



BOARD DECISION

2016-02 / FA16003

Review of Decision Summary FA16003

Hutterian Brethren Church of Silver Valley

August 31, 2016

Background

On July 12, 2016, NRCB Approval Officer Randy Bjorklund issued Decision Summary FA16003 in relation to Hutterian Brethren Church of Silver Valley's (Silver Valley Colony) application to expand its confined feeding operation (CFO) located S1/2 3-81-12 W6M in Saddle Hills County. The Silver Valley Colony application proposed to expand its existing 800 beef feeder CFO by adding a 30,000 chicken layer operation. The Approval Officer denied the Silver Valley Colony application as he determined that it was inconsistent with the land use provisions of the Saddle Hills County Municipal Development Plan (MDP).

A Request for Board Review of Decision Summary FA16003 was filed by the Silver Valley Colony on July 12, 2016. In Board Decision RFR 2016-02 dated August 5, 2016, the Board determined that a review was warranted 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. A Board Panel (the Panel or the Board) consisting of Vern Hartwell (Panel Chair) and Glenn Selland was appointed to conduct the review. The Panel directed that the review be conducted as a written hearing.

The Board provided opportunities for directly affected parties to file written submissions and interrogatories. The Board's record was complete on August 26, 2016.

The Panel's record included the Approval Officer's public file material, Decision Summary FA16003, the Request for Review and hearing submission filed by Silver Valley Colony and a letter of support and hearing submission from Saddle Hills County.

This report provides the Panel's decision following its review of Decision Summary FA16003.

Issue

The review hearing dealt with the single issue of 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.

Board Decision

The Approval Officer determined that the plain and simple interpretation of the MDP led to his conclusion that the Silver Valley Colony expansion was not consistent with the MDP land use provisions. The *Agricultural Operation Practices Act (AOPA)* directs NRCB Approval Officers to deny an application that is inconsistent with the land use provisions of the relevant municipal development plan. While in this case the Approval Officer rhetorically questions whether Saddle Hills County intended "this far-reaching preclusion of CFOs", the Board supports the plain language interpretation applied by the Approval Officer.

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 MDP. The result is that AOPA expressly empowers the Board not to follow the requirements of an MDP in appropriate cases. In the Board's decision on a previous review (Zealand Farms, 2013-01/RA09046A), it expressed its interpretation of the legislative scheme as:

In the Board's opinion, the overall legislative scheme set out in AOPA governing the interplay between the specific requirements of AOPA and the land use provisions of the

applicable MDP, and the need to resolve any conflicts between the two, divides the responsibilities between Approval Officers and the Board in a manner which respects the roles and responsibilities of the two. Under AOPA, Approval Officers interpret the land use provisions in the applicable MDP and apply those provisions to an application for an NRCB permit; the Board, on review, must interpret the MDP, but also bears the burden of deciding whether to override a municipal bylaw in respect to a specific CFO approval application in the event of a conflict. This is always a difficult decision, one which the Board believes is appropriate for a quasi-judicial board appointed by the Lieutenant Governor in Council.

The most relevant portion of the MDP provides:

3.3 Confined Feeding Operations

- 3.3.1 The County encourages the development of Confined Feeding Operations at appropriate locations, as a means of adding value to grain crops, and creating employment.*
- 3.3.2 The County generally considers Confined Feeding Operations greater than three times the size described in Column 3 of Schedule 2 of Agricultural Operations, Part 2: Matters Regulation (Alberta Regulation 257/2001) as an inappropriate land use and may or may not support their development within the County depending on the nature of the proposed operation.*
- 3.3.3 Applications to the Natural Resources Conversation Board for the establishment or expansion of Confined Feeding Operations shall be supported by the County only if they are compatible with adjacent land uses, do not generate adverse health or environmental effects, follow the Agricultural Operations and Practices Act guidelines, and meet or exceed the following separation distances:
 - a. 3.2 kilometres (2 miles) from the boundary of a hamlet settlement, or a multi-lot country residential subdivision, community or public use, or provincial or municipal park;*
 - b. 0.8 kilometres (1/2 mile) from a water body, swamp, gully, ravine, coulee, river, creek, stream or registered drainage ditch, and may not be located in an area subject to flooding; or*
 - c. 1.6 kilometres (1 mile) from an adjacent municipality, unless supported by the municipality affected;*
 - d. within an Environmentally Sensitive Area identified on Map 2; or*
 - e. within proximity of other similar areas where a potential conflict may occur.**
- 3.3.4 Confined Feeding Operations should not be established or expanded where there is any risk that runoff will contaminate ground or surface water supplies.*
- 3.3.5 The County shall protect existing Confined Feeding Operations by refusing development permits for new residences proposed to be located within the Minimum Distance Separation of these operations as defined by Agricultural Operations and Practices Act.*

Article 3.3.3(b) states that CFO's must be at least 0.8 kilometres from surface water features. The Board accepts that this provision employs distance as an environmental protection measure for permanent, seasonal and intermittent surface water features. *AOPA* provides for the protection of surface water quality through various provisions in its approval and compliance processes. While the Board must in each case determine whether it is prepared to approve the CFO notwithstanding an inconsistency with a MDP, the Board generally would 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.

Generally, Board review hearings include multiple parties and are adversarial in nature. This review hearing departed from the norm in that there was no adversarial component to the submissions tendered by the two participating parties. As the only party to the review other than the Silver Valley Colony, Saddle Hills County submitted a letter signed by the Reeve requesting that the Board review and consider approving the Silver Valley Colony expansion application. That letter also stated that the county "Council passed a resolution to initiate an amendment to this section of the Municipal Development Plan to consider aligning the MDP with the provincial setback requirements."

The Approval Officer's review concluded that the proposed expansion would comply with *AOPA* requirements. During his review he completed an environmental risk screening of the grandfathered CFO facilities and concluded those facilities posed a low risk to groundwater and surface water. The Board could find nothing in the Approval Officer's record or the MDP to suggest that the expansion of the Silver Valley Colony would create land use conflicts with current or contemplated land uses. Taken together and having regard for the submission by Saddle Hills County, the Board concludes that this is an instance where it is appropriate to approve the proposed expansion, notwithstanding the inconsistency of that expansion with a provision of the MDP.

The Board notes that the Approval Officer undertook a complete review of the Silver Valley Colony 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 FA16003.

Decision

For the reasons set out above, the Board hereby directs the Approval Officer to issue an approval to the Hutterian Brethren Church of Silver Valley to expand its 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 FA16003.

DATED at EDMONTON, ALBERTA, this 31 day of August, 2016.

Original signed by:

Vern Hartwell
Panel Chair

Glenn Selland
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.