



## **BOARD DECISION**

### **RFR 2018-01 / RA17042**

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA17042

Milk & Honey Dairy Inc.

January 11, 2018

## Background

On November 20, 2017, NRCB approval officer Francisco Echegaray issued Decision Summary RA17042 in relation to the confined feeding operation (CFO) proposed by Milk & Honey Dairy Inc. (Milk & Honey) at SE 14-43-26 W4M in Ponoka County. Milk & Honey sought registration for a new 120 milking cow (plus associated dries and replacements) CFO. The proposed CFO includes the construction of a dairy barn and a synthetic lined liquid manure storage. In Decision Summary RA17042, the approval officer denied Milk & Honey's application as he determined that the application was inconsistent with the land use provisions of Ponoka County's municipal development plan (MDP).

Pursuant to Section 22(4) of the *Agricultural Operation Practices Act (AOPA)*, on November 27, 2017 a Request for Board Review (RFR) of Decision Summary RA17042 was filed by Milk & Honey. The RFR was filed within the 10-day filing deadline established by AOPA.

All directly affected parties were provided with a copy of the RFR and notified of the Board's intent to meet and deliberate on this matter. Directly affected parties with an adverse interest to the matters raised in the RFR were provided the opportunity to make a rebuttal submission in response. The Board received rebuttal submissions from William Toporowski on December 7, 2017 and from Logan Kautz on December 11, 2017. Both of these submissions met the December 12, 2017 filing deadline.

The Board convened to deliberate on the RFR on December 14, 2017. On December 15, 2017 the Board advised parties by letter that a written board decision on the RFR would be issued in early January 2018 outlining both the reasons for granting an oral hearing and a description about the hearing process.

## 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 RFR.

## Documents Considered

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

- Decision Summary RA17042 dated November 20, 2017 and its companion technical document;

- RFR filed by Milk & Honey Dairy Inc., dated November 27, 2017
- Rebuttal to the RFR filed by William Toporowski on December 7, 2017
- Rebuttal to the RFR filed by Logan Kautz on December 11, 2017
- Portions of the public record maintained by the approval officer
- Ponoka County's MDP (Bylaw 6-08-MDP including amendments to September 2012) as available on the County's website
- Ponoka County Land Use Bylaw (Bylaw 7-08-LU including amendments to September 2016)
- Municipal Government Board Order No. MGB 019/11; Annexation to Town of Ponoka from Ponoka County
- Town of Ponoka and County of Ponoka Intermunicipal Agreement on Development in the Urban Fringe (22 September 1998)

## Board Deliberations

The AO Decision Summary denied the application by Milk & Honey as, in accordance with section 22(1)(a) of AOPA, the CFO was inconsistent with the land use provisions of the County's MDP. The Milk & Honey RFR asks the Board to issue a registration for the dairy notwithstanding any inconsistency with Ponoka County's MDP land use provisions. Directly affected parties William Toporowski and Logan Kautz each filed a rebuttal to the Milk & Honey RFR, asking the Board to deny the Milk & Honey permit by respecting Ponoka County's MDP land use restrictions. The rebuttals also raised concerns that neighbouring properties could experience adverse effects associated with surface water quality, livestock health, ground water quantity, and property values.

The Board met on December 14, 2017 to deliberate on the filed RFR as well as the issues raised by William Toporowski and Logan Kautz, in their rebuttal filings. The Board met again on January 10, 2018 to finalize the contents of this decision. In its deliberations, the Board identified two issues advanced in the RFR. The issues are:

- 1) whether the CFO application is consistent with article 2.3 of Ponoka County's MDP, and
- 2) if the Board determines that the CFO application is not consistent with Ponoka County's MDP land use provisions, whether the Board should exercise its authority to approve the CFO registration, notwithstanding an inconsistency with Ponoka County's MDP land use provisions.

Municipal development plans commonly include land use provisions that allow, 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 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.

The Board believes that a hearing is warranted to consider the above enumerated issues as there is uncertainty over whether the application of the 2 mile setback should prohibit the Milk & Honey CFO development. The Board finds that the other issues raised by Mr. Toporowski and Mr. Kautz in their rebuttals do not merit further review as these issues were adequately dealt with by the approval officer. These other issues were considered by the approval officer in the Technical Document and Decision Summary. As stated above, the Board considers that a party requesting the review of an issue has the

onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Having regard for the approval officer's consideration of these other issues and the rebuttal submissions, the Board finds that these issues do not merit review. Therefore, the hearing will not be considering surface water quality, livestock health, ground water quantity, and property values issues.

In setting an oral hearing, the Board will have the benefit of evidence from the proponent and directly affected landowners. The Board is hopeful that it will have the benefit of hearing from both Ponoka County and the Town of Ponoka, in relation to the land use provisions of the County's MDP and their planning objectives.

### **Form of Review**

The Board has determined that the issues to be considered on review will benefit from an oral hearing, and an oral hearing will afford the parties the opportunity to question other participants.

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 prior to and at the oral hearing. The Board views both Ponoka County and the Town of Ponoka as important participants in the review and has structured the review process with the full anticipation that both the County and the Town will advance a submission and appear at the hearing.

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 include:

#### **To All Parties:**

- AP-1 Please explain your understanding of the general planning interests that Ponoka County was pursuing in establishing a CFO exclusion zone around the Town of Ponoka in its MDP, County Land Use Bylaw and the Town of Ponoka and County of Ponoka Intermunicipal Agreement on Development in the Urban Fringe.

#### **To Milk & Honey Dairies Inc.:**

- MH-1 Should your CFO proceed, what effects will your operation have on the planning interests or objectives that led to establishing a CFO exclusion zone on the Milk & Honey CFO site (SE 14-43-26 W4M)?
- MH-2 The RFR states "this piece of property was the first to meet all of the requirements for me and my family, and also those of the NRCB". Please expand on how this reconciles with Ponoka County's MDP land use provisions, with particular attention to meeting all NRCB requirements.
- MH-3 Did you engage a realtor in your property search and advise him or her on your intent to construct and operate a dairy?
- MH-4 The Toporowski rebuttal states that they and other landowners within Ponoka County relied on the County's land use provisions prohibiting CFO development within 2 miles of the Town of Ponoka in their property search. In your view, why should the NRCB override the MDP exclusion zone provisions and permit your CFO despite these

landowners' reliance on the land use provisions in Ponoka County's MDP, Land Use Bylaw, and the Intermunicipal Agreement on Development in the Urban Fringe?

**To Ponoka County:**

- PC-1 Please outline the general planning interests that Ponoka County was pursuing in establishing the CFO exclusion zone around the Town of Ponoka in its Municipal Development Plan.
- PC-2 When did Ponoka County's Municipal Development Plan first establish a CFO exclusion zone around the Town of Ponoka?
- PC-3 What criteria did Ponoka County apply that led to the establishment of a CFO exclusion zone specifically on the SE 14-43-26 W4M?
- PC-4 In the event that Milk & Honey obtained an NRCB registration, what effects would that CFO have on the planning interests or objectives that led to establishing a CFO exclusion zone on the SE 14-43-26 W4M?
- PC-5 What land uses does the County view are compatible in the CFO exclusion zone?

**To the Town of Ponoka:**

- TP-1 When did the Town of Ponoka first become aware of the Milk & Honey CFO application? How did the Town of Ponoka become aware?
- TP-2 Did the Town of Ponoka participate in the public process that resulted in the establishment of Ponoka County's MDP specifically in relation to establishing the 2 mile CFO exclusion zone as set out on Map 2?
- TP-3 Please comment on the Town of Ponoka's general planning interests in relation to Ponoka County's MDP provision for a 2 mile CFO exclusion zone around the Town of Ponoka.
- TP-4 In the event that Milk & Honey obtained an NRCB registration, what effects would the 120 milking cow dairy have on the Town's planning interests or objectives?
- TP-5 What land uses does the Town view are compatible in the CFO exclusion zone?

**Decision**

As a result of the Board's deliberations, it has determined that a review is warranted to consider whether a permit for Application RA17042 should be approved or denied based on the Board's consideration of the relevant land use provisions of the MDP.

**Review Process**

The Board finds that eligible parties to this proceeding include Milk and Honey, Logan Kautz, William Toporowski, Ryan and Ashley LaFontaine, Ponoka County, Town of Ponoka, and NRCB approval officer Francisco Echeagaray. Any eligible party wishing to submit a written submission must file their submission on or before January 29, 2018. The Board anticipates that a hearing of the issues for review

will be completed in a single day. Board staff will make arrangements for a hearing venue in the Town of Ponoka on a date in early February. All parties will be advised once those arrangements are finalized.

Board staff will contact both Ponoka County and the Town of Ponoka and request that they consider attending the hearing.

Written submissions are to be directed to the attention of Laura Friend at the Calgary 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 CALGARY, ALBERTA, this 11<sup>th</sup> day of January, 2018.

*Original signed by:*

See note below

\_\_\_\_\_  
L. Page Stuart

\_\_\_\_\_  
Michele Annich

\_\_\_\_\_  
Sandi Roberts

NOTE: The Panel Chair, L. Page Stuart, was absent at the time this report was finalized and as such has not signed this decision. In Ms. Stuart's absence, the remaining panel members, constituting a quorum, continued with the finalization of this panel decision in accordance with the section 19 of the *Natural Resources Conservation Board Act*. Ms. Stuart participated in all panel meetings prior to 10 January 2017 and it is anticipated that she will continue as panel chair of the public hearing to be held in February.

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

**Edmonton Office**

4th Floor, Sterling Place, 9940 - 106 Street  
Edmonton, AB T5K 2N2  
T (780) 422.1977 F (780) 427.0607

**Calgary Office**

19<sup>th</sup> Floor, 250 – 5 Street SW  
Calgary, AB T2P 0R4  
T (403) 297.8269 F (403) 662.3994

**Fairview Office**

Provincial Building, #213, 10209 - 109 Street  
P.O. Box 159, Fairview, AB T0H 1L0  
T (780) 835.7111 F (780) 835.3259

**Lethbridge Office**

Agriculture Centre, 100, 5401 - 1 Avenue S  
Lethbridge, AB T1J 4V6  
T (403) 381.5166 F (403) 381.5806

**Morinville Office**

Provincial Building, #201, 10008 - 107 Street  
Morinville, AB T8R 1L3  
T (780) 939.1212 F (780) 939.3194

**Red Deer Office**

Provincial Building, #303, 4920 - 51 Street  
Red Deer, AB T4N 6K8  
T (403) 340.5241 F (403) 340.5599

NRCB Response Line: 1.866.383.6722

Email: [info@nrcb.gov.ab.ca](mailto:info@nrcb.gov.ab.ca)

Web Address: [www.nrcb.gov.ab.ca](http://www.nrcb.gov.ab.ca)

Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca) or through the NRCB website.