



BOARD DECISION

2015-02 / BA13006 and BA14002

Review of Decision Summary BA13006
and BA14002

William and Audrey Trenchuk

March 3, 2015

Background

On October 17, 2014, NRCB Approval Officer Randy Bjorklund issued Decision Summary BA13006 and BA14002 in relation to William and Audrey Trenchuks' (Trenchuks) confined feeding operation (CFO) located on three quarter sections (NW 21-59-16 W4M, SE 21-59-16 W4M and SW 21-59-16 W4M) in Smoky Lake County. The Trenchuks submitted two separate applications to facilitate the potential for a future division of their feedlot operation between their two sons. Together these applications sought approval for 11 feedlot pens that were constructed without a permit, six new feedlot pens, two new catch basins and an increase in animal numbers from 3,950 to 9,500 beef feeders. The Approval Officer considered both applications in a single decision summary, Decision Summary BA13006 and BA14002, and issued separate approvals with conditions.

Requests for Board Review of Decision Summary BA13006 and BA14002 were filed by Robert and Linda Morgan, Lawrence Rogoza, James Rogoza, and Billy Bogdan. In Board Decision RFR 2014-04 dated December 19, 2014, the Board determined that a review was warranted to consider whether the Approval Officer adequately determined that Applications BA13006 and BA14002 satisfy the required minimum distance separation (MDS). A Board Panel (the Panel or the Board) consisting of Vern Hartwell (Panel Chair), Jim Turner and Donna Tingley was appointed to conduct the review.

In granting the review the Board directed the Approval Officer to prepare and file a report that included information related to the applications' MDS requirements, although the Board deferred the decision on the need for an oral hearing. The Report of the Approval Officer was filed with the Board on January 15, 2015. By letter dated January 21, 2015, the Board circulated a copy of the Approval Officer's report (as well as unsolicited filings received from Don Dublenko and James Rogoza) and advised that directly affected parties would have the opportunity to provide written comments for the Board's consideration on or before February 11, 2015.

Between December 19, 2014 and February 11, 2015, the Board received written submissions from:

- the NRCB Approval Officer,
- James Rogoza,
- Don Dublenko,
- Aaron Dublenko,
- Billy Bogdan,
- Lawrence Rogoza,
- Mike and Elizabeth Rogoza,
- P. Timms, M. Timms and L. Achtymichuk,
- J. Senetza and T. Senetza, and
- W. Trenchuk and A. Trenchuk.

The Board revisited the need for an oral hearing following the receipt of all written submissions and determined that an oral hearing was not required. Having made this determination, the Panel proceeded with the review having regard for the Approval Officer's public record and the written submissions of directly affected parties provided to the Board after October 17, 2014. The Panel convened to deliberate on the Requests for Board Review on February 12, 17 and 26, and March 3, 2015.

This report provides the Panel's decision following its review of Decision Summary BA13006 and BA14002.

Issues

Board Decision RFR 2014-04 determined that there was sufficient uncertainty in the Approval Officer's decision to warrant a Board review of the MDS in relation to the residences on the NE 16-59-16 W4M. While the Board had determined that a review of the MDS to the Dublenko cabin was not warranted, the Board has since decided that some further comments are necessary based on the additional information provided since December 19, 2014.

Board Decision

The Dublenko Cabin

The Board received further submission evidence that suggests that the existing cabin located on NE 21-59-16 W4M was built prior to January 1, 2002. The January 1, 2002 date is significant as that is the date at which existing confined feeding operations are granted a deemed permit under s. 18.1 of the *Agricultural Operation Practices Act* (AOPA). Having regard for all relevant information, the Board accepts that a cabin has existed on that land location from a date that preceded January 2002. The Board further accepts that the Trenchuk CFO will be the source of nuisance odours and may affect future use of the cabin by members of the Dublenko family.

The purpose of MDS is to mitigate nuisance odours on neighbouring residences through a separation distance calculated through the formula set out in the *Standards and Administration Regulation*. Decision Summary BA13006 and BA14002 concluded that the cabin was built in 2005 within the MDS of the existing Trenchuk feedlot. For that reason the Approval Officer found that "the MDS for the CFO's proposed expansion 'does not apply' to that residence." Although the Approval Officer used "residence" when referring to the cabin, he did not consider the nature of the cabin with any rigour and the Board, having made a finding that the cabin was constructed prior to 2002, must determine whether the cabin is a residence within the meaning of the MDS provisions in AOPA. AOPA does not define what constitutes a residence.

Several parties provided information on the cabin stating it:

- is under 400 sq.ft. in size (Billy Bogdan)
- consists of one room (Decision Summary BA13006 and BA14002)
- has no foundation (William and Audrey Trenchuk)
- is serviced by a hand pump water well (Donald Dublenko)
- has cedar siding, soffits and fascia (Donald Dublenko)
- has outside amenities including (Donald Dublenko)
 - a fire-pit
 - outhouse
 - woodshed
 - concrete patio
- includes a shower structure (Donald Dublenko)
- has solar panel electrical power supplemented by a gas powered generator (Donald Dublenko)

Limited evidence was provided on the cabin's frequency of use or duration of stays, but what can be taken from the available information is that the cabin is used by various members of the Dublenko family for short term recreational use outside of the winter months. The Board

accepts that the cabin was purpose built for seasonal use and is probably not suited for winter occupation or extended stays.

According to submissions by Donald Dublenko the structure did not require a building permit when it was first built, and has seen several improvements since its initial construction. Smoky Lake County assessed and taxed the structure beginning in 2012.

The Board accepts that cabins may be included within the intended meaning of residences under the MDS provisions of AOPA, and confirms that seasonal cottages or cabins have been considered residences in past Board reviews. However, having regard for all the submissions the Board finds that the Dublenko cabin is not a residence within the meaning of AOPA. While no individual factor was persuasive to reaching this conclusion, the following considerations supported this finding:

- amenities and character of the building,
- amenability to short-term rather than extended stays,
- history of occupancy, and
- municipal permitting history.

Having made this finding, the Board finds that there is no statutory requirement to apply MDS for the Trenchuks' CFO to the Dublenko cabin.

MDS to Residences on NE 16-59-16 W4M

Having reviewed the January 15, 2015 Report of the Approval Officer, the Board now has the benefit of a clear explanation of the methodology and site work associated with the MDS calculations performed by the Approval Officer on this application. Based on a consideration of that report and having regard for all relevant information provided by the parties, the Board accepts that the Trenchuk CFO expansion does, or is capable of, meeting the required separation distances to all existing residences.

However, in reaching that conclusion the Board appreciates and agrees with the concern raised by James Rogoza in relation to proposed catch basin storage in the SE 21-59-16 W4M. For this reason, any approval issued by the Approval Officer in relation to Applications BA13006 and BA14002 must be subject to a condition that the catch basin storage meet the MDS. With that condition in place, the Board is satisfied the CFO meets the necessary MDS.

Other Comments

The AOPA permitting process requires certainty, transparency and accuracy on the part of Approval Officers, and in the case of this application the Board finds itself in the situation where further comment is appropriate.

The Board respects the time and effort that all parties have expended throughout the NRCB's application and review process in relation to this application. AOPA requires rigorous oversight by the Approval Officer of a proposal's compliance with technical standards, and that public notice and transparent access is afforded to both applicants and neighbours. Given this, decision reports must include clear and sufficient reasons to provide all parties with an understanding of how each application was assessed relative to requisite standards.

Over the course of this review the Board received comment from a directly affected party that conveyed an impression that the Approval Officer was either disinterested in assisting them with understanding the Trenchuk applications or that he was partial to the position of the applicant.

The Board accepts such feedback as providing an opportunity to reinforce basic principles and implement improvements to the organization's processes.

The Board wants to assure all participants in this review that all staff are expected to clearly understand the NRCB's mandate under AOPA and that when such concerns are expressed, each is taken seriously.

Decision

The Board directs the Approval Officer to issue William and Audrey Trenchuk approvals in relation to Applications BA13006 and BA14002 subject to the condition set out in this Board Decision.

DATED at EDMONTON, ALBERTA, this 3rd day of March, 2015.

Original signed by:

Vern Hartwell

Jim Turner

Donna Tingley

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