



BOARD DECISION

RFR 2014-01 / RA14003

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA14003

Spruce Lane Dairies Ltd.

May 29, 2014

Background

On April 29, 2014, NRCB Approval Officer Francisco Echegaray issued Decision Summary RA14003 in relation to Spruce Lane Dairies Ltd.'s (Spruce Lane) confined feeding operation (CFO) located at NE 3-37-28 W4M in Red Deer County. Spruce Lane had applied to expand its existing dairy by increasing its livestock numbers from 200 milking cows to 300 milking cows and constructing a young stock barn and a manure storage facility. In Decision Summary RA14003, the Approval Officer denied Spruce Lane's application as he determined that the application was inconsistent with the land use provisions of Red Deer County's municipal development plan (MDP).

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, on May 21, 2014 a Request for Board Review of Decision Summary RA14003 was filed by Spruce Lane. The Request for Board Review noted that the Board is to conduct a review when issues raised in an application for review have not been adequately considered by an Approval Officer. Counsel for Spruce Lane reasoned that since *AOPA* disallows approval officers from considering the merits of an MDP, such consideration must be undertaken by the Board. The Request for Board Review was filed within the 10-day filing deadline established by the *AOPA*.

Following receipt of the Request for Board Review, all directly affected parties were provided with a copy of the request and notified of the Board's intent to meet and deliberate on this matter on May 27, 2014. Typically the Board extends adversely interested parties with an opportunity to make a submission in response to a Request for Board Review; however, in this case Decision RA14003 did not identify any directly affected parties with an adverse interest. The Board therefore convened to deliberate on the Request for Board Review on May 27, 2014, without further submissions from other directly affected parties.

Jurisdiction

The Board's authority for granting a review of an Approval Officer's decision is found in Section 25(1) of the *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 14 of the *Board Administrative Procedures Regulation* describes the information that must be included in each Request for Board Review.

Documents Considered

The Board considered the following information in arriving at its decision:

- Decision Summary RA14003 dated April 29, 2014 and its companion technical document;

- Request for Board Review filed by Keith Wilson on behalf of Spruce Lane Dairies Ltd., dated May 20, 2014;
- Portions of the public record maintained by the Approval Officer; and,
- Red Deer County's 2012 MDP as available on the County's website.

Board Deliberations

The Board met on May 27, 2014 to deliberate on the filed Request for Board Review (RFR). In its deliberations, the Board determined that the single issue advanced in the RFR was the request that the Board override the provisions of the Red Deer County Municipal Development Plan (MDP) that would exclude the Spruce Lane expansion. As stated in both Decision Summary RA14003 and the Spruce Lane RFR, Section 20(1)(a) of the *AOPA* provides that an Approval Officer must deny an application when it is inconsistent with the land use provisions in the MDP; whereas on review, "*the Board, must have regard to, but is not bound by, the municipal development plan.*"

The Board must 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. Spruce Lane suggested that since the *AOPA* limits the ability to override the MDP land use restrictions to the Board on review, the RFR must be granted as this is the first instance at which consideration can be given to the merits of approving the application despite the MDP provision.

The Board finds that there is merit in conducting a review in order to determine whether the expansion contemplated by Application RA14003 should be approved or denied based on the Board's consideration of the relevant provisions of the MDP.

Form of Review

Spruce Lane requested the Board conduct a written review given the narrow and technical nature of the RFR. The Board is optimistic that a written review in this case should result in the production of enough information and detail for full understanding of the issues. Should the Board determine at some future point that a written review is not producing the necessary evidence it may convene an oral proceeding.

With a view to advancing the process, the Board has identified a limited number of questions and issues that it would like to see the parties include in their submissions. The Board views Red Deer County as a critical participant in the review and has structured the review process with the full anticipation that Red Deer County will advance a submission.

The Board urges parties to include any information that they believe would assist in this review and not to limit their submissions by the questions included in this RFR decision report. The Board's questions are:

To Spruce Lane Dairies Ltd.:

- SL-1 Please provide supporting rationale for the statement in your RFR that "*It is possible to interpret the MDP in a manner that does not result in an inconsistency.*"
- SL-2 When did Red Deer County's MDP first establish a CFO exclusion zone on the NE 03-37-28W4?

- SL-3 Did you participate in public hearings conducted by the County in order to establish the 2012 MDP or any previous MDPs that may have included a CFO exclusion zone covering the NE 03-37-28W4? If so, please provide relevant details of any representation made by you at those public hearings.
- SL-4 Please explain your understanding of the general planning interests that Red Deer County was pursuing in establishing a CFO exclusion zone in its MDP.
- SL-5 To your understanding, what were the specific planning issues that resulted in Red Deer County establishing a CFO exclusion zone specifically on the Spruce Lane Dairies CFO site?
- SL-6 Why should the NRCB override the MDP exclusion zone provisions and allow your operation to expand?
- SL-7 Should your expansion proceed, what effects will your operation have on the planning interests or objectives that led to establishing a CFO exclusion zone on the Spruce Lane Dairies CFO site (NE 03-37-28W4)?

To Red Deer County:

- RDC-1 Please briefly describe the process utilized for passing the 2012 MDP.
- RDC-2 Please outline the general planning interests that Red Deer County was pursuing in establishing CFO exclusion zones in its MDP.
- RDC-3 When did Red Deer County's MDP first establish a CFO exclusion zone on the NE 03-37-28W4?
- RDC-4 What criteria did Red Deer County apply that led to the establishment of a CFO exclusion zone specifically on the NE 03-37-28W4?
- RDC-5 Map 2 in the 2012 MDP refers to "*New Confined Feeding Operation (CFO) Exclusion Areas*" in both the title and note, however, the map legend does not use "*new*" as a descriptor. Further the text throughout article 3.3 generally uses the language "*new or expansion*" when describing the application of the prescribed CFO exclusion areas. What interpretation does the County advocate in relation to an expansion of a CFO within an area identified as a CFO exclusion area on Map 2?
- RDC-6 In the event that Spruce Lane Dairies obtained an NRCB approval and proceeded with the proposed expansion, what effects would that expansion have on the planning interests or objectives that led to establishing a CFO exclusion zone on the NE 03-37-28W4?
- RDC-7 Please provide a copy of the County Council formal resolution passed in support of the Spruce Lane expansion.
- RDC-8 Should the Council statement of "*no objections*" in relation to the Spruce Lane expansion be interpreted as a request that the NRCB override the provisions of the MDP?

Decision

As a result of the Board's deliberations, it has determined that a review is warranted to consider whether the expansion contemplated by Application RA14003 should be approved or denied based on the Board's consideration of the relevant provisions of the MDP.

Review Process

The Board proposes that written submissions by Spruce Lane and Red Deer County be filed on or before June 10, 2014. Should the Manns and the Approval Officer choose to prepare a written submission, it should be filed by the same date. Written submissions are to be directed to the attention of Susan Whittaker at the Edmonton offices of the NRCB. Following this filing date, the Board will ensure all directly affected parties are provided copies of each other's submissions, and will canvas parties to obtain input as to whether, based on a review of other submissions, there is a need for interrogatories or reply submissions. The Board will conduct its own assessment of the adequacy of the record and advise what if any further procedural steps are appropriate before it commences final deliberations.

DATED at CALGARY, ALBERTA, this 29th day of May, 2014.

Original signed by:

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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.