



## **BOARD REVIEW DECISION**

**2022-07 / LA21053**

Review of Decision Summary LA21053

John Schooten and Sons Custom  
Feedyard Ltd.

June 6, 2022

**The Board issues this decision document, following its written review of Decision Summary LA21053, held pursuant to the *Agricultural Operation Practices Act (AOPA)*.**

## **Background**

On March 17, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary LA21053 (Decision), 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 S½ 8-21-24 W4M and N½ 5-21-24 W4M in Vulcan County (County). The approval officer approved the application, with conditions.

A Request for Board Review (RFR) of the Decision was filed by Schooten on April 7, 2022. The RFR asked the Board to remove Condition #3 and modify Condition #8.

On April 26, 2022, NRCB Board Decision RFR 2022-04 was released, advising that the Board had determined that a written review on the request to remove Approval Condition #3 and on the request to modify Approval Condition #8 was warranted.

The written review submission filing deadline was set to be May 11, 2022, and the reply submission deadline was set to be May 18, 2022. A submission from the approval officer was received on May 4, 2022, and from the Schootens on May 11, 2022. Reply submissions were received from Vulcan County and the approval officer; both met the May 18, 2022, deadline.

## **Board Deliberations**

### **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.

The Shootens' RFR requested that Condition #3 be removed, and included several assertions, including the following:

- The Schootens have entered into a Road Use Agreement (that includes a TIA) and that "this type of partnership better suits the needs of both parties."
- The distance of the intersection of Provincial Highway 547 and Municipal Range Road 244 puts the Schooten CFO outside of the "jurisdiction of Alberta Transportation and suggests the Municipality has discretion as to how they will support the development. Therefore, with the adoption of a Road Use Agreement, a condition associated with the feedlot permit is not required."
- "While the point was made in the Decision Summary that there will be additional traffic, no thresholds or information was presented as to when a TIA should be implemented."

In their RFR, the Schootens included an April 6, 2022, letter from Mr. Schneider, Reeve of Vulcan County that stated:

- The County and Schootens have entered into a road use agreement to address the concerns regarding the applicant's use of Vulcan County infrastructure, and the road use agreement includes a Traffic Impact Assessment.
- Vulcan County supports removing Condition #3.

In their May 11, 2022, hearing submission, the Schootens outlined several considerations related to the request to remove permit condition 3, including the following:

- "Traffic impact assessments is not legislation found in AOPA" and "The approval officer did not provide reasons why the TIA could not be addressed by the municipality."
- The permit condition [3] is "too restrictive, causes unwarranted construction delays and puts them in a competitive disadvantage" and the "TIA appears to place potential highway improvement costs onto the [applicant]".
- "A traffic impact assessment is included in [the road use agreement], but there are no construction restrictions associated with the TIA delivery."

A May 11, 2022, email from Mr. Mike Kiemele of Vulcan County to the Schootens included an unsigned Road Use Agreement between Vulcan Country and the Schootens. This agreement included several considerations, including confirmation that the County "has the direction, control and management of all roads, excluding Provincial Highways, within its municipality boundaries pursuant to the Municipal Government Act, R.S.A. 2000, c. M-26." In addition to outlining potential cost assignments to the Schootens, the unsigned agreement addressed the requirement for a Traffic Impact Assessment:

30. In consideration of the permission hereby granted by the County for use of the Designated Roads and Haul Routes, the Developer covenants and agrees to the following:

- o. Conduct a Traffic Impact Assessment (TIA). The TIA shall be done according to Alberta Transportation guidelines. The Scope of the TIA shall be submitted to Vulcan County prior to the TIA being initiated for approval. The TIA shall be provided to the County for review and use.

The Schootens submitted a Traffic Impact Assessment proposal from MPE Engineering Ltd., dated April 29, 2022, that included a signed "Confirmation of Assignment".

In Decision Summary LA21053, the approval officer outlined comments provided by Ms. Erickson, Manager of Development Services with Vulcan County, and Ms. Olsen, Development and Planning Specialist, Alberta Transportation.

Ms. Erickson made several comments related to a traffic impact assessment requirement:

- Highway 547 and Range Road 244 sightlines, highway design, and traffic volumes are the reasons for the request that a traffic impact assessment be completed.
- The County requests that the requirement to complete a Traffic Impact Assessment be included as a condition in the NRCB permit.

- Given the “NRCB is the approval body for this application, and the development is outside of the highway control zone, it is imperative that the NRCB engage Alberta Transportation and that a Traffic Impact Assessment be completed prior to an approval being granted.”

The Board notes that Alberta Transportation offered the following guidance to the approval officer during the permit application review process (Decision Summary LA21052, section 3):

In her response, Ms. Olsen stated that the subject site is well removed from the provincial highway system and connected to this system through local road systems. Therefore, a permit from her department is not required. She recommended that because of the types and volume of traffic generated by the development, the county should request a traffic impact assessment.

She continued to state that they have no objections/concerns with the issuance of a permit. A copy of all responses mentioning concerns in respect to road safety in the area of the RR 244 and HW 547 intersection were later forwarded to Ms. Olsen for her consideration. In a follow up conversation and email, Ms. Olsen stated that she had no further comments but supports Vulcan County’s request for a traffic impact assessment.

In response to the approval officer’s follow up request for clarification regarding who would conduct a TIA, Ms. Olsen stated that such an assessment would typically be the result of a condition in a development permit issued by the responsible approving authority, to be completed by the developer.

The decision summary also included concerns from directly affected parties that Highway 547 and Range Road 244 is a “dangerous intersection”, that “traffic has increased over the years”, that “increased traffic will increase risk”, and that “a traffic impact assessment is necessary”.

In reviewing the Schootens’ request to remove Condition #3, the Board first reviewed whether the approval officer has jurisdiction to impart a condition requiring a traffic impact assessment.

***Are TIAs a matter that would normally be considered by a municipality when issuing a development permit?***

The approval officer asserted that the requirement for a TIA is within the jurisdiction of AOPA:

- 9. The authority of the approval officer to require a traffic impact assessment (“TIA”) is found in section 20(1)(b)(i) of the Agricultural Operation Practices Act (“AOPA”). That provision requires an approval officer to “consider matters that would normally be considered if a development permit were being issued.”

Alberta Transportation’s Traffic Impact Assessment Guideline states:

Prior to the approval of a subdivision, pre-development planning or development, Alberta Transportation (TRANS) may require the completion of a TIA. For subdivision and developments within the highway control zones, TRANS is responsible to ensure that the proponent addresses transportation issues including access removals, public road intersection treatments, setbacks, etc. prior to issuing a permit or a waiver. For developments outside the highway control zones, the municipality is responsible to ensure that the impacts to the highway are addressed prior to issuing their development permits in consultation with TRANS. Municipalities are responsible to identify which proposals could impact the highway and are encouraged to refer subdivision proposals, development applications, and traffic impact assessments to TRANS for technical review and recommendations, and support, prior to the municipality issuing a permit [emphasis added].

The Board finds it noteworthy that the Alberta Transportation Alberta Traffic Impact Assessment Guideline describes the municipal government authority and responsibility to “identify which proposals could impact the highway” for developments that are “outside the highway control zones.” Further, this guideline states that municipalities “are encouraged to refer...traffic impact assessments to TRANS for technical review and recommendations...prior to the municipality issuing a permit.”

The Board acknowledges the Schooten RFR observation that NRCB Approval Policy 2016-7 states that it would be impractical and inefficient for the NRCB to attempt to manage road use (agreements) through AOPA permits. The Board notes Field Services’ submission that LA21053 Condition #3 requires a TIA, not a road use agreement.

The Board concludes that the requirement for a Traffic Impact Assessment is a matter that would normally be considered by a municipality when it issues a development permit which, in turn, satisfies the approval officer’s interpretation of AOPA 20(1)(b)(i). Therefore, the Board finds that the approval officer’s inclusion of Condition #3 is well within her authority under AOPA.

### ***Should Condition #3 be removed?***

The Schootens requested that the Board provide guidance as to “...how, and when, an AO should include a TIA as a permit condition for a confined feeding operation (CFO).”

Field Services’ hearing submission paragraphs 15 through 20 provide useful background on the role of the approval officer, the Approval Policy, and the need for independent decision making while balancing the need for consistency in permit decisions. The approval officer acknowledged that typically the NRCB would not “initiate or request an applicant to conduct a traffic impact assessment.” In this case, the approval officer determined that the request from the County to include a TIA, supported by Alberta Transportation, was sufficient to require the inclusion of a condition that is not part of a standard NRCB permit evaluation process. The Board sees no need to venture any further down a policy path on behalf of Field Services on this matter.

The Board notes that the County expressed concern that the approval officer improperly placed follow up and implementation requirements stemming from the TIA on the County. The County further stated that it does not have the jurisdiction to oversee projects under the jurisdiction of Alberta Transportation.

In the Decision Summary, the approval officer acknowledged that “there seems to be some confusion about who is to initiate the traffic impact assessment in the context of a CFO application under AOPA.” The approval officer explained her rationale in resolving “this apparent dilemma:

I determined that it will be necessary, under section 20(1)(b)(i) of AOPA, to include a condition for this approval, requiring the applicant to conduct a traffic impact assessment relating to risk at the HW 547 – RR244 intersection and to provide the document to Vulcan County. The consequences of the assessment will be moved forward by Vulcan County. In part, this is because municipalities “have autonomy for land use decisions and development approvals and have the ability to undertake improvements and recover the costs of growth from developers through agreements (i.e., development agreements and off-site levies for new or expanded

transportation infrastructure)” (from Alberta, Traffic Impact Assessment Guidelines, February 2021).

The Board observes that AOPA is silent with respect to the approval officer’s authority to direct municipalities to take any action, including matters that would be related to the follow up and implementation of a TIA. Nonetheless, the Board finds that the wording of Condition #3 is sufficiently broad and does not restrict or impose the County to do anything outside of its jurisdiction.

The Board observes that Vulcan County’s intent to pursue a Traffic Impact Assessment, in keeping with the TRANS TIA Guideline, is consistently reflected in the submissions. While the Board acknowledges the letter from the County’s Reeve dated April 6, 2022, stating “Vulcan County supports removing condition #3”, that letter included no rationale that allows the Board to consider contradicting the County’s previously and clearly stated position that a TIA be completed “prior to an approval being granted”. In fact, the Reeve’s letter served to confirm that a TIA will be required, and acknowledges the County’s and Schootens’ mutual intent to complete a TIA. The Board further notes the Schootens demonstrated willingness to honour the County’s request for a TIA, given the signed “Confirmation of Assignment” between the Schootens and MPE Engineering Ltd., dated April 29, 2022.

In granting this review, the Board acknowledges that the onus is on the party requesting the review to persuade the Board that the requested relief (in this case, the removal of Condition #3) is warranted. The Board finds that there is insufficient evidence to conclude that Vulcan County has changed its position regarding its intent to include a TIA requirement, particularly given the collective willingness of the parties to conduct a TIA and given that the County ultimately retains control of how the results of the TIA will be implemented. Given that the Schootens’ and the County have reached agreement that a TIA is necessary, the Board cannot identify the remedy being sought.

The Board finds that Condition #3 is within the scope and authority of the approval officer. The Board rejects the request to remove Condition #3.

### **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.

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.

The Schootens requested that the reporting month for soil testing records of all manure spreading lands be changed from October to December.

No party to this proceeding opposed the Schootens’ request to change the reporting month for soil testing records. The Board finds that changing the reporting month from October to December is reasonable and does not impact risk to the environment whatsoever.

The Board directs the approval officer to amend Condition #8 as:

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

## Decision

For the reasons set out above, the Board hereby directs the approval officer to issue an amended approval (Condition #8) to John Schooten and Sons Custom Feedyard Ltd. for the expansion of the existing CFO as described in the application and identified by the approval officer in Decision Summary LA21053.

DATED at EDMONTON, ALBERTA, this 6<sup>th</sup> day of June, 2022.

Original signed by:

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Peter Woloshyn (chair)

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Sandi Roberts

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L. Page Stuart