



BOARD DECISION

RFR 2021-07 / LA21018

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act*

JBC Cattle Inc.

October 13, 2021

The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary LA21018.

Background

On September 9, 2021, the Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary LA21018 (Decision Summary) in relation to an application by JBC Cattle Inc. (JBC Cattle) to construct a new 30,000 beef finishers confined feeding operation (CFO) plus related facilities. The proposed CFO is located at SW 11-15-18 W4M in the Municipal District of Taber (M.D. of Taber). The approval officer approved the application by issuing Approval LA21018.

A request for Board review (RFR) of Approval LA21018 was filed by Jim Ragan, a directly affected party. The RFR met the filing deadline of September 30, 2021.

The directly affected parties, as established by the approval officer, were notified of the Board's intent to review this request and provided with a copy of the RFR. Parties that have an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. One rebuttal from the operator was received by the filing deadline of October 5, 2021.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (panel chair), L. Page Stuart, and Daniel Heaney was established on September 30, 2021, to consider the RFR. The Board met on October 6, 2021 to deliberate on the filed RFR.

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 has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board review.

Documents Considered

The Board considered the following information:

- Decision Summary LA21018, dated September 9, 2021
- Technical Document LA21018, dated September 9, 2021
- RFR filed by Jim Ragan, dated September 20, 2021
- AO public material, received September 30, 2021
- Rebuttal filed by JBC Cattle, dated October 1, 2021
- M.D. of Taber municipal development plan (MDP), dated August, 2019

Board Deliberations

The Board met on October 6, 2021, to deliberate on issues raised in the RFR filed by Mr. Ragan. Issues stated in the RFR included increased traffic, road deterioration, dust, odour, flies, impact of multiple feedlots in the area, and a drop in land values.

Increased Traffic and Road Deterioration

The Ragan RFR stated that both big truck and smaller vehicle traffic have increased substantially as a result of feedlot development close to the Ragan's home, and there is a suggestion that the current application will contribute to further increases in traffic and road deterioration.

In the Decision Summary, the approval officer addressed concerns similar to those submitted in the Ragan's August 12, 2021 statement of concern. The approval officer referenced section 18 of the *Municipal Government Act* giving counties "direction, control and management" of all roads within their borders, and stated that it is "impractical and inefficient" for road use to be managed through AOPA permits. The approval officer confirmed that the JBC Cattle CFO is consistent with the M.D. of Taber's land use bylaw and land use provisions in the MDP.

The Board agrees that impacts on shared roads are challenging to manage through AOPA permits. Generally, impacts on municipal infrastructure are assessed through an examination of the proposed operation's consistency with municipal land use planning considerations such as setbacks, environmentally sensitive areas, or identified CFO exclusion zones. Nonetheless, it is reasonable to expect that a CFO may fully meet these requirements, while also contributing to infrastructure impacts from increased agricultural activity.

The Board finds the approval officer appropriately determined that the proposed JBC Cattle CFO is consistent with the M.D. of Taber's land use provisions, and although exclusion zones do exist within the MDP, none apply to the site of the proposed CFO. The Board observes that Mr. Ragan referenced general impacts from other CFOs in the area; however, the RFR failed to provide a direct link between an increase of traffic from the proposed JBC Cattle CFO and impacts on the Ragans. Further, given the road layout and access to the proposed CFO outside of roads adjacent to the Ragan residence, the Board is unconvinced that the impacts of the JBC Cattle CFO on the Ragans would be beyond those reasonably expected in an agricultural area. The Board finds that, within the authority of AOPA, the approval officer adequately dealt with the issue of increased truck and smaller vehicle traffic and road deterioration.

Nuisance impacts from Dust, Odour and Flies

The Ragan RFR concerns included increased dust, odour and flies “making outdoor activities unpleasant.”

The approval officer calculated the minimum distance separation (MDS) for the proposed CFO as 1,316 metres and confirmed that the Ragan residence is located “about 4 km northeast of the proposed CFO which is more than 3 times greater than the required MDS.” The approval officer acknowledged that people residing beyond the MDS may experience nuisance impacts including odour, dust and flies from time to time. As well, the approval officer confirmed that there are no provisions in the M.D. of Taber’s MDP that preclude construction of a CFO in the proposed location.

Nuisance effects, such as dust and odour, are managed through the application of minimum distance separations (MDS) that are established based on the type and size of a CFO operation, meaning that larger CFO operations are required to be sited at greater distances from existing neighbouring residences. The AOPA employs a prescriptive regulatory framework, using tools such as MDS, in order to achieve a consistent, province-wide approach for siting CFOs. Given that the CFO meets the MDS requirement, and that the Ragan RFR does not establish specific impacts outside of what would reasonably be expected on agriculturally-zoned land, the Board finds that the approval officer adequately dealt with the nuisance impacts from dust, odour and flies.

Land Values

The Ragan RFR included a concern that their land values will decrease if the CFO is built.

In the decision summary, the approval officer referenced previous Board decisions where the Board have stated that concerns regarding effects on land or property values are “not a subject for [the Board’s] review under AOPA or for approval officers’ consideration.” The approval officer also confirmed that the application is consistent with the M.D. of Taber’s land use provisions in the MDP.

The Board and approval officers have consistently stated that impact on property values is an issue that resides outside of AOPA legislation. Specifically, the Board agrees that impacts on property values are a land use issue, best dealt with by municipalities through land use provisions applied in municipal development plans and land use bylaws. The Board finds that the issue related to a drop in land values has no merit within the context of a review under AOPA.

Board Decision

As a result of the Board's deliberations, it has determined that the approval officer adequately considered all issues raised in the filed Request for Review, or they are without merit, and therefore does not direct any matter to a hearing. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 13th day of October, 2021.

Original signed by:

Peter Woloshyn (chair)

L. Page Stuart

Daniel Heaney

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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.