



BOARD DECISION

RFR 2018-10/ RA17058; and 2018-10 / RA17058

In Consideration of a Request for Board Review filed
under the Agricultural Operation Practices Act in
relation to Decision Summary RA17058; and

Review of Decision Summary RA17058

Vermeer Dairy Ltd.

September 12, 2018

Background

This report provides the Board's decision following its consideration of two requests for Board review (RFR) in relation to Decision Summary RA17058.

On July 30, 2018, NRCB Approval Officer Jeff Froese issued Decision Summary RA17058 in relation to Vermeer Dairy Ltd.'s (Vermeer Dairy) application to expand its confined feeding operation (CFO), located at E ½ 4-45-19 W4M in Camrose County (the County). The Vermeer Dairy application proposed to increase livestock numbers from 450 to 1,000 milking cows (plus dries and replacements). The proposed facilities include the construction of new earthen liquid manure storage and an addition to the livestock barn. The approval officer denied Vermeer Dairy's application, as he determined that it was inconsistent with the land use provisions of the County's municipal development plan (MDP).

Two RFRs of Decision Summary RA17058 were filed; the first was filed by Vermeer Dairy on July 30, 2018, and the second was filed by Camrose County on August 9, 2018. Both RFRs advocated for the Board's approval of the Vermeer Dairy expansion notwithstanding its inconsistency with the Camrose County MDP.

On August 22, 2018, a Panel (the Panel or Board) was appointed to conduct the review, consisting of Peter Woloshyn (Panel Chair), Keith Leggat, and Daniel Heaney. The Board met on August 28, 2018 to consider the RFRs, determining that a review was warranted and that, on its face, the record appeared to be sufficiently complete. The Panel determined that it could issue one decision report that included both the decision required for a request for review under *Agricultural Operation Practices Act (AOPA)* section 25(1), and the decision required under section 25(7) when the Board conducts a review. At the Panel's direction, Board staff contacted Vermeer Dairy, the County and the approval officer, advising them of the Board's decision to issue one decision and establishing a September 7, 2018 submission deadline for the Board review. Other than Vermeer Dairy, the County and the approval officer, there were no other parties eligible to participate in the Board review. No party exercised the opportunity to file a further written submission.

The Record

As no submissions were filed following the Board's August 28, 2018 meeting to consider the RFRs, the record was the same for both the RFR decision and the review decision. The record included:

- Approval officer's public file material
- Decision Summary RA17058
- RFR filed by Vermeer Dairy, dated July 30, 2018

- RFR filed by the County, dated August 9, 2018
- Camrose County Municipal Development Plan (Bylaw 1372) April 12, 2016

RFR Decision [AOPA s. 25(1)]

In Decision Summary RA17058, the approval officer denied Vermeer Dairy’s application, as he determined that the application was inconsistent with the land use provisions of the County’s municipal development plan (MDP). This decision is consistent with the AOPA provision that:

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,

- (a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, ...

Section 25(1) of AOPA directs the Board to dismiss an RFR if the Board determines that the issue has no merit or was adequately dealt with by the approval officer. The effect of this provision is to place the burden on the party submitting an RFR to establish that a review is merited. In this case the Board is satisfied that a review should be conducted to determine whether the Board should exercise its authority to approve the Vermeer Dairy CFO, notwithstanding an inconsistency with the MDP.

Board Decision [AOPA s. 25(7)]

The approval officer concluded that the Vermeer Dairy expansion was not consistent with section 4.3.9 of the County’s MDP, which states:

Development of new or expanding CFO’s shall not be supported within 3,219 m (2 miles) of the City of Camrose, 3,219 m (2 miles) from any recreational lake¹, or 1,610 m (1 mile) from any other urban municipality or hamlet or as outlined in the IDP.

The approval officer determined that section 4.3.9 of the MDP is a valid land use provision and denied the application since the Vermeer Dairy is within the 2 mile exclusion zone. When reviewing an approval officer decision to deny an application because of an inconsistency with a municipal development plan, the Board is directed by section 25(4)(g) of AOPA to “have regard to” but not be bound by the applicable municipal development plan. The result is that AOPA expressly empowers the Board not to follow the requirements of a municipal development plan

¹ The MDP defines a “recreational lake” as “All County recreational lakes including Miquelon Lake, Little Beaver Lake, Bittern Lake, Red Deer Lake, Buffalo Lake, and Driedmeat Lake. This also includes lakes that will support recreational activities in the future.”

in appropriate cases.

In past decisions, the Board has expressed that a reasonable approach to considering whether or not to exercise its authority to approve a CFO located within a municipal development plan exclusion zone requires the Panel to focus on the municipality's planning objectives behind the CFO prohibition. The Board notes that the MDP contains various provisions that may assist in identifying the planning objectives of section 4.3.9 of the MDP, including:

- Section 4.2.2 To minimize impacts on the natural environment from agricultural operations
- Section 4.2.3 To allow Confined Feeding Operations (CFO) where appropriate
- Section 6.3.1 Growth centres shall not include intensive agricultural operations, CFO's, ILO's, heavy industrial uses, or any other uses which may be considered a nuisance.
- Section 8.2.3 To locate recreational areas adjacent to existing natural areas, near large water bodies or water courses.

The County stated in its May 30, 2018 letter to the approval officer that:

- The primary reason for the 2 mile setback in section 4.3.9 is to protect a waterbody from potential contamination, and
- the risk to Battle River is significantly reduced given the distance of the operation from Driedmeat Lake and that it is outside the effective Battle River drainage basin as delineated by the County.

In the County's RFR filed August 9, 2018 the County states:

- The MDP provision 4.3.9 serves two objectives; to reduce the potential risk of contamination of lakes, and to protect the recreational and residential nature of the lake from nuisance issues,
- the County restated (from its May 30, 2018 letter) that it is not concerned about contamination of Driedmeat Lake from Vermeer Dairy, and
- the project location will not interfere with the County's current and long term growth plans for the lake given the distance of the lake from the Vermeer Dairy, and because there are gravel pits and a highway between the Vermeer Dairy and the lake.

The Board notes that the Vermeer Dairy is approximately 2,900 m (1.8 miles) from Driedmeat Lake. No neighbours have objected to this application and the County has taken the position that it supports the expansion. The Board must assess, having regard for the County's land use objectives, whether it will approve the expansion notwithstanding the inconsistency with the MDP. The Board has determined that the expanded CFO facilities will pose a negligible environmental risk to Driedmeat Lake given the statutory provisions in AOPA that provide for the

protection of surface water and groundwater quality.

While the Board must in each case determine whether it is prepared to approve the CFO notwithstanding an inconsistency with a MDP, the Board will look to identify a compelling site specific need to prohibit a CFO in those cases where the MDP provision appears to address environmental issues that AOPA also addresses. In this case, the Board does not find any site specific environmental need to prohibit the Vermeer Dairy expansion as there is no evidence before the Board that expansion of the Vermeer Dairy CFO facilities will represent a material risk to the Driedmeat Lake water quality.

With respect to the MDP objective of protecting recreational and residential development at Driedmeat Lake, the Board is satisfied that by any reasonable measure, the CFO is located far enough away from the lakeshore and it will not pose nuisance effects of any material significance. Again, the County supports such a conclusion. The Board also notes that the calculated AOPA minimum distance separation for the proposed expanded dairy to a category 4 residence is 1,674 m (1.04 miles). A category 4 residence represents the highest odour objective factor and the greatest separation distance provided under AOPA. Category 4 includes residences located in large scale country residential developments, hamlets, villages, towns or cities. While the measurement available to the Board is to the lakeshore rather than residences, or potential residences, the Board has considered that such residences would be located in close proximity to the lakeshore to take advantage of any recreational potential.

All available evidence before the Panel supports a conclusion that the Vermeer Dairy does not pose a risk to Driedmeat Lake water quality, nor will the expansion have nuisance effects that would impair the recreational and residential planning objectives of the County's MDP. Taken together, the Board concludes that this is an instance where it is appropriate to approve the proposed expansion, notwithstanding the inconsistency with section 4.3.9 of the MDP.

The Board notes that the approval officer undertook a complete review of the Vermeer Dairy expansion application, including setting out conditions that should form part of any approval issued. The approval officer's assessment and the conditions proposed are set out in Decision Summary RA17058.

Decision

For the reasons set out above, the Board hereby directs the approval officer to issue an approval to Vermeer Dairy to construct and operate a confined feeding operation as described in the application, subject to the conditions related to technical matters set out by the approval officer in Decision Summary RA17058.

DATED at EDMONTON, ALBERTA, this 12th day of September, 2018.

Original signed by:

Peter Woloshyn
Panel Chair

Keith Leggat
Panel Member

Daniel Heaney
Panel Member

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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.