applicant meeting report was prepared and was certified as accurately reflecting the observations and discussions of the Applicant Meeting by the Agent on March 21, 2023 (the “Applicant Meeting Report”). A copy of the Applicant Meeting Report was provided to all members of the Panel prior to its deliberations.
- [7] The Panel conducted a walk-around and meeting site visit on March 10, 2023 in accordance with the *ALC Policy Regarding Site Visits in Applications*, (the “Site Visit”). A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit Report”). The Site Visit Report was certified as accurately reflecting the observations and discussions of the Site Visit by the Agent on March 21, 2023. A copy of the Site Visit Report was provided to all members of the Panel prior to its deliberations.

BACKGROUND

- [8] The Applicants purchased the Property in July 2013.
- [9] In 2015, Mr. Van Hooydonk began operating the Business on the Property. Mr. Van Hooydonk owns and resides on the adjacent ~0.4 ha parcel west of the Property.
- [10] On June 1, 2021, ALC Regional Planning staff sent a letter to the Regional District of Okanagan Similkameen (“RDOS”), advising that the Dining and Catering Services on the Property are not a permitted use within the ALR, leading to this Application being submitted.
- [11] The Property is less than 0.8 ha (2 acres), and so ALC staff reviewed the Property under section 23(1) ALCA that provides for the potential for the exception on the restrictions of use for parcels less than 2 acres. The ALC confirmed in a letter dated June 7, 2021 to the RDOS that the Property does not meet section 23(1) ALCA and is subject to the restrictions of use in the ALCA and its regulations.
- [12] The RDOS Administrative Report dated August 18, 2022 (the “RDOS Report”) states that the Property’s zoning (Agriculture One – AG1) does not permit for an ‘eating and drinking establishment’, and thus the Proposal is inconsistent with the zoning. The RDOS Report indicates that if approved by the Commission, a Temporary Use Permit or rezoning would be required.

ANALYSIS AND FINDINGS

The Dining and Catering Service Proposal

- [13] The existing Dining Service is operated out of the existing ~200 m² residence located on the Property, including use of an associated patio and unsurfaced parking areas. The Application describes the Dining Service as a “farm-to-table culinary experience” which includes the chef explaining the “food’s journey from on-site farm production to table, all-the-while discussing sustainable and organic farming practices used...”.
- [14] The Application material indicates that the Dining Service is seasonal and by appointment only between March and December, with only one booking per evening. Further, there is a maximum of approximately 12 bookings per month, of up to 20 guests, but typically includes 10-14 guests per booking. No alcohol is sold, but guests may bring their own.
- [15] The Application material submits that the Catering Service provides food to off-site events at wineries and other venues.
- [16] Based on the site plan in the Application material, the floorspace of the ~200 m² residence is ~45% allocated to the dining area and kitchen, and ~55% for residential purposes. The outdoor patio space is adjacent to the residence, approximately 50 m² in area. The Application clarifies that the patio is not intended as an expansion of the business’ overall guest capacity. The Application explains that an outdoor dining option enhances the “food-to-table” theme of the dining service. The Application material includes a ‘Parking Plan’ that identifies ten available parking spaces, totaling approximately 200 m² in area, and a note that the majority of guests arrive by shuttle service or taxi. The Agent states that the

parking stalls are unpaved, and no work is planned to add or alter any parking stalls.

Food and Beverage Services in the ALR

[17] The Agent asserts that the Dining Service is “agri-culinary” and is of a different nature than a conventional food and beverage service.

[18] The Panel wishes to clarify that food service is only referenced in section 13 of the ALR Use Regulation which permits operating a food and beverage service lounge as an ancillary use (i.e. secondary or subordinate use) to a manufacturing license for alcohol production. Alcohol production facilities in the ALR that serve alcohol are required to provide food to their patrons in accordance with their liquor manufactures license as explained in the *BC Liquor Manufacturer License Terms and Conditions Handbook*. There is no provision for other food services in the ALR Use Regulation, or requirement to provide food service by other authorities, for any other farm use. For this reason, the Panel confirms that a dining and catering establishment such as the existing Dining and Catering Services described in this Proposal are not a permitted use in the ALR and that the necessary non-farm use application has been appropriately submitted.

The Dining and Catering Service Inputs

[19] The primary purpose of ALR land is for agricultural use. However, the Panel recognizes that in certain circumstances that value-added services may be contemplated through an ALC application if those services are supportive of, and ancillary to, agriculture.

[20] The Application states that the 0.37 ha (0.9 acre) Property produces agricultural products used in the Dining and Catering Services. The Agent states that the Property does not have an official organic farm certification, but that organic and

regenerative practices are used. The Application explained that portions of the Property and Mr. Van Hooydonk's 0.4 ha adjacent property (collectively, the "Properties") are both used to grow agricultural products that are used for the existing Dining and Catering Services.

- [21] Mr. Van Hooydonk explained in the Applicant Meeting that he and his wife are actively involved with the farming tasks (such as pruning, thinning, composting, harvesting, and more), and no farm workers are hired. The agricultural products grown on the Properties include vegetables, tree fruits, berries, nuts, flowers, and herbs. Additionally, there are ten beehives for honey and a mobile chicken coop for 14 laying chicken. The Properties include raised garden beds, in-ground beds, a small greenhouse, a farm shop, a tractor, irrigation, and fencing.
- [22] The Application states that all of the harvested products from the Properties are used by the Dining and Catering Services and not sold off-farm to market. In the Applicant Meeting, the Agent and Mr. Van Hooydonk explained that approximately 55-60% of the food used by the Business is grown on-site and that having food grown on-site is an essential component of the existing Dining Service, to him and to his guests.
- [23] The Panel considered that the farm product area is small, but based on its discussions at the Applicant Meeting and observations at the Site Visit, the Panel finds that the agricultural production is intensive for its size. In light of the small size of the Properties and agricultural area on the Properties, the Panel gave substantial consideration as to whether the existing Business provides 'value-added' to the agricultural production without overshadowing it. In this case, the Panel finds that the Applicants and Mr. Van Hooydonk have demonstrated that the experience of the guests is predicated on the proximity and connection of the existing Dining Service with the Properties and the food produced on them. The

Panel also considered that scale and seasonality of the existing Dining Service further emphasizes its ancillary nature given that it is only operated from March to December, hosts only approximately 12 services per month, and maintains a small number of guests at a time. The Panel finds that the small-scale nature of the Dining and Catering Services are commensurate with the equally small-scale agriculture taking place on the Properties, and that the Dining Service is dependent on the continued intensive small-scale agricultural production on the Properties. For this reason, the Panel is amenable to the continued use of the residence on the Property for Dining and Catering Services based on the current business model and demonstrated connection and level of agricultural inputs for the existing Dining and Catering Services.

[24] The Panel then considered the impact of the existing Dining and Catering Services on the Property and whether they would impact the long-term use of the Property for agriculture. Firstly, the Panel considered if the physical impact of the Proposal affects the integrity of the ALR. The Panel noted that no expansion of structures, the patio, or the parking area are proposed, that the existing Business utilizes a portion of the existing ~200 m² residence. Further, neither the patio nor parking areas are paved which the Panel finds to be less impactful to agricultural land as it is permeable and decreases the potential for runoff. Additionally, Mr. Van Hooydonk explained that guests of the Dining Service typically use a shuttle service as opposed to bringing individual vehicles which further reduces the impact and need for parking. The Panel considered that if the existing Business ceases to operate, that the residence and parking areas could be returned to residential use. Thus, given the size and nature of the residence, parking, and patio areas used in conjunction with the existing Business, the Panel finds that the Proposal presents a negligible physical impact on the integrity of the ALR.



[25] Since the decision is closely tied to such details, the Panel believes that a non-transferable decision is prudent, to avoid future owners operating a non-farm use in a manner different than has been considered here.

DECISION

[26] For the reasons given above, the Panel approves the Proposal to continue operating the existing Dining and Catering Services within the existing residence, and with the patio and parking areas, as identified, subject to the following conditions:

- (a) siting of the non-farm use in accordance with Schedule A;
- (b) a maximum of 20 guests per evening;
- (c) no expansion of the footprint of the Business within the ~200 m² residence. The Commission understands that the Business utilizes 45% of the existing residence;
- (d) approval for non-farm use is only for the existing Dining and Catering Services (The Backyard Farm Chef's Table) in accordance with its existing business model as identified;
- (e) if rezoning of the Property is required by the local government, the Commission requires the zoning change to be specific to the Property and limit the type of non-farm use permitted to the Dining and Catering Services specified in this decision. No broad zoning changes are permitted and the draft amendment bylaw must be reviewed and approved by the ALC prior to first reading of the bylaw.

[27] 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.

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

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

[30] Resolution #122/2023
Released on March 31, 2023

A handwritten signature in black ink, appearing to read 'G. Zimmermann', with a long horizontal line extending to the right.

Gerald Zimmermann, Panel Chair
On behalf of the Okanagan Panel

