



BOARD DECISION

2014-02 / RA14003

Review of Decision Summary RA14003

Spruce Lane Dairies Ltd.

June 25, 2014

Background

On April 29, 2014, NRCB Approval Officer Francisco Echegaray issued Decision Summary RA14003 in relation to Spruce Lane Dairies Ltd.'s (Spruce Lane) confined feeding operation (CFO) located at NE 3-37-28 W4M in Red Deer County (the County). Spruce Lane had applied to expand its existing dairy by increasing its livestock numbers from 200 milking cows to 300 milking cows and constructing a young stock barn and a manure storage facility. In Decision Summary RA14003, the Approval Officer denied Spruce Lane's application as he determined that it was inconsistent with the land use provisions of the County's municipal development plan (MDP).

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, on May 21, 2014 a Request for Board Review of Decision Summary RA14003 was filed by Spruce Lane. Board Decision RFR 2014-01 issued on May 29, 2014 determined that a review was warranted to consider whether the expansion contemplated by Application RA14003 should be approved or denied based on the Board's consideration of the relevant provisions of the MDP. The Board directed that the review would be conducted through a written submission process with the potential for interrogatories and reply submissions. Notice of that decision was provided to Spruce Lane, the County, Gordon and Kim Mann, and NRCB Approval Officer Francisco Echegaray.

In accordance with the established procedure, written submissions were filed by Spruce Lane and the County by June 10, 2014. After allowing sufficient time for parties to review the filed submissions, the Board canvassed the parties to understand whether there was any desire for an interrogatory stage or reply submissions. No party expressed the need for interrogatories or reply submissions and the Board commenced deliberations.

A Board Panel (the Panel or the Board) consisting of Vern Hartwell (Panel Chair), Jim Turner and Jay Nagendran was appointed to conduct the review.

Parties to the Review	Counsel/Representative
NRCB Approval Officer Francisco Echegaray	Mike Wenig, Counsel
Spruce Lane Dairies Ltd.	Keith Wilson, Counsel
Red Deer County	Calvin Symington, Planner

The Panel received staff support from Bill Kennedy as counsel and Susan Whittaker, Board Reviews Manager.

This report provides the Panel's reasons for decision following its review of Decision Summary RA14003.

Issues and Board Views

Section 20(1)(a) of the *AOPA* provides that an Approval Officer must deny an application when it is inconsistent with the land use provisions in a municipal development plan. Consequently, in Decision Summary RA14003, the Approval Officer determined that the Spruce Lane operation is located within a CFO exclusion zone and therefore denied the expansion

application. However, on a review conducted by the Board in accordance with s.25 of AOPA, subsection 4(g) states the Board “*must have regard to, but is not bound by, the municipal development plan.*”

The Panel accepts that the Spruce Lane operation is located on lands that are identified as a “*CFO Exclusion Area*” on Map 2 in the MDP. While some issues arise on interpreting article 3 of the MDP, including whether there is an inherent conflict between the statement in article 3.3.3 referencing “*new or expanded CFOs*” in Map 2 and the Map 2 title and note that refer only to “*new*” confined feeding exclusion areas, the Panel finds that the exclusion areas identified in Map 2 are intended to apply to both new and expanding CFOs. This interpretation was supported by the County in its written submissions to the Approval Officer on the initial application and to the Board on this review. Additionally, to narrowly read the Map 2 references by excluding their application to expanding operations would not only render aspects of article 3.3 meaningless, but also be in direct conflict with the relevant planning objectives of the MDP.

Having reached that conclusion, the Panel must go on to consider whether in this instance, it is prepared to approve the expansion notwithstanding its inconsistency with the land use provisions in the MDP. In considering the merits of this review, the Board respects that land use planning within an area as large and dynamic as Red Deer County presents a number of challenges, including the balancing of uses that may be noncomplementary.

The County provided helpful background information on how it went about delineating the CFO exclusion zones. It stated the intent was to provide enough distance to separate a CFO from residential districts, urban municipalities, and hamlets to minimize potential conflict. The County advised that it used a distance of 1 mile or 1.6 km as a “*general rule of thumb*” and that “*County Administration measures the distance of any setbacks from property lines and not the location of buildings.*” The County identified three residentially zoned parcels on SE 9-37-28W4 and four parcels of residentially districted land on NE 35-36-28W4. Using the measurements from the property lines these parcels are located 800 m and 1100 m, respectively from the Spruce Lane quarter at NE 3-37-28W4. The Board finds that the County’s primary intention in establishing exclusion zones was to address the potential for nuisance odour conflicts rather than environmental protection issues.

AOPA takes a similar approach to minimizing odour nuisance conflict, however, it measures distances from manure storage facilities to residential buildings rather than property lines and calculates the required separation distance based on the size of the operation, livestock type and type of residence. AOPA further provides four separate calculation factors based on residential type, ranging from residences on agriculturally zoned land (Category 1) to residences on land zoned for large-scale country residential, rural hamlet, village town or city (Category 4). The Approval Officer’s file indicates that the calculated minimum separation distances required for Spruce Lane’s expanded operation are 405 m, 539 m, 674 m and 1079 m for Categories 1 through 4, respectively. The Approval Officer measured separation distances for two Category 1 residences, the first being on the SW2-28-37W4 measured at a distance of 610 m from the nearest Spruce Lane manure storage facility and the second on the SE10-28-37W4 measured to have a separation of 820 m. The Approval Officer specifically identified three lots that are zoned country residential (Category 2) that are adjacent to a 1,600 m radius from the Spruce Lane facilities and further calculated that the Town of Penhold (Category 4) is located more than 1,600m from the CFO facilities.

The Board concludes that the relevant MDP exclusion zone demarcated using a 1.6 kilometer measure between property lines rather than actual distances between the Spruce Lane CFO and

existing country residential development is unwarranted in respect to this application, and at least on its face seems in conflict with the strong statements of support for agriculture in the MDP. The exclusion zone covering the Spruce Lane CFO does not appear to be protecting a localized aggressive growth area within the County and all lands surrounding the Spruce Lane CFO are currently zoned agriculture.

The Board also notes that no objections were advanced by neighbours and that the County Council issued a formal statement that it did not object to the Spruce Lane expansion. Having regard for all of these factors, the Board is confident that the Spruce Lane expansion contemplated in Application RA14003 would not create a conflict with the objectives of the MDP's exclusion zone, and therefore concludes that the Approval Officer's consideration of the Spruce Lane dairy expansion may proceed, notwithstanding its location within an area identified in the MDP as a CFO exclusion zone.

Board Decision

The Panel directs the Approval Officer to proceed with the consideration of application RA14003 and that such consideration not be bound by the provisions of Red Deer County's 2012 Municipal Development Plan.

DATED at CALGARY, ALBERTA, this 25th day of June, 2014.

Original signed by:

Vern Hartwell
Panel Chair

Jim Turner
Panel Member

Jay Nagendran
Panel Member

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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.