



BOARD DECISION

RFR 2012-01 / BA11009

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary BA11009.

Alieda Farms Ltd.

December 19, 2012

Background

On November 9, 2012, NRCB Approval Officer Randy Bjorklund issued Decision Summary and Registration BA11009 to Alieda Farms Ltd. (Alieda Farms). The decision approved Alieda Farms' application to construct and operate a new 145 milking cow dairy to be located at NW 31-49-27-W4 in Leduc County.

Pursuant to Section 22(4) of the *Agricultural Operation Practices Act (AOPA)*, Requests for Board Review of the Approval Officer's decision were filed by Ron Kozial and Frank Kozial, both of whom were identified as directly affected parties in Decision Summary BA11009. Each request met the 10-day filing deadline established by *AOPA*.

By way of letter dated December 4, 2012, directly affected parties named in Decision Summary BA11009 were provided a copy of both Requests for Board Review along with notification of their opportunity to file a response by December 11, 2012. The Board did not receive any rebuttal submissions. The Board convened to deliberate on this matter on December 12, 2012.

Jurisdiction

The Board's authority for considering a request to review an Approval Officer's decision is found in Section 25(1) of *AOPA*, which states:

25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,

(a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or

(b) schedule a review.

The Board considers that a party requesting a board review has the onus of demonstrating that there are sufficient grounds to merit review of the Approval Officer's decision. Section 14 of the *Board Administrative Procedures Regulation* describes the information that must be included in each Request for Board Review.

Documents Considered

The Board considered the following information in arriving at its decision:

- Decision Summary and Registration BA11009, dated November 9, 2012;
- Request for Board Review filed by Ron Kozial, dated November 20, 2012;
- Request for Board Review filed by Frank Kozial (completed and submitted by Ron Kozial by power of attorney for Mr. Frank Kozial), dated November 20, 2012;
- The public components of the file maintained by the Approval Officer.

Board Deliberations

The Board met December 12, 2012 to consider the Requests for Board Review. In its deliberations, the Board determined that odour was the primary issue raised regarding Decision Summary and Registration BA11009.

As owners of the quarter section immediately south (Frank Kozial) and the quarter section immediately south-east (Ron Kozial) of the Alieda Farms' confined feeding operation, both Requests for Review (RFRs) express the concern that the location of the confined feeding operation facilities would generate odour that would impair future development and negatively affect land values.

In light of their concerns, both Ron Kozial and Frank Kozial asked that the siting of the confined feeding operation barns and manure storage be relocated 1000 feet north from the south boundary of the NW 31-49-27-W4 rather than the currently approved location along the south boundary. The RFRs go on to request that if the barns and manure storage cannot be moved that Alieda Farms plant a tree buffer to mitigate odour. Finally, the RFRs indicate a willingness to cooperate with the operator.

Odour

The RFRs express the same basic issue that was raised by the statement of concern provided to the Approval Officer by Ron Kozial, for himself and Frank Kozial, on August 3, 2012. In the statement of concern Ron Kozial noted odour concerns and expressed a desire to know more about the "manure management and disposal..." It is not clear from the materials before the Board whether Mr. Kozial initiated a direct dialogue with, or was contacted by, the Approval Officer or Alieda Farms to discuss the manure management proposal.

The Board observes the Approval Officer considered odour concerns by examining whether the operation met the prescribed minimum distance separation (MDS) requirement in the legislation. The Board is satisfied the Approval Officer considered the separation distances between the proposed operation and the neighbouring residences and correctly concluded the project met MDS requirements of the *Standards and Administration Regulation*. The Board notes that the odour concern raised in the RFRs focuses on constraints to future land uses rather than effects on existing residences, and as a consequence the MDS provisions that prescribe a buffer to existing residences are not particularly helpful in addressing that concern. In raising the potential impact that odour may have on future development, the RFRs do not disclose that the landowners have taken any concrete steps to pursue a municipal planning designation contemplating non-agricultural land use.

The Board observes that the consideration of future land use in association with an application under *AOPA* generally starts with an examination of the relevant provisions in the municipal planning documents. Municipalities have a responsibility to provide a forward looking plan for development that has regard for current land use and the type of development that may occur in the future based on established priorities. *AOPA* requires that the Approval Officer deny an application if it is inconsistent with the municipal development plan. The Board notes that the Approval Officer received correspondence from Leduc County stating that Alieda Farms' application "appears to comply with the provisions of the MDP." The Board further notes that the Approval Officer concluded that the application "is consistent with the County's MDP" after his own review of the MDP.

Having regard for the application's satisfaction of MDS requirements, its consistency with the MDP and the absence of any evidence of concrete action on behalf of the Koziels to pursue an

alternate land use that would conflict with the Alieda Farms' application, the Board is satisfied that the Approval Officer adequately considered the effect of odour on adjacent lands. The Board therefore determines that a review is not warranted.

Other Comments

The Board notes that the RFRs are clear in stating that, rather than an absolute objection to the presence of a new dairy, the Kozials' desire is that odour mitigation measures be pursued. The mitigation measures identified in the RFRs include the relocation of barns and manure storage facilities further from the south property line and planting a stand of trees between the new dairy and the Kozial lands.

The NRCB encourages applicants to engage in community consultation. The potential to reduce neighbour concerns and promote a positive ongoing relationship is summarized in the NRCB Application Process Guide. While there is no indication on the file that Alieda Farms pursued such an initiative with neighbours to this point in time, there remains an opportunity to initiate discussions on a go-forward basis. The Guide states:

The consultation process does not end when a permit is issued; communication and consultation about ongoing activities is a courtesy and is good business practice for the operator.

The Board believes that the circumstances of this case suggest that consultation has potential to yield lasting benefits for both Alieda Farms and the Kozials. However, once a Registration is issued there is no longer flexibility for some actions, such as the relocation of facilities, absent the filing and approval of a new application.

While the Board does not believe that an Approval Officer should lead the consultation process, the Board does think there is a positive onus on the Approval Officer to identify the potential benefits of consultation to both the operator and concerned neighbours. Given the stated willingness and interest on the part of Ron Kozial to discuss these issues with the operator, the Board recommends that he speak to the operator directly. The NRCB can assist parties by providing information to understand odour impacts and feasible measures to reduce effects on neighbouring land owners.

While not a central part of the Approval Officer's rationale for the decision, he concludes that an Approval Officer is precluded from considering broad environmental and odour and other nuisance-type concerns raised by the directly affected parties in an application for a registration-sized confined feeding operation as those concerns will have been addressed by the technical requirements of the Act and regulations. The Approval Officer cites Board Decision RFR 2007-02 (Bonnie Spragg) in support of this conclusion. The Board wishes to express some concern with the categorical nature of this position. The Board agrees that in most cases, once an Approval Officer has determined that an application for a registration complies with the Municipal Development Plan, reliance on the technical requirements of the Act and regulations in assessing an application for a registration will suffice. However, the Board cannot discount the possibility of a rare case arising where an Approval Officer would be entitled to use his or her discretion under s. 22(1)(b) of *AOPA* to either condition or refuse an application for a registration-sized confined feeding operation due to the seriousness of the potential environmental impact of the proposal, despite its adherence to the technical requirements of the Act and regulations. This, however, is not the case with the Alieda Farms' application.

Decision

The Board determined the Approval Officer adequately addressed the relevant issues raised in the Requests for Board Review. The review requests are therefore denied.

DATED at CALGARY, ALBERTA, this 19th day of December, 2012.

Original signed by:

Vern Hartwell
Panel Chair

Jay Nagendran
Panel Member

Donna Tingley
Panel Member

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

Edmonton Office

4th Floor, Sterling Place, 9940 - 106 Street
Edmonton, AB T5K 2N2
T (780) 422.1977 F (780) 427.0607

Calgary Office

19th Floor, 250 – 5 Street SW
Calgary, AB T2P 0R4
T (403) 297-8269 F (403) 662.3994

Fairview Office

Provincial Building, #213, 10209 - 109 Street
P.O. Box 159, Fairview, AB T0H 1L0
T (780) 835.7111 F (780) 835.3259

Lethbridge Office

Agriculture Centre, 100, 5401 - 1 Avenue S
Lethbridge, AB T1J 4V6
T (403) 381.5166 F (403) 381.5806

Morinville Office

Provincial Building, #201, 10008 - 107 Street
Morinville, AB T8R 1L3
T (780) 939.1212 F (780) 939.3194

Red Deer Office

Provincial Building, #303, 4920 - 51 Street
Red Deer, AB T4N 6K8
T (403) 340.5241 F (403) 340.5599

NRCB Response Line: 1.866.383.6722

Email: info@nrcb.gov.ab.ca

Web Address: www.nrcb.gov.ab.ca

Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.