



BOARD REQUEST FOR REVIEW DECISION

RFR 2023-01/ RA22026

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

Rimrock Cattle Company Ltd.

April 6, 2023

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 (RFR) of Decision Summary RA22026.

As a result of the Board’s deliberations, it has determined that there is no merit in conducting a review based on the RFR filed by Rimrock Cattle Company Ltd. The RFR is denied.

Background

On March 2, 2023, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary RA22026 (the Decision). The Decision denied an application by Rimrock Cattle Company Ltd. (Rimrock or the applicant) for an Approval to expand its confined feeding operation (CFO) by increasing livestock numbers from a combination of 7,000 beef feeders and 7,000 beef finishers, to a total of 28,000 beef finishers (and no beef feeders). The existing CFO is located at Section 28-29-25 W4M in Kneehill County (the County). The approval officer denied the application after determining the proposed expansion 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 Rimrock, asking for a reversal of the Decision. The RFR met the filing deadline of March 23, 2023.

On March 24, 2023, the NRCB sent a Notice of Filed Request for Board Review and Rebuttal Opportunity to the 21 directly affected parties, which included Kneehill County and the Village of Acme, and one not directly affect party 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 Kneehill County, the Village of Acme, and 8 other directly affected parties, by the filing deadline of March 30, 2023.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (panel) consisting of Sandi Roberts (chair), Earl Graham, and Walter Ceroici was established 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.

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

Documents Considered

The Board considered the following information:

- Decision Summary RA22026, dated March 2, 2023
- Technical Document RA22026, dated March 2, 2023
- RFR filed by Rimrock Cattle Company Ltd., received March 13, 2023
- Kneehill County Municipal Development Plan (MDP), Bylaw 1829 dated February 23, 2021
- Village of Acme and Kneehill County Intermunicipal Development Plan; Kneehill Bylaw 1807 dated March 24, 2020; Acme Bylaw 2020-02 dated March 9, 2020 (IDP)
- Statement from NRCB Field Services legal council sent on March 27, 2023 indicating that the Approval Officer takes no position on the outcome of the RFR, has no submission to make, and has no documents to assist the Board at this time
- Rebuttal from the Village of Acme, received March 27, 2023
- Rebuttal from Kneehill County, received March 28, 2023
- Eight rebuttals from neighbours considered directly affected parties, received before the filing deadline of March 30, 2023

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

Rimrock asked that the Board approve the CFO expansion application notwithstanding the inconsistency with the MDP. Rimrock's RFR requested that the Board review and consider the impact that the new IDP has on Kneehill County's MDP Agriculture Policy 11 (iii), which is essentially the same today as it was five years ago when this CFO was originally built. Rimrock expressed concern about lack of public consultation regarding impacts that the new IDP would have on CFO minimum distances, and stated that when the MDP was reviewed in 2021 impacts of the IDP on CFOs were not highlighted. The Board was also asked to consider the likelihood of residential development near Acme's lagoon.

Rimrock stated that the County's Reeve and the Manager of Planning & Development indicated to it that the impact of the new IDP on CFO distances was an oversight, and that the intent/spirit of the MDP is to prevent CFOs from building within 1 mile from an urban fringe.

Rimrock commented that this is why, when the CFO was originally built in 2018, the County had no concern, as the CFO is more than 1 mile from the Village of Acme.

Issues Raised in the Rebuttals

Village of Acme

The Village of Acme requested that the Board uphold the approval officer's decision to deny Rimrock's feedlot expansion application.

Acme brought the Board's attention to three sections of its IDP with Kneehill County:

- Guiding principles statement "creates a shared vision for future growth by establishing a long-term strategy balancing the interests of both municipalities"
- Policies section subpoint "Buffers or similar mechanism to mitigate potential conflict between commercial/industrial, agricultural, and other uses shall be used where needed."
- Annexation section "The County recognizes and agrees that the Village will need additional land to grow and will support annexations that will provide for 30-40 years of projected growth with the boundaries of the Village."

Kneehill County

Kneehill County provided the Board with a discussion of its MDP and IDP development history and process.

The County's first MDP was adopted in 1995. Due to the NRCB being given the authority for the permitting of new and expanding CFOs in 2002, the MDP was amended in 2005 to include some limitations to provide some guidance/boundaries for CFOs. Although the wording of the current MDP section 11. (iii) has been slightly altered over time, the County contends that the intent has remained. It currently reads:

"11. No new or expansions of existing confined feeding operations (CFOs) will be allowed in the following:

iii. Within 1.6 kilometres (1 mile) of an urban fringe or an Intermunicipal Development Plan boundary"

The process used to develop IDPs was to have a local committee draft the plans. This was followed by a public consultation process, notification, and public hearings, before being approved by the Councils of both municipalities.

Kneehill County stated that CFOs were not really discussed during the development of the IDP because legislation requires an NRCB approval officer to consider the MDP, which was not being amended during that time. However, once the designated plan area was formally adopted, the result was that villages that did not previously have an IDP with the County had an increased CFO restricted area around each village.

Directly Affected Neighbours

All the rebuttal letters received from directly affected neighbours expressed concerns about the proposed feedlot expansion.

The most common concern was the volume of water required and the effect this could have on water availability for neighbouring properties. Other concerns were surface and groundwater quality, that no new construction was needed to accommodate more livestock, manure disposal, air quality and odours, land values, weed contamination, projected maximum livestock capacity, traffic/road use and safety, dust, and predators.

Board Views

Under section 20(1)(a) of AOPA, approval officers must consider whether approval applications are consistent with MDP land use provisions and, where an inconsistency exists, the approval officer must deny the application. In this case, the approval officer denied Application RA22026 since it is inconsistent with Kneehill County's MDP land use provisions. The MDP states that CFO expansions are not allowed within 1.6 km of an IDP boundary, and this proposal is closer than 1.6 km from the Village of Acme/Kneehill County IDP boundary. The Board finds that the approval officer's denial of this application is proper under section 20(1)(a) of AOPA.

Rimrock has requested that the Board review the approval officer's decision. Although approval officers are bound by section 20(1)(a) of AOPA, if the Board grants a review, section 25(4)(g) of AOPA states that the Board must have regard to, but is not bound by, the MDP. Therefore, the Board must first consider whether the issues raised by Rimrock warrant a review. If a review is warranted, the Board could then exercise its authority to consider approving this proposal, notwithstanding the inconsistency with the County's MDP.

In its RFR, Rimrock asserted that there was lack of public consultation for the IDP and the 2021 MDP review, because impacts of the IDP on CFOs were not highlighted. The County's rebuttal included details about its development plan process and stated that its IDPs were completed as required by legislation. Rimrock noted that the County's Reeve and the Manager of Planning & Development indicated to it that the impact of the new IDP on CFO distances was an oversight, and that the intent/spirit of the MDP is to prevent CFOs from building within 1 mile from an urban fringe. In its rebuttal, the County made no comment about conversations with Rimrock.

Because the County did not address Rimrock's statement about its alleged oversight and the intent/spirit of the MDP in its rebuttal, the Board cannot consider this issue.

Under AOPA, the Board has no jurisdiction to review the adequacy of public notification, consultation, and hearing processes for MDPs and IDPs. Therefore, the Board has no authority to consider this issue and it does not warrant a review.

Rimrock asked the Board to consider that the closest point of the IDP to the CFO is the town's lagoon, where it is very unlikely any resident would live. None of the rebuttals received by the Board commented on this issue. The Board agrees that it is unlikely residential development will occur near a lagoon; however, the use of land for municipal sewage systems can and does change over time. The Board finds that this issue does not warrant a review.

Regarding the issues raised in the neighbouring directly affected parties' rebuttal submissions, the Board observes that most of these concerns were adequately addressed by the approval officer in Decision Summary RA22026. Because these parties agree with the approval officer's denial of the application, and the Board is declining to review the Decision, any other issues raised by these parties will not be addressed.

Board Decision

As a result of the Board's deliberations, it has determined that there is no merit in conducting a review based on the RFR filed by Rimrock Cattle Company Ltd. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 6th day of April, 2023.

Original signed by:

Sandi Roberts (chair)

Walter Ceroici

Earl Graham