



BOARD DECISION

2017-05 / FA14003

Review of Decision Summary FA14003

Hutterian Brethren of Bear Canyon

May 3, 2017

Background

This report provides the Board's decision following its written hearing review of NRCB Decision Summary FA14003.

On January 30, 2017, NRCB approval officer Randy Bjorklund issued Decision Summary FA14003 in relation to Hutterian Brethren of Bear Canyon's (the Colony) application to construct and operate a confined feeding operation (CFO), located at NW 23-83-13 W6M, in Clear Hills County (the County). The Colony's application proposed to construct a new 3,500 beef finisher CFO. The proposed facilities included feedlot pens, a feedlot barn, and two catch basins. The approval officer denied the Colony's application, as he determined that it was inconsistent with the land use provisions of the County's municipal development plan.

On February 14, 2017, a Request for NRCB Board Review of Decision Summary FA14003 was filed by the Colony. On March 21, 2017, in Board Decision RFR 2017-04, the Board determined that a review was warranted to consider whether it should exercise its authority to approve the CFO expansion. The Board directed that the review be conducted as a written hearing. At that time, a Panel (the Panel or Board) was appointed to conduct the review, consisting of Vern Hartwell (Panel Chair), Glenn Selland, and Jay Nagendran.

In its March 21, 2017 decision cover letter, the Board provided opportunities for directly affected parties to file written hearing submissions and reply submissions. By letter dated April 13, 2017, all directly affected parties were provided with details on how to electronically access copies of the hearing submissions filed with the Board. The Board's record was complete on April 20, 2017, and included:

- Approval officer's public file material
- Decision Summary FA14003
- Request for Board Review filed by Bear Canyon Colony, dated February 14, 2017
- Response submissions to the February 14, 2017 Request for Board Review submitted by:
 - Clear Hills County
 - Randy and Marion Maxwell
 - Charlie, Pat, Ashley, and Crystal Johnson
- Written hearing submissions filed by:
 - Bear Canyon Colony
 - Brittany Fess
 - Randy and Marion Maxwell
 - Charlie, Pat, Ashley, and Crystal Johnson
 - Clear Hills County

- Written hearing reply submissions filed by:
 - Bear Canyon Colony
 - Clear Hills County

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.

Discussion

1. County

In 2007, the County adopted bylaw 102/07 which amended the municipal development plan to provide for the siting of CFOs. Prior to adopting the 2007 municipal development plan amendments, the County commissioned a study and undertook a public consultation process. The County states that the provisions related to CFOs in the municipal development plan are, “to protect the interests of all rural users, both agricultural and residential, respecting and protecting the ability of neighbors to continue to use and enjoy existing land uses.”

The County’s hearing submission regarding Decision Summary FA14003 states that article 2.1.4(f) of the municipal development plan provides greater certainty to landowners and CFO proponents as they would not have to make a calculation. The submission asserts that the municipal development plan provision removes ambiguity, and creates a level playing field for residents, by stating that a new CFO must be a minimum of 1.6 km from any existing country residential development.

The County submits that the setbacks provided for in the municipal development plan are reflective of good planning, as they mitigate nuisance impacts on surrounding residents, as well as providing for greater buffers to mitigate potential environmental contamination of water features that would impact surrounding residences. In support of this statement, the County states that setbacks identified in the study and included in bylaw 102/07, were the result of a transparent and public process with the intent to protect existing residences from the impacts of CFOs. The County further submits that the provisions are reasonable and that the reciprocal fixed setbacks create certainty for both residents and proponents of CFOs.

The County states that its authority to require setbacks greater than those specified in the *Agricultural Operation Practices Act* (AOPA) is based on its more detailed knowledge and understanding of the lands and land uses within its boundaries. The County cites the study that it commissioned in 2007 in support of the municipal development plan provisions,

“that take into account the concerns and interests of residents across the Municipality.” The County states that the establishment of reciprocal setbacks in the municipal development plan reflects and respects the planning objective of establishing a buffer around incompatible uses.

2. Colony

The Colony states that the County’s increased separation distance provisions are not reasonable, and do not represent good planning, as they account for neither the different sizes of CFOs, nor the density of the residential receptors.

The Colony’s submission provides a detailed overview of the legislative scheme that was put in place in 2001 when the province amended AOPA to provide for the regulation of confined feeding operations. Additionally, the submission references several past NRCB decisions that considered approval officer decisions where there were issues of consistency with municipal development plans.

The Colony states that as the proposed operation is not located within an exclusion zone, the municipal development plan provisions establishing CFO exclusion zones are not relevant to this review.

3. Directly Affected Parties

As neighboring landowners and directly affected parties, the Johnsons, Maxwells, and Ms. Fess stated human health concerns, nuisance effects, and economic and environmental concerns. They advocated that the Board should not allow the Colony’s application to proceed, focusing with some detail on the adverse effects on both the community generally, and them specifically, should the CFO be constructed.

4. Board

In 2001, and concurrent with the establishment of the NRCB mandate regulating CFOs, the *Municipal Government Act* was amended to remove the authority of municipalities to issue development permits for CFOs and manure storage facilities. The provisions in AOPA respect the municipality’s planning authority to establish land use provisions that restrict CFO development in its municipal development plan. However, while NRCB approval officers are directed to deny any application that is inconsistent with land use provisions set out in the municipal development plan, the Board is not bound by such a provision. AOPA only requires that the Board have regard to the municipal development plan.

In this case, the provision that caused the approval officer to deny the Colony’s application is the 1.6 km setback to an existing country residential development. Municipal development plan provisions that closely resemble the minimum separation distance provisions of AOPA, but fall short of establishing a CFO exclusion zone, present a considerable challenge to the Board on review as they appear to serve precisely the same

objective of reducing nuisance effects through mitigation by separation. The municipal setback effectively modifies the AOPA setback by establishing a greater separation distance; and in that respect, the Board has sought to identify the specific circumstances that support a municipal standard that directly modifies one established by the province.

CFO exclusion zones deserve considerable deference by the Board as they serve the core planning objectives within a municipality. These often relate to recreational lands and urban growth areas, where CFO nuisance effects would be inconsistent with the long-term community objectives. In areas outside of such exclusion zones, and that promote agricultural land uses, the AOPA legislative scheme establishes nuisance objectives that are in keeping with the sensitivity of the receptor. AOPA minimum distance separation provisions are calculated based on animal numbers, species, and the residential density of the receptor. This is not to say that residents that live in farming and ranching communities are necessarily less sensitive to CFO nuisance effects, but rather that CFO development represents progressive growth in Alberta's rural landscape.

While the Board is prepared to express a general concern that some of the municipal development plan provisions included as a result of bylaw 102/07 may have the consequence of sterilizing CFO development within much of the County, it respects that its jurisdiction in this respect is limited to the review of NRCB approval officer CFO application decisions. Such reviews arise on a case-by-case basis. The Board understands that one of the primary objectives for the County in including these municipal development plan amendments was to create greater certainty for residents, and the Board's decision in this case may create less certainty.

The Board is satisfied that the approval officer undertook a complete review of the Bear Canyon Colony CFO 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 FA14003.

Having regard for each of the submissions made in respect to this review, the Board finds that the Colony's application to construct a new 3,500 beef finisher CFO should be approved by the NRCB, notwithstanding its inconsistency with the County's municipal development plan. In reaching this decision, the Board has also considered the Colony's CFO application in relation to the other relevant provisions in the municipal development plan that may be inconsistent with this development. These other provisions are described in Decision Summary FA14003, as well as in the submissions by the County and Colony.

Decision

For the reasons set out above, the Board hereby directs the approval officer to issue an Approval to the Hutterian Brethren of Bear Canyon 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 FA14003.

DATED at EDMONTON, ALBERTA, this 3rd day of May, 2017.

Original signed by:

Vern Hartwell
Panel Chair

Glenn Selland
Panel Member

Jay Nagendran
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.