



BOARD DECISION

RFR 2017-07 / FA17001

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary FA17001

Danny Friesen and Tara Warkentin

July 19, 2017

Background

On June 5, 2017, NRCB Approval Officer Randy Bjorklund issued Decision Summary FA17001 regarding a registration application by Danny Friesen and Tara Warkentin (Friesen & Warkentin). The application was to expand an existing confined feeding operation (CFO), located at River Lot 6, Range 6 in the Fort Vermilion Settlement in Mackenzie County (the County), approximately 2 kilometres south of the Hamlet of Fort Vermilion. The proposed expansion would increase livestock numbers from 3,000 chicken layers to 11,000 chicken layers, and would include the construction of an interior wall in the livestock housing area of an existing barn. The approval officer denied Friesen & Warkentin's application.

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

A Request for an NRCB Board Review of Decision Summary FA17001 (the RFR) was filed by Friesen & Warkentin on June 22, 2017, meeting the 10-day filing deadline pursuant to section 20(5) of AOPA. The RFR asked the Board to approve the registration, notwithstanding the inconsistency with the County's municipal development plan.

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 parties found to be directly affected by the approval officer. The Tall Cree First Nation did not submit a statement of concern to the approval officer; however, the Board notified the Tall Cree First Nation that the Board had received an RFR. The Notice advised that any adversely affected parties were being given an opportunity to file a response submission with the Board, by the deadline of July 7, 2017. The County was the only party to file a response. Friesen & Warkentin tendered a further email on July 7, 2017; however, as this email was not in the nature of a response submission the Board did not have regard for the contents of this email in considering the RFR.

The Board met on July 11 and 18, 2017 to deliberate on the RFR and the response.

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 June 5, 2017.

As stated above, the Board notified the Tall Cree First Nation that a request for review was being considered in relation to this CFO application. While it is somewhat unusual to notify a party that did not participate in the application review conducted by the approval officer, the Board determined that direct notice to the Tall Cree First Nation of the RFR filing was warranted given the specific nature of the issue raised. The Board has reviewed the general policy concerning notification of affected parties and notes that the approval officer acted in full accordance with that policy. That said, the Board suggests that the NRCB Field Services Division review its policy to satisfy itself that notice procedures adequately serve the range of circumstances that may arise.

Documents Considered

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

- Decision Summary FA17001 dated June 5, 2017 and its companion technical document (Part 2 Technical Requirements);
- Request for Board Review filed by Friesen & Warkentin dated June 22, 2017;
- Response Submission to the Board's June 28, 2017 Notice of Filed Request for Board Review, as submitted by the County; and
- portions of the public record maintained by the approval officer.

Board Deliberations

The AO Decision denied the application by Friesen & Warkentin as, in accordance with section 20(1)(a) of AOPA, the CFO was inconsistent with the land use provisions of the County's municipal development plan.

The NRCB approval officer reviewed several submissions from the County related to the CFO's consistency with the municipal development plan. In a letter dated April 3, 2017, the County advised that the proposed operation was inconsistent with the 3.2 km setback to the Hamlet of Fort Vermilion and the Fort Vermilion Indian Reserve No. 173B (Tall Cree First Nation). The specific provision in the County's municipal development plan is article 4.2.9(a). Later, a second letter from the County, dated April 13, 2017, advised that the County had passed a motion to grant a variance to Friesen & Warkentin for the layer hen barn, for a maximum of 12,000 hens. The County's variance decision did not cause the approval officer to change his conclusion that the Friesen & Warkentin application is inconsistent with the municipal development plan.

As a consequence, Friesen & Warkentin have asked the Board to review the AO Decision and approve its application, notwithstanding the municipal development plan provisions. This request engages section 25(4)(g) of AOPA, where on review the Board may consider approving a CFO application, notwithstanding inconsistency with a municipal development plan.

Municipal development plans commonly include provisions that allow, preclude, or restrict CFO development in order to further planning objectives. However, in order to achieve more consistent CFO siting provisions across the province, AOPA provides the Board with the review authority to approve CFO applications, notwithstanding a municipal development plan exclusion zone provision.

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. As this RFR raises an issue that the approval officer has no discretionary authority to exercise, the Board's consideration of the RFR rests on whether the issue raised merits further consideration.

The Board is satisfied that a review is warranted in this instance.

Decision

Upon reviewing the submissions from all parties, the Board finds that a review is warranted to consider the following issue:

Whether the Board should exercise its authority to approve the Friesen & Warkentin CFO, notwithstanding an inconsistency with the municipal development plan. It will have regard for matters that would normally be considered if a municipal development permit were being issued; consider the effects on the environment, the economy, and the community; and the appropriate use of land.

The Board anticipates that deliberations on this issue will include identifying the County's rationale for establishing the relevant provisions in the municipal development plan, having regard for whether:

- the relevant provisions are reasonable and reflective of good planning,
- there is a direct link between the planning objectives and the establishment of the CFO exclusion zone, and
- the municipal development plan is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

The Board has determined that a written review is appropriate. The details for the review process are set out in the following section. The Board encourages all directly affected parties to file submissions addressing the hearing issue outlined above.

Review Process

The Board will establish online access to the approval officer's public record and all filings made with respect to this RFR. Once this site has been established, the Board will advise all parties.

The scheduled deadlines for the written review process are as follows:

July 31, 2017: All parties (Friesen & Warkentin, Dolores Dachuk, and Mackenzie County) file their submissions. Although the Board does not anticipate that the approval officer will be filing a submission, the approval officer is a party to the review. Review staff will ensure that all submissions that are received on or before July 31, 2017 are made available to each party.

August 8, 2017: All parties file their reply submissions. Reply submissions are not mandatory, but allow for filing rebuttal evidence and argument to that contained in the other parties' submissions. It also provides the chance for parties to raise questions that it believes need to be answered by other parties to the review in order to complete the record. If parties include questions with their reply submissions, the Board will determine whether an answer should be pursued. When putting forward a question, please include the reasons why an answer is necessary for the Board to complete its deliberations.

All submissions are to be directed to the attention of Laura Friend at the Calgary office of the NRCB.

The Board will assess the record and, subject to any written questions it may direct to parties, will determine whether the record is sufficient to proceed to deliberations.

DATED at EDMONTON, ALBERTA, this 19 day of July, 2017.

Original signed by:

Vern Hartwell

Glenn Selland

Page Stuart