



BOARD DECISION

RFR 2022-04 / LA21053

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act*

John Schooten and Sons Custom Feedyard Ltd.

April 26, 2022

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 LA21053.

Background

On March 17, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary LA21053 (Decision Summary) in relation to an application by John Schooten and Sons Custom Feedyard Ltd. (Schooten) to expand an existing beef confined feeding operation (CFO) by constructing additional pens, a catch basin, and to increase beef finisher numbers to 75,000. The existing CFO is located at S ½ 8-21-24 W4M and N ½ 5-21-24 W4M in Vulcan County (County). The approval officer approved the application with conditions.

A request for Board review (RFR) was filed on April 7, 2022 by Schooten, meeting the RFR filing deadline of April 7, 2022. On April 8, 2022, the NRCB sent a Notice of Filed Request for Board Review and Rebuttal Opportunity to the directly affected parties, as established by the approval officer. Parties were also provided with a copy of the RFR. Parties having an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. Two rebuttals were received from Sue Archibald and Cindy Hoerger and Sons, both directly affected parties, by the deadline of April 14, 2022.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (chair), Page Stuart, and Sandi Roberts was established on April 12, 2022, to consider the RFR. The Board met on April 12 and 20, 2022 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 LA21053, dated March 17, 2022
- Technical Document LA21053, dated March 17, 2022
- Approval LA21053, dated March 17, 2022
- RFR filed by John Schooten and Sons Custom Feedyard Ltd., dated April 7, 2022
- Rebuttal from Sue Archibald, dated April 14, 2022
- Rebuttal from Cindy Hoerger and Sons, dated April 14, 2022
- Vulcan County Municipal Development Plan, dated April 2012

Board Deliberations

In the RFR, Shooten asked that the Board grant a review in order to:

- 1) Remove condition #3 (Requirement for a Traffic Impact Assessment (TIA))
- 2) Modify condition #8 (Change report month)
- 3) Determine deemed capacity of the grandfathered portion of the feedlot

The Request to Remove Approval Condition #3

Condition #3 in Approval LA21053 states:

3. The permit holder shall conduct a Traffic Impact Assessment. The Traffic Impact Assessment shall be done according to the guidelines provided by Vulcan County together with Alberta Transportation (as applicable) and provided to Vulcan County for follow up. The results of the assessment shall be provided to Vulcan County prior to commencing construction. The NRCB delegates the oversight of this process, including scope, details, resulting commitments, and compliance, to Vulcan County.

Shooten stated that it has entered into a Road Use Agreement (that includes a TIA) and that this “type of partnership better suits the needs of both parties.” Shooten’s RFR included a letter of support from Vulcan County.

The Board finds that the request to remove approval condition #3 is an issue that warrants consideration at a hearing.

Without intending to limit the scope of each party’s submission, the Board has identified some content that should be included on this issue. The Board would like to hear from Shooten, Vulcan County (which stated that a TIA was an imperative), and the approval officer on any further actions that may be necessary to meet the terms of condition #3. In granting the request to consider removal of this condition, the Board would benefit from submissions that would clarify the need to remove a condition that may already have been satisfied. The Board expects that Schooten’s submission will provide the completion date of the TIA and the Road Use Agreement signature date.

The Request to Modify Approval Condition #8

Condition #8 in Approval LA21053 states:

8. The permit holder shall submit soil testing records of all manure spreading lands on an annual basis in October of each year to the NRCB, starting in October of 2022.

The Board finds that the request to modify approval condition #8 is an issue that warrants consideration at a hearing.

Condition #8 is carried over from municipal development permit #98-0-12. The Board notes that the October reporting requirement has been in place since 1998 when that permit was issued, and there is no indication in the Decision Summary that a change was requested by the operator as part of its application. Submissions should address what, if any, consequences would result from changing the annual reporting to December.

The Request to Review the Grandfathered Capacity Determination

Appendix D to Decision Summary LA21053 contains the reasons for the approval officer's determination of the grandfathered capacity of the existing facilities.

The Board finds that this issue does not merit review.

As stated earlier, a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. The RFR stated that "The AO was provided several key pieces of information which were discredited or not included in the assessment", but did not provide any details. The Board concludes that the RFR raised no substantive challenge that would support a finding that the issue was not adequately dealt with by the approval officer; as such, the RFR failed to meet the required onus to establish that the issue merits review.

The Rebuttals filed by Sue Archibald and Cindy Hoerger & Sons

As directly affected parties, both Ms. Archibald and Ms. Hoerger had the opportunity to file an RFR with the Board in accordance with the approval officer's March 17, 2022 letter. The March 17, 2022 letter established the April 7, 2022 deadline to file an RFR.

The NRCB rebuttal opportunity that follows the receipt of an RFR has a defined and limited purpose. That limited purpose provides directly affected parties with the opportunity to rebut the issue(s) raised in a filed RFR. The rebuttal opportunity does not include the opportunity to raise new issues that are unrelated to the issues raised in the RFR. The Sue Archibald and Cindy Hoerger and Sons rebuttals raise issues largely unrelated to the three issues raised in the single RFR filed with the Board. The Board has no authority to extend the statutory deadline to file an RFR, and did not consider the issues raised in the rebuttals as they did not address the merits of reviewing the issues raised in the single RFR that was filed before the April 7, 2022 filing date.

As directly affected parties, both Ms. Archibald and Ms. Hoerger may fully participate on the two issues that the Board has determined warrant a review.

Form of Review

The Board has determined that a written review on the request to remove Approval Condition #3 and on the request to modify Approval Condition #8 is appropriate. The details for the review process are set out in this section.

Written submissions filing deadlines are:

- Hearing submissions must be filed no later than May 11, 2022
- Reply submissions must be filed no later than May 18, 2022

Should the Board have questions of a party during the review, it will pose those questions in writing and request a written response that will form part of the public record.

All filings and correspondence made with respect to this review will be posted on the Board's website [project page](#).

All submissions are to be directed to the attention of Laura Friend, Manager of Board Reviews, at laura.friend@nrcb.ca.

DATED at EDMONTON, ALBERTA, this 26th day of April, 2022.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

L. Page Stuart