

City of Surrey  
**PLANNING & DEVELOPMENT REPORT**

Application No.: 7920-0003-00

Planning Report Date: July 27, 2020

**PROPOSAL:**

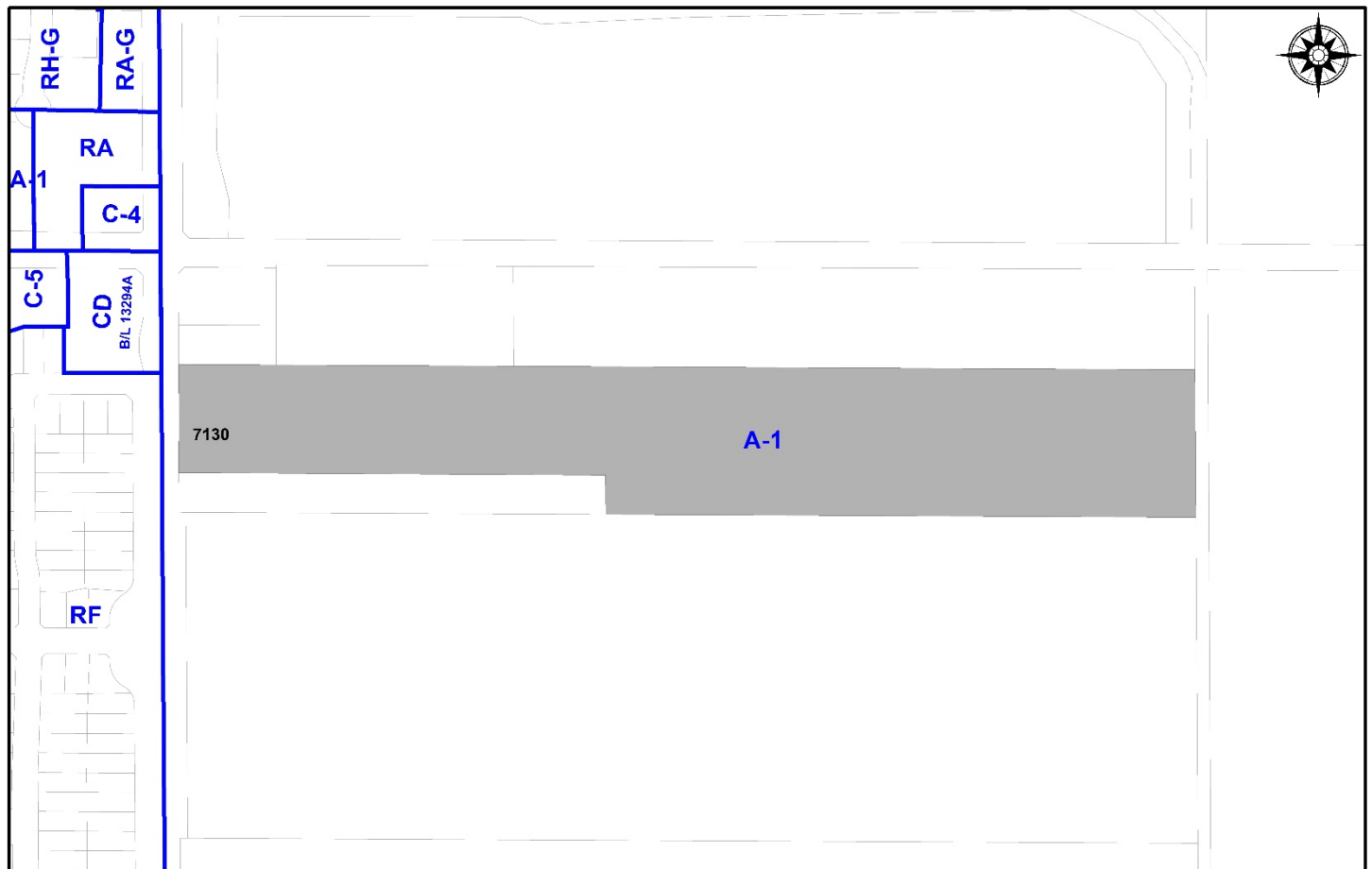
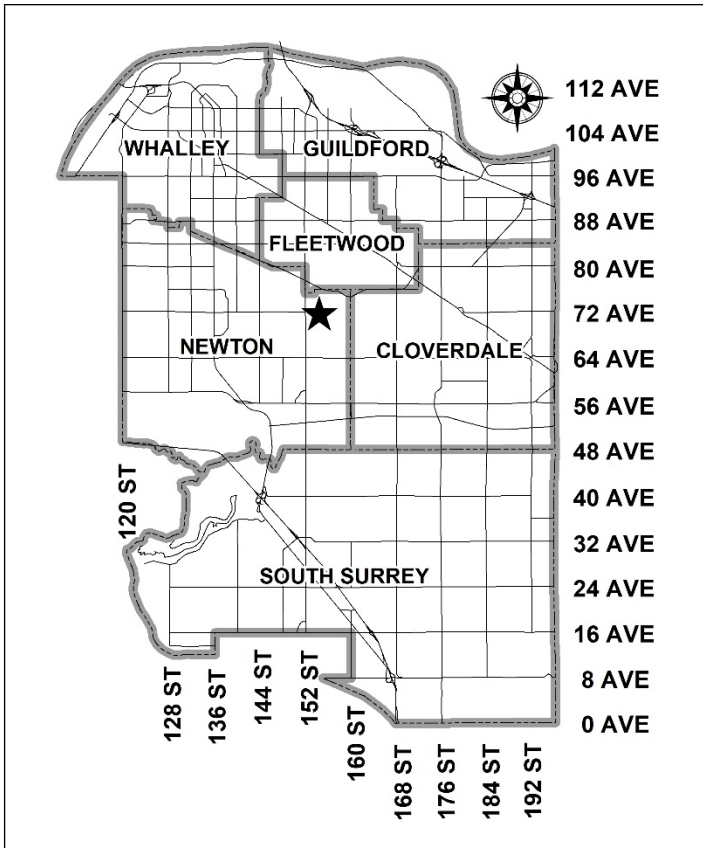
- Placement of fill in the ALR under Section 20.3(5) of the ALC Act.
- Development Variance Permit

to approve fill that has already been imported onto the site.

LOCATION: 7130 - 152 Street

ZONING: A-1

OCP DESIGNATION: Agricultural



**RECOMMENDATION SUMMARY**

- Authorize referral of the application to the Agricultural Land Commission (ALC).
- Approval for Development Variance Permit to proceed to Public Notification.
- Repeal Development Variance Permit No.7913-0143-00.

**DEVIATION FROM PLANS, POLICIES OR REGULATIONS**

- Proposal to allow existing, unpermitted fill to remain on the property, which is in excess of the maximum fill allowed by the Agricultural Land Reserve Use Regulation.
- Proposal to expand the farm residential footprint from what was approved under Development Variance Permit 7913-0143-00.

**RATIONALE OF RECOMMENDATION**

- The applicant has been working with a professional agrologist to develop and implement a farm plan since taking ownership of the property in 2012. While the applicant has not yet fully implemented their farm plan, significant agricultural investment has been made on the property. The farm is currently in production, primarily as a pumpkin patch, with a portion of the property being used to produce corn and garlic.
- Part of the applicant's farm plan is to create a direct-farm marketing and agritourism model for their agricultural operation. The applicant plans to sell their pumpkins, and other agricultural products, directly on the farm.
- The applicant requires the existing unpermitted fill in order to provide a display area for the sale of agricultural products, parking, and traffic circulation.
- The applicant retained a geotechnical engineer, who has indicated that some of the additional fill near the home is also used to improve the structural stability of that single family dwelling.
- The Agriculture and Food Policy Advisory Committee (AFPAC) recognize the work that has been completed on the property to bring it into agricultural production, but are wary of the multiple fill violations that have occurred on the property during that time.

## RECOMMENDATION

The Planning & Development Department recommends that:

1. Council authorize referral of the application to the Agricultural Land Commission.
2. Council approve Development Variance Permit No. 7920-0003-00 (Appendix IV) varying the following, to proceed to Public Notification:
  - (a) to increase the maximum setback of the single family dwelling from 50 metres to 125 metres;
  - (b) to increase the maximum depth of the farm residential footprint from the front lot line of the (A-1) Zone from 60 metres to 138.2 metres; and
  - (c) to increase the maximum size of the farm residential footprint of the A-1 Zone from 2,000 square metres to 3,600 square metres.
3. Council instruct staff to resolve the following issue prior to final adoption:
  - (a) Approval from the Agricultural Land Commission.
4. Prior to issuance of Development Variance Permit No.7920-0003-00, Council pass a resolution to repeal Development Variance Permit No. 7913-0143-00.

## SITE CONTEXT & BACKGROUND

Direction	Existing Use	OCP Designation	Existing Zone
Subject Site	Agriculture (ALR)	Agricultural	A-1
North:	Residential and Agriculture (ALR)	Agricultural	A-1
East:	Fallow Agriculture (ALR)	Agricultural	A-1
South:	Residential, Greenhouse and Fallow Agriculture	Agricultural	A-1
West (Across 152 Street):	Single Family Residential	Urban (Urban Single Family – East Newton South NCP)	RF

### Context & Background

- The subject site is located at civic address 7130 – 152 Street and is approximately 7.9 hectares in area.

- The property is designated "Agricultural" in the Official Community Plan (OCP), zoned "General Agricultural Zone (A-1)" and located within the Agricultural Land Reserve (ALR).
- The applicant has held legal title of the property since 1997. However, a financing arrangement was in place – the applicant was holding the property "in trust" for a relative. Other than holding legal title to the property, the applicant had no financial ties to it – all maintenance, fiscal, and tenant responsibilities were undertaken by the trustee. In October 2012, this arrangement ended. The applicant took full possession of the property and assumed all financial interest. Prior to this time, the applicant never physically occupied nor inhabited the property.
- The property was unoccupied and fallow when the applicant took full ownership of the property. The applicant hired agrologist Dave Melnychuk, P. Ag., to develop a farm plan to bring the property into production. The applicants have spent a significant amount of time and resources on improving the agricultural capability of the site. These investments include land clearing and drainage, irrigation, and soil improvements.
- Ultimately, the applicant's objective is to develop the agricultural operation under a direct-farm marketing and agritourism model.
- One aspect of the farm plan was to develop a single family dwelling on the property. Existing fill was placed haphazardly without permit on the property by a previous occupant, which was located between 90 and 130 metres from the front property line and was approximately 1,200 square metres in area. DVP 7913-0143-00 was issued on January 13, 2014 to allow the dwelling to be located on the existing fill. The dwelling was to be located no further than 125 metres from the front lot line and accessory residential facilities were to be located no further than 130 metres from the front lot line.
- Soil Permit 13-041159 was issued to approve the existing fill after-the-fact. The permit allowed an area of up-to 2,000 square metres to be filled. This is the only soil permit issued for the site.
- In 2014, during the construction of the new single family dwelling, the surcharge of the imported fill was spread to the south and to the east, outside the identified limits of the existing fill permit. City Staff also identified that additional fill had been brought on to the property and issued a stop work order on the site.
- Staff worked with the applicant to identify an appropriate solution towards removal of the unpermitted fill and remediate the site. An agreement was reached between the applicant and the City to remove the fill from the east side of the dwelling. As a compromise, City staff agreed to have the fill that was placed to the south of the property remain on site, because the amount of fill was under the maximum allowable area permitted by the ALC regulations at the time (2% of the maximum parcel size). The fill to the east of the dwelling was removed and the stop work order was lifted in 2016.



Agricultural and Food Policy Advisory Committee (AFPAC):

At the July 7, 2020 meeting, AFPAC recommended to the General Manager of Planning and Development that the proposal be supported by Council provided that a restrictive covenant is registered on title to ensure the property is farmed in perpetuity.

In their discussion, AFPAC remarked on the investments made to the farm and the progress of the agricultural operation since the applicants took possession of the property. However, AFPAC was concerned about additional soil violations in the future, given the applicant's history with soil violations. However, it was also noted that the applicant has worked with the City to address their violations. The committee also remarked that the retaining wall installed by the applicant creates a defined barrier on the site, making it unlikely that additional soil would be brought onto the property in the future to encroach onto the farm fields on the property.

### Planning Considerations

- The applicant is proposing to have the existing, unpermitted fill be approved by the ALC, under Section 20.3(5) of the *Agricultural Land Commission Act (ALCA)*.
- A consequence of the unpermitted fill is an expansion of the farm residential footprint in terms of area and the maximum setback. If the retention of the existing, unpermitted fill is supported by Council and the ALC, Development Variance Permit 7913-0143-00 will need to be repealed and a new Development Variance Permit will need to be issued.
- In this circumstance, the exact extent of the farm residential footprint is poorly defined due to the fact that portions of the fill are being used for both residential and farm activities. A 3,600 square metres farm residential footprint area has been identified by staff.
- A Development Variance Permit is required to increase the area of the farm residential footprint from 2,000 square metres to 3,600 square metres, to increase the maximum setback of the single family dwelling from 50 metres to 125 metres and to increase the depth of the farm residential footprint from 60 metres to 138.2 metres.
- Legal Services has advised that a restrictive covenant requiring the property to be farmed in perpetuity poses significant legal issues.
- The covenant steps beyond the statutory framework of the *Agricultural Land Commission Act (ALCA)*; the *ALCA* does not require that a property is farmed and the *ALCA* allows a land owner to make an application for non-farm use, which the nature of the covenant would prohibit.
- The property is within the ALR, designated Agricultural in the Regional Growth Strategy and the Official Community Plan and Zoned A-1. The current regulatory and policy framework limits the use of the property to those related to agriculture and the covenant provides no additional protection to the agricultural use of the land.

- Requiring this covenant would be an unfair burden on the applicant as its content differs significantly from standard City requirements. For these reasons staff are not supportive of require a covenant to require farming on the property.

## **POLICY & BY-LAW CONSIDERATIONS**

### **Agricultural Land Reserve Use Regulations**

- Section 35(a) of the Agricultural Land Reserve Use Regulation (ALR Use Regulation) allows the placement of fill on ALR land for constructing or maintain a structure for farm use or for a principal residence if the total area from which fill is placed is 1,000 square metres or less and that the resulting elevation level of the fill is consistent with the minimum elevation.
- The current ALR Use Regulation was enacted by the Province after the unpermitted fill had been deposited on the site. The previous ALR Use Regulation (BC Regulation 171/2002) allowed fill up-to two percent of the property area before requiring an application.
- There is approximately 0.67 hectares of fill on the property.
- The ALC violation on the property has requested the removal of approximately 2,860 square metres of fill from the property.

### **Zoning By-law**

#### Farm Residential Footprint Variances

- The applicant is requesting the following variances:
  - To increase the maximum setback of the single family dwelling from 50 metres to 125 metres;
  - to increase the maximum depth of the farm residential footprint from the front lot line of the (A-1) Zone from 60 metres to 138.2 metres; and
  - to increase the maximum size of the farm residential footprint of the A-1 Zone from 2,000 square metres to 3,600 square metres.
- Development Variance Permit 7913-0143-00 varied the maximum setback of the single family dwelling from 50 metres to 125 metres and varied the maximum depth of the farm residential footprint measured from the front lot line from 60 metres to 130 metres.
- There will be no change to the location of the single family dwelling. Development Variance Permit 7913-0143-00 approved the increase to the maximum building setback of the single family dwelling to 125 metres. The variance to the maximum building setback must be included in Development Variance Permit 7920-0003-00 should Development Variance Permit No. 7913-0143-00 be repealed to ensure the existing dwelling complies with the setback requirements for the property.

- The expanded farm residential footprint area is being used for a combination of residential and agricultural purposes.
- The area to the east of the dwelling will be used for farm product displays and sales, the area to the south of the dwelling will be used for visitor/customer parking, and the two farm roads are required to facilitate one-way traffic flows to and from the farm sales area.
- The applicant has indicated that the additional fill located to the east of the dwelling was required to maintain the geotechnical stability of their dwelling. Prior to depositing fill on the site, the applicants noted cracks in a concrete walkway around their dwelling.
- A geotechnical review was conducted by Northwest Engineering in support of the application. The geotechnical engineer found that some of the unpermitted fill located to the east of the existing single family dwelling could be removed from the site, however, a 3 horizontal by 1 vertical slope should remain to maintain the stability of the structural fill. The slope would occupy the same area as the existing fill.
- Staff support the requested variances to proceed for consideration.

#### INFORMATION ATTACHED TO THIS REPORT

The following information is attached to this Report:

Appendix I.	Site Plan
Appendix II.	Survey
Appendix III.	Draft Agricultural and Food Policy Advisory Committee Minutes
Appendix IV.	Development Variance Permit No. 7920-0003-00

*approved by Shawn Low*

Jean Lamontagne  
General Manager  
Planning and Development

BD/cm





Farm Residential  
Footprint Area

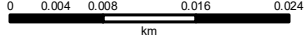
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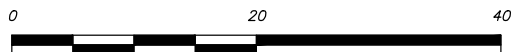
Map created on: 2020-06-23

**B.C. LAND SURVEYORS CERTIFICATE OF LOCATION  
SHOWING CONSTRUCTED RETAINING WALL ON LOT 1  
EXCEPT: FIRSTLY: PARCEL "D" (EXPLANATORY PLAN 11080)  
SECONDLY: THE NORTH 3.83 CHAINS  
THIRDLY: PARCEL "B" (BYLAW PLAN 62484);  
SECTION 14 TOWNSHIP 2  
NWD PLAN 3636**

PID: 010-967-206

**CIVIC ADDRESS :**

7130 - 152nd STREET  
SURREY, BC



SCALE 1 : 400 DISTANCES ARE IN METRES



Lot dimensions and clearances according to  
Plan EPP37126

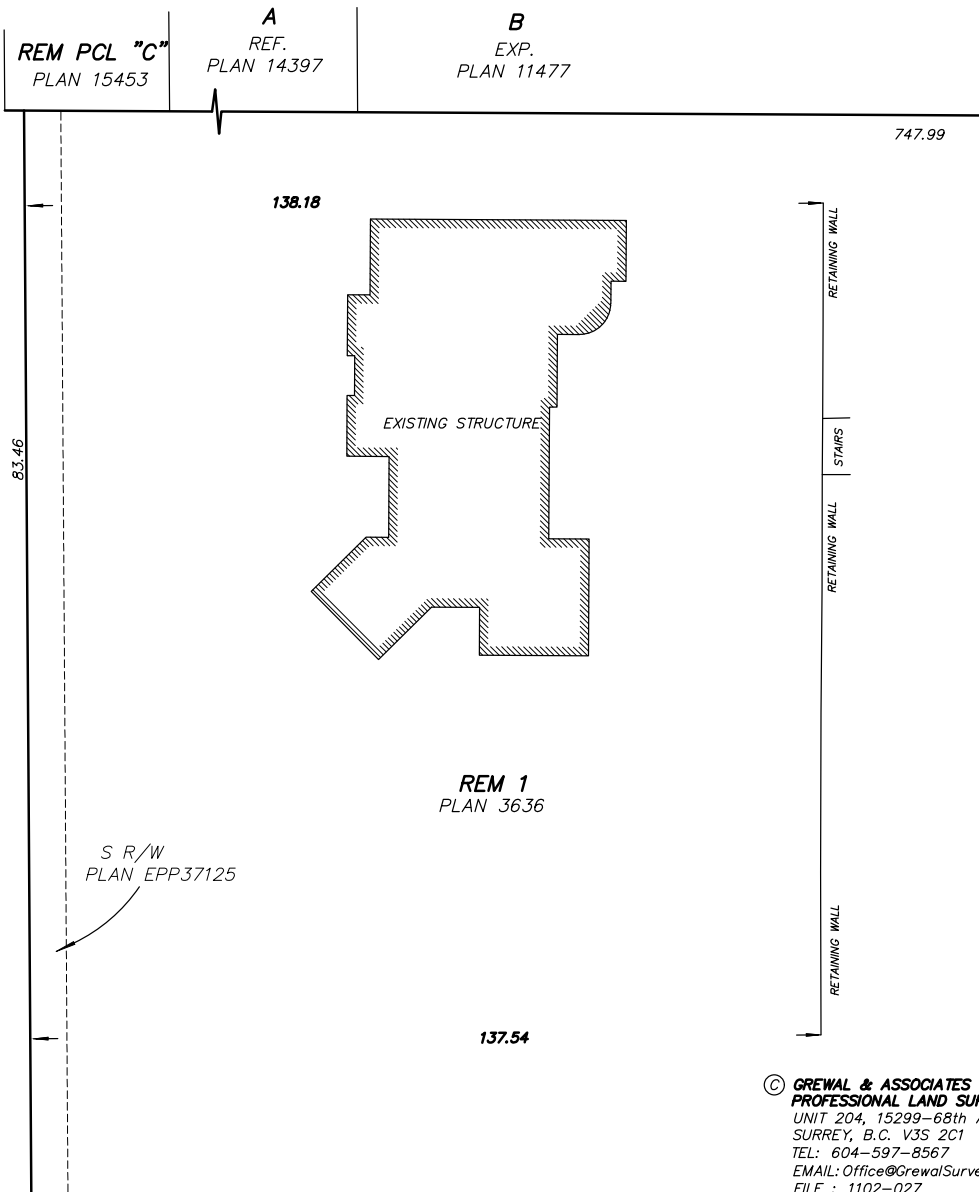
This plan was prepared for inspection purposes and is for the exclusive use of our client. The signatory accepts no responsibility or liability for any damages that may be suffered by a third party as a result of any decisions made or actions taken based on this document. This documents shows the relative location of the surveyed structures and features with respect to the boundaries of the parcel described above. This document shall not be used to define property lines or property corners. All rights reserved. No person may copy, reproduce, transmit or alter this document in whole or in part without the consent of the signatory.

CERTIFIED CORRECT THIS 23rd DAY OF APRIL, 2020.

B.C.L.S.

LAKHJOT S. GREWAL

This document is not valid unless originally signed and sealed.  
NOT SUITABLE FOR MORTGAGE PURPOSES



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TEL: 604-597-8567  
EMAIL: Office@GrewalSurveys.com  
FILE : 1102-027  
DWG : 1102-027 CE2



## AGRICULTURE AND FOOD POLICY ADVISORY COMMITTEE

TUESDAY, JULY 7, 2020

**For the purposes of information only, minutes are subject to change.**

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**C. NEW BUSINESS****2. Development Application 7920-0003-00**

Ben Daly, Planner

File: 7920-0003-00

The proposal is for the placement of fill in the ALR and a Development Variance Permit to increase the maximum area and maximum setback of the farm residential footprint.

- The subject property is designated "Agricultural" in the Official Community Plan (OCP), zoned "General Agricultural Zone (A-1)" and located within the Agricultural Land Reserve (ALR). The site is classified as farmland under the *BC Assessment Act*. The site was classified as farmland between 2014 and 2017. In 2018 and 2019 the property did not have farm classification.
- Staff noted that Bill 52 has new soil restrictions and that the Agricultural Land Commission requested removal of the illegal fill. The site was filled with illegal fill, which extended the farm home plate and as a consequence, a DVP is required. The applicant is applying to the ALC to allow the unpermitted and excess fill to remain on the property. The preload is intended to be used partially for the farm Homeplate and partially for the farm operation, to display and sell farm product. A Geotechnical report was submitted to the City and noted a portion of the fill could be removed, provided a 3 horizontal by 1 vertical slope was maintained to stabilize the Homeplate.
- The Committee expressed concerns that the illegal fill placement has not benefited agriculture land. It was noted that the violations were to benefit the home and not the lands for improved farming activity.
- In response to concerns from the Committee, staff noted the City is not able to place a bond on the property. Staff noted the applicant is attempting to be in compliance with the ALC and the City.
- It was noted that one member visited the property and observed crops and noted that the retaining wall was still leaking with water coming out. It was noted that moving the retaining wall would not make it anymore viable. It was noted that retaining wall would preserve and separate the agriculture land.

It was noted that this application could be an opportunity to work with an applicant to make the property farmable. The Committee expressed concerns on the violations made on the property and whether the applicant would comply moving forward. It was noted that the applicant has made significant improvements to the agricultural utility of the property.

AGRICULTURE AND FOOD POLICY ADVISORY COMMITTEE

TUESDAY, JULY 7, 2020

For the purposes of information only, minutes are subject to change.

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It was

Moved by M. Bose

Seconded by J. Werring

That the Agriculture and Food Policy

Advisory Committee recommend to the General Manager of Planning and Development to support Development Proposal 7920-0003-00 together with a Restricted Covenant placed on the property that the property be used for farming.

Carried

Staff noted there could be issues to legally require and enforce a Restrictive Covenant in favour of the ALC that would require a party to use specific portions of the land for farming on title; but staff will look into the legality of the Restrictive Covenant request. City staff indicated they would follow up with legal and ALC staff before the proposal is brought forward to Council.

CITY OF SURREY

(the "City")

DEVELOPMENT VARIANCE PERMIT

NO.: 7920-0003-00

Issued To:

(the "Owner")

Address of Owner:

1. This development variance permit is issued subject to compliance by the Owner with all statutes, by-laws, orders, regulations, or agreements, except as specifically varied by this development variance permit.
2. This development variance permit applies to that real property including land with or without improvements located within the City of Surrey, with the legal description and civic address as follows:

Parcel Identifier: 010-067-206

Lot 1: Except: Firstly: Parcel "D" (Explanatory Plan 11080)

Secondly: The North 3.83 Chains

Thirdly: Parcel "B" (Bylaw Plan 62484); Section 14 Township 2 New Westminster District Plan 3636

7130 - 152 Street

(the "Land")

3. Surrey Zoning By-law, 1993, No. 12000, as amended is varied as follows:
  - (a) In Section F.1(b) Yards and Setbacks of Part 10 "General Agriculture Zone (A-1)" the maximum setback of a single family dwelling from the front lot line is increased from 50 metres to 125 metres.
  - (b) In Section J.2(a) Special Regulations of Part 10 "General Agriculture Zone (A-1)" the maximum size of the farm residential footprint is increased from 2,000 square metres to 3,600 square metres.
  - (c) In Section J.2(a) Special Regulations of Part 10 "General Agriculture Zone (A-1)" the maximum depth of the farm residential footprint from the front lot line is increased from 60 metres to 138.2 metres.

4. This development variance permit applies to only the that portion of the buildings and structures on the Land shown on Schedule A which is attached hereto and forms part of this development variance permit.
  
5. The Land shall be developed strictly in accordance with the terms and conditions and provisions of this development variance permit.
  
6. The terms of this development variance permit or any amendment to it, are binding on all persons who acquire an interest in the Land.
  
7. This development variance permit is not a building permit.

AUTHORIZING RESOLUTION PASSED BY THE COUNCIL, THE      DAY OF      , 20 .  
ISSUED THIS      DAY OF      , 20 .

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Mayor – Doug McCallum

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City Clerk – Jennifer Ficocelli





Farm Residential Footprint Area

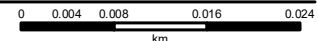
**Development Variance Permit to:**

- Increase the maximum setback of the single family dwelling from 50 metres to 125 metres;
- Increase the maximum area of the farm residential footprint from 2,000 square metres to 3,600 square metres and;
- Increase the depth of the farm residential footprint as measured from the front lot line from 60 metres to 138.2 metres.

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