



BOARD DECISION

RFR 2022-03 / RA22002

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

R&T Penner Farms Ltd.

April 4, 2022

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 RA22002.

Background

On March 1, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary RA22002 (Decision Summary) in relation to an application by R&T Penner Farms Ltd. (Penner Farms) to expand an existing broiler chicken confined feeding operation (CFO). The CFO is located at SW 28-45-20 W4M in Camrose County (County), roughly two kilometres (or 1.2 miles) west of Dried Meat Lake. The approval officer denied the application after determining that the proposed expansion is inconsistent with the County's municipal development plan (MDP).

A request for Board review (RFR) was filed on March 1, 2022 by the operator, Penner Farms. A supporting document to the RFR was filed by Penner Farms' representative, Cody Metheral, on March 22, 2022. Both met the filing deadline of March 22, 2022. On March 23, 2022, the NRCB sent a Notice of Filed Request for Board Review and Rebuttal Opportunity to the directly affected parties, as established by the approval officer. Parties were also provided with a copy of the RFR. Parties that had an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. No rebuttals were received by the deadline of March 29, 2022.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (chair), Sandi Roberts, and Earl Graham, was established on March 30, 2022, to consider the RFR. The Board met on March 31, 2022 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 RA22002, dated March 1, 2022
- Technical Document RA22002, dated March 1, 2022
- RFR filed by Penner Farms, dated March 1, 2022 and supporting document dated March 22, 2022
- Camrose County's response to application RA22002, dated January 27, 2022
- Camrose County Municipal Development Plan (MDP), dated April 12, 2016

Board Deliberations

In Decision Summary RA22002, the approval officer determined that section 4.3.9 of the County's MDP is a valid land use provision. It 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 lake, or 1,610 m (1 mile) from any other urban municipality or hamlet or as outlined in the IDP.

Dried Meat Lake is classified by the County as a recreational lake. Since the Penner Farms' CFO is within the 2 mile exclusion zone surrounding the lake, the approval officer concluded that the proposed expansion is not consistent with section 4.3.9 of the County's MDP.

The Board is in agreement with the approval officer's decision that the Penner Farms' CFO expansion application is inconsistent with the County's MDP.

The NRCB approval officer denied the application as directed by section 20(1)(a) of AOPA.

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, ...

The RFR asks the Board to issue an approval for the Penner Farms' CFO expansion application, notwithstanding any inconsistency with the MDP land use provisions.

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 is not 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 in appropriate cases.

The Board has established that the following considerations are reasonable in a determination of whether a permit application is approved notwithstanding an inconsistency with the MDP presented as a CFO exclusion zone:

1. the municipal authority's rationale for establishing the relevant provision(s) in the municipal development plan,
2. whether the relevant provision is reasonable and reflective of good planning,
3. whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone, and
4. whether the municipal development plan is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province

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, in its January 27, 2022 response to the approval officer regarding the application, stated that the proposed project does not comply with the regulations of its MDP, which requires a setback distance of 2 miles from a recreational lake. However, the County did not explain its reasons for the 2 mile setback distance. An email from the County to Penner Farms on March 21, 2022, explained that Penner Farms "can ask Council to send a letter to the NRCB in support of a relaxation".

It is not clear to the Board whether the County objects, supports, or is indifferent to the proposed CFO expansion. The County's rationale for the 2 mile setback from Dried Meat Lake is also not clear to the Board.

Board Decision

As a result of the Board's deliberations, it has determined that a review of the approval officer's decision is warranted to consider whether a permit for Application RA22002 should be approved despite its inconsistency with the MDP, or whether the denial should be upheld.

Review Process

The Board finds that eligible parties to this proceeding include R&T Penner Farms Ltd., Camrose County, and NRCB Field Services.

It would be helpful to the Board if the County would provide a written submission to clarify its objection, support, or indifference to this CFO application, as well as its rationale for the 2 mile setback from Dried Meat Lake.

The Board has directed the Board's General Counsel to contact County representatives to determine an appropriate date for the County to provide its written submission. Once this date has been established, parties will be advised of dates and details for the filing of written submissions and written rebuttal submissions. The Board will ensure that all parties to this review are provided copies of each other's submissions. All materials will also be posted on the NRCB website.

The Board anticipates that this review will be completed through written submissions; however, it reserve the option to schedule an oral hearing.

If anyone has questions about this process, please contact Bill Kennedy, NRCB General Counsel, at 403-297-4304.

DATED at EDMONTON, ALBERTA, this 4th day of April, 2022.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

Earl Graham