



BOARD DECISION

RFR 2017-01 / LA16044

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA16044

Norlin Investments

February 14, 2017

Background

NRCB Approval Officer Karen Stewart issued Decision Summary LA16044 (the AO Decision) regarding Norlin Investment's application for a confined feeding operation (CFO), located at SW 18-12-6 W4M in Cypress County (the County), roughly 6 kilometres west of the City of Medicine Hat (Medicine Hat), on December 23, 2016. Norlin Investments applied to construct and operate a new sheep CFO with a capacity of 12,000 sheep (ewes with lambs), construct a new sheep barn and feedlot pens, and berm a natural low area to serve as a catch basin. The Approval Officer denied Norlin Investment's application.

The Approval Officer listed the factors she considered in her decision-making, including her statement that the proposed development met all technical requirements under the *Agricultural Operation Practices Act* (AOPA). Nevertheless, the application was denied, as she determined that the proposed development is inconsistent with the County's municipal development plan (MDP).

A Request for an NRCB Board Review of Decision Summary LA16044 (the RFR) was filed by Mr. Norman Wever on behalf of Norlin Investments on January 22, 2017, meeting the 10-day filing deadline pursuant to section 20(5) of AOPA. The RFR asked the Board to reverse the Approval Officer's decision.

Following receipt of the RFR, the Board sent a Notice of Filed Request for Board Review (the Notice), and a copy of the RFR, to all of the people found by the Approval Officer to be directly affected parties. The Notice advised that any adversely affected parties had an opportunity to file a response submission with the Board, by the deadline of February 1, 2017. The following directly affected parties submitted separate responses: (1) Linda J. Fisher, (2) W. R. Brigden, (3) Randall and Cherie Schmidt, (4) Lorelei Yanke, (5) Donald Kornelson, (6) Kenneth Scott, (7) Butch and Bonnie Insko, (8) Rob and Sheila Church, (9) Roland Kappel, and (10) Barb Oveson and Cecil Glasco.

The Board met on February 7, 2017 to deliberate on the RFR and the responses.

Jurisdiction

The Board's authority for granting a review of 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 review of an Approval Officer's decision has the onus of demonstrating that there are sufficient grounds to merit a review. The information that

must be included in each RFR is described in section 14 of the *Board Administrative Procedures Regulation*, and is also set out in the AO Decision cover letter dated December 23, 2016.

Documents Considered

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

- Decision Summary LA16044 dated December 23, 2016 and its companion technical document (Part 2 Technical Requirements);
- Request for Board Review filed by Norman Wever of Norlin Investments, dated January 22, 2017;
- Response Submissions to the Board's January 24, 2017 Notice of Filed Request for Board Review, as submitted by:
 - Linda J. Fisher, January 26, 2017 email
 - W.R. Brigden, January 27, 2017 email
 - Randall and Cherie Schmidt, January 29, 2017 email
 - Lorelei Yanke, January 30, 2017 email
 - Donald Kornelson, January 30, 2017 email
 - Kenneth Scott, January 30, 2017 email
 - Butch and Bonnie Insko, January 30 and January 25, 2017 facsimiles
 - Rob and Sheila Church, January 31, 2017 email
 - Roland Kappel, January 31, 2017 email
 - Barb Oveson and Cecil Glasco, February 1, 2017 email
- portions of the public record maintained by the Approval Officer; and,
- portions of Cypress County's MDP as available on the County's website.

Board Deliberations

The Board is directed by AOPA to dismiss an application for review if, in its opinion, the issues raised in the RFR were adequately dealt with by the Approval Officer, or the issues are of little merit. Having regard for the documents referenced above, the Board has determined that the primary issue raised by Norlin Investments does not merit consideration at a hearing. As a consequence, the Board does not need to consider any of the secondary issues that have been raised in the RFR submissions.

The primary issue raised is whether the Board should exercise its authority to approve the proposal to construct and operate a 12,000 sheep (ewes and lambs) CFO, notwithstanding the inconsistency with the County's MDP. AOPA directs the Board to assess the merit of conducting a review hearing in order that time and resources are not expended where there is little chance of success. For the reasons that follow, the Board concludes that there is no merit in conducting a review as there is no reasonable chance that the Board would direct an approval of this CFO at this site.

The Board has conducted several review hearings in the past where the Board considered whether to approve an application notwithstanding an inconsistency with planning provisions in

an MDP. For example, in the Board's reasons for decision on the Zealand Farm application (#2011-04 / RA10053), it stated:

Consistent with previous Board decisions and with the knowledge that MDPs are adopted through an open and transparent process, the Board believes that a reasonable approach to this issue requires that it must:

1. identify the municipal authority's rationale for establishing the relevant provision(s) in the MDP;
2. determine whether the relevant provision is reasonable and reflective of good planning;
3. determine whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone; and,
4. identify whether the MDP is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

The Board first looked to identify the County's rationale for the relevant MDP provisions. In doing so the Board observes that the County had obvious regard for the provisions of AOPA in adopting its 2015 MDP. Various provisions in its MDP establish rules or guidelines that are intended to protect and promote the establishment or expansions of CFOs.

Additionally, and not inconsistent with the provisions promoting and protecting CFOs, the County's MDP sets out a well-defined rationale for establishing the CFO exclusion zones. Most notable were the following:

- 2.2 (c) To minimize the encroachment of incompatible land uses near confined feeding operations in order to ensure their continued operation and viability;
- 2.2(h) To plan for the orderly expansion of the corporate boundaries of urban municipalities within the Municipality;
- 3.2 (b) Pursuant to the Agricultural Operation Practices Act, the County may designate areas where confined feeding operations are to be encouraged or excluded;
- 3.2 (c) New confined feeding operations will be excluded from the areas shown on Figure No.2;

The Board then considered whether the exclusion zone provision is reasonable and reflective of good planning, and whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone. The Board finds that the provisions of the MDP take a balanced and reasonable approach to addressing complex land use issues for lands immediately adjacent to Medicine Hat. The County provides for CFO exclusion zones around Medicine Hat, various towns and hamlets, and Cypress Hills Provincial Park. The buffer size of the exclusion zone appears to provide greater separation around Medicine Hat than that established for the smaller towns and villages. The Board finds this is entirely consistent with the County's planning objective 2.2(c), "to minimize the encroachment of incompatible land uses near confined feeding operations in order to ensure their continued operation and viability".

In examining whether the MDP is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province, the Board looks to whether the exclusion zone is inconsistent with what might be encountered in other MDPs. CFO exclusion zones are found in most MDPs. Prudent use of CFO exclusion zones minimizes land use conflicts in areas where land use transitions between agriculture and urban. The Board concludes the exclusion zone surrounding Medicine Hat is not in conflict with the objectives of AOPA.

Norlin Investments acknowledged that it proposes to locate within an area established as a CFO exclusion area, notwithstanding such inconsistency with the County's MDP. It presented letters of support from the County (referencing the Council motion) and Medicine Hat that supported its application. An earlier letter from the County to the Approval Officer stated that the County was unable to support the Norlin Investments application as the property is located within its Confined Feeding Operation Exclusion Area. The Board considered the letters indicating support as well as the County's initial letter in its deliberations.

Establishing an MDP requires a public planning process where ratepayers and residents have a full and fair opportunity to participate. While the Board had regard for the letter referencing the County Council motion of support, the Board is not persuaded that there is sufficient merit to consider the Norlin Investments application at a public hearing.

Norlin Investments also provided a detailed response to the concerns raised by directly affected parties. While the applicant's proposed response to the various concerns may somewhat mitigate the magnitude of the effects on the community, the Board finds that the neighbours are and should remain entitled to the zoning protection afforded in the MDP.

The Board also considered the proponent's rationale in selecting this parcel of land but is not persuaded there is justification to support establishment of a CFO within the MDP exclusion zone.

Decision

As a result of the Board's deliberations, it has determined that there is no merit in conducting a review based on the RFR filed by Norlin Investments. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 14th day of February, 2017.

Original signed by:

Vern Hartwell

Glenn Selland

Jay Nagendran