



BOARD REVIEW DECISION

2022-05 / RA22002

Review of Decision Summary RA22002

R&T Penner Farms Ltd.

May 9, 2022

The Board issues this decision document, following its written review of Decision Summary RA22002, held pursuant to the *Agricultural Operation Practices Act (AOPA)*.

Background

On March 1, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary RA22002 (Decision), 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). 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) of the Decision was filed by Penner Farms on March 1, 2022, and a supporting document to the RFR was filed by Penner Farms' representative on March 22, 2022. The RFR asked the Board to reverse the approval officer's decision and approve the application, notwithstanding the exclusion zone identified in the County's MDP.

On April 4, 2022, NRCB Board Decision RFR 2022-03 was released, advising that the Board had determined that a written review was warranted. In an April 12, 2022 letter from the Board's counsel, the written review submission filing date for the County was given as May 11, 2022, and the reply submission date for Penner Farms and the approval officer was given as May 19, 2022. The County made its submission on April 26, 2022. The Board canvassed Penner Farms and the approval officer, and both advised they would not be providing a reply submission, making the May 19 filing date unnecessary. The panel met on May 4, 2022, to deliberate.

Board Deliberations

The issue under review is whether the Board should exercise its authority to approve the CFO, notwithstanding an inconsistency with the MDP.

When reviewing an approval officer decision to deny an application because of an inconsistency with an MDP, 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, a responsibility the Board takes seriously and with great caution.

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 an MDP exclusion zone requires the Panel to focus on the municipality's planning objectives behind the CFO prohibition.

Board Decision RFR 2022-03 asked the County to 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.

In its April 26, 2022 submission, the County stated that it supports the expansion of this CFO despite the inconsistency with its MDP. Reasons given for its support are:

- The existing CFO has not created any concerns at Dried Meat Lake, and the County expects that the NRCB and the applicant will remain vigilant in protecting its interests in

the lake for recreational purposes and drinking water supply for Camrose, Bittern Lake and portions of the County;

- within the existing site there are no suitable options to expand that would comply with the 2 mile setback;
- the proposal is approximately 6 km from the nearest residential and recreational component of the lake; and
- there are gravel pit operations and other farms between this CFO and the lake.

The County's submission also stated that it has begun an MDP review which is expected to be completed by January 2023. The distance that CFOs are currently required to be from recreational lakes will be assessed to determine if revisions to the MDP could provide a more flexible approach based on new technology, and whether specific issues can be addressed more precisely.

The Board notes that in section 5 of the Decision the approval officer stated this application was reviewed to determine if it was consistent with respect to the technical requirements set out in the regulations. It was determined that the proposed CFO expansion:

- meets the required AOPA setbacks from all nearby residences,
- meets the required setbacks from springs and common bodies of water,
- has sufficient means to control surface runoff of manure,
- meets AOPA's nutrient management requirements regarding the land application of manure, and
- meets groundwater protection requirements for the design of floors and liners of manure storage facilities and manure collection areas.

Although an existing water well is located within the required 100 metre AOPA setback requirement, its potential risk to contaminate the aquifer was assessed and it was determined that an exemption is warranted. The Board is not aware of any responses about this proposed CFO expansion that expressed concerns or provided evidence about site specific environmental risks. For these reasons, the Board is satisfied that the Penner Farms expanded CFO will pose no material environmental risk to Dried Meat Lake.

With respect to protecting the lake for recreational purposes and residential development, the calculated AOPA minimum distance separation for the size of the proposed expanded poultry broiler operation to a category 4 residence is 529 metres. 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. The nearest residence to the CFO site is 800 metres. The Board is satisfied that by any reasonable measure, the CFO is located far enough away from the nearest residential and recreational component of the lake such that it will not pose nuisance effects of any material significance. Additionally, the County appears to support this conclusion.

All available evidence before the Panel supports a conclusion that the Penner Farms proposed CFO expansion does not pose a risk to the Dried Meat Lake water quality, nor will it 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 County's MDP.

The Board notes that the approval officer undertook a complete review of the Penner Farms 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 RA22002.

Decision

For the reasons set out above, the Board hereby directs the approval officer to issue an approval to Penner Farms Ltd. to construct and operate a CFO as described in the application, subject to the conditions related to technical matters identified by the approval officer in Decision Summary RA22002.

DATED at EDMONTON, ALBERTA, this 9th day of May, 2022.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

Earl Graham