



## **BOARD DECISION**

### **RFR 2017-04 / FA14003**

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary FA14003

Hutterian Brethren of Bear Canyon

March 21, 2017

## Background

Decision Summary FA14003 (the AO Decision) regarding the Hutterian Brethren of Bear Canyon's (Bear Canyon Colony) application for a confined feeding operation (CFO), located at NW 23-83-13 W6M in Clear Hills County (the County), approximately 2 kilometres north of the community of Cherry Point, was issued by NRCB Approval Officer Randy Bjorklund on January 30, 2017. Bear Canyon Colony applied to construct and operate a new 3,500 beef finisher CFO. The proposed facilities are feedlot pens (373.4 m x 292 m, in total), a feedlot barn (61 m x 19.8 m), and two catch basins (each 61 m x 30.5 m x 4.5 m deep). The approval officer denied Bear Canyon Colony's application.

The approval officer listed the factors he considered in his decision-making, including his statement that the proposed development met all technical requirements under the *Agricultural Operation Practices Act* (AOPA). Nevertheless, the application was denied, as he determined that the proposed development is inconsistent with the County's municipal development plan.

A Request for an NRCB Board Review of Decision Summary FA14003 (the RFR) was filed by Nor-AG Ltd. on behalf of Bear Canyon Colony on February 14, 2017, meeting the 10-day filing deadline pursuant to section 20(5) of AOPA. The RFR asked the Board to reverse the approval officer's decision.

Following receipt of the RFR, the Board sent a Notice of Filed Request for Board Review (the Notice), and a copy of the RFR, to all of the people the approval officer had found to be directly affected parties. The Notice advised that any adversely affected parties were being given an opportunity to file a response submission with the Board, by the deadline of March 1, 2017. The following directly affected parties submitted separate responses: (1) Clear Hills County, (2) Randy and Marion Maxwell, and (3) Charlie, Pat, Ashley and Crystal Johnson.

The Board met on March 14, 2017 and March 21, 2017 to deliberate on the RFR and the responses.

## 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 of an approval officer's decision has the onus of demonstrating that there are sufficient grounds to merit a review. The information that must be included in each RFR is described in section 14 of the *Board Administrative Procedures Regulation*, and is also set out in the AO Decision cover letter dated January 30, 2017.

## Documents Considered

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

- Decision Summary FA14003 dated January 30, 2017 and its companion technical document (Part 2 Technical Requirements);
- Request for Board Review filed by Nor-AG Ltd. on behalf of Bear Canyon Colony, dated February 14, 2017;
- Response Submissions to the Board's February 22, 2017 Notice of Filed Request for Board Review, as submitted by:
  - Clear Hills County, February 27, 2017 email
  - Randy and Marion Maxwell, February 27, 2017 email
  - Charlie, Pat, Ashley and Crystal Johnson, February 28, 2017 email
- portions of the public record maintained by the approval officer; and
- portions of Clear Hills County's municipal development plan and land use bylaw.

## Board Deliberations

In issuing the AO Decision, the NRCB approval officer reviewed a detailed Statement of Concern from the County that was submitted on July 21, 2016. In that submission, the County advised that the proposed operation was inconsistent with the 1.6 km setback to existing country residential developments provided for in section 2.1.4(f) of its MDP. Then on August 17, 2016, the County adopted a revised land use bylaw that increased setbacks from CFOs to country residential developments, as well as to waterbodies, to 3.2 km. The AO Decision denied the application by the Bear Canyon Colony as, in accordance with section 20(1)(a) of AOPA, the CFO was inconsistent with the land use provisions of the municipal development plan.

Bear Canyon Colony has asked that the Board review the AO Decision and approve its application, notwithstanding the municipal development plan provisions. This request engages section 25(4)(g) of AOPA, where on review the Board may consider approving a CFO application notwithstanding inconsistency with a municipal development plan.

The Board is directed by AOPA to 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. As this RFR raises an issue that the approval officer has no discretionary authority to exercise, the Board's consideration of the RFR rests on whether the issue raised merits further consideration. The Board is satisfied that a review is warranted in this instance.

Municipal authorities commonly include provisions that preclude or restrict CFO development in order to further planning objectives. However, in order to achieve more consistent CFO siting provisions across the province, AOPA provides the Board with the review authority to approve CFO applications, notwithstanding a municipal development plan exclusion zone provision. The Board is satisfied that the RFR has sufficient merit to warrant consideration of whether it should exercise its authority to approve the CFO, notwithstanding the inconsistency with the municipal development plan.

Directly affected parties also raised a number of issues beyond the municipal development plan inconsistency that are within the NRCB's AOPA mandate, and that were considered by the approval officer in Decision Summary FA14003. Section 25(1) of AOPA requires that the Board determine whether these issues were adequately dealt with by the approval officer and, if so, dismiss them from the review. In that regard, the Board notes that none of the parties advanced significant questions in relation to the approval officer's technical consideration and findings. For that reason, the Board does not consider that there is merit in reconsidering the approval officer's findings on these other issues at a Board hearing.

## **Decision**

Upon reviewing the submissions from all parties, the Board finds that a review is warranted to consider the following issue:

Whether the Board should exercise its authority to approve the Bear Canyon Colony CFO, notwithstanding an inconsistency with the municipal development plan, having regard for matters that would normally be considered if a municipal development permit were being issued, and considering the effects on the environment, the economy, and the community; and the appropriate use of land.

The Board anticipates that a reasonable approach to assessing this issue will include:

- identifying the municipal authority's rationale for establishing the relevant provision(s) in the municipal development plan,
- determining whether the relevant provision is reasonable and reflective of good planning,
- determining whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone, and
- determining whether the municipal development plan is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

The Board has determined that a written review is appropriate, and has set out the details for that review in the following section. The Board encourages all directly affected parties to file submissions addressing the main issue as outlined above. The board has also provided its anticipated approach to the issue to assist parties as they prepare their filings.

## Review Process

The Board will establish online access to the approval officer's public record and all filings made with respect to this RFR. Once this site has been established, the Board will advise all parties.

The scheduled deadlines for the written review process are as follows:

**April 12, 2017:** All parties (Bear Canyon Colony; Charlie, Pat, Ashley and Crystal Johnson; Randy and Marion Maxwell; Marlene and Allen Maxwell; George Maxwell; Darrin and Brittany Fess; Christopher and Sally Jones; and Clear Hills County) file their submissions. Although the Board does not anticipate that the approval officer will be filing a submission, the approval officer is a party to the review. Review staff will ensure that all submissions that are received by April 12, 2017 will be made available to each party.

**April 20, 2017:** All parties file their reply submissions. Reply submissions are not mandatory, but allow for filing rebuttal evidence and argument contained in the other parties' submissions. It also provides the chance for parties to raise questions that it believes need to be answered by parties to the review in order to complete the record. Should parties include questions with their reply submissions, the Board will determine whether an answer should be pursued. When putting forward a question, please include the reasons why an answer is necessary for the Board to complete its deliberations.

All submissions are to be directed to the attention of Tim Riordan at the Edmonton offices of the NRCB.

The Board will then assess the record and, subject to any written questions it may direct to parties, will determine whether the record is sufficient to proceed to deliberations.

DATED at EDMONTON, ALBERTA, this 21st day of March, 2017.

*Original signed by:*

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Vern Hartwell

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Glenn Selland

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Jay Nagendran