



BOARD DECISION

RFR 2016-02 / FA16003

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary FA16003

Hutterian Brethren Church of Silver Valley

August 5, 2016

Background

On July 12, 2016, NRCB Approval Officer Randy Bjorklund issued Decision Summary FA16003 regarding the Hutterian Brethren Church of Silver Valley's confined feeding operation (CFO) located at S1/2 3-81-12 W6M in Saddle Hills County. The Hutterian Brethren Church of Silver Valley (Silver Valley Colony) applied to expand an existing beef CFO by adding a 30,000 chicken layer operation. In Decision Summary FA16003 the Approval Officer determined that the application was inconsistent with a land use provision of the Saddle Hills County Municipal Development Plan (MDP) and for that reason denied the Silver Valley Colony application.

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, a Request for Board Review of Decision Summary FA16003 was filed by the Silver Valley Colony within the 10-day filing deadline established by the *AOPA*.

The Board convened to deliberate on the Request for Board Review on August 4, 2016.

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 a Request for Board Review.

Documents Considered

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

- Decision Summary FA16003 dated July 12, 2016;
- Technical Document FA16003;
- the Request for Board Review filed by Silver Hills Colony;
- the letter from Saddle Hills County dated July 12, 2016;
- Saddle Hills County's MDP; and

- Portions of the public record maintained by the Approval Officer.

Board Deliberations

The Board met on August 4, 2016 to deliberate on the filed Request for Board Review (RFR). In its deliberations, the Board did not consider the letter filed by Saddle Hills County as an RFR, but rather as a letter of support for the RFR filed by the Silver Hills Colony.

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. The only issue raised in the RFR filed by Silver Valley Colony is whether the Board should exercise its authority to approve the expansion notwithstanding an inconsistency with the MDP. Having regard for the materials referenced above the Board has determined that it will hold a hearing to consider that issue.

The Board finds that the reasoning in Decision Summary FA16003 is correct in denying the Silver Valley Colony application based on its inconsistency with a land use provision in the MDP. In contrast to the AOPA provision directing the Approval Officer to deny an application that is inconsistent with a municipal development plan land use provision, on review the Board is not bound by such provisions in a municipal development plan.

AOPA states that when the Board receives a RFR it must schedule a review unless it is of the opinion that the Approval Officer adequately dealt with the issues raised or that the issues raised are of little merit. The Board accepts that the burden of asserting a reviewable issue is not as onerous when the RFR asks the Board to exercise its discretion under AOPA section 25(4)(g), as the issue of whether to override the MDP land use provision may only be considered at the review stage.

The Board directs that the review take the form of a written review rather than an oral hearing. The Board will accept written submissions from Silver Valley Colony and Saddle Hills County that are filed on or before August 19, 2016. The Board is providing a common filing date as the directly affected parties' positions are not adversarial in nature.

Decision

As a result of the Board's deliberations, it has determined that a review is warranted in the form of a written hearing to consider:

Whether the Board should exercise its authority to approve the CFO expansion notwithstanding an inconsistency with the MDP having regard for matters that would normally be considered if a municipal development permit were being issued.

Review Process

The Board review will be conducted as a written hearing. The Board proposes that eligible parties to this proceeding are the Silver Valley Colony and Saddle Hills County. Although not anticipated, should any parties have questions arising from the submissions to the written hearing the Board will provide an opportunity to pose those questions in writing and direct them through the NRCB's Manager of Board Reviews.

Written submissions shall be filed by August 19, 2016 and are to be directed to the attention of Tim Riordan, Manager of Board Reviews, 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.

DATED at EDMONTON, ALBERTA, this 5 day of August, 2016.

Original signed by:

Vern Hartwell

Glenn Seland

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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.