



BOARD REQUEST FOR REVIEW DECISION

RFR 2023-06 / LA23003

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

Joshua and Debra Denbok
(operating as JD Feeders)

November 22, 2023

The Board issues this decision under the authority of the *Agricultural Operation Practices Act* (AOPA or the Act), following its consideration of a request for the Board’s review (RFR) of Decision Summary LA23003.

1. Background

On November 14, 2023, the Board issued an RFR Decision Letter granting a written review and advising that the RFR Decision with reasons would follow shortly. This document provides the reasons for the Board granting the review.

On October 6, 2023, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary LA23003 (the Decision Summary). The approval officer concluded that the application is inconsistent with s. 3.6 of Lethbridge County’s Municipal Development Plan, Bylaw 22-001 (the MDP) because the proposed and existing pens are within property line setbacks defined in the Lethbridge County Land Use Bylaw No. 1404, Part 2 – Land Use Districts and Regulations, Rural Agriculture, s. 4(1) (the LUB). The LUB is directly referenced in the MDP land use provisions. The property line setbacks apply to the site of the proposed CFO and the subdivided parcel, both located on SE 20-11-23 W4M and both owned by Joshua and Deborah Denbok (the Denboks).

Following the issuance of the approval officer Decision, the Board received one request for review (RFR) of the Decision from the Denboks, submitted within the filing deadline of October 30, 2023. On October 31, 2023, the NRCB sent a Notice of Filed Request for Board Review and provided a rebuttal opportunity to the directly affected parties listed in the Decision. The rebuttal opportunity gives parties that may have an adverse interest to the matters raised in the RFR a chance to submit their views. Field Services made a submission on November 3, 2023. Lethbridge County and Clint and Sharon Vander Woude submitted rebuttals on November 6, 2023. All submissions were made within the filing deadlines.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (panel) consisting of Peter Woloshyn (chair), Sandi Roberts, Rich Smith, and Darin Stepaniuk was established to consider the RFR and decide whether a review is warranted.

As used here, a “review” is a quasi-judicial hearing or written review 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 oral hearing or written review.¹ References to the “Board” in this document are to findings of the panel of Board Members established specifically for this file.

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

2. Documents Considered

The Board considered the following information:

- Decision Summary LA23003, dated October 6, 2023
- Technical Document LA23003, dated October 6, 2023
- RFR filed by the Denboks², received October 30, 2023
- Lethbridge County Municipal Development Plan, Bylaw 22-001, dated March 2022
- Lethbridge County Land Use Bylaw 1404, October 2013, consolidated to Bylaw 22-014, November 2022
- Field Services submission, dated November 3, 2023
- Lethbridge County rebuttal, dated November 6, 2023
- Clint and Sharon Vander Woude rebuttal, dated November 6, 2023

3. 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.

4. Submissions

4.1 Issues Raised in the RFR

The Denboks' October 30, 2023, RFR asked the Board to grant a review of the approval officer's decision, substantively to rule on 4 points:

1. Is a property line setback a proper planning provision that an AO must consider under AOPA section 20(1) or is it a test or condition related to the construction of a CFO site and therefore should not be considered by the AO under AOPA 20(1.1)?
2. Does the definition and intent of Lethbridge County's Land Use By-law (RA 4.1 - Side Yards) clearly suggest this provision must be considered by the AO as indicated in the Municipal Development Plan?
3. Did the written submission by Denboks (to consolidate the property) address the requirements for LUB 4.1 - Side Yards?

² Represented by Cody Metheral (Linkage Ag Solutions)

4. If Lethbridge County's Land Use By-law (RA 4.1 - Side Yards) is considered an appropriate land use provision, then the Board is asked to grant a review of the decision in order to consider why the Denboks chose to proceed with the application, while not meeting the County requirements.

The RFR also makes assertions in relation to several ancillary issues including whether the approval officer improperly indicated to the Denboks that the application would not meet the MDS required to a nearby Mennonite school. The RFR also includes a number of emails between the applicants and/or their agent and NRCB Field Services.

4.2 Submission of NRCB Field Services

Field Services stated that it does not take a position on whether the Board should schedule a review of this decision.

In relation to the RFR suggesting that the approval officer should have included a requirement to consolidate the two property parcels as a condition in an issued permit rather than denying the permit, Field Services directed the Board to several sections of the Decision Summary regarding this matter.

The submission included a response from the County about the application that outlines the County's views on the application in relation to its MDP.

Also attached to Field Services' submission are emails sent on May 12, 2023, between the approval officer and the applicants and/or their agent about the NRCB Policy 2016-4: Resolving Disputed Permit Information Requirements.

4.3 Lethbridge County Rebuttal

The County's rebuttal described its MDP section 3.6 which states "No part of a CFO building, structure, corrals, compost area or stockpile is to be located within the established property line and public roadway setbacks, including provincial highways, as outlined in the municipal Land Use Bylaw." The County commented that this is not a test or condition related to the site and that every landowner within the County is held to the same minimum setback standards.

The County made further argument including:

- The landowner does not have approval from the County for the freshwater dugout within the prescribed development setbacks and the NRCB permit application was only submitted after a contravention had been investigated and enforcement action was taken by the NRCB. The County argued that a dugout is an excavation defined as a development in accordance with both the *Municipal Government Act* and the County's Land Use Bylaw. Further, under Part 1 Section 13(j) of the County's LUB, a dugout is exempt from a development permit if applicable setbacks to roadways and property lines are met.
- The County took exception to the Denboks' claim that the County approved the location and construction of the school and should have considered the proximity of the school buildings to the existing livestock corrals, shop, and agricultural activities. The County

stated that it approved the location of the school because the livestock corrals, shop, and agricultural activities at the time the school was approved were considered benign and a low intensity standard agricultural site and not associated with a NRCB permitted CFO.

- In its response to notification about the application, the County expressed concern regarding:
 - the proximity of the proposed CFO to an adjacent school and the potential for negative impacts on the school and the community
 - the initially proposed synthetic liner for the catch basin
 - the MDS to the school not being met, but later acknowledged that MDS is not calculated to a school.

4.4 Clint and Sharon Vander Woude Rebuttal

The Vander Woude rebuttal is the same submission that they made to the AO on July 25, 2023, in response to notification about this CFO application. They stated that they like young farmers staying and working on the land but do not like the idea of bigger and bigger CFOs. The Vander Woude's expressed concerns about water supply and nuisance impacts such as odour and road dust. Specifically, the Vander Woude's questioned whether the water line constructed under the Keho West water user co-op was designed to provide the amount of water required for a CFO of 1000-3000 head of cattle and calves.

5. Board Deliberations

5.1 Vander Woude Submission

The Vander Woude's reaffirmed their concerns related to nuisance impacts, road use, and water availability. These concerns were addressed by the approval officer in the Decision Summary Appendix C. The Board finds that the approval officer adequately dealt with issues raised by the Vander Woude's.

5.2 County of Lethbridge

As noted above, the County made several arguments related to its LUB, MDP, and whether the property line setbacks were an appropriate consideration in the approval officer's decision. The Board's findings on these matters are set out below under the heading "Denbok RFR Points #1 and #2".

The County also made comments about the location of the school and stated its concern about potential negative impacts on the community. Approval officer comments on this issue in the Decision Summary Appendix C explain that MDS is not applicable to the school as it is not considered to be a residence. Although waivers from school managers were included with the application, the approval officer noted that AOPA does not state whether directly affected parties can waive effects on the community. However, none of the surrounding community members submitted concerns regarding effects on the community. In any event, the approval

officer concluded that, although the County expressed concern about potential negative impacts on the community, the school did not oppose the proposed CFO and its leaders stated that they did not foresee the proposed CFO impacting them. The Board finds that this issue was adequately dealt with by the approval officer.

5.3 Denbok RFR Ancillary Issues Raised

It is unclear how the ancillary issues raised by the Denboks relate to the remedy sought—namely the Board is asked to review the decision and use its authority to approve the application.

There is no indication in the RFR about what the Board is to consider with respect to the submitted exchange of emails between the applicant and Field Services. In any event, the Board finds no relevance or merit in the emails in relation to the remedy sought by the Denboks.

5.4 Denbok RFR Points #1 and #2

RFR points #1 and #2 ask the Board to address whether a property line setback is a proper planning provision that approval officers must consider under AOPA s. 20(1) and whether the County's LUB must be considered by the AO as indicated in the MDP.

Under AOPA s. 20(1)(b)(i), approval officers must consider matters that would normally be considered if a development permit were being issued by the municipality. The Board notes that approval officers routinely include permit conditions related to LUB setbacks from property lines. The NRCB regards setbacks as a matter that would normally be considered if a development permit were being issued by the municipality.

In its rebuttal, the County commented that the municipality has jurisdiction under the *Municipal Government Act* to regulate setbacks to property lines through its planning instruments. The County stated that setbacks are not a test or condition related to a specific site but are standards that every landowner must meet unless granted a waiver by the County.

The Board agrees with the approval officer and the County and finds that the approval officer correctly treated LUB property line setbacks as a matter normally considered if a development permit were being issued.

AOPA s. 20(1)(a) states that approval officers must deny approval applications that are inconsistent with MDP land use provisions. In previous Board decisions, the Board has directed Field Services that municipal LUBs may be used in the MDP consistency test if, and only if, the LUB is referenced **directly** within the MDP³. This is also addressed in part 8.2.3 of NRCB Operational Policy 2016-7: Approvals.⁴ It requires approval officers to consider land use provisions in a land use bylaw if the text of the MDP provides clear intent to adopt the LUB. The Board agrees with the approval officer that the County's MDP s. 3.6 specifically references and thereby incorporates its LUB regarding property line setbacks. Because the LUB is specifically

³ See Board Decision 2015-01 / LA13018, Folsom Dairy Ltd.

⁴ The Policy was updated on November 14, 2023 and this is now part 9.2.4.

linked to the MDP, and this application is inconsistent with the LUB property line setbacks, the Board finds that the approval officer correctly applied AOPA s. 20(1)(a) in denying the application.

5.5 Denbok RFR Point #3

Does the Denbok's proposal to include a permit condition requiring consolidation of the two properties address the LUB property line setbacks?

In its November 6, 2023 rebuttal, the County commented that "As stated in the County's original comments the issue with regards to the setback can be remedied by relocating the pens and dugout or consolidating the two titles together." Given this clear statement by the County, it appears that title consolidation removes the inconsistency between the application and the MDP.

Although consolidation of the subdivision into the remainder of the quarter section could have addressed the application's inconsistency with the MDP, the Denboks did not pursue the option during the application process. While the written submission from the Denboks stated a willingness to address the setback requirements, it does not actually fulfil these requirements. The submission did not make the application consistent with the LUB.

For the reasons explained above, the approval officer properly denied the application due to the inconsistency. The Act does not provide the approval officer with the jurisdiction to resolve the inconsistency through a permit condition. The Act is clear—if an inconsistency with the MDP exists, the only option for the approval officer is to deny the application. As requested by the Denboks, upon review, the Board can potentially approve the application subject to title consolidation.

5.6 Denbok RFR Point #4

The agent for the Denboks requested that the Board consider "...why the Denboks chose to proceed with the application, while not meeting the County requirements." This is not a clear framing of an issue and does not align with the approval officer's application of s. 20(1)(a) of AOPA nor the Board's jurisdiction to review that decision. The Board has jurisdiction to potentially grant an approval notwithstanding MDP inconsistency and, unlike the approval officer, may also grant an approval conditional on title consolidation.

6. Board Decision

As a result of the Board's deliberations, the Board finds that the approval officer correctly determined the application was not consistent with Lethbridge County's MDP land use provisions and therefore was directed by AOPA to deny the application.

The Board notes that the issue may well have been better resolved by the applicant during the application stage of this file. Regardless, the RFR has been filed and the Board must proceed with its decision.

The Board will grant a review to first consider whether consolidation of the two parcels on SE 20-11-23 W4M will remove the inconsistency with the County’s MDP and, if not, the Board will then decide whether it should approve the application despite the inconsistency.

The Board has determined that the remaining issues raised in the RFR have been adequately dealt with by the approval officer or have no merit and denies the request for review of those issues.

7. Form of the Review

Given the narrow scope of the issue under review, the Board has decided that a written hearing is most appropriate.

It would be helpful to the Board if Lethbridge County provides a submission confirming whether consolidation of the SE 20-11-23 W4M titles would make this application compliant with its MDP land use provisions.

8. Review Process

The Board finds that eligible parties to this review include Joshua and Deborah Denbok, Lethbridge County, Old Colony Mennonite Church, Clint and Sharon Vander Woude, Adrian and Cheryl Feyter, and NRCB Field Services.

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 on the [project page](#) on the Board’s website.

Submission Deadline	December 4, 2023
Reply Submission Deadline	December 11, 2023

DATED at EDMONTON, ALBERTA, this 22nd day of November, 2023.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

Rich Smith

Darin Stepaniuk