

ANNUAL REPORT OF THE NORMAL FARM PRACTICES PROTECTION BOARD  
April 1<sup>st</sup>, 2006 – March 31<sup>st</sup>, 2007

**Introduction**

The Normal Farm Practices Protection Board (“the Board”) is established under *The Farming and Food Production Act* to adjudicate issues pertaining to farm practices.

The Act protects farmers from nuisance complaints by neighbours, provided they are following normal farm practices. Nuisance complaints covered by the Act are limited to those arising from odour, dust, flies, light, smoke, noise and vibration. Farmers are also protected from municipal by-laws which restrict their normal farm practices.

“Normal farm practice” is defined in the Act as a practice which:

- a) is conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar agricultural operations under similar circumstances, or
- b) makes use of innovative technology in a manner consistent with proper advanced farm management practices.

In responding to a complaint, the Board conducts a hearing to determine whether the farm practice involved is a “normal farm practice.” The Board may rule that the practice:

- 1. is a normal farm practice,
- 2. is not a normal farm practice, or
- 3. must be modified in a specific manner to make it a normal farm practice.

If the Board rules that the farm practice is “normal,” the farmer can continue his operation in spite of the nuisance complaint or the restrictive by-law. If the practice is ruled not normal, the Board may order either that it be stopped, or that it be subject to the by-law. The Board may also rule that the practice would be normal if specific modifications are made.

**Board Membership**

Under the Act, the Board consists of a minimum of five members appointed by the Minister of Agriculture, Food and Rural Affairs. The members are appointed from across the province, with various backgrounds and expertise in agriculture and municipal affairs.

During the 2006-2007 fiscal year, there were seven members on the Board:

Chairperson	Glenn C. Walker	Ridgetown	lawyer
Vice-Chair	Anthony Little	London	lawyer
	Dwayne Acres	Osgoode	cash crop and livestock farmer
	Hélène Blanchard	Embrun	dairy farmer
	John DeBruyn	Salford	swine farmer
	Bill French	Mitchell	dairy farmer
	Gordon Garlough	Williamsburg	cash crop and beef farmer

## Hearings

To assist farmers and others appearing before the NFPPB, hearings are held in the municipality where the complaint originates. There is no charge for hearings. Legal counsel is not required, but parties may, if they wish, retain legal counsel at their own expense. To assist parties who are not represented by legal counsel, the Board developed a *Citizen's Guide to the FFPPA and the NFPPB* in 2005. The *Guide* explains the purpose of the Act, the role of the Board, the concept of "normal farm practice," Board procedures and the hearing process.

Determination of normal farm practice by the NFPPB requires technical knowledge and experience of established and emerging farming practices. At NFPPB hearings, the Board often has to call its own expert witnesses to provide essential evidence not presented by the parties. The Board normally calls upon agricultural engineers in the Environmental Policy & Programs Branch to provide such expert testimony. Expert witnesses may also come from other professional groups related or unrelated to agriculture.

In 2006-2007, according to the Agricultural Information Contact Centre, approximately 7 complaints pertaining to farm practices and/or the FFPPA were received each month, translating into 84 total complaints received by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). Through conflict resolution, OMAFRA agricultural engineers resolve the vast majority of these complaints; on average, approximately 4 cases are heard by the Board each year. In February of 2005, the Board established a new policy requiring that it would only hear cases that had gone through a conflict resolution process and had not been resolved.

In 2006-2007, the Board held hearings, pre-hearing conferences and / or teleconferences for five cases. By the end of the fiscal year, the board had issued a decision in three cases; one case has been stopped, one case is in process; two cases are in the conflict resolution process stage and two cases had been withdrawn.

In January 2005, the Ontario Superior Court overturned a NFPPB decision in the case 2002-03: Hill & Hill Farms Ltd. v. Municipality of Bluewater. The Superior Court ruled that the NFPPB has no jurisdiction over municipal zoning by-laws. In March of 2006, the Ministry of the Attorney General participated in the farmer's appeal to the Appeal Court. In September 2006, the Appeal Court upheld the Superior Court's ruling in regards to the decision made by the NFPPB, but ruled that the FFPPA and the NFPPB have full jurisdiction over all municipal by-laws, including zoning by-laws.

Following are the cases heard by the NFPPB:

<b>Case:</b>	<b><u>2000-01 Gardner et al v. Greenwood Mushroom Farm</u></b>
<b>Address:</b>	Ashburn, R.M. of Durham
<b>Issue:</b>	<b>Odour</b>
<b>Dates of Hearing:</b>	June 20 2006 (1 day), November 7 & 8 (2 days), December 11 (1/2 day), January 26 <sup>th</sup> , 2007 (1 day)
<b>Location(s) of Hearing:</b>	Uxbridge; Guelph
<b>Panel Members:</b>	Glenn C. Walker, Linda O'Neill <i>(The Panel originally consisted of Robert Stephens, Glenn Walker and Linda O'Neill. Mr. Stephens' appointment to the Board ended in July 2004 and for personal reasons decided that he could not continue to sit on this Panel. The Panel continued with the remaining two members.)</i>

### **Description:**

The applicants complained about odours arising from a mushroom composting operation. The file has been before the Board since January 6<sup>th</sup>, 2000, there is a lot of history associated with this file, but here is a synopsis of the events that took place over this fiscal year. At the Hearing in June the parties informed the Board they were close to settling and they would need more time. The Board then rescheduled the Hearing for November. Shortly after June, the Board received confirmation that three of the four parties had settled and the fourth party (Ms. Gardner) was withdrawing from the proceedings. Prior to the November Hearing, the Board received a letter from Ms. Gardner indicating that she does not

want to withdraw from the proceedings and instead would like to continue with a full Hearing. Therefore the Hearing continued in November and then was scheduled for continuation in December 2006. Prior to the Hearing in December 2006, the Board received a letter from Ms Gardner wishing to withdraw again, as well as a Motion from the Respondent for a Stay in the proceedings so that items in the settlement between the three other parties can be completed. Ms Gardner did not receive the Motion from the Respondent in time so the December Hearing was postponed to January. In January, the Board heard the Motion with respect to the Stay and granted 90 days, the Board also did not grant Ms Gardner a leave from the Hearing because it did not receive consent from the Respondent.

**STATUS:**

In a Stay until May 2007. There will be a Hearing that will deal with any procedural Motions on April 16, 2007, if necessary.

**Case:** 2002-03 Hill & Hill Farms Ltd. v. Municipality of Bluewater  
**Address:** Varna, Huron County  
**Issue:** **By-law: Minimum Distance Separation (MDS)**  
**Dates of Hearing:** October 24-25, 2002 (2 days)  
**Location(s) of Hearing:** Varna  
**Panel Members:** Bob Stephens, Glenn C. Walker, Linda O’Neill

**Description:**

A farmer claimed that the municipality had built new facilities near his hog operation in 1984 and had re-zoned the area, doubling the minimum distance separation (MDS) required for barn expansion. In 2001, the farmer applied for a permit to expand his operation; he said his application was refused on the grounds of the doubled MDS. The farmer challenged the municipal decision before the Board.

**STATUS:**

The Board ruled that the farmer had to meet MDS, but that the doubled distance required by the municipality was not justified in this case. The decision was appealed by the municipality to the Divisional Court. The Court overturned the Board decision, stating that the NFPPB had no jurisdiction over municipal zoning by-laws. The farmer appealed the Divisional Court ruling to the Court of Appeal in March of 2006. In September 2006, the Court of Appeal upheld the Divisional Court’s ruling in regards to the decision made by the NFPPB, but the Court of Appeal did overturn the Divisional Court’s ruling in regards to the NFPPB jurisdiction in the matter.

**Start Date: June 6, 2002** **End Date: April 22, 2003** **Appeal decision rendered.**

**Case:** 2002-06 Read Farms v. Town of Oakville  
**Address:** Oakville, R.M. of Halton  
**Issue:** **By-law: Prohibiting Farming Operations**  
**Dates of Hearing:** November 24-25, 2003 (2 days) (*Motion*)  
**Location(s) of Hearing:** Guelph  
**Panel Members:** Glenn C. Walker (*Motion*)

**Description:**

A farmer applied for a hearing to determine whether it constitutes normal farm practice to do farming operations on a farm which is an area zoned residential. The municipal by-law prohibits farming operations. A pre-hearing conference was held on March 12<sup>th</sup>, 2003, in Guelph. The municipality made a Motion on November 24<sup>th</sup>, 2003 challenging the Board’s jurisdiction. The Board dismissed the Motion in February 2004. The municipality appealed to the Divisional Court for a Judicial Review; the Court dismissed the appeal. The Board informed the parties of a decision in the case of Hill & Hill Farms vs. Municipality of Bluewater, which the Board considered to be similar.

**STATUS:**

As a result of the Court of Appeal decision in the matter of Hill & Hill Farms Ltd. v. Municipality of Bluewater (2002-03) the case has been re-opened. The Hearing is tentatively set for July 2007.

**Start Date: January 14, 2003**

**Case:** 2006-01 Donkers v. County of Middlesex  
**Address:** Arva, Middlesex  
**Issue:** **By-law: Permanent encroachments**  
**Dates of Hearing:** July 20<sup>th</sup>, 2006 (1 day) (*Motion*)  
**Location(s) of Hearing:** Ilderton  
**Panel Members:** Glenn C. Walker, Dwayne Acres, H  l  ne Blanchard (*Motion*)

**Description:**

A farmer came to the Board complaining that a county by-law no longer allows him to cross the county road with a temporary pipeline in order to spread manure. Although the by-law was revised after discussions in 2005, the farmer argued that even the revised by-law did not provide him with a workable solution. The farmer was told that the county would likely only consider changing its position in the event that the province were to pass new legislation or the NFPPB were to issue a decision in the matter.

**Status:** A Motion was put forth by the counsel for the Respondent claiming that the Board did not have jurisdiction in the matter because the agricultural activity took place on non-agricultural land, which was owned by a third party (i.e. the county). The Board concluded that it did not have jurisdiction because there wasn't any specific wording within the FFPPA that gave the power to the Board to rule on the matter.

**Start Date: March 16, 2006** **End Date: November 30, 2006**

**Case:** 2006-02 Beckett v. Redekop  
**Address:** Ridgeville, Niagara (RM)  
**Issue:** **Smoke & Odour**

**Dates of Hearing:**

**Location(s) of Hearing:**

**Panel Members:**

**Description:**

A group of residents complained about smoke and odour emanating from an outside wood burning boiler on a neighbouring greenhouse operation.

**Status:** Although the Board was able to acknowledge the receipt of a hearing request, it cannot process an application unless the matter has been through a conflict resolution process conducted by an OMAFRA Agricultural Engineer. The conflict resolution process is on-going.

**Start Date: May 3, 2006**

**Case:** 2006-03 Quick v. Hesselman  
**Address:** London, Middlesex  
**Issue:** **Noise**

**Dates of Hearing:**

**Location(s) of Hearing:**

**Panel Members:**

**Description:**

A resident complained about the noise emanating from exhaust fans which are apart of the swine finishing facility.

**Status:** Although the Board was able to acknowledge the receipt of a hearing request, it cannot process an application unless the matter has been through a conflict resolution process conducted by an OMAFRA Agricultural Engineer. The conflict resolution process was a success and the Applicant withdrew his complaint.

**Start Date: June 14, 2006** **End Date: August 24, 2006**

**Case:** 2006-04 Reilly & Bastedo v. Leckey.  
**Address:** Wooler, Northumberland  
**Issue:** **Noise, Vibration, Light & Odour**

**Dates of Hearing:** December 6<sup>th</sup>, 2006 (1 day)

**Location(s) of Hearing:** Brighton

**Panel Members:** Glenn C. Walker, Anthony Little, H  l  ne Blanchard

**Description:**

The Applicants brought forth four nuisance complaints; noise, light, vibration and odour. The noise, light and vibration complaints were in relation to the movement of the Respondent’s tractor in the early morning and the odour complaint was in relation to the manure stockpiled within the feedlot.

**Status:** A decision was rendered January 2007, in which the Board ruled that the practices within the feedlot constitute a normal farm practice and that, in these particular circumstances, the use of the tractor on the County Road in the early morning hours was not a normal farm practice. The Board ordered the Respondent not to use the tractor for transporting feed along the County Road between the hours of 10.00 p.m. and 7.00 a.m. An exception was made for tractor use for necessary snow removal. After the decision was issued a complaint was received by the Board from the Applicant indicating their displeasure with three items in the Order. Two of these items were minor typographical errors which were subsequently corrected by the Board. The third dealt with the fact that the Order does not prohibit the Respondent from operating a diesel tractor between the hours of 10:00pm and 7:00am for a purpose other than transporting feed or necessary snow removal. The Board did not amend the Order with respect to this item.

**Start Date: August 18, 2006                      End Date: February 26, 2007**

**Case:** 2006-06 Solomon v. Lomco Ltd.  
**Address:** Newmarket, York (RM)  
**Issue:** Noise  
**Dates of Hearing:** October 23<sup>rd</sup>, 2006 (*Prehearing*) (1 day)  
**Location(s) of Hearing:** Guelph  
**Panel Members:** Glenn C. Walker

**Description:**

A resident complained about the noise emanating from the equipment, in particular the safety beepers, of a nursery operation.

**Status:** Both parties agreed to settle the matter in Divisional Court. The applicant withdrew his complaint and consequently the case is now closed.

**Start Date: August 23, 2006                      End Date: October 23, 2006**

**Case:** 2006-07 Brown v. Howes.  
**Address:** Bath, Prince Edward  
**Issue:** Noise  
**Dates of Hearing:** January 17<sup>th</sup> & 18<sup>th</sup>, 2007 (2 days)  
**Location(s) of Hearing:** Napanee  
**Panel Members:** Anthony Little, John DeBruyn, Dwayne Acres

**Description:**

A resident complained about the noise emanating from a bird banger used to scare off birds from a vineyard.

**Status:** The Board ruled that, in this instance, the use of a “bird banger” was a normal farm practice.

**Start Date: September 15, 2006                      End Date: March 26, 2007**

**Case:** 2007-01 Peat & Leroux v. Bougie  
**Address:** St-Benardin, United Counties of Prescott & Russell  
**Issue:** Noise  
**Dates of Hearing:**  
**Location(s) of Hearing:**  
**Panel Members:**

**Description:**

Two residents complained about the noise emanating from a grain dryer which is in close proximity to their home.

**Status:** Although the Board was able to acknowledge the receipt of a hearing request, it cannot process an application unless the matter has been through a conflict resolution process conducted by an OMAFRA Agricultural Engineer. The conflict resolution process is on-going.

**Start Date: January 25, 2007**

## **Annual Meeting of the Normal Farm Practices Protection Board**

The Annual Meeting of the NFPPB was held on February 9<sup>th</sup> of 2007 at the Government of Ontario Building at 1 Stone Road West in Guelph.

### Attendees:

Anthony Little	Vice Chair – NFPPB (Chair of Meeting)
Gordon Garlough	Member - NFPPB
Hélène Blanchard	Member - NFPPB
Bill French	Member - NFPPB
John DeBruyn	Member - NFPPB
Dwayne Acres	Member - NFPPB
Andrew Jamieson	Acting Secretary - NFPPB
Finbar Desir	Acting Manager – ETU OMAFRA
Marianne Orr	Legal Branch - OMAFRA

### Regrets:

Glenn Walker	Chair – NFPPB (sick)
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At the previous Annual Meeting there was a discussion about the Board's power to award costs. Marianne Orr was asked to provide the group with some legal advice with respect to Board's ability to award costs. During this year's Annual Meeting the Board was advised that under the Statutory Powers and Procedure Act (SPPA) it has the power to create rules within its own procedure to award costs. However, the SPPA only allows the Board to award costs if it feels that that conduct or the course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith. Since the meeting, a draft rule has been created and the Board invited OMAFRA to comment on the proposal. At this juncture, the members of the Board have yet to vote on this matter but have received support from the Director on behalf of OMAFRA to continue with its discussions. The Board members also agreed that this issue should not wait until the next annual meeting. The meeting is scheduled early in the next fiscal year.

Other major issues discussed included jurisdiction over non-agricultural land, jurisdiction over Divisional Court in agricultural nuisance complaints, and a rule change with respect to court reporters. The two topics involving the jurisdiction of the Board were tabled until the Chair could be present. These topics are expected to be discussed at the meeting scheduled early in the next fiscal year. The Board approved an amendment to rule 39 of the NFPPB Rules of Practice and Procedure that deals with the matter of court reporters at NFPPB Hearings. The proposed amendment specifically dealt with the responsibility of each party, including the Board's, when ordering a transcript of a Hearing from a court reporter, specifically the financial responsibility.

## **Internet Access**

Summaries of all NFPPB decisions are available on the NFPPB website, accessible through the OMAFRA website <[http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb\\_decisions.htm](http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb_decisions.htm)>. Full decisions are available electronically or in hard copy by contacting the Agricultural Information Contact Centre at 1-877-424-1300, or by e-mail at [ag.info@omaf.gov.on.ca](mailto:ag.info@omaf.gov.on.ca).

## **Performance Measurement**

The following is a report on Board Performance Measures, required by the Management Board of Cabinet, set in the Business Plan for 2005-2008. Because of the nature of hearings, the Board cannot ask hearing participants to rate its performance and so, instead, must rely on the incidence of complaints received in specific areas of service.

1. *Respect and consideration for participants.* No complaints were to be received.  
Results: No complaints were received.
2. *Quality of hearing process information provided to participants.* No quality complaints were to be received.  
Results: No quality complaints were received. However, although the Respondent was sent the “*Citizen’s Guide to the FFPPA and the NFPPB*”, she complained that she did not realise that the Hearing would follow a legal format. Consequently, it stressed the need to create a smaller much simpler preparation document for parties who choose to represent themselves at a NFPPB Hearing. The Board’s Secretary will develop a simple 2 page brochure to be distributed in addition to the *Guide*.
3. *Fairness in the processing of applications.* No fairness complaints were to be received.  
Results: A complaint was received by the Acting Secretary by the Applicant in the matter of Brown v. Howes. Prior to the Hearing, the Respondent submitted to the Board a letter in rebuttal to the Applicant’s original application. As per the NFPPB protocol, this letter was included in the Board file, which is circulated to all the Board members, Board witnesses and both parties. The Applicant felt that circulating such a letter prior to a Hearing was unjust and could potentially prejudice the panel members and Board witnesses against him. It was relayed to the Applicant that nothing within the Board file is considered as evidence and that such information bears no weight in the decision making process, only evidence heard at the Hearing would be considered by the panel members. The Applicant still felt that this was inappropriate and requested that the Chair of the Hearing address the issue. At the Hearing, the Chair addressed the issue with respect to the items that exist within the Board file and how they bear no weight in the Board’s decision. The Applicant still insisted that the action was inappropriate and should not be allowed.
4. *Consideration of participants in the selection of the hearing date.* No complaints were to be received.  
Results: No complaints were received.
5. *Convenience to participants of the hearing location.* No convenience complaints were to be received.  
Results: No convenience complaints were received.
6. *Appropriateness of the hearing room set-up.* No complaints were to be received.  
Results: No complaints were received.
7. *Fairness in the conduction of the hearing.* No fairness complaints were to be received.  
Results: No fairness complaints were received. The Acting Secretary did receive the following compliments in the Brown v. Howes matter:

Martin Byl - Marketing Director, Ontario Grape Growers Association

Mr. Byl, a former policer officer and lawyer, commented that he was impressed with proceedings and he felt that the Chair and panel members were fair to both parties. He congratulated us on our effort.

Victoria Billard - Court Reporter

Ms. Billard had never attended a NFPPB hearing but was impressed with the Chair, especially with his delivery. She had felt that the proceedings were run smoothly and fair to both parties.

8. *Adequate opportunity for participants to present evidence.* No complaints were to be received.  
Results: No complaints were received.
9. *Adequate opportunity for participants to respond to the evidence of the opposing party.* No complaints were to be received.

Results: No complaints were received.

10. *Satisfaction that the decision reflected the evidence presented at the hearing.* No complaints were to be received.  
Results: No complaints were received; however, all parties were dissatisfied with the Board's decision in the case of Reilly & Bastedo v. Leckey.
11. *Clarity of the reasons why the Board reached its particular decision, as presented in the written Decision.* No clarity complaints were to be received.  
Results: No clarity complaints were received; however, all parties were dissatisfied with the Board's decision in the case of Reilly & Bastedo v. Leckey.
12. *Timing of the release of the decision.* No timing complaints were to be received.  
Results: No timing complaints were received.
13. *The plain language used in the decision.* No language complaints were to be received.  
Results: No language complaints were received.
14. *Absence of bias.* No bias complaints were to be received.  
Results: The Applicant and the Respondent in the matter of Brown v. Howes both felt that the panel members at the Hearing would be biased due to the letters that their respective counterparts had submitted to the Board prior to the Hearing. The issue was addressed by both the Acting Secretary and the Chair of the Hearing in that any correspondents that exist within the Board file do not bear any weight in the Board's decision. After the Hearing, neither party revisited the biased issue.
15. *Performance standard of 20 days for a reply to applicant on acceptance of an application:* The average period lag for a reply to the applicant was 17 days for this reporting period.
16. *Performance standard of 60 working days for the rendering of a hearing decision.* For this reporting period, it took on average 53 working days for the one decision to be issued.

Submitted this 11th day of May, 2007.

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Glenn C. Walker,  
NFPPB Chair