



## **BOARD DECISION**

### **RFR 2020-11 / RA20041**

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA20041

Manna Farms Ltd.

December 17, 2020

**The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary RA20041.**

## **Background**

On November 6, 2020, Natural Resources Conservation Board (NRCB) approval officer Francisco Echegaray issued Decision Summary RA20041 (Decision Summary), in relation to an expansion of an existing swine confined feeding operation (CFO) from 3,000 to 4,200 feeder hogs proposed by Manna Farms Ltd. (Manna Farms), located at NE 8-44-21 W4M in Camrose County (Camrose County or County). The approval officer denied the application, as he determined that it was inconsistent with the land use provisions of the County's municipal development plan (MDP). The approval officer also determined that the application did not meet the minimum distance separation (MDS) requirement under AOPA but was in compliance with the other technical requirements.

Pursuant to section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, one Request for Board Review (RFR) of the Decision Summary was filed, by the applicant, and met the 10 day filing deadline established by AOPA of November 30, 2020.

The directly affected parties, as established by the approval officer, were notified of the Board's intent to review the request and were provided with a copy of the RFR on December 1, 2020. Parties that had an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. The Board received three rebuttals: one from Camrose County (December 1, 2020), one from Tim and Roxanne Callaghan (December 1, 2020), and one from Dianne AuCoin (December 7, 2020), all of which met the rebuttal deadline of December 7, 2020.

Under the authority of section 18(1) of the *Natural Resource Conservation Board Act*, a division of the Board consisting of L. Page Stuart (panel chair), Indra L. Maharaj, and Keith Leggat was established on December 1, 2020 to consider the RFR. The Board convened to deliberate on the RFR on December 8 and 10, 2020.

## **Jurisdiction**

The Board's authority for granting a review of the 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.*

The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit a review of the approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board review.

## **Documents Considered**

The Board considered the following information:

- Decision Summary RA20041, dated November 6, 2020
- Technical Document RA20041, dated November 6, 2020
- RFR filed by Manna Farms Ltd., dated November 27, 2020
- Rebuttal filed by Camrose County, dated December 1, 2020
- Rebuttal filed by Tim and Roxanne Callaghan, dated December 1, 2020
- Rebuttal filed by Dianne AuCoin, dated December 7, 2020
- NRCB Authorization RA04039, dated May 30, 2005
- NRCB Registration RA20026, dated July 8, 2020
- Camrose County Municipal Development Plan
- Camrose County Land Use Bylaw 1373

## **Board Deliberations**

The Board met on December 8 and 10, 2020, to consider the issues raised in the RFR filed by the applicant.

The RFR identified a single issue:

- Compliance with the municipal development plan (MDP)

The Board must determine whether the party requesting the review has identified sufficient grounds to merit a review of the approval officer's decision. This process includes consideration by the Board of whether the issues raised in the RFR were adequately considered by the approval officer.

The Board has reviewed the issue raised by the applicant in the RFR and has considered the three rebuttals to the RFR.

### *Compliance with MDP*

All CFOs are required to comply with the MDP's land use provisions relevant to the county in which they are located. In this case, the CFO is located in Camrose County. Therefore, the CFO is subject to the MDP of the County. The latest revision to the MDP is dated April 12, 2016.

Section 20(1)(a) of AOPA states:

*20(1) In considering an application for an approval ... an approval officer must consider ... whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,*

*(a) ... there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application .... (emphasis added)*

In this case, the approval officer considered the information that he had available to him with respect to the CFO's compliance with the MDP's land use provisions and concluded that the CFO was inconsistent with Camrose County's MDP.

Section 20(1)(a) of AOPA requires the approval officer to deny the application if there is an "inconsistency with the municipal development plan land use provisions". Therefore, the approval officer denied the application and issued NRCB Decision Summary RA20041 on November 6, 2020.

In response to the denial of the application, the applicant filed an RFR, dated November 27, 2020. In his RFR, the applicant stated simply that the basis for the requested review was that the "application was denied wholly on section 4.3.9 of the Camrose County MDP". The applicant also stated that the CFO would have been approved prior to 2015, presumably referring to the fact that the MDP was revised in April 2016, and the CFO would have been approved in 2015. The applicant did not raise any issues in the RFR other than the CFO's compliance with the MDP.

Camrose County filed a rebuttal, dated December 1, 2020, to the applicant's RFR and stated that the County supported the applicant's request for review. In the rebuttal, the Manager of Planning and Development, Ms. Howard, recognized that the "approval officer is bound by the requirements of the MDP but that the review board has discretion in applying the MDP requirements". Ms. Howard stated that the Camrose County Council was meeting on December 8, 2020 to "discuss whether the County is willing to support a relaxation of the setback for this project". In this rebuttal, Ms. Howard offered information that suggested that the County supported the application made by the applicant.

The Board recognizes that section 20(1)(a) of AOPA does not provide the approval officer with any discretion when a proposed development or expansion does not comply with the relevant MDP. This section requires the approval officer to deny the application, and so he did just that in making his decision to deny the application.

The issue raised in the RFR would normally merit consideration by the Board as the AOPA provisions leave the Board with the sole mandate to consider approving an application notwithstanding an inconsistency with an MDP land use provision.

The practice of the Board, consistent with AOPA section 25(1), is that only issues that are raised in requests for review may be the subject of a review hearing.

In its review of the conclusion of the decision summary, the Board finds that the approval officer stated there were two reasons for the denial of the application:

*Application RA20041 is denied because the proposed CFO expansion is inconsistent with the Camrose County's MDP, and does not meet the MDS requirement under AOPA. (emphasis added)*

The RFR raised only the issue of non-compliance with the MDP; it did not either raise or disclose any challenge to the approval officer's clear finding that the application does not meet the MDS.

To allow the incursion of and adjudication of issues that were not raised in the properly filed requests for review would risk creating a situation where either the parties are not informed of the issues to which they must respond at a hearing or where the Board would be raising issues based on its own interpretation of the approval officer's decision. Neither of these results is fair, efficient, or transparent.

With respect to this case, the result of a review on the issue of the CFO's compliance with Camrose County's MDP would result in one of two outcomes: either an affirmation of the approval officer's decision that the CFO does not comply with the MDP or a decision by the Board that it ought to exercise its discretion and not apply the MDP requirements (in this case specifically with respect to the setback of the CFO from the residences at Little Beaver Lake).

If a determination was made by the Board at a review hearing that there was no reason to apply its discretion regarding the matter of the CFO's non-compliance with the County's MDP, the matter would end there. However, if the Board was to exercise its discretion after hearing all of the evidence, and was to determine that that the CFO was not required to comply with the setback established in the MDP, the outstanding issue of MDS non-compliance would remain. Because the applicant did not raise the issue of the CFO's lack of compliance with the MDS in his RFR, the Board cannot review that issue to determine whether a review ought to occur.

Therefore, regardless of the outcome of a review on the issue of whether the Board ought to exercise its discretion to modify the application of the Camrose County MDP requirements for the setback of the CFO from the residences at Little Beaver Lake, the outcome is the same for the applicant. If the applicant was successful, the application would fail on the question of whether it complies with the MDS and that issue cannot be examined on review as it was not raised in the RFR. If the applicant was unsuccessful, the application fails and the expansion is denied on the basis that it does not comply with Camrose County's MDP.

While on its own, the MDP issue may warrant consideration, even if Manna Farms were to prevail in a Board review on the MDP issue, the relief it has requested would not be available as the approval officer's decision to deny the application for failure to meet MDS was unchallenged. The Board notes that the onus is on the party requesting the review to raise the issues for the review and to introduce the issues in a manner that would warrant review (i.e. that the issue was not adequately considered by the approval officer and that the issue raised has sufficient merit to warrant a review).

Even if on review, the Board was prepared to find that the CFO expansion should be approved despite the inconsistency, that would not result in Manna Farms obtaining the relief requested as the CFO does not meet the MDS requirement.

While there is a technical basis for holding a review on the issue of the CFO's compliance with Camrose Country's MDP, there is no utility in holding such a hearing as the result is irrelevant to the outcome for this applicant. Therefore, the Board declines to schedule a review hearing in this matter.

The Board also notes that the rebuttals filed by the other directly affected parties addressed nuisance issues such as odour, impact on lake life and recreation activities, and property values. As these issues were not raised by the applicant in the RFR, they cannot be addressed in a review and, therefore, the Board makes no determination in this regard.

## **Decision**

As a result of its deliberations, the Board has determined that, given the RFR has no merit as the relief requested is not available, the RFR is denied.

DATED at EDMONTON, ALBERTA, this 17<sup>th</sup> day of December, 2020.

*Original signed by:*

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L. Page Stuart

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Indra L. Maharaj

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Keith Leggat

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Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca) or through the NRCB website.