



## **BOARD REVIEW DECISION**

**2024-02 / RA22027**

Review of Decision Summary RA22027

Darcor Holsteins Inc.

May 7, 2024

***The Board issues this decision under the authority of the Agricultural Operation Practices Act (AOPA or the Act), following the Board's review of Decision Summary RA22027 via a virtual hearing held on April 17, 2024.***

## **1. Background**

On February 9, 2024, a Natural Resources Conservation Board (NRCB) Field Services approval officer issued Decision Summary RA22027 under authority of section 22 of AOPA. The decision denied an application by Darcor Holsteins Inc. (Darcor) to convert an existing hog operation into a dairy confined feeding operation (CFO) and expand its livestock capacity. The existing hog operation is located at NE 14-47-23 W4M in the County of Wetaskiwin (the County).

Under section 22(1)(a) of AOPA, approval officers must consider whether the application is consistent with the municipal development plan (MDP) land use provisions and, where an inconsistency exists, the approval officer must deny the application. In this case, the approval officer denied Application RA22027 since, in the opinion of the approval officer, the application was inconsistent with the County MDP.

The Board received one Request for Review (RFR) of the Decision Summary from Darcor, asking the Board to reverse the denial decision.

On March 13, 2024, the Board issued Decision RFR 2024-01, stating it had determined that an oral, virtual review was warranted to consider whether Application RA22027 should be approved notwithstanding its inconsistency with the MDP. On March 20, 2024, the hearing date was set as April 17, 2024. The Board determination on the scope of the review is set out in section 7 of the RFR decision. The eligible parties for the review are set out in section 8 of the RFR decision as Darcor, the County, Lori Cridland, and NRCB Field Services.

The review submission filing deadline was April 3, 2024. Darcor, the County, and Field Services filed submissions prior to the deadline. On April 9, 2024, the Board requested further information from the County; the County responded on April 10, 2024. No further reply submissions were received by the April 10, 2024, deadline. Lori Cridland did not provide a submission and advised she would not participate in the review.

Parties to the review and their representatives are identified below:

<b>Parties to the Review</b>	<b>Counsel/Representative</b>
NRCB Field Services <ul style="list-style-type: none"><li>Francisco Echegaray, Approval Officer</li><li>Andy Cumming, Director, FS-Applications</li></ul>	Fiona Vance, Counsel
Darcor Holsteins Inc.	Darrin Rasmuson, Agent
County of Wetaskiwin	Jeff Chipley, Assistant CAO

Bill Kennedy participated in the hearing as counsel for the Board. Additional staff support was provided by Laura Friend, Manager, Board Reviews and Sylvia Kaminski and Crystal Powers-Sanford, document management.

All filings were submitted within the prescribed deadlines.

During the course of the virtual hearing, Darcor provided evidence via Darrin Rasmuson under oath that Darcor would not be proceeding with development of the dairy CFO at issue in the hearing. Darcor will be proceeding with development of a dairy CFO at an alternative location.<sup>1</sup>

## 2. Issue

The issue before the Board is whether it should exercise the discretion that exists in section 25 of AOPA to approve Application RA22027 notwithstanding its inconsistency with the MDP. Given Darcor’s hearing evidence that it will not be proceeding with development of the dairy CFO, the Board’s determination needs to address the issue of mootness.

## 3. Party Positions

Field Services took no position on the outcome of the review.

The review outcome sought by Darcor is approval of Application RA22027 notwithstanding inconsistency with the MDP.

The review outcome sought by the County is refusal to grant an approval of Application RA22027 based on inconsistency with the County’s MDP.

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<sup>1</sup> Hearing transcript, pp.62-65.

## 4. Board Deliberations

Courts and administrative tribunals can decline to decide a matter on its merits when it is moot. As the Supreme Court of Canada has explained, a matter is moot or becomes moot if the decision will have no practical effect on the rights of the parties<sup>2</sup>.

Darcor's hearing evidence was that it will not be proceeding with development of a dairy CFO at the site. Therefore, a determination by the Board on whether Application RA22027 should be approved notwithstanding inconsistency with the MDP will have no practical effect on Darcor's rights. The matter is moot.

Courts and tribunals may still choose to make a determination on a moot issue in exceptional circumstances, keeping in mind the importance of an adversarial context, appropriate use of scarce adjudicative resources, and awareness of whether making a determination in a moot setting will result in a marked departure from a tribunal's role in the legal system. These considerations relate to the rationale supporting enforcement of the mootness doctrine. In assessing these considerations, the tribunal should consider the extent to which each of the supports for the mootness doctrine is present. The considerations may not all support the same conclusion. The presence of one or two of the factors may be overborne by the absence of the third, and *vice versa*.<sup>3</sup>

After determining that the matter here is moot, the Board assessed the three factors supporting the mootness doctrine to decide whether it should make a decision on the merits of the review despite the mootness.

Adjudication of disputes depends on parties adverse in interest fully advancing their positions. The merits of the matter were argued during the review hearing. However, Darcor's evidence that it would not be proceeding with the CFO leads to some possibility that there was diminished effort by Darcor and the County in advancing their respective positions during the course of the hearing.

This review raises important issues about the interplay between the land use provisions of MDPs and the AOPA provincial standards. Under section 25 of AOPA, in conducting a review, the Board must have regard to, but is not bound by, the MDP. This section gives the Board discretion to approve an application notwithstanding inconsistency with the MDP. However, approval of a CFO in the face of MDP inconsistency is a decision the Board does not take lightly.

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<sup>2</sup> *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC).

<sup>3</sup> *Ibid.*

Given the significance of the issues addressed during the hearing, making a decision on the merits of this review might provide some precedential guidance. However, as the Supreme Court of Canada indicated in the *Borowski* decision, the mere fact that a case raising the same point is likely to recur, even frequently, should not by itself be a reason for making a determination in a moot context. It is preferable to wait and determine the point in a genuine adversarial context unless the circumstances suggest that the dispute will have always disappeared before it is ultimately resolved.<sup>4</sup> The type of dispute here is not one that will typically disappear before resolution. Appropriate use of scarce adjudicative resources supports a conclusion that the type of important issues raised in this case would be best addressed where the outcome will be material to whether a proposed CFO can proceed.

Making a determination on the merits here would not appear to involve a marked departure from the Board's role in the legal system.

Evaluating the considerations outlined above as a whole, the Board's conclusion is that it is not appropriate for it to make a decision on the merits of this review due to mootness.

## 5. Board Decision

The matter before the Board is moot and it declines to make a determination on the substantive merits of it. As a result, the decision of the Field Services approval officer denying Application RA22027 remains in place.

DATED at EDMONTON, ALBERTA, this 7<sup>th</sup> day of May, 2024.

Original signed by:

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Sandi Roberts (chair)

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Rich Smith

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Darin Stepaniuk

<sup>4</sup> *Borowski*, *supra*, footnote 2, at para. 36.