



BOARD DECISION

RFR 2020-01 / FA19003

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary FA19003

1577912 Alberta Ltd. (Hines Creek Farms)

March 10, 2020

The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary FA19003.

Background

On January 31, 2020, Natural Resources Conservation Board (NRCB) approval officer Nathan Shirley issued Decision Summary FA19003 (Decision Summary) in relation to a new multi-species confined feeding operation (CFO) proposed by 1577912 Alberta Ltd./Hines Creek Farms (Hines Creek Farms) at NE 4-85-5 W6M in Clear Hills County (County). The approval officer denied the application, as he determined that it was inconsistent with the land use provisions of the County's municipal development plan (MDP).

A request for Board review (RFR) of Decision Summary FA19003 was filed by Hines Creek Farms, which met the filing deadline of February 24, 2020.

The directly affected parties, as established by the approval officer, were notified of the Board's intent to review this request and provided with a copy of the RFR. Parties that have an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. The Board received a rebuttal from the County directing the Board to the County's October 28, 2019 letter to the approval officer. The rebuttal met the rebuttal filing deadline of March 2, 2020.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (Board) consisting of Peter Woloshyn (chair), Page Stuart, and Sandi Roberts was established on March 4, 2020, to consider the RFR. The Board met on March 5, 2020.

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 has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board review.

Documents Considered

The Board considered the following information:

- Decision Summary FA19003, dated January 31, 2020
- Technical Document FA19003
- RFR filed by Hines Creek Farms, dated February 4, 2020
- Clear Hills County MDP
- Rebuttal (adopting the County's October 28, 2019 letter to the approval officer) filed March 2, 2020 by Clear Hills County, dated February 27, 2020.

Board Decision

The Board finds that a review is warranted.

AOPA requires that approval officers deny an application that is not consistent with the MDP land use provisions [AOPA section 20(1)(a)]. In Decision Summary FA19003, the approval officer determined that the Hines Creek Farms' application was not consistent with the MDP setbacks to roads, residences, and water bodies or wetlands.

The approval officer did not consider the County's land use bylaw (LUB) as, consistent with past Board decisions, the NRCB should only consider planning documents beyond the MDP when the MDP text provides a clear intent to adopt the specific LUB planning provision.

In its review, the Board will consider the County's land use objectives associated with those MDP land use provisions that preclude the Hines Creek Farms' CFO development. The Board finds that the approval officer was correct in declining to consider the LUB provisions; therefore, the Board's review will be limited to the MDP.

The issue for review is whether the Board should exercise its authority to approve the Hines Creek Farms CFO, notwithstanding an inconsistency with the MDP, having regard for matters that would normally be considered if a municipal development permit were being issued, and considering the effects on the environment, the economy, and the community; and the appropriate use of land.

Parties to the review shall file written submissions by March 27, 2020. While not limiting the submissions of any of the parties, the Board would find it helpful if the County would address the following matters in its submission:

1. Please identify all inconsistencies the proposed CFO has with the MDP.

Background: The County's March 2, 2020 rebuttal is limited to a re-filing of the County's October 28, 2019 submission to the approval officer. That October 28 letter identifies only one inconsistency with the MDP; that is, the application is not consistent with the minimum setbacks from existing rural residential development as set out in 3.1.2 (h) of the MDP. In Decision Summary FA19003,

the approval officer states “the proposed CFO does not meet the setbacks to roads, residences, and water bodies or wetlands.”

2. Provide the planning rationale for each inconsistency that would preclude the development of the Hines Creek Farms CFO.

Background: In previous applications, the Board has declined to approve CFOs that are not consistent with an MDP land use provision that is reasonable and addresses a site-specific planning objective within the municipality. The Board has approved CFOs, despite inconsistencies with municipal development plan provisions, where the MDP provision is not reasonable or addresses a matter that is included in the AOPA legislation and provides a province-wide standard.

3. Provide the rationale for the 3.2 km setback distance from residences, licenced CFOs, water bodies, town or hamlet, Grimshaw gravels aquifer, intensive recreation areas and environmental sensitive areas.

Background: The Board will generally rely on AOPA standards as they provide the province-wide statutory tool to accomplish environmental and nuisance mitigation objectives. The County has identified only one inconsistency with its MDP (3.2 km setback from rural residence). The AOPA minimum distance separation is a calculated value for each application based on the operation size and animal type. For the Hines Creek Farms’ application, the approval officer’s calculated minimum distance separation is 315 m from residences on land zoned as agricultural.

4. Provide the rationale for the 152.4 m setback from road rights-of-way and the 100 m setback from parcel boundaries set out in the MDP (Schedule G) for CFO facilities.
5. The MDP states one of the four agricultural policy objectives is “To provide guidance on the development of Confined Feeding Operations.” In reference to MDP Schedule G (Schedule G), explain what guidance the County’s policy provides with respect to CFOs.

Background: It appears from a review of Schedule G that there is only one small and isolated land location that would satisfy the County’s CFO siting criteria for CFO Permitted Area. Please describe any other land locations within the County’s titled lands (White Area) that would be a CFO Permitted Area. Schedule G does not identify the County’s titled lands (White Area) or Crown land (Green Area).

6. Provide the approximate total land area identified as CFO Permitted Area on Schedule G, and clarify whether the identified CFO Permitted Area in Township 86, Range 10, West 6 is provincial Crown land (Green Area) or in the White Area of the County. Please address whether the County’s MDP setback provisions effectively exclude CFO development in any of the CFO Permitted Area.

Background: If the CFO Permitted Area is located in the Green Area, provide details regarding Government of Alberta permitting and or licensing

requirements for CFO operators wishing to site an operation in the CFO Permitted Area.

7. Describe the overall impact on the County's land use objectives if the Board were to approve the CFO.

Form of Review

The Board has granted a review and directs the following:

- March 27, 2020 - deadline to file written hearing submissions
- April 3, 2020 - deadline for parties to file written reply and rebuttal to the filed submissions of other parties.

Written submissions are to be emailed to laura.friend@nrcb.ca; alternatively, parties may file their submissions with the NRCB by facsimile to 403-662-3994 to the attention of Laura Friend. The Board will distribute a copy of filed materials to each of the parties.

Until such time as the Board has received all of the parties' filings, the Board is reserving the decision on whether an oral hearing will be required. The Board invites all parties to state their preference with respect to the benefit of conducting an oral hearing (rather than a written hearing) in their reply submission.

Decision

As a result of its deliberations, the Board has determined that a review is warranted to consider whether the Board should exercise its authority to approve the Hines Creek Farms CFO, notwithstanding an inconsistency with the MDP.

DATED at EDMONTON, ALBERTA, this 10th day of March, 2020.

Original signed by:

Peter Woloshyn

Page Stuart

Sandi Roberts

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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.