



BOARD REQUEST FOR REVIEW DECISION

RFR 2024-01 / RA22027

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

Darcor Holsteins Inc.

March 13, 2024

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 RA22027.

1. Background

An AOPA registration for a 440 sow farrow to isowean hog confined feeding operation (CFO) at NE 14-47-23 W4M was issued to Keith Rasmuson and co-holders on November 7, 2005. The registration also included a grandfathering determination and recognized a deemed registration for the hog CFO that already existed (Registration RA05042).

On November 7, 2022, Darcor Holsteins Inc. (Darcor) submitted a Part 1 General Information and Disclosure Application (notice of intent) to a Natural Resources Conservation Board (NRCB) Field Services approval officer to convert and expand the existing hog operation into a dairy CFO (Application RA22027). The application was deemed complete on January 12, 2023.

Following site inspections on January 31 and February 6, 2023, and subsequent AOPA process steps, the approval officer determined that the CFO was abandoned and cancelled the existing Registration RA05042 on June 9, 2023. Darcor filed a Request for Review (RFR) of the Cancellation Decision and on June 14, 2023, requested that Application RA22027 be put on hold pending this review.

On April 11, 2023, the County of Wetaskiwin (the County) adopted a new Municipal Development Plan (MDP). It excludes new and expanding CFOs within 1.6 km of Coal Lake. Darcor's CFO site is within 1.6 km of Coal Lake. The new MDP also states that it considers any CFO within that setback zone that has not been in operation for a period of 10 years or more to be without proper authorization to resume operation or expand, and that the County will not support the resumption or expansion of such operations.

The Board granted the RFR of the Cancellation Decision and held a virtual review hearing on October 10, 2023. The registration cancellation was overturned following this review (see November 21, 2023 Board Decision 2023-05 / Darcor Holsteins Inc. and Damien Rasmuson). Darcor subsequently requested that the approval officer continue processing Application RA22027.

On February 9, 2024, the approval officer issued Decision Summary RA22027 (the Decision). The approval officer concluded that the proposed CFO conversion and expansion is inconsistent with the land use provisions in the County's current MDP.

Following the issuance of the approval officer Decision, the Board received one request for review (RFR) of the Decision from Darcor, submitted within the filing deadline of March 4, 2024. On March 5, 2024, 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. Lori Cridland submitted a rebuttal on March 6, 2024. Field Services made a submission on March 7, 2024. These submissions were made within the filing deadline. The County did not submit a rebuttal.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (the panel) consisting of Sandi Roberts (chair), 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 RFR file.

2. Documents Considered

The Board considered the following information:

- Decision Summary RA22027, dated February 9, 2024
- Technical Document RA22027, dated February 9, 2024
- RFR filed by Darcor Holsteins Inc., received March 4, 2024
- County of Wetaskiwin Municipal Development Plan, Bylaw 2023/05, April 11, 2023
- Lori Cridland rebuttal, dated March 6, 2024
- Field Services submission, dated March 7, 2024

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.

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

4. Submissions

4.1 Issues Raised in the RFR

The RFR raised two issues.

1. The timing of the decision.

Darcor asserted that had cancellation of the registration not been pursued, a decision on the merits of Application RA22027 would have been issued before the County approved its new MDP on April 11, 2023. Darcor contended that Application RA22027 was consistent with the MDP in effect before April 11, 2023, and that the application would have been approved if a decision had been made before this date.

2. Whether the NRCB should exercise its discretion to approve Application RA22027 notwithstanding inconsistency with the MDP.

The Board believes that the RFR could have been clearer on this point. However, the Board's determination is that the RFR sufficiently raised this issue viewing the RFR as a whole. The concluding sentence stated that the only issue the approval officer had with the merits of the application is MDP inconsistency. The RFR also included a request for Board action to reverse the approval officer's decision. In this situation, the action would be the Board using its discretion under ss. 25(4)(g) and 25(7) of AOPA to approve Application RA22027 notwithstanding the inconsistency with the MDP.

4.2 Submission of NRCB Field Services

Field Services takes no position on the RFR.

4.3 Lori Cridland Rebuttal

This rebuttal raised the following issues:

1. MDP inconsistency;
2. whether the CFO is an expansion or a new operation;
3. Darcor's alternative CFO registration at a different location;
4. the prior feedback raising concerns about the Application from other parties; and
5. the potential for the CFO to contaminate Coal Lake with impacts to recreation, persons living near the lake, and the citizens depending on the lake as their source for drinking water.

5. Board Deliberations

Section 25 of AOPA requires the Board to dismiss a RFR if the issues raised were adequately dealt with by the approval officer or if the issues raised are of little merit. As the approval officer is required by s. 20(1)(a) of AOPA to deny an application inconsistent with an MDP, the Board's decision-making under s. 25 is based on the merits of the issues raised rather than whether they were adequately dealt with by the approval officer.

The Board's view is that the timing of the denial decision as raised in the RFR is not an issue supporting a review. The issue is highly speculative. Had the approval officer not pursued abandonment, there is still uncertainty as to whether a decision on the merits of the application would have taken place before the MDP was changed. While Darcor was advocating for that, ordinary diligence requirements in reaching a decision and other competing priorities might have precluded this. The issue also involves a remedy that may be beyond the authority of the Board to grant under s. 25(7) of AOPA. Granting a remedy on this issue would essentially involve the Board or the approval officer going back in time to issue an approval before the new MDP was adopted on April 11, 2023. Clear statutory authority would appear to be needed for such an extraordinary remedy. This may be especially the case recognizing the Board's clear authority under AOPA ss. 25(4)(g) and (7) for an approval to be issued notwithstanding a MDP inconsistency.

The Board's conclusion on this issue is also consistent with the result in Board Review Decision 2022-09 / A&D Cattle Ltd. / LA21037. One of the issues in that decision was the timeliness of the approval officer decision, within the target of 65 working days from public notice of the complete application, resulting in an Intermunicipal Development Plan (IDP) inconsistency. The Board concluded that it was unlikely the decision could have been issued more quickly to avoid the IDP inconsistency.

In this case, Application RA22027 would have needed to have been processed within 59 working days from the January 12, 2023, public notice to avoid the MDP inconsistency. The Board also notes that it is NRCB Field Service's performance measure target to issue 85 per cent of permit decisions within 65 working days from the date applications are determined to be complete. This is not a legislative requirement.

The issue of whether the Board should approve Application RA22027 notwithstanding inconsistency with the MDP has merit. A number of prior Board decisions have outlined the considerations associated with this issue as follows²:

- the municipal authority's rationale for establishing the relevant provisions in the MDP;
- whether the relevant provisions are reasonable and reflective of good planning;

² These RFR decisions include 2011-04 Zealand Farms Ltd., 2016-01 Peters, 2017-08 Friesen & Warkentin, and 2022-06 A&D Cattle Ltd. LA21037.

- whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone; and,
- whether the MDP is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

A Board review to achieve clarity on these considerations and reach a conclusion is appropriate.

The Board does not view the issues raised in Lori Cridland’s rebuttal as requiring any expansion of the focus of a review. MDP inconsistency will be addressed during a review. The issues of potential lake contamination, quality of life, and health impacts were adequately dealt with by the approval officer in Decision Summary RA22027. That said, these issues will likely be examined again to some extent in determining whether the Board should approve the Application notwithstanding MDP inconsistency and the considerations informing a decision on that issue. The remaining issue raised, that Darcor has another registration at a different site, isn’t directly relevant to decision-making on Application RA22027.

6. Board Decision

The Board has determined that a review is warranted to consider whether Application RA22027 should be approved notwithstanding inconsistency with the MDP.

7. Scope of Review

Based on the Board’s prior decision-making on MDP inconsistency files, it expects the parties’ review participation to address the following considerations:

- the municipal authority’s rationale for establishing the relevant provisions in the MDP;
- whether the relevant provisions are reasonable and reflective of good planning;
- whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone; and,
- whether the MDP is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

8. Review Process

The eligible parties to this review include Darcor Holsteins Inc., the County of Wetaskiwin, Lori Cridland, and NRCB Field Services.

The Board has determined that a virtual hearing is warranted. The Board anticipates that the hearing will be completed in a single day and proposes that it be held Tuesday, April 16, 2024, commencing at 9:00 a.m.

Written Submission Deadline	April 2, 2024 at 4:30 p.m.
Written Reply Submission Deadline	April 9, 2024 at 4:30 p.m.
Virtual Hearing	April 16, 2024 at 9:00 a.m.

Please contact Laura Friend, Manager of Board Reviews, at laura.friend@nrcb.ca by Monday, March 18, 2024, to confirm that these dates fit your schedule.

Details about the hearing arrangements will be provided by the Manager of Board Reviews in due course.

DATED at EDMONTON, ALBERTA, this 13th day of March, 2024.

Original signed by:

Sandi Roberts (chair)

Rich Smith

Darin Stepaniuk