



BOARD REQUEST FOR REVIEW DECISION

RFR 2022-14 / FA21002

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

Hutterian Brethren Church of Cleardale

November 15, 2022

The Board issues this decision under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for the Board’s review of Decision Summary FA21002.

Background

On October 12, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary FA21002 (the Decision). The Decision denied an application by the Hutterian Brethren Church of Cleardale (Cleardale Colony or the applicant) for an Approval for a 6,000 head beef finisher confined feeding operation (CFO), including permitting of the previously constructed pens and a catch basin, and to construct new pens and new catch basin. The proposed CFO is located at SW 32-84-9 W6M in Clear Hills County (the County). The approval officer denied the application after determining the proposed CFO is inconsistent with the land use provisions of the County’s municipal development plan (MDP).

The Board received one request for review (RFR) of the approval officer’s decision from Cleardale Colony, asking for a reversal of the Decision. The RFR met the filing deadline of November 2, 2022.

On November 3, 2022, the NRCB sent a Notice of Filed Requests for Board Review and Rebuttal Opportunity to the directly affected parties to this application, as established by the approval officer. The rebuttal opportunity gives parties that may have an adverse interest to the matters raised in the RFR a chance to submit their views. Rebuttals were received from Ron Craig, Sylvia Gula and Cornelius Wolfe by the filing deadline of November 9, 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, Daniel Heaney, and Earl Graham was established on November 2, 2022, to consider the RFR and decide whether a review is warranted. As used here, a “review” is a quasi-judicial hearing in which the parties can submit expert and witness testimony and other evidence, when relevant, to the issues selected by the Board to be considered at the hearing.¹ (References to the “Board” in this document are to findings of the panel of Board Members established specifically for this file.)

Under section 25(1) of the *Agricultural Operation Practices Act (AOPA)*, the Board must determine whether an applicant seeking a RFR has raised issues that warrant a review. The applicant must convince the Board that the grounds for review have merit and/or have not been adequately dealt with by the approval officer; otherwise the Board will dismiss the request for review.

Documents Considered

The Board considered the following information:

- Decision Summary FA21002, dated October 12, 2022
- Technical Document FA21002, dated October 12, 2022

¹ For more information on Board reviews, see NRCB, *Board Reviews & Court Decisions – Board Review Process*, [online](#).

- RFR filed by Cleardale Colony, received October 29, 2022
- Approval officer material, dated November 4, 2022
- Clear Hills County Municipal Development Plan, Bylaw No. 243-19, September 10, 2019
- Compliance Directive CD 21-08, dated October 18, 2021
- Enforcement Order EO 22-05, dated October 17, 2022
- Rebuttal from Ron Craig, received November 9, 2022
- Rebuttal from Sylvia Gula, received November 9, 2022
- Rebuttal from Cornelius Wolfe, received November 9, 2022

Board 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.

Board Deliberations

Issues Raised in the RFR

Cleardale Colony's RFR stated that Clear Hills County's MDP is not reasonable or appropriate since it basically eliminates any opportunity to site a CFO in the county.

In addition, Cleardale Colony noted that the County is not opposed to application FA21002 as described in the County's written response to the approval officer.

While Cleardale Colony constructed the existing facility without first obtaining a permit, the Colony asserted that it has constructed the facility to meet all AOPA requirements and that it provides economic benefit to the community.

Issues Raised in the Rebuttals

In his rebuttal, Ron Craig raised issues about unauthorized feedlot construction, increased animal numbers, odours from the feedlot, unauthorized construction of drainage ditches that resulted in flooding of downstream property, removal and stockpiling gravel intended for all County residents, reduced property values, and disregard for rules and laws.

Sylvia Gula stated her belief that the public was not properly notified about the application as it was published in the Fairview Post sometime after March 30, 2022, with a closing date for submissions of April 29, 2022. She commented that this newspaper is not subscribed to by many people and that April is a busy time for residents and farmers in the area.

Cornelius Wolfe expressed concern about decreased land values, no local economic benefit to neighbours from the feedlot, increased traffic, and lack of respect for neighbours and County bylaws.

Board Views

The Cleardale Colony RFR raised one issue—whether the County’s MDP is reasonable regarding CFO exclusion zones.

AOPA section 20(1)(a) requires that approval officers deny an application that is not consistent with MDP land use provisions. In the Decision, the approval officer determined that Cleardale Colony’s application was not consistent with Clear Hills County’s MDP setbacks to residences and waterbodies or wetlands, and is located within a CFO exclusion zone.

AOPA section 25(4)(g) states that in conducting a review the Board must have regard to, but is not bound by, the municipal development plan. The issue for this review is whether the Board should exercise its authority to approve the Cleardale Colony CFO, notwithstanding an inconsistency with the MDP, having regard for matters that would normally be considered if a municipal development permit were being issued. Tied to this issue is consideration of whether the proposal is an appropriate use of land, and its effects on the environment, the economy, and the community. In this case, the Board finds that Cleardale Colony has raised sufficient issues with the County’s MDP to justify a review.

The Board finds that there is sufficient lack of clarity regarding how specific setbacks outlined in Schedule G (of the MDP) relate to the CFO exclusion areas as depicted in the map “Confined Feeding Operations Permitted and Exclusion Areas” in the County’s MDP.

Several of the issues raised by directly affected parties—odours, traffic, property values and public notification—were addressed by the approval officer in the Decision. The Board finds that these issues were adequately dealt with by the approval officer and are not reviewable matters.

The Board finds that the issues of unauthorized feedlot construction and increases in animal numbers have properly been dealt with by NRCB’s Compliance and Enforcement Division through Compliance Directive CD 21-08 and Enforcement Order EO 22-05. Therefore, these issues will not be considered in the review of RFR FA21002.

The concerns about unauthorized drainage ditch construction and County gravel supply are outside the jurisdiction of the NRCB; therefore, the Board cannot address these matters.

Board Decision

As a result of its deliberations, the Board has determined that a review of the approval officer’s decision is warranted to consider either whether a permit for Application FA21002 should be approved despite its inconsistency with the County’s municipal development plan, or whether the denial should be upheld.

The Board finds that eligible parties to this review include the Hutterian Brethren Church of Cleardale, Clear Hills County, Rob Craig, Cornelius Wolfe, John and Mary Peters, Sylvia Gula, and NRCB Field Services.

Issues for Review

Parties to the review shall file written submissions by November 23, 2022.

While not limiting the submissions of any of the parties, the Board would find it helpful if the County addresses the following matters in its submission:

1. It appears to the Board that essentially the entire County of Clear Hills (including public lands) are an exclusion zone for CFOs.

Yet, MDP Section 3.1.2 (f) states:

The development of the CFO's **may** be encouraged in areas that are not impacted by the exclusionary zones map or other restrictive policies.

i. The exclusion zones for confined feeding operations (CFO) **shall** be established by Schedule G.

The Board has the following questions in relation to the MDP Schedule G setbacks and map:

- Does MDP section 3.1.2(f) apply to the one small (roughly three-four sections of land) area depicted by orange in the Schedule G map?
- Please confirm whether the CFO permitted area is located in the green area (on public land).
- Were the setbacks listed in Schedule G [see Note 1 below] of the MDP used to generate the CFO Exclusion Area (as depicted in yellow) on the Schedule G map?
- If so, how (and why) were the setback criteria in Schedule G applied to the green area, or public land?
- If not, how was the CFO Exclusion Area determined?

Note 1: MDP Schedule G setbacks are:

152.4 m from roads

3.2 km from: residence, licensed CFO, Water bodies, rivers streams, tributaries, wetlands, Town/Hamlet, Grimshaw Gravesls aquifer, Intensive Recreation Area, Environmental Sensitive Area

2. The approval officer's Decision stated the County responded that it is not opposed to the application and that it is consistent with the County's land use provisions of the MDP, specifically section 3.1 which supports "right to farm" legislation as long as the operation "follows generally accepted practices and is in compliance with the County's vision." However, the Board observes that the County's MDP Schedule G shows the location of this application is within the CFO exclusion area.

Please confirm that the County is not opposed to this application and provide the County's rationale for this even though it is located within the CFO exclusion area.

3. Describe the overall impact on the County's land use objectives if the Board were to approve the CFO.

Review Process

The Board anticipates that this review may be completed through written submissions²; however, it reserves the option to schedule an oral hearing (virtual).

Written review and reply submissions are to be emailed to Laura Friend, Manager of Board Reviews, at laura.friend@nrcb.ca by the deadlines stated below. All review materials will be posted [online](#) on the NRCB website project page.

Submission Deadline: November 23, 2022

Reply Submission Deadline: November 30, 2022

Virtual Oral Hearing Date (if required): December 8, 2022

DATED at EDMONTON, ALBERTA, this 15th day of November, 2022.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

Daniel Heaney

Earl Graham

² The process for written hearings is essentially an exchange of written information between the parties and the Board. Instead of personally attending the hearing, the parties submit written statements to give their evidence.