

November 6, 2023

Natural Resources Conservation Board
Agriculture Centre, #100, 5401-1 Avenue S
Lethbridge, AB T1J 4V6

RE: LA23003 Decision – Request for Review, Lethbridge County Rebuttal

With regards to the above Request for Review, Lethbridge County has the following rebuttal:

The proposal does not meet the Lethbridge County Land Use Bylaw No. 1404 setbacks of the Rural Agricultural District nor the policy direction of the Lethbridge County Municipal Development Plan Bylaw 22-001.

Lethbridge County's position is that the property line setbacks are to be considered by the NRCB approval officers (AO) as the municipality has jurisdiction as afforded under the Municipal Government Act to regulate such to property lines and roadways through its planning instruments; and notwithstanding and further to this, setback considerations are provided for and indicated in the Municipal Development Plan (policy 3.6) pertaining to confined feeding operations which the NRCB must consider. It is not a test or condition related to the site.

The application is not consistent with the MDP land use provisions, and the application was denied by the NRCB AO on that basis, it is understood AOPA requires approval officers to consider matters that would normally be considered if a development permit were being issued. The NRCB has interpreted this to include aspects such as property line and road setbacks related to the site of the CFO (Grow North, RFR 2011-01 at page 2), and consideration for municipal setbacks have been referenced and used in previous NRCB decisions (Rimrock Cattle Co. RA22026 NRCB Decision). In respect of such matters, the proposal is therefore inconsistent with the Municipal Development Plan and in accordance with AOPA section 20(1)(a) the application must be denied.

- MDP Section 3.6 – no part of a CFO building, structure, corrals, compost areas or stockpile is to be located within the established property line and public roadway setbacks, including provincial highways, as outlined in the Municipal Land Use Bylaw.
 - The established setbacks applicable to this application and as defined in the Rural Agricultural District are 6.1 m to the side/rear property line and 38.1 m to the centreline of a county road (Range Road 23-4).

- With regards to the comments made by the agent of the applicant regarding the applicability of the setback to a livestock facility or a yard subdivision. The farmyard was subdivided under subdivision 2015-0-177. The subdivision was approved as an isolated country residential subdivision there was not a feedlot operation on the parcel at the time of subdivision. The setbacks apply to the both the yard as subdivided and the remnant quarter section as per the Lethbridge County Land Use Bylaw. These setbacks so apply to a livestock operation as a use/development on the property, as mentioned above.
- The exclusion of the dugout in the MDP as a specified development is noted, but it is still a land use consideration. The landowner does not have approval from Lethbridge County to have a dugout with the prescribed development setback nor did they approach the County prior to constructing the dugout. The dugout was constructed without the benefit of a permit nor due consideration of the County's land use bylaw and regulations or an NRCB permit. The NRCB permit application was only submitted after a contravention had been investigated and enforcement action taken by the NRCB.
- The County also is of the position the dugout is being misrepresented as part of the CFO operation application, as the dugout is preexisting and was already established on this property well over a decade or more ago and was expanded by the applicant to create the existing encroachment issue over the property line, without permission. A dugout is an excavation which is defined as a development in accordance with both the Municipal Government Act and County's Land Use By-law and which requires a municipal development permit if setbacks to the property line are not met (LUB Part 1, section 13(h)). No approval was applied for or issued for the existing dugout use and expansion at its present location prior to the CFO application being submitted.
- Under Part 1 Section 13 (h) of the Lethbridge County Land Use Bylaw a dugout is exempt from a development if the applicable setback to all roadways (including the require site triangle restriction) and **property lines** are met in accordance with the bylaw (setbacks are to include the area for berms, stockpiles, and fencing associated with a dugout or pond).
- It should be noted that every landowner within the County is held to the same minimum setback standards and is required to adhere to them unless

otherwise granted a waiver of those standards by the County on a case-by-case site specific basis.

- Land Use Bylaw – Rural Agricultural District Section 4(1) - setbacks to the side yard at 6.1 metre. This includes any building or structure (other than a fence) or bank of a dugout. The MDP reference for CFO setbacks (that includes the corrals) would prevail as it is the highest-level statutory document.
- The agent for the applicant has misconstrued or misinterpreted the definition and intent of Lethbridge County’s Land Use By-law (RA 4.1 – Side Yards) and setbacks, and the Municipal Development Plan does clearly require this provision must be considered by the AO. The County contends there are very specific property line setbacks noted and they do mention livestock facilities in both of these documents.
 - Land Use Bylaw – Rural Agricultural District Section 6(5) all confined feeding or intensive livestock operation shall be sited in consideration of prohibited areas and be able to meet the required development setbacks in accordance with the Lethbridge County Municipal Development Plan.
 - Lethbridge County’s MDP (Section 3.6) is specific toward which facilities the AO should consider. The MDP Section 3.6 states (Bylaw 22-001, page 12): No part of a CFO building, structure, corrals, compost area or stockpile is to be located within the established property line and public roadway setbacks, including provincial highways, as outlined in the municipal Land Use Bylaw.
 - Lethbridge County LUB RA 4.1 – Side Yards – states: No building, structure (excluding fencing) or dugout banks shall be within 6.1 metres (20 ft.) of a property line not fronting on or adjacent to a municipal roadway. (underline added for emphasis)
 - In the County’s Land Use Bylaw definitions of a Confined Feeding Operations is distinct from a fence and as such the County’s interprets the Corral as a structure.
 - **Fence** – means a structure usually made of wood, rails, bricks or wire used as an enclosure, **to mark parcel boundaries or for screening (emphasis added)** purposes for all or part of a parcel or lot. NOTE – the definition does not include corral or confined feeding operation. A fence that is not within a defined titled area is considered an encroachment. Fences are not

to encroach over a property line, they can be within a property within a setback area.

- **Confined Feeding Operation** - has the same meaning as defined in *the Agricultural Operation Practices Act, RSA 2000, Chapter A-7*, as amended and means fenced or enclosed land or buildings where livestock are confined for purposes of growing, sustaining, finishing or breeding by means other than grazing and any other building or structure directly related to that purpose but does not includes residences, livestock, seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks or exhibition grounds.
- A corral is not a fence, the common definition for a corral can be found in the Merriam-Webster dictionary which defines it as “a pen or enclosure for confining or capturing livestock”. A corral may consist of fencing material for providing the enclosure, as may other structures, but it is not unto itself a fence which is specifically defined in the County Land Use Bylaw. Corrals are fixed to the ground and are considered structures in accordance with the land use bylaw definition, and as such, the stipulated 6.1 m (20ft.) setback applies. The Municipal Development Plan (policy 3.6) clearly states that corrals are not to be located within the established property line and public roadway setbacks, including provincial highways, as outlined in the municipal Land Use Bylaw. There is no ambiguity in this statement.
- The aerial imagery clearly shows that the corrals straddle the property line (north and west property lines) and the dugout **is over** the west property line. It is noted that there are two separate ties of land currently and they legally must be considered and dealt with as individual, separate properties, irrespective of the ownership.
- As stated in the County’s original comments the issue with regards to the setback can be remedied by relocating the pens and dugout or consolidating the two titles together.

Additionally, the County has a concern with the proximity of the proposed feedlot to the existing approved school located on the adjacent property and that the proposed feedlot would have a negative impact on the community and the current and future students that will attend the school.

- The County includes in the Municipal Development Plan a reciprocal clause stating that the County would apply the MDS to any new developments adjacent to a feedlot this would include residential uses, as well as school, community or food developments.
- The County uses this policy to ensure that there are no land use conflicts between adjacent uses, even though the NRCB may not recognize these efforts.
- It is noted that the agent (Cody Metheral) for the applicant in an email to the NRCB dated September 15, 2023, states that "It is understood the County approved the location and construction of the church/school and should have considered the proximity of the church buildings to the existing livestock corrals, shop, and agricultural activities. While the County expresses concern about the expansion, they have not explained why this concern is warranted."
- The above statement is out of context and disingenuous. The County approved the location and construction of the church/school because the livestock corrals, shop and agricultural activities at the time (that the school was approved) were considered benign and a low intensity standard agricultural use as they were not associated with a NRCB permitted confined feeding operation. Scope and scale are obvious factors to consider. The potential negative impact on the community is previously noted.

Regards,

A handwritten signature in blue ink, appearing to read "Hilary Janzen", is written over a horizontal line.

Hilary Janzen, MCIP, RPP
Supervisor of Planning and Development

cc. Cole Beck, CAO
Devon Thiele, Director of Municipal Services and Infrastructure