



BOARD DECISION

RFR 2021-04 / LA21011

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA21011

Hutterian Brethren Church of Little Bow

June 9, 2021

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 LA21011.

Background

On May 4, 2021, Natural Resources Conservation Board (NRCB) approval officer Joe Sonnenberg issued Decision Summary LA21011 (Decision Summary) in relation to an application to expand an existing multi species confined feeding operation (CFO) with the construction of a chicken layer barn with manure storage, and the increase of chicken layer numbers from 2,500 to 10,000. The CFO is owned and operated by the Hutterian Brethren Church of Little Bow (Little Bow Colony) and is located at E ½ 32-14-25 W4M in Vulcan 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 LA21011 was filed by Little Bow Colony, which met the filing deadline of May 26, 2021.

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. No rebuttals were received by the filing deadline of June 2, 2021.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Sandi Roberts (chair), L. Page Stuart, and Earl Graham was established on May 27, 2021, to consider the RFR. The Board met on June 3, 2021 to deliberate on the filed RFR.

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 LA21011, dated May 4, 2021
- Technical Document LA21011
- RFR filed by Little Bow Colony, dated May 26, 2021
- Vulcan County Municipal Development Plan (MDP), latest revision adopted April 4, 2012 under Bylaw #2012-003

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. The Board must consider each of these questions in accordance with the provisions of section 25(1) of AOPA. These provisions require that the Board consider whether the issues advanced at the RFR stage warrant consideration at a Board hearing.

The primary issue raised here is whether the Board should exercise its authority to approve the Little Bow Colony's CFO proposal to expand an existing multi species CFO with the construction of a chicken layer barn and attached manure storage, increasing chicken layer numbers from 2,500 to 10,000.

The Little Bow Colony CFO is in Vulcan County and is therefore subject to that county's MDP. Section 4.1 of the Vulcan County MDP addresses the expansion of existing CFOs:

"New confined feeding operations (CFOs) are not permitted to be established and existing confined feeding operations are not permitted to expand within the exclusion areas as shown on the map in Appendix B (re: Confined Feeding Operation Exclusion Area). However, although new CFOs and expansions to existing CFOs are prohibited in the exclusion areas (as per the map in Appendix B), improvements with respect to the maintenance and/or environmental protection of an existing CFO are permitted."

The referenced map in Appendix B of the MDP identifies the "Confined Feeding Operation Exclusion Area", and includes the location NE 32-14-25 W4M, where the Little Bow Colony proposes to expand their CFO.

A written response received from Ms. Erickson, a development officer with Vulcan County, confirmed that the application is not consistent with Vulcan County's land use provisions of the municipal development plan because it is located within a CFO exclusion zone.

The Board agrees with the approval officer's interpretation that this section of the MDP precludes the expansion of the Little Bow Colony CFO, given it cannot be characterized as "an improvement with respect to the maintenance and/or environmental protection of an existing CFO."

Further, the Board agrees that the approval officer was correct to deny the Little Bow Colony CFO application based on its inconsistency with the Vulcan County municipal development plan [AOPA s.20(1)(a)]:

Considerations on approvals

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,

(a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application....

In its submitted RFR, Little Bow Colony has asked the Board to review the approval officer's Decision. This request engages section 25(4)(g) of AOPA, where on review the Board may consider approving a CFO application, notwithstanding its inconsistency with a municipal development plan:

25(4) In conducting a review the Board

(g) must have regard to, but is not bound by, the municipal development plan

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.

Board Decision

Having regard for the materials referenced above, the Board has determined that a review is warranted in the form of an oral hearing to consider the following issue:

Whether the Board should exercise its authority under AOPA section 25(4)(g) to approve the Little Bow Colony CFO expansion, notwithstanding an inconsistency with the Vulcan County municipal development plan.

Written Submissions by Parties to the Hearing

The Board encourages submissions by all directly affected parties with respect to requests for review hearings. Submissions should focus on the hearing issue and serve to provide further evidence in support of your position.

In previous Board reviews (Zealand Farms Ltd. 2011-04, Peters 2016-01; Norlin Investments 2007-01; Bear Canyon 2017-4; and Friesen & Warkentin 2017-07), the Board has determined that a reasonable approach to assessing this issue requires, consistent with AOPA s. 25(4)(h), that it have regard for matters that would normally be considered if a municipal development permit were being issued: the effects on the environment, the economy, and the community; and, the appropriate use of land.

The Board anticipates that submissions may address a variety of matters relevant to understanding the underlying objectives of section 4.1 of the Vulcan County MDP, and encourages parties to consider 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:

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

The Board has found it helpful in the past when parties have addressed these questions in their written submissions.

Board Hearing

The Board has granted a review in the form of a virtual oral hearing, which will commence on **Tuesday, June 29, 2021 at 9:00 a.m.** The hearing will also be live streamed and recorded on YouTube; a link will be on the NRCB's main website page the morning of the hearing. A court reporter will be present, and the transcript will be posted on the website the day following the hearing.

The hearing will be conducted virtually using the Zoom platform. Board staff will contact all parties to confirm they are available for the hearing date and to facilitate participation. The Board does not anticipate that Field Services will file a hearing submission.

Written submissions from all parties as described in the previous section shall be filed with the Board in advance of the hearing, as identified in the following schedule:

Parties	Submission	Deadline
Vulcan County	Response	Friday, June 18, 2021 @ 4:30 p.m.
McDougalls	Response	Friday, June 18, 2021 @ 4:30 p.m.
Hutterian Brethren Church of Little Bow	Rebuttal	Thursday, June 24, 2021 @ 4:30 p.m.

All documents should be filed electronically and directed to laura.friend@nrcb.ca. Parties are encouraged to file submissions as Adobe pdf documents. Parties will be able to access filed documents through the NRCB's website. The Board encourages all parties to sign up for email notification of new documents being posted to the website [project page](#).

DATED at EDMONTON, ALBERTA, this 9th day of June, 2021.

Original signed by:

Sandi Roberts (chair)

L. Page Stuart

Earl Graham

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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.