

COMMUNITY-BASED STRATEGIES FOR RESOLVING AGRICULTURAL AND LAND USE CONFLICT



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Project Introduction

This research is intended to respond to environmental issues related to agriculture by identifying best practices in the management of conflict. Related issues of land use and conflict resolution have been considered. This information is intended to be used by individual property owners, farm groups, municipalities and provinces.

More specifically this research has the following objectives:

- To identify ‘best practices’ for local conflict resolution by documenting and analyzing the success of current initiatives.
- To document and analyze the experience of the farm community with the Ontario Municipal Board and the Normal Farm Practices Protection Board
- To evaluate the opportunity for local committees to assist in mediating disputes. Existing examples in Ontario, Manitoba and Michigan will be evaluated to determine the broader applicability of these initiatives.
- To develop a manual to assist local initiatives to establish committees to mediate agricultural disputes. This will include training materials to assist local initiatives.

Increasingly there is a recognition that conflict resolution strategies offer the potential to resolve conflict related to agriculture. At its best it can offer workable solutions, enhance communication and foster understanding. Despite this potential, however there is an absence of materials to help develop and implement local strategies. This project contributes to local innovation through the provision of materials that facilitate the use of local strategies in the management of conflict.

In response to the key research objectives this report is divided into several freestanding sections. These sections are related but can be used independently or as part of a broader cohesive whole. The key components of this research are as follows:

Section 1

The Role of Conflict Resolution in the Rural Community: A Focus on Ontario’s Agricultural Mediation Committees

Section 2

The Role of the Ontario Municipal Board in Adjudicating Agricultural Conflict

Section 3

Informal Methods of Conflict Resolution in Rural Manitoba

Section 4

Lessons from Michigan: Regulating Intensive Livestock Operations - Conflict Resolution, Right-to-Farm and the Role of the State

Section 5

Ten Steps to Creating a Local Advisory Committee

Section 6

Training Resource Materials for Local Advisory Committees

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Informal Methods of Conflict Resolution in Rural Manitoba

Lessons from Michigan: Regulating Intensive Livestock Operations - Conflict Resolution, Right-to-Farm and the Role of the State

Ten Steps to Creating a Local Advisory Committee

Training Resource Materials for Local Advisory Committees

Notes

The Role of Conflict Resolution in the Rural Community: A Focus on Ontario's Agricultural Mediation Committees

Land Use Conflict in the Rural Community: Preamble

Two farmers – Farmer A and Farmer B reflect on the circumstances that have led them to an on-going and expensive conflict:

Farmer A's Perspective

My great-great-great grandparents originally cleared a 100-acre farm out of the bush on the 7th Concession. It was good land, a creek went through the middle of the farm, there was water for the livestock and, with the soils and climate they were blessed with, they could grow some of the best crops in Canada. Gradually, over the years, they established a good-sized barn that supported their cattle, pigs and horses. As the farm became more prosperous, the old log house was eventually replaced by a red brick house that would stand the test of time.

They had good neighbours that lived across the road – their children played together, went to school together, and they supported each other in times of need. The farm was passed down from generation to generation and the cycle of neighbourly relations went on for more than 100 years.

Gradually, however, things changed. After the war the house across the road lost some of its luster. Farm sizes were getting larger and larger and eventually, the neighbour's farm was purchased by a farmer who lived several miles away. The house continued to deteriorate – no one was living in it now, but the barn continued to be valuable. Dairy heifers were kept in the barn – it was good to see it being occupied. The barn was kept in good repair and now and then there was a chance to speak to my new neighbour about the dairy business – something we shared in common. This went on for several years- trees had now grown up around the old house and, while I longed for the days when we had good neighbours close at hand, there was something to be said for the solitude. This farm would provide a good home for my son and grandchildren.

And then one morning there were happenings across the road. The old dairy barn was being demolished and there was evidence that a new barn was about to be built. I soon discovered that there were plans for one or more hog barns. I've read and

heard that these new larger barns can be a real problem. In fact, I once had pigs myself and know how much they can stink. I contacted the Township but was told that everything was fine - appropriate permits had been issued. Still, this change caused me concern. This new barn seemed awfully close. I spoke to the Ministry of Environment and the Ministry of Agriculture and they informed me that, while certain guidelines weren't met, the Township did issue a legal permit. I've decided to contact my lawyer and now we'll see what happens....

Farmer B's perspective

I'm proud to call Canada my home. When my parents left Europe for Canada, I came along as a young man determined to work hard, to contribute positively to my new country and to farm in what seemed like wide open spaces. I worked hard to build up sufficient equity to purchase my first farm. It was a time of opportunity.

Many people did not see the relative cheapness of Ontario's farmland but, with prudent acquisitions, I was able to add several farms close to my home operation. The dairy business was good to me – that monthly cheque allowed me to keep the bills paid when crop prices were bad or when the high interest rates of the early 80's forced other farmers out of business. For me, getting large was a survival strategy. My children wanted to farm and, with Free Trade and ever reduced margins, I sensed that if I wanted to keep in the business and compete with the Americans and Brazilians I needed to both diversify and achieve certain economies of scale.

Some years ago I picked up the farm on the 7th concession – a good piece of land – a decent barn but not much of a house – certainly not worth the hassle of trying to rent it out. I kept dairy heifers in the barn for a number of years - it was close to home – not so far for the hired hand to go for chores. The neighbour across the road was a good man and gave me a call if he saw anything unusual around the property.

I'd been in the hog business for a while – the market was always up and down – but that new approach to production – a “loop”, as they called it – with sows in one barn, feeder hogs in another and weaners in another barn held promise - of reducing disease, maximizing production and of achieving those economies of scale that I needed. As I thought about it, the farm I picked up a number of years ago on the 7th concession was a good spot to build. There was a sow barn in the next township and I had plans to

build finishing barns with a partner elsewhere. I needed a spot to build 2-4 weaner barns and I decided that the farm on the 7th Concession would work well.

I approached the Township for a building permit and they told me that I should get a Certificate of Compliance, which determines the minimum separation distance to the neighbour's house. This would push the barns back further from his house than was practical; the property slopes away from the road and if the barns are too far back I wouldn't be able to use the gravity system for the liquid manure that I had planned to use. When I discussed this with the Township, I discovered that the Certificate is simply a guideline – a recommendation and that the Township would issue me a building permit even if I didn't have a certificate. After all, these barns aren't that large (2 barns at 1800 weaner pigs each) and these new barns will be downwind from my neighbour. It seemed like a good spot to build.

A few days after construction began, I was in the coffee shop and heard that my neighbour was quite concerned about my new barns. I wasn't overly concerned - after all, I did everything that the Township required of me. Just the other day, however, I was contacted by the Ministry and understood that my neighbour has hired a lawyer. Some years ago I discovered that, while I know pigs and cows, I don't know law. I think I'll give my own lawyer a call. What else can I do?

1.0 Introduction

Today, in many areas of rural Ontario, livestock production has reached a crossroads. The continued viability of livestock production in rural Ontario is becoming partially dependent upon the willingness of a community to accept this agricultural industry as it continues to evolve and change. However, the intensification of the livestock industry has been a catalyst of debate, concern and action in rural Ontario communities. There are many attitudes in the public that reflect legitimate interests in environmental factors such as air and water quality, along with social and economic concerns.

Current and anticipated future trends suggest that, as the rural community becomes increasingly urbanized, there will be an escalation of conflict between rural residents and the growing scale and concentration of the livestock industry (Caldwell, 1998). This is putting an increasing strain on the relationship between neighbours, farm operators and other key players in both the community and agricultural sectors. Thus, the degree of conflict and methods for resolution must be addressed.

To this end, in the context of agriculture in Ontario, this paper will further examine some of the specific causes of rural conflict; review tools of alternative dispute resolution; provide an overview of provincial and local dispute resolution initiatives being used in and by the agricultural community; and, by way of a case study, demonstrate the process used for resolution by the Huron County Environmental Mediation Committee.

2.0 Context for Conflict

The conflict described between “Farmer A” and “Farmer B” is, in many ways, a symptom of broader changes that are occurring within rural communities across the country. In many areas, the intensification and specialization of agriculture, in combination with a number of trends such as increasing numbers of non-farm neighbours, has contributed to farm-non-farm conflict as well as conflict between farmers (Caldwell, 1998; Robinson, 1990). In particular, the trend towards larger farms with liquid manure systems has made conflict resolution related to environmental issues more important than ever. It includes concerns from farmers and non-farmers alike towards other farmers and toward the municipality itself.

3.0 Perceptions and Reality

Across Ontario and Canada, rural communities are undergoing “substantial and unprecedented change” (Smith & Krannich, 2000, p. 397). This is due to the fact that communities are not fixed, static identities but rather changing, dynamic processes. They do not exist in a ‘vacuum’ but are constantly being developed, restructured and refined by their interrelationships with other people and places (Cloke & Little, 1997).

The idea of ‘rural’ is also not a fixed concept. It is a social and symbolic representation of the meaning and values of the people behind it. Problems arise when concepts of ‘rural’ put community against agriculture. Often ‘rural’ is associated with a picture of small, family sized farms nestled on an idyllic rural landscape (Barrett, 1994; Bunce, 1998)). Thus, intensive livestock facilities are seen as destructive of this quality of life (DeLind, 1995; McTavish & Lee, 1998).

The perceived economic, social, and environmental concerns of rural community residents often are key variables that create conflict with a person’s construct of their rural community. These perceptions are leading to a sense of NIMBYism (Not In My Backyard) across Ontario toward intensive livestock operations. As well, these perceptions are sources of heated debate and complicated processes that involve the community in decision-making matters and dispute resolution approaches concerning the siting and practices of such operations.

Sometimes conflict can be based on perceptual issues, which may not have any factual basis (Caldwell, 1998). Carter and Owen (2000) identify a number of Common Causes of conflict that they refer to as the Dirty Dozen. These are listed below:

The Dirty Dozen (Carter and Owen, 2000)

Most of the conflicts affecting Canadian farmers are about:

- 1) Air pollution- odour, dust or noise
- 2) Water pollution- both surface and ground
- 3) Waste management – both handling and disposal
- 4) Chemicals – of all kinds at all stages in the food production and processing system
- 5) Land Degradation – erosion, compaction, salinization, depletion, contamination, etc.
- 6) Wildlife and fish protection – including habitat protection
- 7) Biodiversity – including fears about dwindling wildlands and monoculture farming.

- 8) Resource management – including preservation of wild parklands and green spaces
- 9) Public access- to public and private land used by farmers and trespassing
- 10) Zoning and planning – farms and residential subdivisions sited too close together
- 11) Unkempt farmsteads – offend neighbours and passers –by
- 12) Aesthetic despoilment – due to berms, nets, buildings, fences and hours of operation

As noted by Carter and Owen (2000), the number and intensity of conflicts facing Canadian farmers have risen sharply in recent years. Farmers must now answer to a wide range of critics and stakeholders, including urbanites, lobby groups, federal, provincial, regional and municipal government agencies, non-farm rural residents and even neighbouring farmers. There is the potential for significant harm to individuals, communities, and even parts of the agricultural industry if conflict is not addressed and appropriate resolution processes explored.

4.0 Bill 81 & Alternative Dispute Resolution (ADR)

4.1 Bill 81

There have been a variety of government responses to the conflict arising from the livestock industry. At the provincial level in Ontario, the new Nutrient Management Act, Bill 81, was created to provide standards for, and thereby more consistently regulate, the management of manure and other nutrients on agricultural operations of all sizes. Contained within this legislation (under Section 6.3.z.2) is the intent for there to be mechanisms for non-legal dispute resolution (Minister of Agriculture & Food, 2002). The development of such a model necessitates the examination of Alternative Dispute Resolution techniques and an analysis of existing structures and practices for dealing with agriculturally related conflict. This research will contribute to the exploration of models of conflict resolution for province-wide application.

4.2 Alternative Dispute Resolution (ADR)

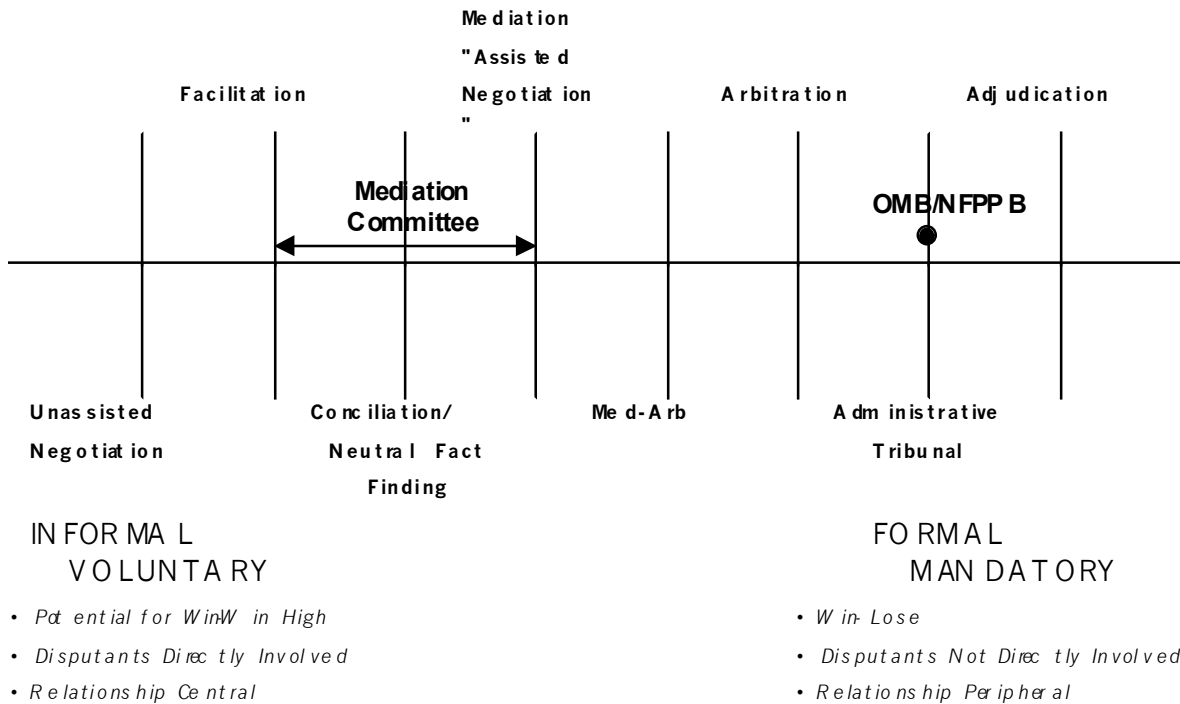
In the recent past, a court of law was the venue where personal, business, and environmental conflicts were settled. Now, with ever-increasing frequency, one of the first steps in resolving a dispute is a more efficient and cost effective process known as '*alternative dispute resolution*'. The 'alternative' in alternative dispute resolution implies an alternative

to litigation. Figure 1 illustrates the range and overlap of various alternative dispute approaches. Some of these include:

- Negotiation – parties meet and control the process of trying to reach mutually acceptable agreements
- Mediation – an objective third party facilitates the negotiation process between the parties
- Arbitration – by mutual agreement, an objective third party (the arbitrator), makes a determination on how the complaints will be resolved
- Administrative Tribunals – more formal process with procedural rules and the parties have limited control of the process (eg. Normal Farm Practices Protection Board, Ontario Municipal Board).

The goal of ADR is to arrive at some mutually agreeable solution that satisfies the needs of the constituent groups and ideally can be labeled as a win/win situation.

Figure 1: ADR Continuum



For a variety of reasons, unresolved conflict is a problem. It destroys relationships between people, complicates livelihoods and eventually contributes to a dysfunctional community. Conflict can however be the impetus for positive change. In the words of Sherman and Livey (1992), “The most valuable aspect of conflict is the energy that it generates and conflict management is not an attempt to suppress the energy but to use it constructively.” While sometimes conflict just goes away, remains unresolved, or is dealt with informally, there is much to be gained by channeling energies to resolve it outside of a formal legal structure (i.e. the courts). From this perspective, the challenge is to find the mechanisms that are most successful in the resolution of conflict.

5.0 Provincial Overview of Existing Practices

As stated, social, economic, and environmental perceptions concerning the siting of intensive livestock operations have created a high degree of conflict in the rural community. In Ontario, steps are being taken to resolve agricultural related conflict

concerning not only intensive livestock operations but with the agricultural community as a whole. This is taking place to ensure that the agricultural industry can continue to operate in an effective manner (Fraser & Desir, 2001). These measures will be discussed in the proceeding section.

5.1 Existing Structures

At the provincial level, quasi-judicial structures have been established, under provincial statutes, to resolve disputes. These include the Ontario Municipal Board and the Normal Farm Practices Protection Board, which, on the ADR continuum, are Administrative Tribunals and thus play a more formal role in addressing conflict. Local initiatives by counties and municipalities include Agriculture Advisory Committees and Mediation Committees. These fall in a range on the Continuum between Facilitation, Conciliation, and Mediation and are thus less formal structures with varying mandates.

5.1.1 Ontario Municipal Board

The Ontario Municipal Board (OMB) was established under the Ontario Municipal Board Act is an independent administrative tribunal that hears appeals and makes decisions on municipal planning and land use issues (MMAH, 1997). As such, OMB public hearings are less formal than in a court of law however, OMB decisions are binding and can only be appealed to the provincial courts on a point of law. The OMB does not deal with specific agricultural issues unrelated to land use planning issues.

5.1.2 Normal Farm Practices Protection Board

The Normal Farm Practices Protection Board (NFPPB) is a peer review board created by the government to act as a last resource board to resolve conflict that could not be mediated at the local level. Acting as a tribunal system, the NFPPB works to provide “a less expensive and quicker forum for complaint resolution than the courts,” (Fraser & Desir, 2002, p.5).

Following the mandate of the Farming and Food Production Protection Act (FFPPA), the NFPPB works solely to resolve issues concerning the seven nuisance complaints¹ under the directives, guidelines and policy of the Ontario Ministry of

¹ A nuisance complaint constitutes any “disturbances for which farmers are not liable, provided these disturbances result from normal farm practices”. The seven nuisances outlined by the government include

Agriculture and Food. As with a court, the NFPPB can pass legal decisions concerning a normal farm practice as related to smoke, dust, noise, odour, vibration, pests, and light.

The NFPPB accepts hearing applications only after local initiatives have been taken to resolve the conflict. This is to avoid bringing constituents into a tribunal setting when mediation at the onset of the concern can adequately address the conflict situation. The question to be answered is what are the informal approaches recognized by the NFPPB that can be taken at the local level to work through these conflict scenarios?

Primarily, the method for addressing agricultural dispute resolution is through the traditional authority of local engineers from the Ontario Ministry of Agriculture and Food as well as local environmental officers from the Ontario Ministry of the Environment. In most areas of the province, these staff members provide advice and assistance in addressing conflict scenarios when approached by individuals or the local, lower tier government. If these staff members are unable to resolve the conflict at hand, the matter can then be brought in front of the NFPPB (Desir, 2002).

An alternative to the use of government staff is an initiative that, though not mandated by the NFPPB, is reflective of the practice, process and organizational structure of the NFPPB. At the local level, some lower tier governments in the province have implemented agricultural advisory boards or otherwise known as 'peer review committees'. Examples of these committees and their functions are discussed in the following section.

5.1.3 Local Committees

There are a variety of formalized committee structures at the municipal level that could conceivably be involved in local dispute resolution strategies. Some are more ideal than others, but each is outlined below.

5.1.3.1 Nutrient Management Plan Review Committee

Nutrient Management Plan Review Committees have been set up by municipalities in Ontario and given the specific role of reviewing nutrient management plans submitted by farmers. It is critical to the integrity of the agricultural industry that these committees retain the necessary level of expertise among their members to properly

light, smoke, pest, noise, vibration, dust, or odour. These are practices deemed as not harmful nor dangerous to the people or the environment (Fraser & Desir, 2002, p. 6).

review nutrient management plans. It is felt by some, that this role should not be compromised by broadening the mandate of the review committees to include dispute resolution (Respondent, Interview, August 2002).

5.1.3.2 Agricultural Advisory Committees / Mediation Committees

Across Ontario, local Agricultural Advisory Committees² are emerging. As stated previously, these committees exist as sources of peer review built upon representation from members of the agricultural community.

These committees are working partnerships between local councillors and members of the agricultural community. Some act solely in an advisory capacity to their council. These are found especially in amalgamated municipalities, such as the City of Ottawa, where there is no or little agricultural representation on the council and the farm community has taken on the responsibility of being an informational resource to councillors (Respondent, Interview, August 2002)³. Others of these committees exist to mediate conflict based on nuisance complaints. And still a few others have branched out as sounding boards for conflict emerging from policy development, land use development and other initiatives that will affect the agricultural industry in their locality. One such committee is the Norfolk Irrigation Advisory Committee that deals primarily with issues of irrigation. Other committees, more broadly mandated, include the Perth County Agricultural Review Committee, the Oxford County Agricultural Advisory Committee, and the Huron County Farm Mediation Committee.

6.0 Existing Agricultural Mediation Committees –

Perth/Oxford/Huron

There are currently three local committees in Ontario that are mandated by their County to respond to agriculturally related inquires, complaints, and disputes. Other counties, facing similar pressures and increasing community dissent in relation to expanding livestock industries, have expressed interest in the model and some are in

² These Agricultural Advisory Committees predate and are not to be confused with the Local Advisory Committees referred to in Bill 81.

³ Ottawa's Rural Affairs Committee was disbanded following the 2003 elections in which a seasoned rural representative was not reelected to council. "There is no longer...a single farmer at the table." (Egan, 2004).

process of developing similar structures. As well, Bill 81 recommends the establishment of these committees and provides relevant related regulation and protocols.

The Perth County Agricultural Review Committee was the first to be formed in 1997, while the Oxford County Agricultural Advisory Committee and the Huron County Farm Mediation Committee were both formed in 1999. In the Perth and Huron cases, these committees function in separate capacities to larger Agricultural Advisory Committees.

6.1 Similarities between Existing Committees

Table 1 provides a comparison of the three committees. All three are similar in structure and mandate. All are centralized at the county level although Perth and Oxford's were more formally brought into being by by-law. Representatives from the major commodity groups are appointed to the committees. There is an executive of a chair, vice chair, and secretary and the chair is responsible for forming a subcommittee of three members to respond to each complaint. The process of responding will be discussed in a subsequent section. Annual meetings are held and annual reports are provided to council. All committees were provided with some level of training in their role at the onset. However, there is the need for this to be ongoing as members change and the infrequency of complaints leaves skills unpracticed.

6.2 Differences between Existing Committees

A major difference in the mandates of the committees is that the Oxford committee is to respond only to complaints arising from the Nutrient Management By-laws while the other two respond to any agriculturally related complaint. Other differences are in the committees' composition, funding, and action process.

6.2.1 Composition

Perth County has no council members on the committee while Huron County's committee includes these as well as ministry staff and a member of the Huron Farm Environmental Committees. None of the committees has non-agricultural representation, apart from the county councillors. This is due to the intent that the committee operates as a group of peers from the farm community.

6.2.2 Funding

In terms of funding, Huron's committee members do not receive any remuneration apart from mileage while both Perth and Oxford provide specified stipends for each complaint and for general committee meetings. In Oxford County, the rate is \$75 for the first four hours spent on a complaint and \$15 for the following four hours. The issue of remuneration is believed to have impacts on the motivation and level of involvement of committee members (Respondent, Interview, August 2002).

6.2.3 Action Process

Response processes vary in that complaints are directed to the municipal clerks in Huron and Perth and to the Chief Building Official (CBO) in Oxford. Complaints in Huron are reviewed by the Ministry of the Environment (MOE) before the subcommittee is engaged, while in Perth and Oxford, part of the subcommittee's review is to determine whether the Ministry needs to be involved. Delays on the part of the Ministry have resulted in delayed responses to some complaints in Huron (Huron Farm Advisory Committee, 1999), while the other two committees are highly aware of the judgement call they must make in assessing a complaint and determining whether it warrants MOE involvement.

Table 1: Comparison of Existing Agricultural Mediation Committees in Ontario

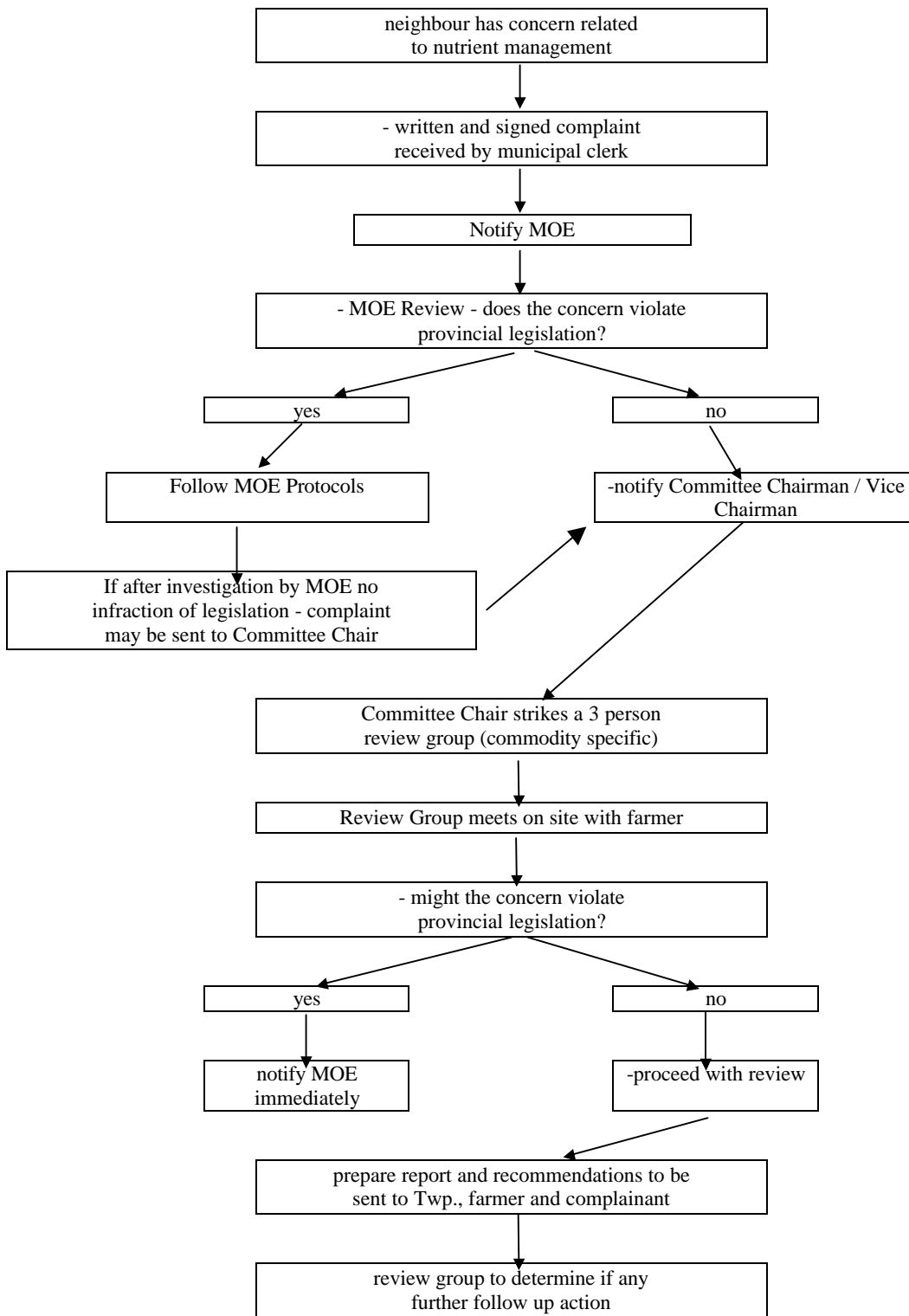
County	Huron County	Perth County	Oxford County
Name of Committee	Huron Farm Environmental Mediation Committee	Perth County Agricultural Review Committee	Oxford County Agricultural Advisory Committee (AAC)
Year Established	1999	1997	1999
Initiating Body	Huron Environmental Farm Coalition	Perth County Agriculture Committee	Oxford County Nutrient Management Review Committee
Mandating Authority	County Council	County Council -established by By-law	County Council -established by By-law
Purpose/Mandate	“Farm industry representatives assist County and Municipal Governments and Ministry of the Environment in resolving environmental complaints between farmers and neighbours, where no law has been broken, for the improvement of the Huron County environment.”	“...to deal with complaints and inquiries related to good farm management practices as they relate to livestock and poultry operations throughout the County...” “The Committee will operate as a group of peers from the farm community with representation from the major commodity groups and farm organization in the County. It is intended that the Committee review complaints and consider inquiries concerning farm management practices and that it will provide advice in respect to same. It may provide an alternative dispute resolution service and has the	“...to review complaints that arise from the Nutrient Management By-laws and to recommend to the municipality remediation actions to resolve these complaints. Such recommendations are to be based on agricultural Best Management Practices, good farm management and proper land stewardship. Advice from provincial Ministry staff may be sought prior to making such recommendations.” “The Committee will operate as a group of peers from the farm community and municipal Councils. With the agreement of the parties involved, the AAC may

		potential to resolve many agricultural issues locally without provincial involvement. The Committee acknowledges and understands that some complaints, specifically those relating to manure spills, clearly fall within the mandate of the Ministry of Environment and therefore the Committee would not become involved in these complaints.”	provide an alternative dispute resolution service and has the potential to resolve many agricultural issues without provincial involvement. Some complaints, including those relating specifically to manure spills, clearly fall within the mandate of the Ministry of the Environment and therefore, the Committee would not become involved with these complaints.”
Composition	<ul style="list-style-type: none"> - Representatives appointed by major farm commodity groups in the County (1-2 each) - Federation of Agriculture (1) - Christian Farmers (1) - County Councilors (2) - Huron Farm Environmental Coalition (1) - OMAFRA (3) 	<ul style="list-style-type: none"> - Representatives appointed by major farm commodity groups in the County - Federation of Agriculture (1) - Christian Farmers (1) 	<ul style="list-style-type: none"> - Representatives appointed by major farm commodity groups in the County - Federation of Agriculture (1) - Christian Farmers (1) - County Councilors (2)
Structure	<ul style="list-style-type: none"> - Executive (Chair, Vice Chair (1st), Vice Chair (2nd), Secretary) - Annual Meetings (1-2/yr) - Subcommittee of 3 for site visits 	<ul style="list-style-type: none"> - Executive (Chair, Vice Chair, Secretary) - Annual Meetings (1-2/yr) - Subcommittee of 3 for site visits 	<ul style="list-style-type: none"> - Executive (Chair, Vice Chair, Secretary) - Annual Meetings (4 first yr, 2/yr thereafter) - Subcommittee of 3 for site visits

Response Process	<ul style="list-style-type: none"> - Complaint filed with clerk - Clerk notifies MOE & Chair - If no MOE involvement, Chair forms subcommittee - On-site meetings - Reports to farm operator, complainant, municipality, county 	<ul style="list-style-type: none"> - Complaint filed with clerk - Clerk notifies Chair - Chair forms subcommittee - Review if MOE required - Site visit - Reports written to farm operator, complainant, municipality 	<ul style="list-style-type: none"> - Complaint filed with CBO - Clerk notifies Chair - Chair forms subcommittee - Review if MOE required - Site visit - Reports written to farm operator, complainant, municipality
Funding	Complaints – municipality <ul style="list-style-type: none"> - Mileage - no other costs covered Committee Mtgs – County	Complaints – municipality <ul style="list-style-type: none"> - cost recovery basis - mileage – 30 cents/km Committee Mtgs – County <ul style="list-style-type: none"> - \$50/mtg (2 max/yr) 	Complaints – municipality <ul style="list-style-type: none"> - \$75/first 4hrs, \$15/ next 4hrs - mileage Committee Mtgs – County <ul style="list-style-type: none"> - \$50-\$100 (half/full day)
Training	- by County & Ministry staff	- by County & Ministry staff	- by County & Ministry staff
Public Education			- annual seminars for farmers, put on by Committee and County staff

(HFEC, 1999; Perth County 2001; Oxford County, 1999)

Figure 2: Huron Farm Environmental Mediation Committee Process



(HFEC, 1999)

6.3 Local Conflict Resolution in Practice

“Farmer A” vs. “Farmer B”

Returning to the introductory example of “Farmer A” and “Farmer B”, how would the outcome of their dispute have been different if they had been able to channel their complaints through a local mediation committee? Using the process set out by the Huron Farm Environmental Mediation Committee (Figure 2), this conflict may have ended quite differently.

“Farmer A” would have gone to his municipal office and put his complaint about “Farmer B’s” proposed new barns in writing. The municipal clerk would then have notified the Ministry of the Environment (MOE) about the complaint. Upon review of the complaint and the current circumstances surrounding the proposed new barns, the MOE would have determined there to be no violation of provincial legislation and so the clerk would notify the Committee Chair or Vice Chair. Three people from the mediation committee would then have been asked to form a subcommittee or review group with one of them being specifically from the hog sector and likely another being from the dairy sector. This is done so as to be able to identify with each farmer and also to bring in any specialized commodity knowledge that might be helpful in making recommendations.

Then, within a couple days, both farmers would be contacted by someone on the review group and asked if they would be willing to meet on site with the group. It would be explained that this is completely voluntary and that the committee has no legal jurisdiction but rather seeks to understand both sides and assist in any possible resolution. Hearing the perspectives of “Farmer A” and “Farmer B”, the review group would compile a list of circumstances of how and why the complaint arose. Some of the history and sentiments expressed in the preamble may well be communicated to the group as part of this process. What is important is that each farmer’s side of the story is told. From there, the review group would assess the situation for any best management practices that might mitigate the complaint or make other suggestions in consultation with each farmer as to how to alleviate “Farmer A’s” concerns.

In this case, some possible recommendations may have been that there be an agreement of when, where, and how the pig manure would be spread; for “Farmer B” to

provide more information for “Farmer A” about the “loop” type of operation and the technology being used to deal with the manure; or even a suggestion for “Farmer B” to pay for “Farmer A” to install air conditioning in his home so as to deal with possible odour. A report would then be written addressing what was learned at the site meeting and outlining any resulting recommendations. This report would be forwarded to the municipal clerk who would then send copies to the county and to the affected parties. The review group would determine the need for any follow-up action on their part. And from here, it would be up to the two parties as to whether this process was sufficient for dealing with their concerns or whether they would want to continue toward more costly legal action.

6.4 Overall Success of Committees

While these committees have no statutory authority, they have had a reasonable degree of success. In Huron County, for example, several complaints have come to this committee annually. Whether regarding odour or water quality, so far the majority of complaints relate to improper spreading practices. In general, the committee has been successful in either encouraging farmers to alter their management practices or in explaining to the complainant the legitimacy of certain practices. The few situations when this process has not worked have been where the mandate of the committee did not match the expectations of the complainant or when the conflict had escalated to a point of needing professional intervention. Much success depends on the desire and willingness of the parties to work toward a resolution.

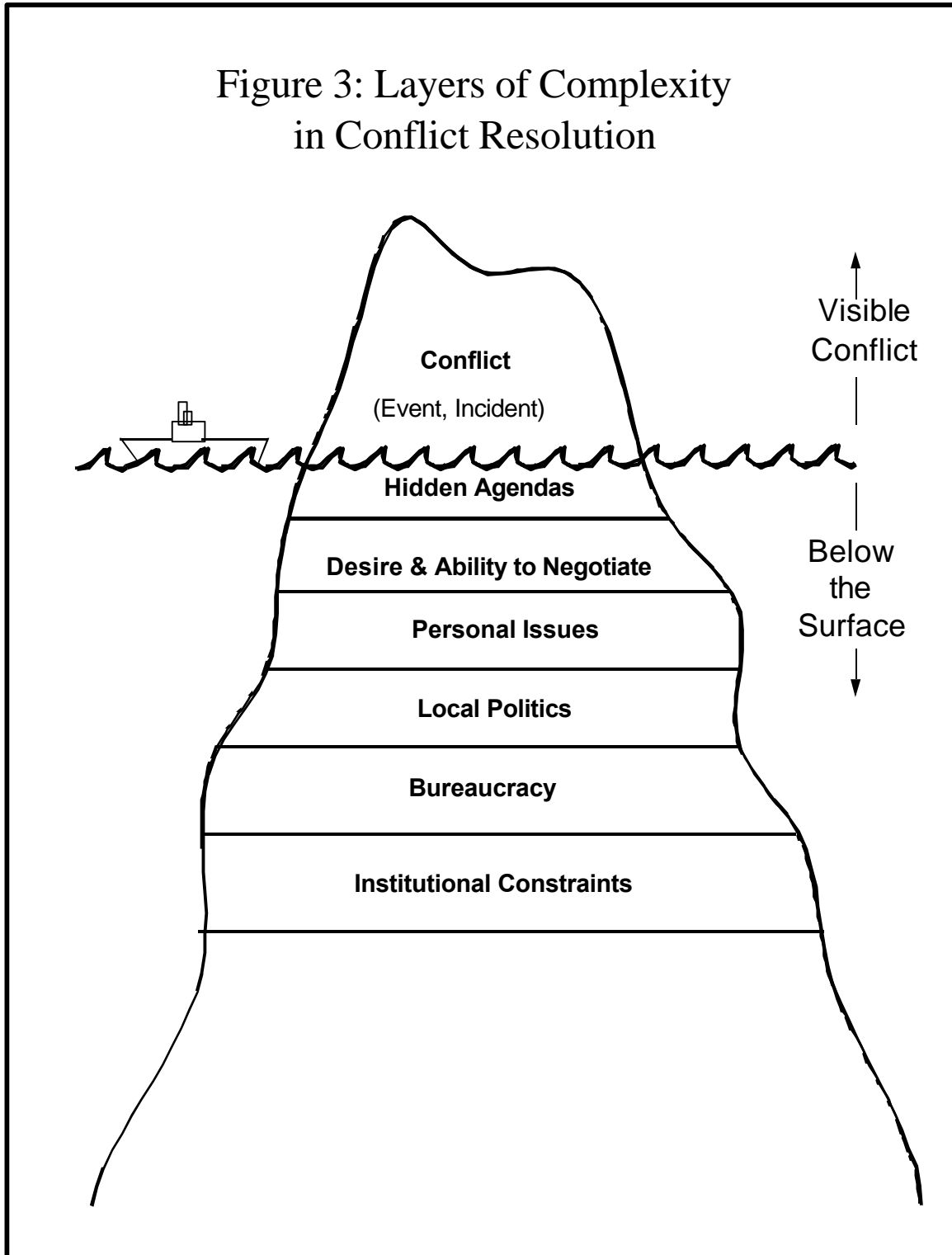
7.0 Layers of Complexity in Resolving Conflict

As the above scenario illustrates, conflict is rarely only about the specific event or circumstance involved in the complaint. Inevitably, when mediation committee members meet with landowners and hear their perspective or their ‘side of the story’, the underlying layers of the conflict begin to expose themselves (Figure 3). Conflict can be likened to an iceberg where what is visible above the surface is rarely an accurate reflection of the depth and layers of what is underneath. Below the surface often lie:

- hidden agendas – something else the person wants but this is a more ‘acceptable’ way to express it;

- varying levels of desire and ability to negotiate to resolve the conflict;
- personal issues such as a previously denied application, family break-up, family death or illness, or a financial crisis;
- local politics;
- bureaucracy – professional distance, a person’s alienation from the process;
- institutional constraints – municipal and county jurisdictional and financial limitations.

It is through uncovering and understanding these issues that conflict can begin to be effectively mediated and diffused. Otherwise, conflict threatens to escalate and blow apart relationships of individuals and of whole communities. By providing opportunities for parties to explain their perspectives and essentially tell their story, mediation/advisory committees can effectively look below the surface, identify and try to address issues that are at the root of a complaint.



8.0 Learning from Practice

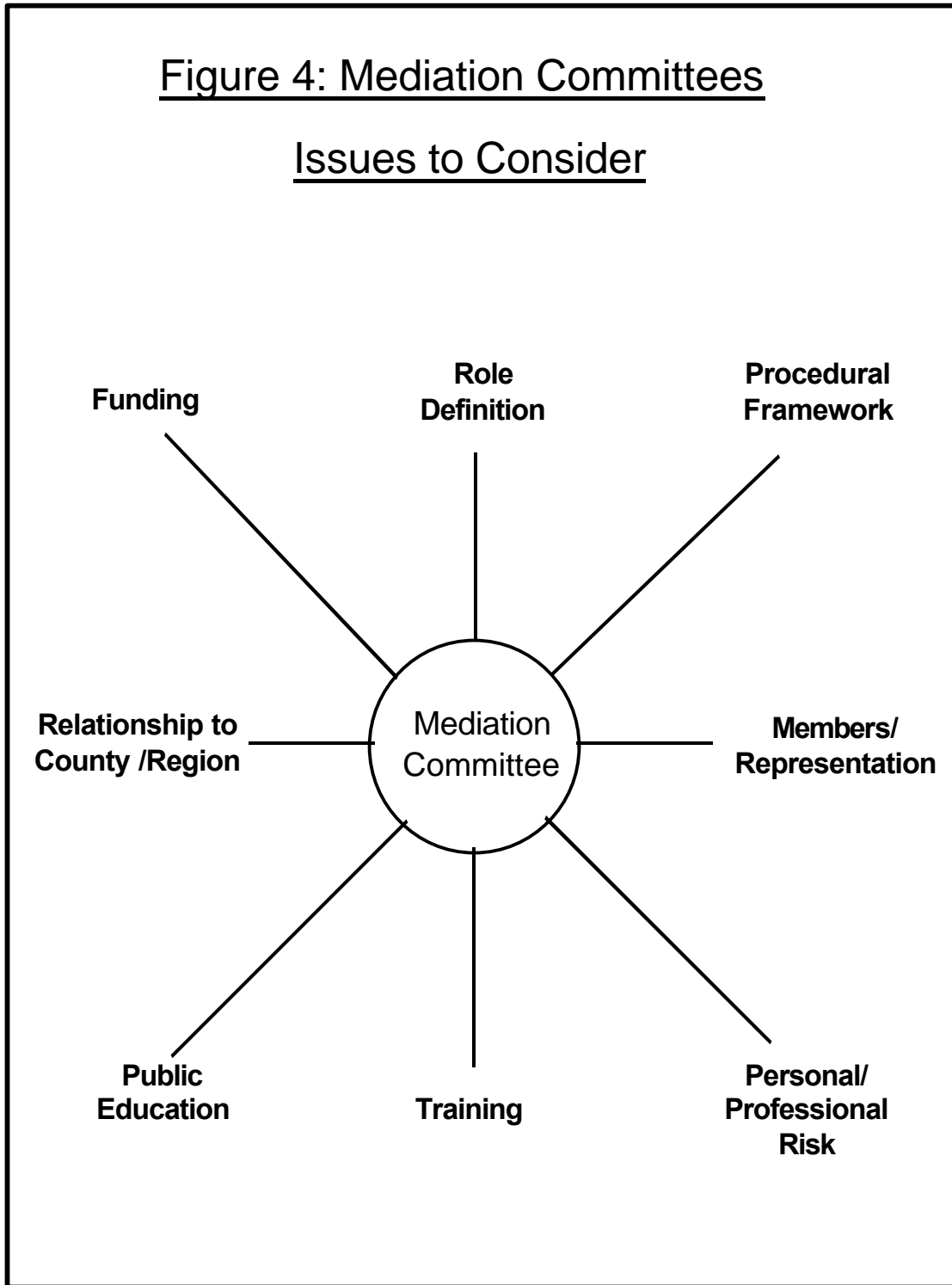
The experience of the existing committees involved in agricultural dispute mediation highlights several issues that need to be considered in the replication and development of this committee structure.

- *Relationship to County/Region* – It is important that the administration of the committee be centralized at the county/regional level. This would mean that the county/regional council would take ownership of the committee and thus accept responsibility and liability for the committee. This would give greater legitimacy to such a committee. Also, representation of commodity groups tends to be on a county/region-wide basis. Broader geographic representation of members also aids in the confidentiality of issues (i.e. a committee member from the south might deal with an issue in the north, outside their own community).
- *Role Definition* – It is important to define the types of disputes to be handled by the committee. As well, when setting up such a committee, the expectations regarding how involved they become in resolving a dispute or the limits to their mandate needs to be defined.
- *Procedural Framework* – It is critical to be clear in defining at what point the MOE becomes involved. Also to consider is the question about levels of confidentiality.
- *Funding* – Where does funding come from and how much? Do committee members receive remuneration for their time and work or is it entirely voluntary? This can be a significant incentive for the long-term viability of committees.
- *Members/Representation* – The quality of members, in terms of personal and professional characteristics, is critical to the effectiveness of the committee. Such decisions need to be made intentionally and wisely – perhaps by establishing and using specific selection criteria. Also, a question for further consideration is whether there is a role for non-farm community representation on the committees.⁴ This would need to be clearly developed and defined so as not to jeopardize the aspect of the committee being a peer review body for farmers. However, there may be an educational role that this committee could play for the non-farm community.

⁴ Non-farm member representation on the committee is recommended in the Regulation and Protocols of Bill 81.

- *Personal/Professional Risks* – Potential members could have concerns about possible implications of their involvement on the committee from other sectors of the agricultural community. It is important to recognize this, whether it is a matter of perception or reality, and to determine how this can be addressed.
- *Training* – This needs to be ongoing and centrally organized, possibly in collaboration with other groups so that members from different areas are able to learn from each other's experience. Training is also important in order to maintain a certain level of skills development.
- *Public Education* – There is a need for the public to be aware of this mechanism for conflict resolution. There is also a need for the committees to play a greater role in educating the public about agricultural practices.

The successful replication of this model for local dispute resolution is dependent on municipalities and potential committee members addressing each of these issues in addition to others they may identify. There are areas within the present model that can be improved upon and changes that can be made to better fit a specific local reality. What is important is that the wheel does not get reinvented but that it is improved upon.



9.0 Conclusion

Across Ontario, there is a changing nature of the rural countryside through such impacts as the influx of non-farm rural residents and the expansion into larger, more intensified livestock operations. These changes are impacting on the social, economic, and environmental perceptions of the diversified population and creating outlets for conflict to occur within.

There has been a strong need to address these conflicts in Ontario specifically when they arise from clashes concerning agriculture. Today agriculture is at a crossroad. Its viability to continue production is dependent on approaches to resolve disputes concerning normal farming practices. If not, agriculture may not be able to continue in a productive and efficient manner.

The government of Ontario, at both a provincial and municipal level, has taken a proactive approach to addressing agricultural related disputes. The roles played by the Normal Farm Practices Protection Board and the numerous Agricultural Advisory Committees provide a strong foundation on which to build the next generation of local dispute resolution strategies. Existing committees mandated to deal with agricultural conflict provide the necessary framework for the development of a model that can be replicated in communities across the province. And in all of these it is the goal to ensure the rights of agriculture as well as the community at large.

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* Names of respondents are listed at the end of the document. Comments are not attributed to specific individuals in order to protect their identity.

11.0 List of Respondents

- Bradshaw, Sam. Huron County
- Danbrook, Russ. Perth County
- Debryn, John. Oxford County
- Hudson, Bruce. City of Ottawa
- Petheram, Walter. Norfolk County
- Voelzang, Bauke. Norfolk County
- Vincent, Neil. Huron County
- Zekveld, Dennis. Ontario Pork

Informal Methods of Conflict Resolution in Rural Manitoba

1.0 Introduction

Changes in the structure of agriculture are being seen throughout the province of Manitoba. Similar to trends occurring across Canada, the livestock sector in Manitoba is becoming increasingly specialized. This has resulted in fewer and larger farms. Concerns over the concentration of livestock on these large farms have also become more common with the increased awareness of environmental issues surrounding livestock production. Conflict has thus become a common occurrence within the rural community as the intensive production of livestock does not often fit into the idealized vision of the countryside.

2.0 Changes in Livestock Production

Since 1971, changes surrounding aspects of the agricultural sector have continued to occur in Manitoba. Farm population trends have shown a decline in the number of people involved in agriculture. In 1971, more than 13% of Manitoba's population, approximately 131,000 people, worked on farms. By 1996, only 7% of the population, approximately 79,840 people, was employed on farms (Tyrchniewicz, *et al.*, 2000, pg 3). Not only have less people been employed on farms, but the number of farms has decreased. Between 1971 and 1996, a decrease of more than 30% was seen in the number of farms, with only 24,400 left. By 1999, the number of farms had dropped to 23,400. However, while the number of farms has dropped, the size and amount of capital investment per farm has increased. For example, the average size of a farm in 1971 was 543 acres, and by 1996 the average size had increased to 784 acres (Tyrchniewicz, *et al.*, 2000, pg 3-4). Within the hog industry itself, the number of farms in Manitoba decreased by 50% between 1990 and 2000 from 3150 to 1450. But the average number of hogs per farm increased from 388 to 1290 head during the same period (Tyrchniewicz, *et al.*, 2000, pg 7).

Despite the changing trends, agriculture remains an important part of the economy of Manitoba. Between 1990 and 1995, agriculture contributed approximately 11% to the provincial GDP. In 1999, approximately 37,100 people were directly employed by the

agricultural industry and 20,400 were employed in sectors dependent upon agriculture, such as processing and slaughtering (Tyrchniewicz, *et al.*, 2000, pg 6). With such a great reliance on this industry for livelihoods, it is important that agriculture remain a sustainable and viable sector of the economy into the future.

2.1 Why Changes in Livestock Production?

There are numerous reasons why changes in the livestock sector are occurring. Both international and national factors have been involved in increasing the amount of livestock production in Manitoba. A variety of factors have contributed to a lower price of grain on the world market. Rising incomes across the globe change the structure of people's diets and have increased the demand for meat products. This has often made it more profitable to raise livestock. Improved technologies in the livestock sector have also occurred over the years. Technologies such as better animal husbandry and genetics, and environment controlled housing for livestock have made it possible to undertake the raising of livestock under the often harsh Manitoba conditions (Tyrchniewicz, *et al.*, 2000; Manitoba Agriculture, Food and Rural Initiatives, 2000).

Along with technological improvements, the reduction in government subsidies for grain has also made raising livestock more appealing. The loss of the Crow Benefit, a support program of the Federal government to subsidize rail freight costs for grain, means that farmers in Manitoba must now pay the full freight costs on export grain. As a result, many cash crop farmers are making the switch to livestock (Tyrchniewicz, *et al.*, 2000; Manitoba Agriculture, Food and Rural Initiatives, 2000).

Other factors, along with those mentioned above have encouraged the growth of the livestock industry. These include the diversification of production by farmers in order to reduce the risks associated with generating incomes from farming, increased investments and lending programs so that farmers may take advantage of the improvements in technology, and the effort of the government in Manitoba to expand hog processing within the province (Tyrchniewicz, *et al.*, 2000; Manitoba Agriculture, Food and Rural Initiatives, 2000).

2.0 Regulation of Livestock Operations and Conflict Management

The province of Manitoba currently deals with issues pertaining to livestock developments, including those that cause conflict, through provincial regulations and municipal planning and by-laws. The province regulates issues such as livestock operations siting, livestock manure and mortalities, and other nuisance matters through the Environment Act, the Farm Practices Protection Act, and the Planning Act. Municipalities also play a role in regulating livestock operations through local land-use planning. The efforts of the province and municipalities help to ensure the sustainability of Manitoba's livestock industry through provisions to protect the environment and minimize conflict.

3.1 The Environment Act

The Environment Act establishes the Livestock Manure Management and Mortalities Management Regulation. This regulates the disposal of dead animals, manure storage, manure spreading and manure hauling. The Regulation requires that operators dealing with manure obtain a permit to ensure that the facility has been properly designed. As well, it requires that facilities with more than 400 Animal Units (AUs) prepare an annual Manure Management Plan (Tyrczniewicz, *et al.*, 2000). The Regulation addresses issues of pollution from manure and mortalities, and provides methods for increased protection of the environment. The Regulation thus aims to avert environmental problems, as well as the conflict resulting from environmental concern (Manitoba Agriculture, Food and Rural Initiatives, 2001).

3.2 The Farm Practices Protection Act and the Farm Practices Protection Board

The purpose of the Farm Practices Protection Act is twofold. The Act protects the agricultural operator from nuisance claims when the operator is involved in normal farm practices and is not violating a by-law, the Environment Act, or the Public Health Act. In this way, the Farm Practices Protection Act also protects the neighbouring community from any nuisances resulting from unacceptable farm practices (The Farm Practices Protection Act, 1992; Manitoba Agriculture, Food and Rural Initiatives, 2001).

The Farm Practices Guidelines were created to assist in the identification of normal farm practices within each livestock sector. The guidelines are intended to be used as a standard by the farmer, the municipalities, and the Farm Practices Protection Board, against which an operation's practices can be compared and determined to be either normal or unacceptable. By following the guidelines, the producer can reduce the potential for pollution and minimize nuisances, and the Farm Practices Protection Board can quickly resolve disputes surrounding these issues (Tyrchniewicz, *et al.*, 2000; Manitoba Agriculture, Food and Rural Initiatives, 2001).

The Farm Practices Protection Board, established under the Act, determines whether nuisance complaints against farm operators are justified. The Board receives a written complaint, and then proceeds to investigate the accusation or mediate the dispute. A hearing is held, at which time a ruling about the complaint is made. The use of the Board is a requirement in the process of taking a nuisance complaint to court as no nuisance complaint can be taken to court until it has been deemed unacceptable by the Board. As well, the ruling made by the Board can be filed with the courts and thus enforced under law (Manitoba Agriculture, Food and Rural Initiatives, 2001). Although the Farm Practices Protection Board, under the Farm Practices Protection Act, provides an alternative to a possibly costly and lengthy lawsuit, it is still a formal regulatory process, and thus may not result in ideal neighbourly relations.

3.3 The Planning Act

The Planning Act gives municipalities the primary authority over land use planning. The municipality can voluntarily adopt district or municipal development plans and municipal zoning by-laws, and thus can designate areas for livestock development and regulate the siting of livestock facilities (Manitoba Agriculture, Food and Rural Initiatives, 2000). The Planning Act provides a procedure for the creation of local development plans and zoning by-laws (including their preparation, review and approval) and includes room for public involvement and appeals, as well as room for adjustments to be made to the plan in the future (Manitoba Agriculture, Food and Rural Initiatives, 2000).

The Provincial Land Use Policies Regulation was created under the Planning Act as a guide to land use planning. It was intended that the Regulation be used as a standard

against which local governments could compare possible developments, especially in regions with no development plan (Manitoba Agriculture, Food and Rural Initiatives, 2000; Manitoba Agriculture, Food and Rural Initiatives, 2001). The overall goal of the Regulation is to promote sustainability by following certain policies for development. The policy regarding agriculture aims to make certain that prime agricultural land is used in an economically sustainable and environmentally sound manner. To do so, this policy emphasizes the protection of economically viable agricultural land from encroachment by other land uses (The Planning Act, 2004). By following the policy regarding agriculture, outlined in the Land Use Policies Regulation, it is the intention that potential negative environmental and social issues surrounding livestock operations will be minimized.

3.4 Municipal Land Use Planning

As mentioned previously, under the Planning Act municipalities can establish land use planning regulations. As of the year 2000, 184 out of 201 municipalities in Manitoba utilized local planning and five municipalities are in the process of forming planning districts (Tyrchniewicz, *et al.*, 2000). Along with creating development plans and local by-laws, and controlling zoning, municipalities are also responsible for issuing permits to regulate the siting of livestock operations. Since this is controlled at the local level, inconsistencies exist between municipalities, thus resulting in variability from stringent to lax regulations regarding livestock operations. In some municipalities, the livestock sector is a permitted land use whereas in other regions the activity is designated as a conditional-use and thus must undergo a conditional-use hearing before a permit can be issued. Further, twelve municipalities have no local plan in place and therefore have no legal authority to regulate intensive livestock operations. In this situation, Manitoba Conservation issues permits (Tyrchniewicz, *et al.*, 2000; Manitoba Agriculture, Food and Rural Initiatives, 2000).

The process used for approving livestock developments, as outline below, varies depending upon the existence of local land use planning:

In areas with local land use planning (Manitoba Agriculture, Food and Rural Initiatives, 2000)

- The proponent of the project plans the development. The proponent may consult with Manitoba Agriculture and Food, and Intergovernmental Affairs and Conservation.
- The proponent submits an application to the rural municipality or planning district for a Development Permit.
- An initial review of the application is carried out by the Council. Advice may be requested from the provincial government's Technical Review Committee (TRC) at this point. (Note: If the proposal is 400 Animal Units A.U or greater and is a conditional use in the zoning by-law, a TRC review is mandatory.)
- The development may either be approved and the Development Permit issued (if livestock production is a permitted use and the proposed development meets the minimum site requirements of the applicable zoning by-law), or the development may be subject to a Conditional-Use public hearing before a permit can be issued
 - *The development permit is issued:* The proponent must then apply for a Water Rights License if water requirements are 25,000 litres or more per day and a Manure Storage Structure Permit from Manitoba Conservation.
 - If the storage permit is refused due to the characteristics of the potential site, then the application procedure ends.
 - If the storage permit is issued with site specific design requirements:
 - ❖ The construction process proceeds (with inspection from Manitoba Conservation during and following the construction).
 - ❖ If the facility is larger than 400 Animal Units (AUs), a Manure Management Plan is required and annual registration and an audit of the Plan occurs. (Note: the Province is now proposing to reduce the regulatory threshold to 300 A.U.)
 - *If the development is subject to a Conditional-Use hearing:* The conditional land use hearing is held and the development project is either rejected (at which point the application process ends) or the

conditional land use order is approved and subject to specific conditions:

- Once the conditional land use is permitted, the proponent must apply for a Water Rights License (where use exceeds 25,000 litres/day) and Manure Storage Structure Permit from Manitoba Conservation.
- If the storage permit is refused then the application process ends.
- If the storage permit is issued and the specific conditions specified by the Conditional Land Use Order are met then the Development Permit may be issued or denied. If the Development Permit is denied then the application process ends.
- If the Manure Storage permit and Development Permit are issued:
 - ❖ The construction of the storage and buildings proceeds. Manitoba Conservation inspects the manure storage during and following construction.
 - ❖ Registration and annual audits are required of the Manure Management Plans (if currently greater than 400 AUs).

In areas with no local land use planning (Manitoba Agriculture, Food and Rural Initiatives, 2000)

- The proponent of the project plans the development with or without the advice of Manitoba Agriculture & Food, Manitoba conservation or engineering consultants.
- The proponent applies for a Manure Storage Structure Permit and, if required, a Water Rights License from Manitoba Conservation.
- If the Manure Storage Permit is refused then the development ends.
- If the Manure Storage Permit is granted with site-specific design requirements, then the construction proceeds with inspection by Manitoba Conservation during and after construction.
- If a Manure Management Plan is required (i.e. where the ILO is 400 AU or more) then annual registration and audit occur.

The existence of formal, regulatory processes both directly (as in the case of the Farm Practices Protection Board) and indirectly (the Planning Act) deal with conflict throughout rural Manitoba. However, despite the existence of these, conflict between farmers and non-farmers, and farmers and farmers still occurs. In response to this, the Manitoba Pork Council, an association representing the pork industry, has taken it upon itself to spearhead two programs of informal conflict resolution, each using a different approach. The Peer Advisors Program addresses conflict surrounding hog operations after the conflict has already occurred in the community. The Livestock Facilitated Community Consultation (LFCC) process deals with potential conflicting issues surrounding proposed livestock operations ideally in the early proposal stage but clearly prior to local council's decision.

4.0 The Manitoba Pork Council

The Manitoba Pork Council (MPC) is an industry association representing approximately 1600 hog producers in Manitoba (Aime, 2003). The goal of MPC is to ensure the “sustainability and prosperity of the pork industry for the good of hog farmers and all Manitobans” (Manitoba Pork Council, 2002 - Annual Report). Its purpose is therefore to serve the interests of the industry and it is thus involved with all aspects to facilitate an economically sustainable and environmentally responsible pork industry (other than marketing). Although the MPC is a non-government, non-profit association, its mandate is derived from a provincial statute (The Farm Products Marketing Act). It also provides core funding to the research community to conduct third party independent production and environmental research (Aime, 2003; Mah, 2004). Due to this relationship, it is able to provide a variety of programs and information for the hog producers of Manitoba, including swine production research, animal care programs, international market development, environmental stewardship, human resources development, and public affairs programs (Manitoba Pork Council website).

The sustainability and prosperity of the pork industry is the overall goal of the MPC. Along with production and environmental initiatives, this goal increasingly requires the fostering of good neighbour relations between producers and the community through the resolution of conflict. Therefore the MPC has initiated the Peer Advisors

Program and the Livestock Facilitated Community Consultation process to deal with local concerns and conflicts surrounding the hog industry.

5.0 Peer Advisors Program

5.1 A Brief History of the Peer Advisors Program

The Peer Advisors Program was initiated in 1998. The rationale for the program stemmed from the need for the opportunity for complaints and concerns of local citizens to be brought to the attention of the pork industry. Along with directly addressing the issues of conflict between the industry and members of the community, the Peer Advisors Program allows the industry to become more informed of community concerns and perceptions, as well as giving the industry the opportunity to become proactive in planning (Mah, 2003).

Since the beginning of the Peer Advisors Program, the program has been fairly active in mediating disputes surrounding the hog industry. This has also been despite a slow-down of the program in 1999 when the program was re-profiled, the co-ordinator changed, and a new training workshop for the Peer Advisors was developed (Mah, 2003).

When the Peer Advisors Program started in 1998, there were initially around 30 Peer Advisors recruited from within the hog industry across Manitoba. Today there are about eight active Peer Advisors dealing with issues arising in the community (Mah, 2003 – Personal Communication).

5.2 The Purpose of the Peer Advisors Program

The purpose of the Peer Advisors Program is to deal with local concerns and nuisance complaints towards the pork industry by using a third-party neutral from within the industry. The use of farmers from within the pork industry as Peer Advisors is based on the notion that the best way to deal with complaints in the farming industry is to use fellow farmers who understand the industry and its challenges (Manitoba Pork Council, 1998). The Peer Advisors Program is also an informal process that can be used to supplement more formal processes for dealing with conflict resolution between farmers and neighbours such as the Manitoba Farm Practices Protection Act and Board (Mah, 2003).

5.3 Issues Dealt With by the Peer Advisors Program

The Peer Advisors Program deals mainly with nuisance complaints pertaining to hog operations. The two most frequent complaints are those related to odour from manure storage or barns, and the disposal of deadstock or mortalities (i.e. dead livestock). Although it has been the experience of the Peer Advisors that complaints towards hog producers may sometimes stem from other underlying issues such as previous experiences and/or relationships, generally the complaints addressed by the Peer Advisors Program are similar to those that have been traditionally dealt with by the more formal mechanisms mentioned above (Mah, 2003; Mah, 2003 – Personal Communication; Manitoba Agriculture, Food and Rural Initiatives, 2003).

5.4 Access to the Peer Advisors Program

The Peer Advisors Program deals only with hog-related issues and conflicts. Since the program is based within the hog industry and uses hog producers as Peer Advisors, only those complaints regarding hog operations will be addressed by the Peer Advisors Program. Anyone (i.e. neighbour within the community, fellow producer, representative of the municipality) with a concern or complaint regarding one of these operations can contact the Peer Advisors Program (Mah, 2003; Manitoba Pork Council, 1998).

5.5 Composition of the Peer Advisors Program

The Peer Advisors Program is composed of the Peer Advisor Coordinator and the Peer Advisors. The Peer Advisors Program is run by the Peer Advisor Coordinator who receives complaints and assigns cases to the Peer Advisors (Manitoba Pork Council, 1998). The Peer Advisors are members of the pork industry throughout Manitoba who have been asked by the Peer Advisor Coordinator to volunteer with the program. As a representative of the pork industry, the Peer Advisor represents the standards that the industry must uphold. The Peer Advisor must therefore be familiar with the regulations and normal practices of the industry. As individuals, the Peer Advisors also all have different personalities and experiences and thus are able to deal with a variety of situations (Aime, 2003).

5.6 The Process Used by the Peer Advisors Program

(Peter Mah, 2003; Manitoba Pork Council, 1998) (Figure 1)

- The process of the Peer Advisors Program is complaint driven and is thus initiated by a complaint received by the coordinator. The Peer Advisors Coordinator documents the complaint and chooses a Peer Advisor to deal with the complaint. The choice of Peer Advisor is based on the personality of the Peer Advisor and their distance from the site of conflict, although the Peer Advisor maintains the right to refuse involvement in any situation.

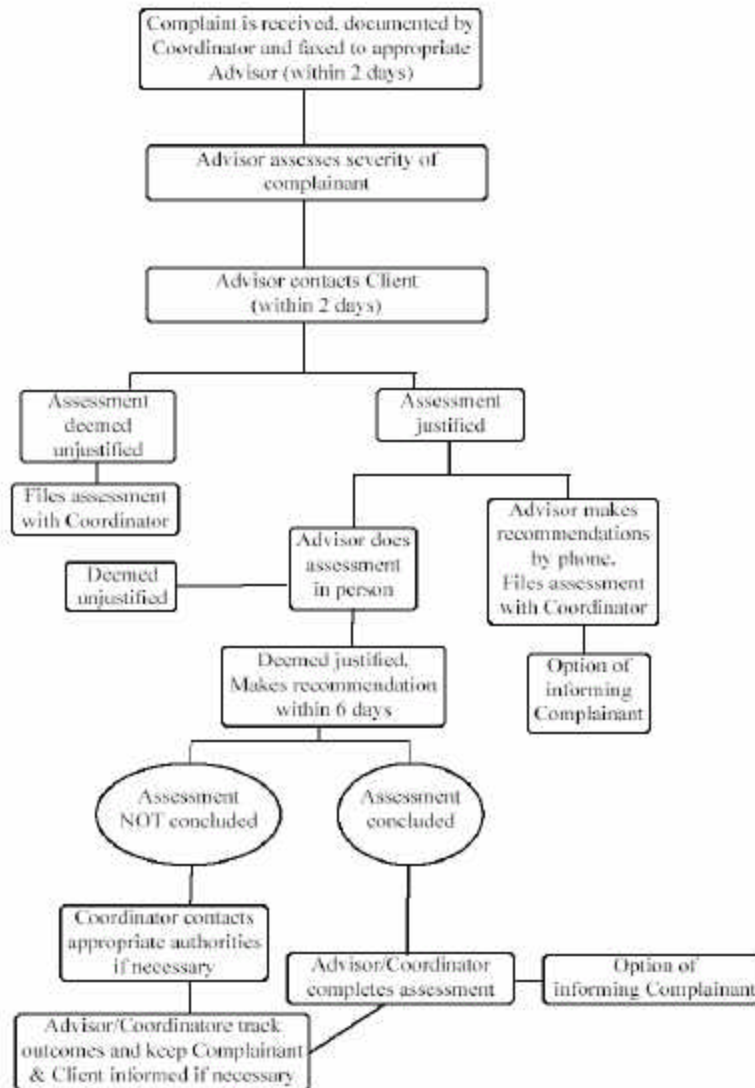


Figure 1: Peer Advisors Program Resolution Process

Source: Manitoba Pork Council, 1998

- Once the Peer Advisor is chosen, the Peer Advisors Coordinator faxes the documented complaint to the Peer Advisor within two days. Once the form is received by the Peer Advisor, the appropriate information is collected. The Peer Advisor may contact the Complainant for additional information or assess the complaint by consulting other sources (including the Peer Advisors Program Coordinator).
- The Peer Advisor arranges a meeting with the Client (i.e. the person that the complaint is about) normally targeted within two days of receiving the complaint to assess the situation. Although, if the situation is not severe, the Peer Advisor may deal with the issue directly over the phone by offering advice or information.
- During the assessment with the Client, the complaint is deemed either unjustified or justified.
 - If the *complaint is unjustified*, then the Peer Advisor notifies the Peer Advisor Coordinator with the report. The Coordinator contacts both the Complainant and the Client and informs them of the reasons for deeming the complaint unjustified and the file is closed.
 - If the *complaint is justified*, then the assessment of the Peer Advisor is either concluded or not concluded:
 - If the *assessment is concluded* then the solution is recommended to the Client within (the target) six days of the assessment. In order to determine this solution, the Peer Advisor may have to contact the Peer Advisor Coordinator or other additional resources. Once the solution is recommended to the Client, the Peer Advisor files a report with the Peer Advisor Coordinator (and where feasible, following up on whether the solution is implemented) and the Peer Advisor Coordinator informs the Complainant of the outcome. The file is then closed.

- If the *assessment is not concluded*, then the appropriate authorities¹ are contacted. The Peer Advisor and Peer Advisor Coordinator keep track of the outcome and inform both the Client and the Complainant. The file is closed once the solution is implemented.

5.7 Methods of Dispute Resolution used in the Peer Advisors Program

Informal dispute resolution is used in the Peer Advisors Program. The Peer Advisor does not bring the two parties together during resolution. Instead the Peer Advisor works as an intermediary between the Client and the Complainant. Thus the Peer Advisors Program uses a form of shuttle diplomacy (Mah, 2003).

5.8 Authority of the Peer Advisors Program

The Peer Advisors Program is both informal and voluntary. Unlike the involvement of Manitoba Conservation or the Farming Practices Protection Board, both of which has the legal authority to order and enforce a solution and can also issue fines, the Peer Advisors Program can only suggest solutions and do not have the authority to enforce them. Farmers are drawn to the process so that the formal, lengthier and more expensive mechanisms for dealing with conflict can be avoided. This saves the farmer from bad press and improves neighbour to neighbour relations. The Peer Advisors Program works on peer pressure from the industry to maintain high standards for hog production (Mah, 2003; Aime, 2003).

5.9 Funding of the Peer Advisors Program

The Peer Advisors Program is entirely funded by the MPC through the Peer Advisors Program fund. The MPC contributes to this program through the producer levies collected from the sales of Manitoba hogs. At the time of the study, for every hog that is sent to market, MPC collects \$0.85. MPC collects \$0.20 for every weaning pig that is exported out of Manitoba. (Note: In January 2004, levies have been reduced to \$0.80 per market hog and \$0.19 per weanling). This money is used to fund all of MPC's programs, including the Peer Advisors Program (Mah, 2003 – Personal Communication).

¹ Appropriate authorities (i.e. government officials) are contacted if illegal activities are occurring or if the regulations of the Environment Act or the Farm Practices Protection Act are not followed. Peer Advisors should not be involved in these situations.

The Peer Advisors Program budget is used to compensate all of the costs of the Peer Advisors, including per diems for time, meals and mileage (Mah, 2003).

5.10 Training

The Peer Advisors undergo training in conflict resolution. Training occurs at the time of joining the Peer Advisors Program and every one to two years thereafter (Mah, 2003 – Personal Communication).

The initial training, at the start of the Peer Advisors Program, occurred during one seminar and was facilitated by Craig Murray, a lawyer with formal mediation training. This training on interpersonal communications and conflict resolution involved exposure to conflict and different forms of dispute resolution, communication skills including speaking, listening, questioning, paraphrasing, and methods for interest-based negotiation (Manitoba Pork Council, 1998).

Although other commodity groups are not involved in the Peer Advisors Program, they are still welcome to be involved in the training program offered, since this program has applicability across all livestock sectors (e.g. a Director of the Dairy Producers of Manitoba took the Peer Advisors Program training in the spring of 2003) (Mah 2003).

5.11 Community Awareness and Perception of the Peer Advisors Program

The communities that have been involved in conflict resolution by the Peer Advisors Program agree that the program is useful. When reoccurrences of conflict that were originally dealt with by the Peer Advisors Program occur, they are often addressed by the program again indicating that the community believes the program is worthwhile and valuable. With the Peer Advisors Program, the community can see that action is being taken and that they have somewhere to turn for voicing their concerns and complaints (Mah, 2003; Aime, 2003).

5.12 Success of the Peer Advisors Program

The success of the Peer Advisors Program is measured on a case-by-case basis, and generally involves the resolution of the initial complaint (Mah, 2003).

The success of the Peer Advisors Program is dependant upon a number of factors:

- Farmer to Farmer contact – It has been found that many farmers are not open to discussing conflict with government authorities and instead are more open to and willing to take advice from their peers (i.e. other farmers). Therefore, it is necessary for the Peer Advisor to make clear to the Client that he/she is not in a position of authority, and is in fact a fellow farmer.
- Finding and maintaining a strong core group of the “right” Peer Advisors – The most successful Peer Advisors are generally those that are easygoing, confident, presentable, willing and capable to work individually, and familiar with the industry and knowledgeable of the rules and regulations.
- One Peer Advisor per case – Using only one Peer Advisor per case is less intimidating to the Client. The Client may be more willing to open up to one person versus a committee of people.
- Quick response process – The Peer Advisors Program tries to respond to the conflict within eight business days of the complaint being made. The quick response process shows that action is being taken and strengthens the reputation and use of the program.
- Intensive training can be overwhelming for the Peer Advisors – The Peer Advisors Program training needs to involve a clear explanation of the process of the Peer Advisors Program and of conflict resolution right from the beginning. By increasing the frequency of training sessions and by involving the more experienced Peer Advisors as additional facilitators, the training may be more beneficial for the Peer Advisors.
- It is necessary for Advisors to remain informed of the regulations and laws.

6.0 Livestock Facilitated Community Consultation (LFCC)

6.1 Background to the LFCC

The approvals process for Conditional-Use Permits allows for public input into the application of livestock developments. However, with the changing trends in agriculture, councils are facing increased conflict from some local community members at these conditional-use hearings. High confrontation between those adamantly opposed

to livestock development and expansion and the livestock producers causes frustration amongst local governments as they are often ill-equipped to deal with this controversy, resulting in a more lengthy and difficult hearing process (Murray, 2003). In response to this growing challenge, the MPC wanted to create a program that would be supplementary and occur prior to the formal livestock review and approvals process, and would address local concerns and conflict surrounding the development of an intensive livestock operation (Mah, 2003; Manitoba Pork Council, 2002).

The beginning of 2001 saw the design of the Livestock Facilitated Community Consultation process (LFCC) for livestock development. Although the process was initiated by Peter Mah of the Manitoba Pork Council and Craig Murray, a lawyer and professional mediator, the design of the process involved a collaboration of provincial and municipal governments, municipal administrators and livestock industry representatives. Five pilot-tests were carried out during the following fall and winter throughout Manitoba, all regarding the development of hog operations (Murray, 2003; Manitoba Pork Council, 2002).

6.2 The Purpose of the LFCC

The purpose of the LFCC is to both provide members of a community with an opportunity to review livestock development projects prior to the formal review and decision-making process by council and to provide the proponent of the livestock development with an opportunity to better inform their neighbours of all aspects of their plans for development. This is done in the hopes that conflict within the community will be minimized through open, respectful and meaningful dialogue between the proponent of the development and neighbours who may be opposed. Harmonious livestock development within communities increases the potential for the success and sustainability of the industry (Mah, 2003; Manitoba Pork Council, 2002).

6.3 Authority of the LFCC

Although the LFCC was an initiative of the Manitoba Pork Council, a neutral third party, non-profit agency has been asked to administer the program on an on-going basis. Mediation Services: A Community Resource for Conflict Resolution Inc., based out of Winnipeg, has agreed to deliver the program by determining a municipality's

eligibility and distributing the funding to eligible municipalities to hire an independent professional facilitator (Manitoba Pork Council, 2002; Mah, 2003 – Email Contact).

6.4 Access to the LFCC

Unlike the Peer Advisors Program, the LFCC does not apply simply to one livestock commodity group. The LFCC is a generic program that can be used for applications for developments from any livestock sector. The discretion of the municipality is used to determine for which applications the process will be used, however the process is designed specifically for use by applications of 300 AUs or more. The mutual consent of the producer – proponent is a prerequisite for municipal eligibility for LFCC participation (Manitoba Pork Council, 2002; Mah, 2003).

6.5 Composition of the LFCC

A number of participants are involved in the LFCC process. The LFCC process is initiated by the municipality. Along with requesting funding from the administrator of the program, the municipality is also involved in the actual public meeting, with the Reeve or Councillor opening the meeting. The public meeting is run by a neutral professional facilitator. A Technical Review Committee may be present and include experts and members of the provincial government (i.e. representatives from Manitoba Conservation and Manitoba Agriculture). The applicant of the livestock development is present, as are the property owners most directly affected by the proposal. Finally, since the meeting is open to the public, all those with an interest are welcome to attend (Murray, 2003; Manitoba Pork Council, 2002).

6.6 Process of the LFCC

(Mah, 2003; Mah, 2003 – Personal Communication; Murray, 2003; Manitoba Pork Council, 2002) (Figure 2)

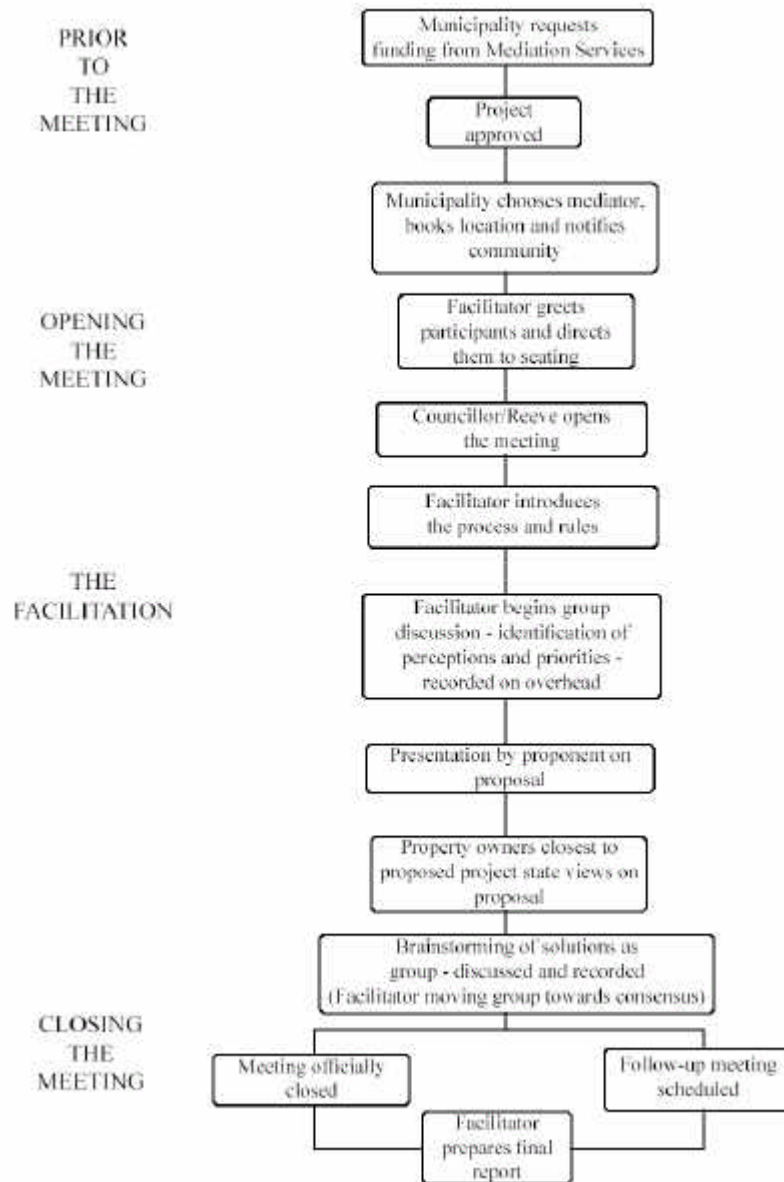


Figure 2: The Livestock Facilitated Community Consultation Resolution Process

6.6.1 Prior to the Meeting

- As stated earlier, the municipality initiates the process by requesting funding from Mediation Services. If the criteria for eligibility for funding are met and the funding is approved, the municipality will be notified in writing. Once the

approval is received, the municipality will be required to choose a facilitator for the public meeting. The facilitator will be chosen from a roster of pre-qualified facilitators. It is also the responsibility of the municipality to book the location of the public meeting and notify the community.

- All residents or property owners within a defined radius determined by Council (e.g. 2 kilometers) are given letters of invitation to the meeting with at least 14 days prior notice. Public notice is also published in the local newspaper. This ensures that the process remains public. The public notices and invitations must make it clear that the process is strictly for consultation and that no decisions about the application will be made at the meeting by Council.

6.6.2 Opening the Meeting

- As the participants arrive at the meeting, they are greeted by the facilitator and are directed to the appropriate seating area (prior to the meeting it is recommended that the hall or room be set up in an “inner and outer circle concept”). Those most directly affected by the proposal – those receiving the invitations to the meeting, including the proponent– sit closest to the front (in the inner circle).
- The Councillor/Reeve opens the meeting with an introduction to the issue, explains the purpose of the process, and introduces the facilitator.

6.6.3 The Facilitation

- The facilitator introduces the process and the suggested rules for the process with the participants. Elements covered in this introduction can include: information regarding who can reach agreement or who has the decision making power; guidelines for behaviour during the meeting to ensure an open and respectful process; the timeline of the process (i.e. length of the meeting, possibility for more than one meeting); the role of the mediator and the participants. Note that this introduction sets the tone for the entire meeting and the emphasis is therefore on open-mindedness and problem-solving. The facilitator asks if these guidelines can be agreed upon by the participants and seeks to obtain group consensus.
- The facilitator begins the process with an informal group discussion. This results in the identification of the community’s concerns, perceptions and priorities

regarding the issues surrounding livestock development. These are recorded on an overhead.

- A presentation by the proponent then follows. This presentation includes all aspects of the proposal and is presented through graphic, written and oral form. For example, the presentation could include “a site map, design drawings if available, a description of the type and size of operation, manure and mortalities management, types and number of jobs created, estimated annual municipal and school tax revenues to be paid, and measures to be taken to mitigate farm odours and to protect the environment” (Manitoba Pork Council, 2002, pg ii).
- Those property owners within the inner circle then introduce themselves and state their views on the proposal. The other participants are asked to add any other points or issues regarding the proposal. Brainstorming of possible solutions to issues regarding the livestock development occurs between the applicant and the participants, with the facilitator continuously attempting to balance the needs and concerns of the two sides throughout the process. All of the possible solutions are examined and the facilitator attempts to move the meeting towards a consensus².

6.6.4 Closing the Meeting

- The Reeve/Councillor ends the meeting by thanking the participants for their contribution.
- The meeting and LFCC process is then either officially closed or a time is arranged for a follow-up meeting. This follow-up meeting may be beneficial for the process as it allows additional room for further focus on options and revisions to the proposal. The additional meeting at a later date can also provide a cooling-off period for those issues that may have caused particularly heated discussions.
- Finally, the facilitator prepares a report for the municipality. This report is shared with all participants and can become part of the information filed at the formal conditional use hearing for consideration of Council.

² It is recommended that a Technical Review Committee (TRC) from the provincial government be present throughout the meeting to answer any technical questions.

6.6.5 Claim Procedures

- Once the LFCC process has been completed, the municipality may claim for reimbursement of costs to Mediation Services in accordance with the agreed upon fee schedule. These costs may include “facilitator fees and expenses including mileage, meals and accommodation and incidental printing and telephone charges” (Manitoba Pork Council, 2002, pg. iv). The municipality must include the facilitator’s invoice, confirmation of payment, and a copy of the project report in order to be reimbursed.

6.7 Authority of the LFCC

The LFCC is a voluntary process. Although initiated by the municipality, the LFCC requires the consent of the applicant of the livestock development in order to undertake the process. A decision made during the process to change any or part of the development proposal is the result of the facilitated compromise between the applicant and the community.

The LFCC is supplementary and complementary to the conditional use review and decision-making process. No decision by the municipality regarding the application is actually made at the LFCC meeting but the outcome of the meeting may influence the decision of the council for granting a conditional use order (Manitoba Pork Council, 2002).

6.8 Funding of the LFCC

As mentioned above, the municipality is granted funding for the LFCC by Mediation Services if they meet the basic program eligibility criteria. These criteria include site-specific applications for all livestock species and priority given to livestock applications of 300 or more Animal Units. The funding distributed by Mediation Services for the LFCC covers the cost of the facilitator and the facilitator’s expenses.

Funding for the LFCC program over two years is expected to be approximately \$200,000 and covers the costs of both funding for the professional facilitator services and related expenses, and costs of program marketing and administration by Mediation Services. The source of funding over two years is expected to match the distribution and includes contributions from the Canada-Manitoba farm Business Management program,

other federal and provincial funding programs and five producers associations including Manitoba Cattle Producers Association, Dairy Producers of Manitoba, Manitoba Pork Council, Manitoba Chicken Producers and Manitoba Egg Producers. The funding will be sufficient to cover approximately 72 LFCC processes for major livestock applications over the program period. This estimate is based on an average cost of \$2500 for each process which provides for an average of 2 meetings per project (Manitoba Pork Council, 2002). Individual municipalities undertaking an LFCC process cost-share with in-kind contributions for hall rental, coffee service, postage, administrative time and use of equipment. All participating public sector and industry funding partners participate on a program advisory committee. This committee is also supported with representatives of the Association of Manitoba Municipalities, Manitoba Mediation Board and Keystone Agricultural Producers (Mah, 2004).

6.9 Success of the LFCC

The results of the pilot tests and the testimonials of the participants demonstrate the success of the LFCC. The outcomes of the pilot case studies show that this process does influence the decisions made by municipal council and the producer applicant regarding livestock developments. In one rural municipality of Manitoba, an expansion of a 350 sow farrow-to-wean barn to an existing 350 sow farrow-to-finish operation was approved quickly by Council following the LFCC process (Manitoba Pork Council, 2002). In another situation, within the same municipality, a proposal for a larger hog operation resulted in considerably more concern and discussion regarding the location of the proposed site. Following the LFCC process, after the producer applicant had heard the concerns of the community, the applicant made the decision to identify a new site for the operation (Manitoba Pork Council, 2002). These examples demonstrate the ability of the LFCC process to have an effect on the approval of livestock developments, both by influencing the municipality's and the applicant's decisions.

Testimonials of participants in the pilot tests also demonstrate satisfaction with the LFCC process. A producer applicant who had his operation approved following the process believed that the LFCC was a good opportunity to hear and understand the concerns of his neighbours regarding his facility, as well as an opportunity for him as the farmer to explain his plans for expansion. This particular farmer recommended this

process to other producers that are looking to expand or build (Manitoba Pork Council, 2001). Another proponent of a larger facility who took part in the LFCC process also found the process to be useful and beneficial for the development of livestock facilities. The producer was satisfied with the win-win solution developed from compromises made during the public meeting and felt that, as a result, the approvals process was much easier because all the major issues had already been dealt with (Church, 2002).

Based on the overall evaluations of the LFCC pilot, the program has been deemed beneficial at increasing the amount of information shared between the proponent and the public. More than half of those responding to the evaluations indicated that, after the process, they felt better informed about the actual proposal as well as about local and provincial regulations for livestock operations. Finally, approximately two-thirds of those responding would recommend the process for other livestock proposals (Manitoba Pork Council, 2002).

6.10 Future Research

At the time of research for this paper, the creators of the LFCC process had finished the pilot test stage and were waiting for the process to be administered on a full-time basis. The potential for future research into the process, including specific lessons learned, will be present once the process has been put to further use.

7.0 Conclusion

The future of livestock production in Manitoba is dependent upon good farmer - neighbour relationships within the rural community. When conflict regarding livestock operations occurs, its resolution requires a fairly inexpensive and speedy process that will maintain, or even improve the relationship between the parties. More formal processes for dealing with conflict, such as the Farm Practices Protection Board, are often both costly and time consuming, and use formal methods which can leave the participants with negative feelings.

The Manitoba Pork Council has introduced informal alternatives for resolving conflict within the rural community. The Peer Advisors Program uses fellow farmers to mediate disputes, and works on peer pressure from the pork industry to ensure that hog farmers are maintaining good practices. The Livestock Facilitated Community Consultation process aims to prevent conflict due to the building or expansion of

livestock operations by addressing community concerns prior to the issuing of building permits. Both processes seek to enhance interactions between conflicting members of Manitoba's countryside, and in turn, seek to ensure the sustainability of the livestock industry into the future.

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LESSONS FROM MICHIGAN: REGULATING INTENSIVE LIVESTOCK OPERATIONS – CONFLICT RESOLUTION, RIGHT TO FARM AND THE ROLE OF THE STATE

1.0 Introduction

Concerns associated with livestock production have contributed to conflict in communities across rural North America (Grey, 2000; Caldwell, 2001). Real and perceived environmental, social, and economic issues related to the intensification of livestock production have led governments at the municipal, provincial/state and federal level to respond (Edelman *et al.*, 1998; Henderson, 1998; Caldwell and Toombs, 1999). In the United States large scale livestock operations tend to be referred to as CAFOs (Confined Animal Feeding Operations) and in Canada they are known by a variety of names including Intensive Livestock Operations (ILOs) or Confined Feeding Operations (CFOs). The debate associated with the establishment of these facilities has led to an equal amount of debate concerning the nature of government response.

From an environmental perspective the focus of attention has been on issues related to odour and water quality. In many jurisdictions including Ontario, Alberta and Manitoba municipalities have attempted to regulate the industry through a variety of strategies including nutrient management plans, conditional use permits (including public meetings), restrictive zoning, and caps limiting the size of these facilities (Caldwell and Toombs, 1999). In some respects, however, municipal involvement has led to what has been referred to as a “patchwork quilt” of differing regulations across the province or state. Moreover, municipalities have often been challenged by issues of enforcement, fairness and local politics. The result is that issues have often been lost in the ferocity of the local debate. Sometimes legitimate environmental issues have not received appropriate attention and sometimes legitimate proposals for new and expanding livestock barns have been inappropriately curtailed. In response, a number of states and provinces have asserted their authority to deal with this issue by introducing or amending legislation - in Alberta, the Agricultural Operations Protection Act was amended on January 1, 2002; in Ontario, the Nutrient Management Act was adopted in June, 2002 and in Michigan, the Right to Farm Act was amended in 1999. The one thing that all of this

legislation holds in common is that it significantly curtails the opportunities for municipalities to regulate an expanding livestock industry. This paper focuses on one of the approaches- the use of Right to Farm in Michigan.

2.0 Livestock Intensification in the United States and Michigan

In a 1998 study conducted by the Animal Confinement Policy National Task Force (Edelman *et al.*, 1998) it was observed that of 48 survey responses, 38 states indicated that Confined Animal Feeding Operations (CAFOs) are controversial. Moreover, in 22 states new legislation was proposed in 1997, court action involving CAFOs had occurred in 19 states and in 16 states local jurisdictions had passed new ordinances or policies. In ranking which species were the most controversial swine were selected in 27 states, dairy cattle in 10, hens and pullets in 3 and chicken broilers in 2. Beef cattle and turkeys were not viewed as the most controversial species in any state and in 5 states no livestock species were considered controversial.

Within Michigan, agriculture and livestock production has continued to intensify with significant local opposition to livestock production occurring across the state. In 1998, swine were identified as the species causing the greatest concern (Edelman *et al.*, 1998). The concern over hog production in Michigan has, however, existed for a number of years and has resulted in a number of local protests and nuisance suits (DeLind, 1995). More recently, growth in the dairy sector has also created considerable local controversy (Linderman, 2002). This intensification of the agricultural industry comes at a time when Michigan is seeing an increase in its total population. Comprised of approximately 10 million people living in 83 counties, Michigan is the eighth most populated state in the U.S. (Government of Michigan, 2002). This demographic change is creating a platform for agricultural conflict. Michigan has had to take measures to regulate the agricultural industry to ensure the livelihood of the industry in the state and mediate agricultural based conflicts. A key component of Michigan's approach is Right to Farm.

3.0 History of the Right-to-Farm Legislation

Right to Farm has been used for a number of years throughout the United States and Canada as a means to protect farmers from nuisance suits and complaints if the farmer uses standard farming practices that do not violate provincial/state or federal laws (Lapping *et al.*, 1983 and Daniels, 1999).

In 1981, Michigan implemented its first Right-to-Farm Act to protect farm operators from nuisance based complaints in relation to normal farm practices. Under this Act, GAAMPs (Generally Accepted Agricultural and Management Practices) were developed, creating a voluntary platform where any farm operator who followed the GAAMPs was protected by the state from nuisance complaints and lawsuits.

Prior to 1999 local government was able to maintain local control over zoning and requirements for the siting of all agricultural based operations. This was a local government power reflective of Michigan's 'home rule state' designation.

In the 1990's, Michigan's food and agricultural industry grew to almost \$40 billion in annual sales, making agricultural one of the prime economic sectors in the State. With this economic growth came a corresponding growth in the size and structure of the agricultural industry itself. Farm numbers began to decrease and fewer farmers began to produce an every increasing amount of Michigan's agricultural commodities. However, Michigan's agricultural land base was also affected as non-farm rural development encroached on prime agricultural land. This forced operators to produce more on a diminishing land base and placed expanding operations closer to neighbours.

Local government, in an attempt to maintain control over the changing dynamics of agriculture, began to implement individual, locally based ordinances to guide the agricultural industry (Norris, 1999). This approach led to a diversity of agricultural land use planning based on established or changing identified zones for animal agriculture and separation distance requirements for agricultural land. Individual local governments in certain areas sought to regulate the intensification of the agricultural industry by establishing size thresholds based on the number of animal units permitted per site, acreage requirements, separation distances based on the farms forecasted production of odour and comprehensive manure management plans. In some jurisdictions, ordinances were passed by local government restricting permits for operations that they deemed as intensive within their boundaries.

This patchwork approach to agricultural based planning became a source of conflict for farm operators, local government and the rural residents.

Operators were met with a continuum of restraints that changed from area to area. In some cases, moratoriums were placed on development, limiting their ability to site and

expand. Operators felt that the outcome of these ordinances impacted their ability to economically compete with other farmers in Michigan and globally.

Local government was met with conflict from two directions. On one side was the agricultural stakeholders who felt constrained by the ordinances and on the other, the rural stakeholders who felt that the issue of agricultural intensification in their community was not being adequately addressed or dealt with.

For the local community, the issue of agricultural expansion became one based on social, economic and environmental concerns. People objected to the changing production style of agriculture as farms moved away from the perceived traditional family farm to what are perceived as highly mechanized ‘corporate’ farms. Rural residents called on their local government to bring in regulations that would address their concerns about water quality, odour and impacts to their property values and overall well-being (Norris and Batie, 2000).

With these concerns and issues integrated into each other, local government was faced with the difficulty of having to pass new ordinances that would continue to encompass all of their constituents’ needs and demands. The inconsistencies in the planning approach across the state became increasingly apparent. It became challenging to “adequately address public concern while recognizing the role of animal production in the agricultural sector,” (Norris and Batie, 2000, p. 7). This controversy led the state to step in.

4.0 The Amended Right-to-Farm Act

In 1999, the state pre-empted the local right to implement siting ordinances based on animal agriculture by amending Michigan’s Right-to-Farm Act. Only the animal industry was targeted at this time as livestock production was deemed as having the greatest impact in the public image verses practices involved with crop production (Wilford, 2002).

Through this amendment, in March 2000 the Michigan Department of Agriculture (MDA) took control over the local authority to create zoning ordinances, site criteria and approvals in relation to all operations including those defined as *confined animal feeding*

operations (CAFOs),¹ by adopting a new section within its pre-standing GAAMPs. The new “GAAMPs for Site Selection and Odour Control for New and Expanding Livestock Production Facilities” provide environmental, social and economic criteria that must be addressed by the state and voluntarily by farm operators to alleviate concerns and conflict about the changing agricultural industry.

The objectives of the new siting GAAMPs are three fold. In order to achieve agricultural sustainability and address agricultural related conflict, the MDA seeks to approach the issues of: 1) Environmental protection, 2) Social considerations (neighbour relations) and 3) Economic viability of the industry (MDA, 2001, p.1). It is the prediction of the MDA that the state control of siting, through the direction and objectives of the new GAAMPs for site selection and odour, will alleviate conflict concerning land use planning around all agricultural operations but particularly CAFOs.

4.1 New Role of Local Government under GAAMPs

As stated, the new siting GAAMPs have given the state authority in what was traditionally a local level governance issue. This is a decision that crosses the State’s home rule designation and is itself, a source of conflict between the two levels of government (Michigan, 2002). Within a home rule state, local government is given the authority to meet state and federal level legislation and pass local ordinances that can be more rigid than that conveyed at a higher governmental level. The new GAAMPs crossed this designation as it pre-empted local government’s power to enforce ordinances that existed prior to the amendment in relation to CAFOs as well as the ability to place additional ordinances to the amendment. However, the ability and opportunity does still exist for local level planning and ordinances in relation to agricultural practices.

Local government still holds authority over operations that fall under the 50 animal unit threshold and may pass agricultural ordinances in relation to these operations as deemed necessary. As well, Master Plans (comparable to Ontario’s Official Plan) can create a defensible plan based on zoning which can be used as a recommendation guideline for state officials when reviewing applications that fall under the siting

¹ Michigan’s GAAMPs apply to operations that have 50 animal units or more. A CAFO is defined as an operation with greater than 1000 animal units. These animal units are based on criteria such as animal weight and amount of manure produced.

GAAMPs (Brummel, 2002).

4.2 Gaamps For Site Selection And Odour Control For New And Expanding Livestock Production Facilities

The new GAAMPs for site selection and odour control for new and expanding livestock production facilities are heavily based on the notion of a good neighbour policy. The goal is to create a production area for the farm operation that is respectful of the environment, respectful of the neighbouring landowners, and respectful of the operator's right to an economically viable future. To clarify, the new siting GAAMPs incorporate any operation with greater than 50 animal units. For the purpose of this paper, operations with 1000 animal units or greater will be the main focus when exploring the next three objectives.

4.2.1 Environmental Protection

In today's modern age, more and more people are becoming environmentally aware of the world around them and the impacts that their and other's actions have on their social and physical well being. "A wealthier, more educated population is focusing more and more attention on how their quality of life is affected by their physical environment," (Norris and Batie, 2000, p. 2). Professors Patricia Norris and Sandra Batie from Michigan State University believe that with this high level of environmental awareness comes a lower tolerance for reductions in environmental quality - reductions that might at one time have been acceptable or overlooked in relation to the agricultural industry. The professors believe that this tolerance for environmental degradation in any form will continue to decrease as rural, non-farm development increases in its current trend. "With more and more rural landowners who aren't involved in agriculture, the presumed rights of agricultural producers to create externalities (i.e. to pollute) are being called into question," (Ibid, p. 3).

The most commonly reported complaint concerning the negative environmental impact of an intensive operation is the issue related to water quality and the risk of non-point source contamination. Therefore, the issue has become a primary target in the siting GAAMPs, in order to resolve water quality issues before they have the opportunity to

evolve. Environmental factors that have been incorporated into the siting GAAMPs are as such:

- Preserving water quality by selecting a site where the potential risk for surface or ground water pollution is minimized (based on soil type, topography, hydrology, etc.).
- Areas such as wetlands, flood plains and wellhead protection zones have been deemed as not appropriate up front and no applications will be accepted in these zones, no matter what technology is utilized.
- The promotion of on-site technologies to minimize the possible environmental degradation to meet site criteria.

4.2.2 Social Consideration

As stated previously, there has been a change in the rural demography of the countryside as a flux of rural development has pitted agricultural producers next to non-farm rural residents - residents who often have been removed from an agricultural connection for generations. This creates an arena for conflict, as the countryside often does not reflect the rural ideal of residents. For example, picturesque red, wood planked barns are replaced with mechanized operations that can be seen as obtrusive to the eye and a scar on the landscape. The siting and odour GAAMPs reflect a degree of social consideration as it aims to alleviate the social concerns about the changing rural ideal that creates the agricultural based conflict. The predominant method incorporates odour management.

The goal of odour control within the siting and odour GAAMPs is to reduce “the frequency, intensity, duration and offensiveness of odors that neighbours might experience,” in order to reduce the potential for a social based land use conflict (MDA, 2001, p.3). At the time of siting or expansion, the ‘Michigan Odour Print,’ based upon the ‘Minnesota Odor Estimator Model,’ is used to identify the odour impact that the operation may have on adjacent non-farm residents. The odour print is an index based upon a plot system which represents approximate distances that a person must be from a source of odour to detect a noticeable or stronger odour up to 5% of the time for 16 directions. Daily and additional weather changes, such as wind, are factored into the

index (Person, 2000). The operation must have a minimum odour index to be permitted to site. This index is also used in conjunction with technology.

The utilization of technology is incorporated into the odour management requirements allowing for the odour impact to be further reduced to meet site criteria. This technology incorporates changes to manure storage units, manure application systems, use of manure additives, etc.

Other methods for decreasing the social impact of odour produced by the expansion or siting of an intensive operation include the use of setbacks. Setbacks are used to minimize the potential effects of the operation in high density, based on residential zoning, population or areas of high public use such as schools, churches, etc.

It must be acknowledged that issues concerning manure management and utilization are implemented within a separate GAAMP for manure handling. The manure impact outlined here is based on its relation to odour production. The manure based GAAMPs include implementing new practices around technology, manure storage systems, manure handling and ventilation.

4.2.3 Economic Viability

Though the MDA states that maintaining the economic viability of an operation in a selected location is an objective of the siting GAAMPs, there is limited discussion available on this objective. The economic viability of an operation is dependent on a placement that is distanced from non-farm residents, which will allow for contiguous parcels of land for production and has land available for future expansion. As well, a parcel of land or expansion ability that requires low input cost to qualify the development, (i.e. reduce the need to implement technology to meet site criteria), will influence the financial ability to select and develop at a site today and in the future.

5.0 Right-to-Farm and Legal Protection and Prosecution

Conformance with the siting and odour GAAMPs, as well as the pre-existing GAAMPs designated under the Right-to-Farm Act, deems a producer as complying with normal farm practices. As stated in the Right-to-Farm Legislation prior to and continuing into the 2000 amendment, this compliance gives operators protection from nuisance complaints and lawsuits. However, compliance is optional and any operator found acting

outside of the GAAMPs is subject to prosecution by the state and public until the operation is brought into compliance.

Currently, the MDA conducts site inspections through Right-to-Farm officials and MDA field agents. Each request brought to the state's attention is responded to immediately, within a business week. Upon an on-site inspection, if there is evidence of an infraction outside of GAAMPs, such as with an environmental or Clean Water Act infraction, the request will be directed to proper environmental and MDA authorities.

Under the Right-to-Farm Legislation, any party has the authority to request a review of a farm operation. As stated, operators acting outside of compliance to GAAMPs can be held accountable to the notifying party and must be brought back into compliance in order to receive protection. However, any party found issuing requests more than three times per operation, with no evidence of an operation infraction upon review by agents, can be charged for the costs of the reviews.

6.0 Michigan Agriculture Environmental Assurance Program

In 1998, Michigan adopted the Michigan Agriculture Environmental Assurance Program (MAEAP). Created out of the Michigan Agricultural Pollution Prevention Strategy, MAEAP is a proactive voluntary program that works hand-in-hand with the MDA's Right-to-Farm GAAMPs. MAEAP's goal is to educate operators of all sizes of operations to implement economical, effective and environmentally sound pollution prevention practices. Compliance with MAEAP indicates that a producer's livestock system operation meets or exceeds state and federal requirements and that all sources of potential agricultural pollution related to the livestock system have been addressed (Wilford, 2002).

The MAEAP program takes a three-part approach to reviewing an operation in order to account for possible environmental degradation in system areas of crops, livestock and risks around the farmstead. A main component of the analysis of the three systems calls for an accountable, comprehensive nutrient management plan in order to prevent environmental pollution through discharges. Education, on-farm assessments and verification of compliance are steps that are utilized by MAEAP officials to ensure that agricultural based environmental risks are properly assessed and addressed.

The MAEAP program has seen much success within the greater community. Compliance has benefited the public with on-farm environmental accountability and has benefited farm operators financially. Compliance under MAEAP has led to financial incentives from insurance companies as well as farm assistance programs to provide cost-share funds to make necessary changes.

6.1 MAEAP and GENERAL PERMITS

In January 2002, the MAEAP program was given a vote of confidence from the federal Environmental Protection Agency (EPA) when the EPA made changes to its agricultural permitting for Michigan. Throughout the United States, producers must operate through a permit as issued under the federal Clean Water Act. This is required of all industries. The EPA's vote of confidence came when it decided to relinquish authority for CAFO permitting to the Michigan Department of Environmental Quality (DEQ) and to MAEAP. This has given MAEAP "opportunity to demonstrate that we can assure environmentally sound farming operations," (MAEAP, 2002).

Under this change, permitting for CAFOs will be shared between the DEQ and MAEAP. The DEQ will be responsible for issuing permits to CAFOs that have had a verified environmental discharge. However, CAFO operators who have not had a discharge can gain their permit and coverage through compliance with the MAEAP program. Due to its rigorous environmental assessments, inspections and required comprehensive nutrient management plans, MAEAP was seen by the EPA as an "exemplary voluntary program" to allow for certification of environmental compliance in relation to permitting. This change made by the EPA is seen as a "fair and comprehensive approach to addressing environmental concerns on livestock farms," in Michigan (MAEAP, 2002).

7.0 Putting It All Together

Now that the Right to Farm, GAAMPs and MAEAP have been introduced, it is imperative to see how these programs and legislation work together in relation to the regulation of intensive livestock operations. An example of the process that an operator of a CAFO would follow to expand their operation in Michigan is outlined below:

Farm operators Stan and Deborah Holstein have decided to expand their dairy operation to a full 2000 animal unit (AU) capacity. During their last expansion, the

Holsteins were required to apply for building and siting permits at their local planning office. At the time, the Township had an ordinance restricting the number of animal units permitted per farm site to 1000 AU. This restricted the Holsteins ability to expand to the capacity that they desired.

Today, as the Holsteins operation has reached the 1000 AU capacity, their operation is classified as a CAFO and exceeds the maximum number of AUs required to meet local level agricultural planning and ordinances. Thus, the Holsteins are applying to the Michigan Department of Agriculture (MDA) to have their expansion site plan reviewed under the state's Right-to-Farm Act using the Generally Accepted Agricultural Management Practices (GAAMPs) for 'Site Selection and Odour Control for New and Expanding Livestock Production Facilities'.

The MDA receives the Holsteins application and notifies the Holsteins Township that a plan has been submitted and is under review. The MDA performs on-site inspections of the proposed expansion site to verify site compliance with pre-standing GAAMPs and an assessment concerning environmental risks. Though the MDA only needs to consider the recommendations of the Township's Master Plan, the MDA confers with the Plan to help determine applicability to existing land uses and availability of adjacent agricultural land. The Master Plan indicates that the farm expansion will be in an agricultural zone and the site will not be adjacent to a residential or commercial development. An odour print index assessment is conducted of the surrounding area. A satisfactory odour index indicates that any odour would be apparent to neighbours less than 5% of the time. Upon completion of the review, the MDA acknowledges that all economic, environmental and social issues are properly addressed by the operator under the siting and odour GAAMPs. The Holsteins site plan and application for expansion has been accepted. The Township is notified of the MDA's decision.

During the period of the MDA review, the Township approaches the Holsteins and asks if a public forum can also be held. This forum is above the requirements of the siting and odour GAAMPs and the operators are not obligated to comply with the request. However, the Holsteins voluntarily participate in the forum with a reviewing MDA official in order to build a positive relationship with the community as well as to address concerns and issues.

Upon completion of the forum, it is evident that the community is concerned with the Holsteins expansion. The Holsteins are worried that the strong protest to the operation will put the farm under scrutiny from the community. The operators want to assure the public that the farm is utilizing the best practices, technologies and environmental protection beyond their current system so as to alleviate undue risks and concerns. Under guidance from field agents, the operator complies with all GAAMPs in relation to manure management and utilization, nutrient utilization and pesticide utilization. This full compliance with the GAAMPs allows the Holsteins to receive state protection from nuisance complaints and lawsuits in relation to their normal farm practices.

The Holstein family has been given the go ahead from the MDA to expand their CAFO at the site designated in their site plan. However, due to federal regulations under the Clean Water Act, the operators needs a general permit indicating compliance to water quality standards in order for the operation to be licensed to produce.

The Holsteins have had a positive environmental track record previously with no discharges into watercourses. This enables them to receive a general permit for production through a certification with the Michigan Agriculture Environmental Assurance Program (MAEAP). Through MAEAP, the Holsteins assess environmental risks around the existing and proposed farmstead. As a main part of their program, the operator's produce a certified nutrient management plan to account for all nutrients and discharges from the operation. Upon completion of MAEAP, the Holsteins gain their CAFO permit. Compliance with GAAMPs and MAEAP will not, however, protect the Holsteins from prosecution if there is a discharge or documented pollution event.

The Holsteins are now subject to verification and on-site reviews from state field officials. Their plans must continually be reviewed and updated to ensure that their operation remains in compliance with the GAAMPs and MAEAP. With continued compliance, there is environmental assurance for both the public and the operator, as well as additional benefits for the farm operators. As noted, the Holsteins will continue to receive state protection from lawsuits and complaints. However, for their completion of both GAAMPs and MAEAP, their insurance company has lowered the Holsteins payments.

8.0 Concluding Thoughts

Though the MDA has created the structure to implement the Right-to-Farm Legislation and enforces the regulation, the final outcome of the Right-to-Farm GAAMPs and MAEAP lies in the hands of the agricultural industry.

An incentive of the GAAMPs and MAEAP is that any livestock operator with a farm with greater than 50 animal units is protected by the state from complaints and lawsuits upon compliance to GAAMPs and MAEAP. By not pinpointing intensive operations exclusively in GAAMPs and MAEAP, Michigan has created an equal platform for protection, an approach that protects the existence of both sizes and types of operations. However, after the difficulty in the past to develop and expand at a location due to local ordinances and planning, many operators are increasing their number of animal units so as to qualify for GAAMPs protection and dodge local ordinances concerning agricultural siting. This is an underlying force pressuring the livestock industry to expand.

Challenges in Michigan's approach also rise in the area of local level stakeholders. With only a regard for local plans and ordinances, there is concern that the power of local level government in a home rule state is being extinguished. As well, concerns over the elimination of the local voice extend to the public sector where the decrease in public participation and consultation has limited the community involvement in the decision-making process.

9.0 SUMMARY

The issue of regulating an industry that is in the stages of a dynamic flux is a challenge across North America. The State of Michigan has approached the changes in the agricultural arena by governing intensifying livestock facilities through environmental regulations, best management practices, and with a strong regard for the social impacts that the agricultural industry has on the state. The use of Right to Farm in this context is of particular interest. Though the state still faces challenges in its approach, it has taken decisive action that attempts to protect the environment while creating a framework for agricultural growth and expansion.

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The Role of the Ontario Municipal Board in Adjudicating Agricultural Conflict

1.0 Introduction

Land use conflict arises in communities because people have divergent interests and claims upon land. More fundamentally, land use conflict arises because of differing views about what is socially desirable. Inevitably, developing and implementing all public policy (including land use policy) is about making choices between competing claims regarding social well-being (Vira, 2001).

In Ontario, the Ontario Municipal Board (OMB) is a central part of the planning process, being the regulatory body that adjudicates conflict related to municipal and land related matters. This paper explores the role of the OMB in adjudicating conflict specifically related to agriculture. Before considering specific OMB decisions, Section 2 outlines the history of the OMB, the role of the Board, and describes the process the Board uses.

The paper uses two approaches to consider the role of the OMB. Section 3 analyses OMB hearings related to agriculture which were heard in 2000 and 2001. The discussion summarizes the stakeholders participating in hearings and the types of conflict that precipitated OMB hearings in an attempt to understand the impact of the hearings on communities, and the role of the OMB in adjudicating conflict.

Section 4 delves into three specific OMB hearings. It relies on conversations with the main players in each of these cases to explore the community perception of the OMB, the effectiveness of the OMB in resolving the dispute, and the impact of the decision on broader policy. The divergent perspectives regarding the hearings, the process, and the decisions offer a wealth of anecdotal insight into the competing interests and inescapable conflict that exists in all communities.

Using the material collected from the summary review of 2000 and 2001 hearings and three individual case studies, the paper attempts to identify the role of the OMB in implementing and influencing policy. Section 5 discusses trends in OMB decisions and the manner in which the Board uses municipal and provincial policies to arrive at

decisions. It also considers the potential impact of OMB decisions on subsequent land use policies at the municipal and provincial level.

Conflict is an ever-present reality of all land use planning. The following analysis of agricultural conflict attempts to understand the role the OMB play, and the impact it has on communities. Bhaskar Vira (2001) makes an excellent point with regards to conflict and policy decisions. “The most difficult decision about rights involves both the recognition of specific claims and the rejection of others.”

2.0 Role of the Ontario Municipal Board

This section of the paper provides an overview of the role of the Ontario Municipal Board. The history, structure and function of the Ontario Municipal Board are presented.

2.1 History of the Ontario Municipal Board

The Ontario Municipal Board is a quasi-judicial, adjudicative tribunal which resolves appeals on a wide range of municipal and land related matters (OMB, 2001). The Ontario Municipal Board was originally created in 1897 and is the province’s oldest regulatory and adjunctive tribunal. Its original purpose was to supervise account keeping by municipalities. In 1906, the Ontario Railway and the Municipal Board was created, with the added responsibility of supervising the mode of transport within and between municipalities (OMB, 2001).

The Board was renamed the Ontario Municipal Board in 1932. Since 1932, the powers of the OMB have been expanded. Currently, the Board draws its jurisdiction from more than 180 statutes (OMB, 2001). While the Board’s jurisdiction is drawn from a large number of Acts, most if its work arises from the *Planning Act* (OMB, 2001) (Refer to Table 2.1).

2.2 Members of the Board

The Board is comprised of a number of Board members. At the end of 1999-2000, there were 27 full-time and six part time appointees to the Board. These members conduct tribunals held by the OMB (OMB, 2001).

Members participate in an interview process. Successful candidates are appointed by the provincial government in power to serve a three-year term (OMB, 2000). The membership includes a variety of professions: lawyers, planners, engineers, accountants, economists, farmers, teachers, professors, municipal politicians and administrators (OMB, 2001).

Members receive formal training and orientation. This training includes practicing with an experienced Board member. The Board has been offering this type of training over a number of years. Experienced Board members act as mentors (OMB, 2001). Ontario Municipal Board members also attend monthly workshops on a variety of topics, including changes in legislation, recent court decisions, and all aspects of conducting hearings and other proceedings (OMB, 2001). This training is provided to keep members abreast of recent changes that may affect their decision-making authority. The training also introduces techniques for members to use in conducting a hearing and mediation.

2.3 Purpose of the Board

The purpose of the Ontario Municipal Board is to act as a quasi-judicial tribunal which resolves appeals on a wide range of municipal and land related matters (OMB, 2001). While the OMB has jurisdiction under many Acts, most of the hearings conducted by the Board are through the *Planning Act*. The OMB deals with a variety of planning tools including: official plans, zoning by-laws, plans of subdivision, consents to convey

land, minor variances from local by-laws, development charges, aggregate licences, compensation for expropriated land, and applications for gravel pit licences (OMB, 2001).

Table 2.1 demonstrates the type and frequency of applications, appeals or referrals received by the OMB between 1997 and 2000. Over this period, the OMB saw some fluctuation in the number of applications/appeals received. In 1997-1998, there were 4,189 applications/appeals received. In 1998-1999 and 1999-2000, the number of applications/appeals was reduced by almost half to 2,164 in 1998-1999 and 2,104 in 1999-2000. The significant reduction in the number of applications/appeals may be explained by the fact that 1997 was the last year that the OMB heard appeals under the *Assessment Act*. The majority of applications/appeals received by the OMB from 1998-1999 (82%) and 1999-2000 (84%) were heard under the *Planning Act* (zoning by-laws, appeals from council, minor variances, consent appeals, official plans and plans of subdivision). Due to the large number of assessments in 1997, only 46% of the applications/appeals were received under the *Planning Act*.

Table 2.1: Type and Frequency of Applications, Appeals or Referrals Received by the OMB - 1997-2000

Application, Appeals or Referrals Received by Type	1997 to 1998		1998 to 1999		1999 to 2000	
	#s	%	#s	%	#s	%
1 Assessments	2,100	50%	266	12%	2	0%
2 Capital Expenditures	24	1%	12	1%	15	1%
3 Zoning By-laws	339	8%	291	13%	306	15%
4 Appeals from Council	186	4%	184	9%	188	9%
5 Minor Variances	601	14%	575	27%	595	28%
6 Consent Appeals	454	11%	358	17%	357	17%
7 Official Plans	261	6%	241	11%	227	11%
8 Plans of Subdivision	107	3%	99	5%	89	4%
9 Miscellaneous	87	2%	95	4%	115	5%
10 Land Compensation	24	1%	32	1%	31	1%

11 Consolidated Hearings	1	0%	3	0%	3	0%
12 Development Charges	5	0%	8	0%	176	8%
Total	4,189	100%	2,164	100%	2,104	100%

From Ontario Municipal Board Annual Report 1998-2000

The following discussion will be limited to what the Ontario Municipal Board does under the jurisdiction of the *Planning Act*, as the focus of this paper is the role of the Ontario Municipal Board in adjudicating agricultural conflict. A majority of conflicts heard by the OMB involving agriculture are the result of an appeal under the *Planning Act*.

2.4 How Does the Ontario Municipal Board Become Involved?

In Ontario, councils and committees at both the local tier and the county/regional level of government have the authority to make decisions under the *Planning Act*. Prior to making a decision on an application, a notice will be circulated to stakeholders making them aware of the pending decision. Council is required to hold a public meeting under the *Planning Act*. At this meeting, the public and the applicant are able to voice their concerns/support for the application. Following this meeting council makes a decision on the application. Any stakeholder has the right to appeal the decision. The OMB is the body that hears the appeal. “The Board listens to the appeals and concerns of people, public bodies, or corporations who object to the decisions of public or approval authorities such as local or regional councils, committees of adjustment, land division committees, the Minister of Municipal Affairs and Housing or an expropriating authority” (OMB, 2000). Any individual person, public body or incorporated group can appeal either a decision of a municipality or a failure to make a decision to the Board (OMB, 2000). Appeals can be entered under different sections of the *Planning Act*. Appendix 2 provides a description of the appeal process.

2.5 How Does the Ontario Municipal Board Hear Appeals?

The Ontario Municipal Board hears appeals through a variety of processes. The most common processes for hearing appeals include mediation and a formal hearing, which may or may not include a prehearing. Refer to Appendix 1 for further details on who can appeal to the OMB and how.

2.5.1 Prehearing Conferences

The Board may hold a prehearing before a full hearing where the matter is expected to be long and complicated. The most important reason for holding a prehearing is to identify the issues. “Often this leads to possible agreements, so that some or all of the issues need not be addressed at the hearing” (OMB, 2000). Prehearings are never conducted in isolation; they are always a precursor to a formal hearing process.

2.5.2 Formal Hearing

Once an appeal is filed, the Board expects the parties to be prepared for a hearing. Board hearings are less formal than a court proceeding but are more formal than a Committee or Council meeting. For example, testimony (evidence) is given under oath or affirmation, and those opposed may cross-examine (OMB, 2000).

A hearing requires all the issues be presented anew. The Member looks at each application or appeal from the beginning as if no decision had been made by a previous authority, such as by a municipal council, committee of adjustment, or land division committee. The Board can make the same decision that an earlier authority made or the decision may be different. The Board makes its decisions from the evidence heard and presented at the hearing, within the framework of the applicable legislation (OMB, 2000).

Generally, legal council will represent the parties. Expert witnesses may be called to testify on behalf of a party. Commonly, testimony is heard from local planners, the applicants, any consultants, provincial ministry staff, neighbours and concerned citizens. The party which goes first gives all their evidence, followed by other parties who support that view. The parties who oppose that position then give evidence (OMB, 2000). There is the opportunity for cross-examination during questioning. At the end, both parties may provide final arguments.

The Board member will issue a decision either orally at the conclusion of the hearing or in writing following the hearing.

2.5.3 Mediation

Recently, there is a concerted effort to settle disputes prior to a hearing so that the expense and formality involved in this more court-like procedure are avoided or at least reduced (OMB, 2002). The Ontario Municipal Board has been attempting to resolve disputes through the process of mediation. The definition of mediation used by the OMB is as follows: “Mediation...is a process in which means of settlement is proposed to the known parties to a dispute by a neutral and knowledgeable third party, in this case a Board member” (OMB, 2002, p.1). Mediation differs from a hearing in that it is usually held with the parties only and does not include the public (OMB, 2000).

The OMB does not attempt to resolve all disputes through mediation. A Board member selects cases for mediation when it can be deduced from reviewing a file that there are only a few issues that separate the parties (OMB, 2002). Mediation is usually arranged before a hearing is scheduled. Mediation usually takes place within three months of the receipt of the appeal. While a mediated session is arranged, the Board

continues to process the matter during mediation so that no time is lost for the parties if it fails to settle (OMB, 2002).

As with a hearing, Board staff sends notice of the mediation to the parties who appear from the Board file to have had an interest in the matter at a local level or are otherwise parties in law. The purpose of the meeting is to have the known interested parties reach a solution themselves (OMB, 2002). Due to the fact that only those who are directly involved in the appeal participate in the mediation, other interested members of the public may not be aware of a subsequent hearing beyond the mediation. As a result, Board staff provides full notice of any subsequent hearing so the public have an opportunity to comment. Participation in the mediation process is voluntary although it is rare that parties refuse to attend (OMB, 2002). The mediation meeting can occur either in person or via a conference call (OMB, 2002).

The Board member begins with summarizing the issues in the appeal. The next step is to describe in general the substantive requirements that apply in the application or appeal (OMB, 2002). In addition, the Board member conducting the mediation provides the parties with a probable outcome if the dispute were to go to a hearing (OMB, 2002). After hearing everyone's concerns, the member usually proposes a means of settlement (OMB, 2002). A report is made of the settlement discussion (OMB, 2002).

Depending on the outcome of the mediation meeting, there are a variety of steps that may be taken by the Board. If the parties settle and if the conclusion is that no hearing appears to be needed, the Board will issue a draft order. This order is sent to all the usual parties notified of a hearing, and not merely those who participated in the mediation. If, after 21 days, no objections are received, the order will be issued in the

form proposed (OMB, 2002). If no settlement is achieved then the case goes to a hearing. A hearing is held by another Board member (not the member who conducted the mediation) (OMB, 2002).

The Ontario Municipal Board has proven that mediation has reduced hearing time and even resolved some fairly major matters prior to a full hearing (OMB, 2001). Stakeholders have also endorsed mediation. According to the OMB (2001), the mediation caseload has continued to increase as many parties and municipalities have requested mediation instead of a hearing when filing appeals (OMB, 2001). In a recent survey of those who had participated in the mediation process, 92% of those surveyed said the results were very positive (OMB, 2002).

2.6 How Does the Board Give Decisions?

Following the conclusion of a hearing, the adjudicating Board member issues his/her decision. This decision may be issued orally at the end of a hearing or it may be issued in writing at a later date. The Board member who hears the matter must deliver or write the decision (OMB, 2000). A decision is sent to all those in attendance at the hearing or mediation and those who requested the decision in writing. In the case where a settlement is reached through mediation, a report is sent to stakeholders, and the member conducting the mediation issues an order.

The decision of the Board is considered final. Other than divisional court, there is no alternate body that will hear an appeal. The Board may grant a review of the hearing process but this is rare and is only conducted in exceptional cases. In order for a review to take place, a person must submit an affidavit proving that: there was an obvious error

in fact or law; new facts have arisen, someone misled the Board, or there was a failure in natural justice (no notice of hearing circulated) (OMB, 2000).

3.0 The Role of the OMB in an Agricultural Context

Section 3 summarizes the 2000 and 2001 OMB hearings related to agriculture in light of the above considerations. Evaluating recent cases related to agriculture offers insight with regards to the types of disputes considered, who the stakeholders are, and who is initiating the process. A synopsis of the 2000 and 2001 OMB hearings related to agriculture, including issues of conflict, location, parties involved and decisions are included in Appendix 5.

The discussion considers 34 OMB hearings that dealt with agricultural related conflict. This is a relatively small sample size, so it is not possible to make any concrete conclusions. Instead, the following is considered a case study, outlining general trends from two years of hearings.

Thirty-four hearings is also a small number relative to the total number of OMB hearings in 2000 and 2001. Table 2.1 shows that the OMB considers approximately 2000 hearings per year.

3.1 What causes conflict in agricultural communities?

A central goal of municipal policies in Official Plans and Zoning By-laws is to regulate development and minimize conflict between different types of land use. Some common adjoining land uses (i.e. agriculture use and residential use) set the stage for potential conflict. Conflict also occurs between members of the public and the municipality when Official Plan policies are either too restrictive (from the perspective of the proponent of a development) or too permissive (from the perspective of the opponent

to a development). Finally, conflict can occur between different levels of government when considering any development project. Lower tier municipal governments, county level governments and provincial governments interpret policy in different ways, which can result in Board hearings.

In an attempt to understand the root causes of conflict in agricultural communities, Table 3.1 summarizes 2000, 2001 OMB hearings according to the issue that created conflict and resulted in an OMB hearing. (For the specific cases referenced in Table 3.1, see Appendix 3). Often there is more than one reason why a case goes to the OMB. As we are attempting to identify root causes of conflict in agricultural communities, individual cases are counted in as many categories as are relevant.

Table 3.1: Issues causing conflict resulting in agriculture-related OMB hearings, 2000, 2001

Issue	Number of OMB Hearings due to Issue
Livestock operations	Total # of hearings: 8 of 34 (23%)
Agriculture related Development Charges By-law	Total # of hearings: 1 of 34 (3%)
Tax Assessment	Total # of hearings: 1 of 34 (3%)
Golf course	Total # of hearings: 2 of 34 (6%)
Zoning amendment, Temporary Use By-law	Total # of hearings: 8 of 34 (23%)
Interim Control By-law	Total # of hearings: 2 of 34 (6%)
By-law infraction	Total # of hearings: 1 of 34 (3%)
Minor variance	Total # of hearings: 7 of 34 (21%)
Severances: Farm land	Total # of hearings: 7 of 34 (21%)
Severances: Residential development	Total # of hearings: 7 of 34 (21%)
Official Plan Amendment	Total # of hearings: 8 of 34 (24%)
Water-taking for bottling and resale	Total # of hearings: 1 of 34 (3%)
Greenhouses	Total # of hearings: 1 of 34 (3%)

This analysis outlines several planning processes that can result in OMB hearings. Consent applications to sever land both for farm and residential use is the single most

common cause of agriculturally related OMB hearings, with a total of 41% of the OMB cases heard in 2000, 2001 related to severance applications. An equal number of hearings (21%) are with regards to zoning amendments and minor variances restricting or permitting land use. Slightly more hearings (24%) result from Official Plan Amendments.

Livestock operations are the most significant “farm issue” causing conflict and thus result in 21% of the 2000, 2001 agriculturally related OMB hearings. It is possible to identify a few other issues that cause conflict, specifically, golf courses, water-taking for resale, greenhouses, tax assessment and development charges. Relative to livestock operations, these concerns appear to be minor.

3.2 What provincial authority permits the appeal?

As well as classifying the issues of conflict that have resulted in OMB hearings, it is helpful to identify which provincial legislation allows parties to appeal a decision to the OMB.

Table 3.2: Provincial Legislation used to appeal decisions to the OMB

Planning Act Section	# of Hearings	% of Hearings
17(24): Right to appeal an Official Plan	1	3%
17(36): Right to appeal the decision of an approval authority regarding an Official Plan	2	6%
17(40): Right to appeal the decision of an approval authority if the authority has not announced the decision related to an Official Plan within 90 days	1	3%
22(7): Right to appeal a requested Official Plan amendment	2	6%
34(11): Right to appeal a requested zoning by-law amendment	4	12%
34(19): Right to appeal a zoning by-law amendment	6	18%
38(4): Right to appeal an interim control by-law	2	6%
45(12): Right to appeal minor variances	7	21%
53(19): Right to appeal provisional consents	11	33%
51(34): Right to appeal application for a plan of subdivision if the decision is not made within 90 days	1	3%

Assessment Act Section	# of Hearings	
40	1	3%
Development Charges Act Section	# of Hearings	
14	1	3%

Table 3.2 echoes the conclusion of Table 3.1, that consent applications are the leading impetus for OMB hearings, as 33% of the 2000, 2001 cases were pursuant to Section 53(19) of the *Planning Act*. The number of cases that are appealed with the authority in Sections 34(11) and 34(19) indicates that many hearings (30%) result from conflict around zoning by-laws. Disagreement about minor variance decisions resulted in 21% of the hearings in 2000 and 2001.

Sections 17(24), 17(36), 17(40) and 22(7) of the *Planning Act* are used to arrange OMB hearing when there is conflict over Official Plans and Official Plan Amendments. In 2000, 2001 this resulted in 18% of the hearings.

3.3 Who initiates OMB hearings?

Making an appeal to the OMB is an avenue that is available to any potential stakeholder: municipal, county, or provincial government, developer, farmer, and member of the public. Further insight into the role of the OMB in an agricultural context is gained from reviewing the cases heard by the Board and identifying the appellants.

Table 3.3 categorizes the 2000, 2001 cases heard by the OMB according to the party that requested the Board hearing. In some cases, more than one party requested the hearing. In the case of multiple appellants, all are noted (i.e. there are more appellants than cases). A complete listing of the individual cases for each category is included in Appendix 4.

Table 3.3: Stakeholders Initiating OMB Hearings

Appellant	Number of Hearings
Local Government	1
County Government	2
Provincial Government	1
Proponent of Development	21
Opponent of Development	11
Other	2

While the above data represents only two years of OMB hearings, it suggests that it is unusual for any level of government to appeal a decision to the OMB. Further, it is approximately twice as likely for a proponent of a development to request an OMB hearing than an opponent of a development. 'Development' in this context is defined as any change in land use, and does not necessarily involve buildings. For example, a severance of agricultural land is considered as a development.

This information suggests that the primary role of the OMB is to respond to concerns of the public, as opposed to conflict between different levels of government. The subset of the population most likely to appeal a municipal decision to the OMB is those who are unable to proceed with a proposed land use due to a municipal decision. Although less frequent, one third of the agricultural hearings in 2000, 2001 were requested by stakeholders who were opposed to development.

3.4 Who is involved in OMB hearings?

The role of the OMB can be explored by considering which stakeholders in a community are represented at hearings. Table 3.4 below summarizes the stakeholders at OMB hearings related to agriculture in 2000 and 2001. A complete list of the respective case for Table 3.4 is listed in Appendix 5.

Table 3.4: Stakeholder Involvement in OMB Hearings Related to Agriculture 2000, 2001

Stakeholder	Representation at OMB Hearings
Local Government	Present at 28 of 34 hearings: 85%
County Government	Present at 8 of 34 hearings: 23%
Provincial Government	Present at 2 of 34 hearings: 6%
Ontario Property Assessment Corporation	Present at 1 of 33 hearings: 3%
Proponent of Development	Present at 31 of 34 hearings: 91%
	Due to multiple proponents at hearings, there were a total of 35 parties at 30 hearings representing proponents of development; an average of 1.2 proponents per hearing that had proponents of development.
Opponent of Development	There was opposition to a proposed development at 14 of 34 hearings: 41%
	Due to multiple opponents at hearings, there were a total of 33 parties at 13 hearings representing opponents to development; an average of 2.5 opponents per hearing that had opposition.
Other	Present at 3 of 33 hearings: 6%
	This category includes a complainant re: tax assessment and complainants re: development charges.

The most common participants at an OMB hearing are proponents of development, with representation at 90% of the OMB hearings related to agriculture in 2000, 2001. This is interesting but not too surprising, as proponents of developments will usually stand to profit from a decision in their favour. Thus it is often in their financial interest to participate at a hearing. Further, land use development is often implicated in

OMB hearings. No matter which party is the appellant, a proponent of development will choose to be involved. This observation would suggest that one impact of the OMB is to provide a community forum to discuss proposed development.

The second most frequent participants at OMB hearings are municipal governments, present at 81% of the hearings related to agriculture in 2000, 2001. This is logical as most hearings will be considering decisions made by local governments, so it is important for these bodies to be represented. The OMB hearing changes the status of the local government from a decision-making body to a stakeholder on the same level as the other parties participating.

Opponents to development are not as common, being represented at only 39% of the hearings. However, when opposition to development is present at a hearing, it is likely that there will be more than one party. At the 13 hearings related to agriculture in 2000 and 2001 that had opposition, there was an average of 2.5 parties opposing development at the hearings. This is more than twice as many as the average number of development proponents (1.2 parties) at OMB hearings where there were proponents to development present.

This would suggest that if there is opposition to a development, it is likely to come from more than one party. A role of the OMB then is to provide a forum for members of the community opposed to a development to present their case.

It is less common to see county level government represented at agriculture related OMB hearing (21% of 2000, 2001 hearings), and even more infrequently is the province represented at agriculture related OMB hearings (3% of 2000, 2001 hearings). This would suggest that agriculture related conflict is more likely to involve local

governments than upper tier municipal or provincial bodies. This makes sense, as local governments make most of the land use decisions in a municipality.

It also indicates that disputes between different levels of government are not as common as between government and the public. This is a positive trend, as it is appropriate for all levels of government to be working together to develop and implement policy, rather than through disputes at costly OMB hearings.

4.0 Case Studies

What is the impact of an OMB hearing in an agricultural community?

The following discussion considers three OMB hearings in more detail:

- 1) Township of West Perth Zoning By-law 100-1998
- 2) Amendment No. 212 to the City of London Official Plan
- 3) Nichol vs. Township of Plympton, Lambton County

For each case, the central stakeholders who participated in the hearing were interviewed and press coverage related to the hearing was reviewed. The names of the stakeholders interviewed have been changed for the purpose of protecting the identity of individuals. To obtain additional information about the OMB hearings reviewed in this paper please either contact the Ontario Municipal Board via their website www.omb.gov.on.ca (actual OMB decisions are posted at this site) or contact the researchers.

Part of understanding the role of the OMB is identifying the impact of a hearing on the local community where the hearing is held, the larger policy impact, and the perception of the local community of the Board. Our analysis intends to understand the impact the OMB hearings have had in the three respective local communities, on the

larger provincial agricultural community, as well as any impact on policy related to the issue at the hearing.

4.1 Township of West Perth Zoning By-law 100-1998 Board Case No. PL 000064

4.1.1 Overview of the Case

The Municipality of West Perth is a rural municipality located within the County of Perth, in Southwestern Ontario. Agriculture is a central component of the local economy. In 1991, 91% of the total land area in Perth County was being farmed, with \$360.4 million in gross farm receipts (Harron, July 18, 2000).

In 1998, the Municipality of West Perth passed a comprehensive zoning by-law that included provisions to restrict large livestock operations. The by-law was appealed to the Ontario Municipal Board by the Ministry of Municipal Affairs on behalf of the Ministry of Agriculture and Food, and a local beef farm operator.

The province and the local farmer appealed the following three provisions:

- 1) prohibiting farm operations from having more than 600 animal units per site;
- 2) requiring that an operation own at least 30% of the land base required for manure disposal; and
- 3) limiting the maximum hauling distance of manure from a livestock facility.

The appellants also questioned Perth County's jurisdiction to pass a nutrient management by-law.

4.1.2 Ontario Municipal Board Decision

The Board stated that large factory farms are a new phenomenon on the agricultural landscape and they bring new problems and risks. The municipality needs planning tools to regulate these large-scale operations. In response to arguments made by the appellants, the Board considered the municipality's authority to regulate the livestock nutrients (Harron, July 18, 2000).

The OMB decision notes that spreading manure is a use of land. Section 34(1) of the *Planning Act* prohibits "the use of land for, or except for, such purposes as may be set out in the by-law within the municipality and for prohibiting the erecting, locating or using of buildings or structures for, or except for, such purposes as may be set out in the by-law" (Harron, July 18, 2000). The municipality's authority to pass the by-law is further supported because the Perth County Official Plan includes a policy to do so. The Board decided it is within the jurisdiction of a municipality to set the number of animal units at a site because it is both a "use of land" and "a use of a building or structure".

The OMB concluded that the *Planning Act* does not give the municipality jurisdiction to permit a municipality to regulate manure-hauling distance. This is regulated by the *Highway Traffic Act*, R.S.O., 1990.

The appeal was allowed in part. The Board decided the municipality had the authority to limit the number of animal units per site and require that an operation own at least 35% of the land base required for manure disposal. West Perth was directed to remove the section that limited the maximum hauling distance of manure from a livestock facility.

The OMB's decision was appealed by George Grant to the Ontario Lower Divisional Court. The Lower Divisional Court upheld the OMB decision and awarded costs to the Municipality of West Perth.

4.1.3 How did the OMB case impact the community?

In order to understand the impact of the West Perth hearing, we contacted several stakeholders involved in the hearing. Specifically, we spoke¹ to:

- Ken McGuire, West Perth Mayor;
- Jane Smith, Rural Planner, Ontario Ministry of Agriculture and Food;
- Susan Brown, Nutrient Management Policy Division, Ontario Ministry of Agriculture and Food;
- James Sutherland, president of both the Ontario Pork Producers and the local Agriculture Peer Review Committee;
- Jeffrey Engles, County Planner;
- Brian Davies, chair of the Perth County chapter of the Christian Farmers Federation of Ontario; and
- George Grant, local beef farmer and appellant.

Press coverage in *The Mitchell Advocate* and *The Ontario Farmer* was also considered.

In essence, the challenge an OMB member is presented with was replicated by the process of speaking to the various interests represented at a hearing. While there was general agreement amongst the various stakeholders that the hearing was equitable and the decision fair, parties remain committed to their initial viewpoint. The OMB hearing and subsequent appeal was successful in adjudicating the conflict and arriving at a

¹ The names have been changed to protect the identity of the individuals interviewed.

conclusion. However, comparing the notes from the hearing to the recent conversations with key stakeholders suggests that none of the stakeholders' perspectives have been significantly altered due to or since the hearing. As noted in the hearing summary, everyone who presented at the hearing wants to farm in an environmentally safe manner and protect the quality of the water. The disagreement arises from a difference in opinion as to how this can be accomplished within a free enterprise system where farmers can expand their operations as they see fit in order to compete domestically and on the world market (Harron, July 18, 2000).

The following discussion summarizes stakeholders' perceptions of the impact and role of the OMB, and the impact of the West Perth hearing on related policy development in other jurisdictions. Conversations with stakeholders revealed concerns related to the actual by-law, and discussions about whether or not the municipality or the province is responsible for regulating large livestock operations. As the focus of this paper is the role of the OMB, these issues are not discussed here.

4.1.4 A Central Component of the Planning Process

The Ontario Municipal Board plays a central role in Ontario's planning process. It provides an objective sounding board for resolving local conflict related to land use. Mayor Ken McGuire indicated that, while the OMB is a critical component of the process, Council does not perceive it as an alternative to deciding difficult issues.

The five-day hearing in Mitchell was thorough and provided an opportunity for all interested parties to present their perspective to an external adjudicator. The presence of an external adjudicator alters the role of the municipality from a local leader and decision-maker to one of stakeholder in opposition to the appellants.

4.1.5 Local community's perception of the OMB

Most people are unfamiliar with the Ontario Municipal Board. Sutherland identified that people tend to become introduced to the Ontario Municipal Board when it arrives in town to consider a case they are interested in (Personal communication with James Sutherland, July 19, 2002). The OMB hearing has a larger impact of publicizing the issue at hand, as the media coverage of the event attracts attention and educates the general public.

Mayor McGuire stated that the OMB did not significantly impact the local community; it was the actual zoning by-law that impacted the local community. The hearing was just part of the process to arrive at the by-law.

Jeffrey Engles responded that, while the farm community was divided on the issue, he thought the Board was perceived as logical and offered an impartial decision based on the information presented. Farmers who presented at the hearing were not as positive. George Grant felt that the decision was not logical and was heavily influenced by the Walkerton crisis. Brian Davies is of the opinion that the OMB is “pretty autocratic” and did not listen to the local needs. Davies’ perspective seems to be rooted in a belief that the issue is a local concern and regulation should come from the agricultural community. The dynamic between provincial and local interests is discussed in more detail below.

4.1.6 A Tool for Conflict Resolution

As noted above, the OMB offers a critical process for resolving conflict around local planning issues. Individuals representing the proponents of the by-law (Jeffrey Engles, Mayor McGuire) indicated that the process was an effective means of resolving

the dispute. As the decision was appealed, the Board decision was not final although the Lower Divisional Court upheld it.

However, the appellants and the farming community were not as clear that the process was entirely effective. George Grant, the appellant, was frustrated with the cost of the process. He believes that his appeal was necessary to contribute to the policy discussion of the usefulness and legality of animal caps in the municipality. However, he is frustrated that many people participated in the hearing without contributing to the legal cost of the hearing.

Jane Smith, rural planner for OMAF and James Sutherland, President of Ontario Pork Producers both thought that a pre-consultation or mediation session would have been beneficial. Stakeholders would have had the opportunity to share perspectives in a non-confrontational setting and arrive at a more amicable solution.

Brian Davies' concerns were even more fundamental. He indicated that the agricultural community more appropriately addresses the issue. Further, he believes that the process was time consuming, expensive and not very effective because in his opinion the resulting by-law has no enforcement mechanism.

4.1.7 Provincial/Local Dynamic

Several stakeholders discussed issues related to the provincial/local government relationship.

It is the responsibility of the municipal government to protect provincial interests at the local level. As one of the appellants, OMAF was of the opinion that West Perth Council did not consider the Provincial Policy Statement guidelines to protect agricultural

lands when they approved the zoning by-law in question (Personal communication with Jane Smith, July 19 2002).

The Province of Ontario's new "one-window planning" process means that revised Comprehensive Zoning By-laws implicating agriculture are not sent to OMAF for review. Instead, municipalities circulate proposed by-laws to the Ministry of Municipal Affairs, which is required to forward them to OMAF. According to Jane Smith, this process is not always efficient. Because OMAF is not necessarily provided the opportunity to comment on by-laws before they are passed, they are required to appeal by-laws that do not conform with the provincial policy to the OMB.

It is also important to consider the merits of a provincial versus local dispute-resolution body. Perth County has an Agricultural Peer Review Committee, which is comprised of local farmers who volunteer to mediate conflict between neighbours. James Sutherland indicated that he prefers this body as an alternative to the OMB with regards to resolving agriculturally related conflict.

4.1.8 Impact on Policy in Other Jurisdictions

As many communities are wrestling with policies for large livestock operations, it is conceivable that one impact of OMB hearings is to influence policy direction in other municipalities and at a provincial level. However, Mayor McGuire is clear that the intent of the West Perth Council was to only direct local policy. Further, he believes that because of the diverse characteristics of local communities, it is appropriate for local councils to determine policy direction related to large livestock operations rather than the province.

Respondents were divided as to how influential this case was on policy in other jurisdictions. Jane Smith did not think the case had any impact on provincial policy direction. Her perspective is significant because she works for the province. Jeffrey Engles did not share this opinion and thought that the case was influential in spurring the province to develop policy. *The Mitchell Advocate* echoed this opinion with a strong headline, “OMB Decision will have Provincial Scope”. The article quoted the Board Chair, Harron, as saying, “No doubt in my mind this is a provincial issue. This has implications further than West Perth” (Harron in Bader, April 5 2000). The potential of the hearing implicating policy in other jurisdictions is supported by coverage in *The Ontario Farmer* (Kelly, October 10 2000).

Several stakeholders interviewed made mention of the crisis in Walkerton which happened about the same time as the hearing. Thus it is conceivable that this OMB hearing was just one of several incidents that encouraged the province to develop policy.

Jeffrey Engles, Ken McGuire, James Sutherland and George Grant all thought that other municipalities were influenced by West Perth’s by-law. From the perspective of other municipalities, it is conceivable that, because the OMB decision supported a substantial component of the West Perth By-law, others would be satisfied that they had the authority to pass similar by-laws and therefore might take a similar approach.

The broader impact of the hearing was also acknowledged in the decision prepared by Harron. He was clear that, because the hearing might effect an area greater than West Perth, all interested individuals were permitted the opportunity to express their concerns to the Board (Harron, July 18, 2000).

**4.2 Amendment No. 212 to the City of London Official Plan
Board Case No. PL010226**

4.2.1 Overview of the Case

The City of London has grown significantly over the past decade. In 1991, the population of London was 311,805. In 2001, the population had increased to 336, 539. The growth of the City has put pressure on the agricultural land around its boundaries. In an attempt to moderate the impact on agricultural operations, the City has designated an urban growth boundary. The City has lands designated 'Urban' to supply its needs until 2016.

According to the Board, the central question at the hearing was, to what extent should the City of London protect agricultural land from urban expansion through policies in their Official Plan (Daly, July 30, 2001)?

Ministry of Municipal Affairs and Housing, as well as a local agricultural landowner, appealed the approval of Official Plan Amendment No. 212 to the City of London Official Plan which had the effect of modifying Policy 9.2.10 dealing with Minimum Distance Separation Requirements (MDS) between urban and agricultural uses (Daly, July 30, 2001).

The policy which the City had adopted provided for some exemptions to MDS application in controlled circumstances. The policy meant that, if residential development occurred within or adjacent to the urban growth boundary, the presence of an agricultural operation could not freeze development. The development would not be frozen because the City could waive the Minimum Distance Separation (MDS)

requirements between residential and agricultural use. For the appellants, this did not adequately protect agriculture, hence their appeals.

The City met with parties prior to the commencement of the hearing in an effort to settle. They believed they could reach a resolution. The parties did not go through the OMB's formal mediation process. The parties entered into this settlement through their own means. The parties agreed to a new policy through settlement discussions (Daly, July 30, 2001). The parties settled on a policy that allows some exemptions to MDS application within the urban growth boundary but normal application of MDS would apply where there was an agricultural operation with livestock adjacent to the urban growth boundary.

The parties brought the settlement to the Board on the day of the hearing. At the beginning of the hearing a development company requested party status before the Board (Daly, July 30, 2001). The three parties who had come to a resolution were in opposition to this. The Board added the development company as a party because the only reason why they did not appeal the original decision was because they were prepared to accept it. The proposed modifications, however, caused them concern.

As a result of the new party being added to the case, the Board tried the hearing from the beginning. At the Board hearing, the development company became the appellant and the MMAH, the local agricultural landowner and the City represented their settled position.

A significant portion of the hearing was spent defining what it meant for the City of London to "have regard to" provincial policy. The Ministry planner also saw no reason for the MDS guidelines not to be applied in the City of London as contemplated in

the revised policy. The Development Company focused their arguments on the impact the policy might have on the development of these lands.

4.2.2 Ontario Municipal Board Decision

The Board agrees with the Ministry planner in his assessment of the steps necessary to have proper regard for provincial policy. “To approve something other than the modified policy forwarded by the City, MMAH and the landowner, would result in disregard for the goals and objectives of the PPS and a lack of adequate protection for agriculture that the PPS demands” (Daly, July 30, 2001).

The Board stated that they were satisfied that the revised policy meets the intent and objectives of the PPS, and does not create a conflict between City policy and provincial policy.

Mr. Daly stated, “To suggest that MDS should not apply to development in Urban Reserve Areas where they abut lands outside the urban growth boundary undermines this intention to protect and minimizes the clear importance of urban growth boundaries in protecting and providing for ongoing agricultural operations” (July 30, 2001).

The Board acknowledges that the general policy application may have implications for certain individuals in certain locations. Mr. Daly stated, “that is the reality of planning” (July 30, 2001). The Board identified that in this circumstance the overall goal and need to protect farmland from potential conflicting land uses represents the best planning approach.

The Board finds that the modified policy provides adequate protection for agriculture, has proper regard for provincial policy, and is in keeping with the Provincial

Policy Statement. The Board allowed appeal in part and directed the City to adopt Official Plan Amendment No. 212 with modified wording for policy 9.2.10.

4.2.3 How did the OMB case impact the community?

In order to understand the impact of Amendment No. 212 to the City of London Official Plan hearing, we contacted several stakeholder involved in the hearing. Specifically we spoke² to:

- Wayne Scott, Planner, Ministry of Municipal Affairs and Housing;
- Jennifer McNeil, Planner, City of London; and,
- John Graham, local farmer and appellant

Attempts were made to contact:

- New Homes Development Inc

No staff members at New Homes Development Inc. were aware of their company's involvement in the case and as such declined to comment. As a result, the discussion below is limited to the stakeholders interviewed.

There was a general impression that the various stakeholders interviewed saw the OMB hearing as a fair and equitable process.

All the stakeholders interviewed questioned how much knowledge those outside the case had about the hearing and the decision. Often, in order for the community to become aware of the case, there must be widespread publicity or press coverage. This case did not receive any press coverage.

The City of London planner, Jennifer McNeil, and the Ministry of Municipal Affairs and Housing planner, Wayne Scott, both believed the impact of this decision was

² The names have been changed to protect the identity of the individuals interviewed.

limited to the farming and development communities. Wayne Scott identified that this decision provides certainty to the existing farming operations with livestock surrounding the City. He also believes this decision provides certainty to the development community (Personal communication with Wayne Scott, July 23, 2002). Jennifer McNeil made similar comments as Wayne Scott, and also added that this policy makes developers more aware of their surroundings.

Mr. Graham also believes the decision provides some protection for the farming community, although he did not think that the average farmer was aware of the policy or the OMB decision (Personal communication with John Graham, July 25, 2002).

With regard to this decision having impact beyond the local farming community, there were mixed responses between stakeholders. Jennifer McNeil did not believe that this decision had much impact beyond the local community (Personal communication with Jennifer McNeil, July 23, 2002). Whereas Mr. Scott identified that there are other jurisdictions with similar concerns as the City of London, and that other municipalities have made reference to the decision (Personal communication with Wayne Scott, July 23, 2002). Mr. Graham believed that the decision made by the OMB gave farmers some power over developers and hoped this decision would be referenced elsewhere (Personal communication with John Graham, July 25, 2002).

4.2.4 A Central Component of the Planning Process

While all stakeholders interviewed feel that the OMB is an important part of the planning process, in this case the initial stakeholders (MMAH, John Graham and City of London) came to a resolution without the intervention of the OMB.

It was originally anticipated that the role of the OMB in this hearing would be to provide formal sanction to the agreed upon settlement between MMAH, John Graham and the City of London.

The initial stakeholders had entered into a settlement prior to the scheduled hearing. According to the City of London planner, the time and cost associated with the OMB provided all parties with the “drive needed” to engage in settlement negotiations (Personal communication with Jennifer McNeil, July 23, 2002). Wayne Scott (MMAH) and Jennifer McNeil (City of London) said their respective employers often engage in these types of discussions/settlement prior to formal hearings. Based on her experience, Jennifer McNeil believes that mediation should always be attempted prior to a hearing.

This case took an interesting twist from what was originally anticipated to occur. The morning of the hearing, a lawyer representing some development firms in London arrived at the hearing and requested the Board’s permission to be added as a party at the hearing. The OMB granted this request.

All the other stakeholders said the last minute intervention of the developers took them by surprise. Instead of the hearing being a few hours, it lasted three days. The case was retried from the beginning. Some of the initial stakeholders were somewhat annoyed that the developers were allowed in at such a late stage in the process but they understood that the Board had an obligation to hear the developers’ concerns. This twist in the case meant that the Board ended up being the full adjudicator of the issue.

4.2.5 Local Community’s Perception of the OMB

Due to the fact that there was little publicity around this hearing, most stakeholders do not think that the community as a whole was aware of this hearing or the

subsequent decision. Both the planner for the Ministry of Municipal Affairs and Housing and the planner for the City of London were very familiar with the Ontario Municipal Board prior to this hearing. John Graham had previously heard of the OMB but he had not been involved in an OMB case before.

In this particular case, the stakeholders interviewed believed the OMB to be an impartial decision-maker. All the stakeholders interviewed found their experience with the OMB at this hearing to be favourable. Jennifer McNeil and John Graham acknowledged that this is probably because the OMB ruled in their favour.

A Tool for Conflict Resolution

All of the stakeholders who were interviewed and involved in the hearing felt that the OMB was an effective means of resolving the dispute between themselves and the developers.

Wayne Scott said that the negotiation between the original stakeholders (MMAH, Graham and City of London) was the effective resolution of their conflict and, in this case, the Board would provide formal sanction (Personal communication with Wayne Scott, July 23, 2002). McNeil made the comment that the looming OMB hearing gave the parties the impetus to enter into negotiations (Personal communication with Jennifer McNeil, July 23, 2002). In negotiations the parties still had a level of control in reaching a decision rather than passing that control over to an impartial third person.

4.2.7 Provincial/Local Dynamic

There was some discussion by the Ministry of Municipal Affairs and Housing planner, Wayne Scott, about the provincial/local dynamic.

The main reason why MMAH appealed the City's original amendment was because they did not believe the City had "regard for" the Provincial Policy Statement.

Policy 2.1.4. of the Provincial Policy Statement reads:

New land uses including the creation of new lots, and new or expanding livestock facilities will comply with minimum distance separation formula.

In the original amendment, it was perceived that it created opportunities for the exemption from the application of MDS requirements to new development at the discretion of the City (Daly, July 30, 2001).

This hearing established a clear definition of "regard for" as stated in the Provincial Policy Statement. Through negotiations, the City and the Province were able to settle on a policy that MMAH deemed to comply with the Provincial Policy Statement.

4.2.8 Impact on Policy in Other Jurisdictions

There was a mixed reaction between the parties as to whether this hearing would impact policy in other jurisdictions. The City of London planner, Jennifer McNeil, did not believe this decision had much impact in other jurisdictions. She felt that most municipalities deal with this type of issue on their own. To her knowledge, there had not been any inquiries from other municipalities about the hearing or decision (Personal communication with Jennifer McNeil, July 23, 2002).

The Ministry of Municipal Affairs and Housing planner, Wayne Scott, felt that this hearing and the subsequent decision had impact on other jurisdictions in a couple of ways. First, other municipalities are faced with a similar situation that London found itself in. After the hearing, Scott had several inquiries from other municipalities in Southern Ontario about the hearing and the subsequent decision. The second impact of

this hearing may have on other jurisdictions, according to Scott is establishing what “having regard to”, as stated in the Provincial Policy Statement, means for local municipalities. Scott identified that this hearing has also made the City look more closely at the impact of policy on the surrounding agricultural community (Personal communication with Wayne Scott, July 23, 2002).

4.3 Nichol vs. Township of Plympton³, Lambton County Board Case No. PL990508

4.3.1 Overview of the Case

Consent applications to sever land both for farm and residential use are the most common cause of agriculturally related OMB hearings (refer to Section 3.1). The hearing between Nichol and the Township of Plympton is a common type of hearing.

Mr. Nichol sought a consent to create a non-farm residential lot to permit him to dispose of a surplus farm dwelling. The local committee of adjustment heard the application and chose to deny the application based on the very strong community opposition to allowing Mr. Nichol a surplus dwelling severance.

At the hearing, a County land use planner responsible for the Township of Plympton, reviewed the pertinent sections of the Provincial Policy Statement, the Lambton County Official Plan, and the Plympton Official Plan. Mr. Nichol’ application to dispose of a surplus farm dwelling was in full compliance with all three planning documents.

Neighbours were concerned about the introduction of a non-farm residential use in the area. Their concerns relates to odour and other unpleasant attributes of hog

³ The name of the appellant has been changed to protect the appellant’s identity.

farming which may result in complaints from a subsequent owner of the surplus dwelling (Emo, September 27, 1999). Mr. Nichol responded to his neighbours' concern by noting that he himself would be the first to hear complaints from an unhappy resident of the surplus dwelling should he not follow approved farm management practices.

4.3.2 Ontario Municipal Board Decision

According to Mr. Emo, the issue is whether a *bona fide* farmer can rely on and use municipal, County and provincial planning policies established to support his profession or whether he should be bound by a higher standard, essentially predicated on "what if" fears by his farm neighbours (September 27, 1999).

The Board found that the application to create a non-farm lot containing a surplus farm dwelling was in compliance with Provincial Policy Statement, the Lambton Official Plan and the local Official Plan. Therefore, the Board allowed the appeal and gave provisional consent to the creation of a new lot.

4.3.3 How did the OMB Case Impact the community?

In order to understand the impact of the Nichol vs. Township of Plympton hearing, we contacted several stakeholder involved in the hearing. Specifically we spoke⁴ to:

- Michael Foster, County of Lambton Planner at the time of the hearing;
- Christine Mayer, Township of Plympton Zoning Administrator;
- Kyla Ardene, Committee of Adjustment Member;
- Tim Masterson, hog and beef farmer, neighbour of Mr. Nichol, and opponent;
- David Nichol, appellant and hog farmer.

There was no press coverage in this hearing.

Most stakeholders involved in this hearing had little previous knowledge or experience with the Ontario Municipal Board. However, they were familiar with the ultimate function of the OMB – to make a final decision on the conflict before them.

The stakeholders interviewed felt that this hearing had limited impact on the community. It did not receive much of a community profile nor did it receive any coverage in local media. Due to the fact that this hearing was site specific, only the people who were directly involved in the hearing (either as an appellant or opponents) were aware of the decision. All the stakeholders interviewed felt that, unless a person was involved in the hearing, the general community knew very little. There was also a unanimous feeling that, due to the nature of the hearing, it did not have a far-reaching, immediate impact on the community. With regard to the surplus house, it is still owned by the applicant, Mr. Nichol, and a hired man lives there. Mr. Nichol and Mr. Masterson both commented that the situation has not changed significantly since the lot was severed.

The impact on the community of this hearing and others like it can have a cumulative effect over the long term. The committee of adjustment member, Kyla Ardene identified that this hearing (and other similar hearings) may contribute to a push for the municipality to pass an Official Plan which does not allow any severances to be granted (Personal communication with Kyla Ardene, July 23, 2002).

The stakeholders interviewed did not perceive that this case would have much impact on other communities in the province. While this may be true, the ruling provided by Mr. Emo demonstrates the strength of planning policy.

⁴ The names have been changed to protect the identity of the individuals interviewed.

4.3.4 A Central Component of the Planning Process

All of the stakeholders believe that the Ontario Municipal Board has an important role to play in Ontario's planning process. Ardene described the OMB as providing an avenue for those who dislike a local decision to appeal it to an impartial third party (Personal communication with Kyla Ardene, July 23, 2002).

The hearing between Mr. Nichol and the Township of Plympton was held on September 27, 1999 at the Township of Plympton-Wyoming Municipal Office. All parties in attendance were allowed to present their perspective regarding the surplus dwelling severance application by Mr. Nichol. While most opponents of the severance did not like the decision, they agreed that the Board was fair and allowed those in attendance to voice their concerns. It was noted that the OMB chair ran the hearing efficiently and expeditiously.

4.3.5 Local community's perception of the OMB

The perception of the community toward the Ontario Municipal Board and specifically, the perception of those who were interviewed, differed between stakeholders.

The appellant (who won the case), David Nichol, found that the process could not have been better and found the chair to be very professional. Nichol stated that much of the hearing was based on politics and bad feelings between farmers (confirmed by other stakeholders) and the chair was able to cut through the politics and deal with the real issues (Personal communication with David Nichol, July 24, 2002).

The opponents to the severance (who lost the case), Christine Mayer, Kyla Ardene and the Mastersons, generally felt the chair was too lenient with David Nichol

and did not take into account factors beyond planning policy in his decision. While Ardene and Masterson commented that they thought while the Board was fair in letting people voice their opinion, they felt the decision was more or less decided prior to the hearing commencing.

The Lambton County Planner, Michael Foster, felt the OMB was fair and that all sides were allowed to make their arguments. Foster said the Board's hands were tied by planning legislation that permitted the applicant's severance. (Personal communication with Michael Foster, July 23, 2002)

While it was acknowledged by a number of stakeholders that the Ontario Municipal Board hearing served an important function, it was noted by all stakeholders interviewed that there was more vocal community opposition to the severance at the Committee of Adjustment meeting than at the OMB hearing.

When asked to reflect on the change in public participation between the two meetings, Kyla Ardene thought it was because the community felt comfortable voicing their concerns to the local Committee of Adjustment. When it came to the Ontario Municipal Board hearing, she felt that people lost their nerve and were too intimidated by the Board to voice their opinions (Personal communication with Kyla Ardene, July 23, 2002).

4.3.6 A Tool for Conflict Resolution

The end goal of an Ontario Municipal Board hearing is to resolve the conflict. A situation such as this is riddled with conflict. There is the conflict between the applicant who was denied the severance and the Committee of Adjustment, conflict between the applicant and those who voiced opposition to the severance, conflict between the

appellant and the proponents, conflict between large and small-scale farmers. And there is the conflict that may result after the decision is made and the community lives with the impact of the decision.

In a formal Ontario Municipal Board hearing, there is only so much conflict that the Board can resolve. In this case, the Board was successful in resolving the conflict that surrounded David Nichol's severance application.

Through a formal hearing, the Ontario Municipal Board does not and cannot provide assistance to resolve all the underlying conflict that result in a hearing. Discussions with central stakeholders suggest that some conflict remains in the community.

The opponents of the severance (Masterson, Ardene and the Township of Plympton) are afraid that the Ontario Municipal Board decision paved the way for conflict to arise between farmers and non-farm neighbours. Tim Masterson indicated that the main reason they were in opposition to the severance was because it introduced the potential for conflict by creating a non-farm residence in an area where livestock farming is active (Personal communication with Tim Masterson, July 23, 2002). Opponents to the severance are afraid that new residents may complain about the agricultural operations. Also, the new lot puts restrictions on surrounding agricultural properties. The house is still in the ownership of David Nichol, and a farm hand is living in the house. So there have not been any problems yet but neighbours are still concerned about the potential.

This is not the kind of conflict that the OMB can resolve because the community permits this type of severance within their Official Plan. It is important to recognize that

the OMB can only go so far in resolving agricultural disputes. It is the community's responsibility to develop effective land use policy.

Ardene, Masterson, Mayer and Nichol acknowledged that, if the community wants to resolve this particular conflict, they must take the onus on themselves and pass an Official Plan which does not allow severances.

4.3.7 Provincial/Local Dynamic

Unlike the OMB hearing in West Perth or the City of London, there was no provincial ministry present or involved in this hearing. The stakeholders identified the OMB as a provincial body and, as such, they made some comments with regard to the dynamic between local decision-making and decision-making by the Ontario Municipal Board.

Kyla Ardene felt that the OMB chair did not have a good sense of why the municipality denied the severance application. When considering the local and county Official Plans and the Provincial Policy Statement, there was no reason to deny the severance. According to Ardene, the Committee of Adjustment was under significant pressure from the community to deny the severance. At the Ontario Municipal Board, the community did not voice their opposition to the severance as actively as they had at the Committee of Adjustment meeting. Ardene felt that the Board did not feel the same pressure from the local community and so it was easier for the OMB to base their decision on policy (Personal communication with Kyla Ardene, July 23, 2002). The distance of the OMB from the community and the issue allows them to make decisions based on policy, while the local committee may have more community pressures to consider in a decision. The OMB is in a better position to cut through the local politics.

Tim Masterson pointed out that the OMB chair had little understanding of the impact of his decision on the physical and social community because the chair was not familiar with the local area.

David Nichol felt that, by taking the decision away from a local group of people who are strongly influenced by local opinion and by placing the decision in the hands of the OMB, it assured that the decision would be based on the rules and good planning principles – not local politics (Personal communication with David Nichol, July 24, 2002).

4.3.8 Impact on Policy in Other Jurisdictions

None of the stakeholders thought that this hearing would have an impact on other jurisdictions in Ontario. Neither Michael Foster (County Planner) nor Christine Mayer (Township Zoning Administrator) has had an inquiry about the decision from any other community.

All stakeholders interviewed thought this hearing, along with similar hearings, would eventually push the municipality to stop permitting severances. Some of the stakeholders are interested to see if the proposed regulations under the new Nutrient Management Act will influence whether municipalities continue to grant severances.

5.0. The Role of the OMB in Defining Land use Policy

The impetus for land use policy comes from any of a number of sources—such as a controversial new land use, sustained or escalating local conflict, political influence or motivation, or health concerns. Some controversial land uses, such as large livestock operations, urban sprawl, concerns about water quality or pesticides, move through

Ontario municipalities like waves and are present in several municipalities, not isolated in a single municipality.

When a land use conflict in a local municipality is appealed to the OMB to adjudicate, it becomes the Board member's responsibility to interpret the various policies that guide local development.

The Board decisions, discussed in Section 3, offer some scope to analyse the manner in which Board adjudicators arrive at a decision. Reviewing the cases reveals the intention of the Board members to evaluate the conflict in light of policies that influence the land use in question. This would include policies in Official and Secondary Plans, municipal Zoning By-laws, as well as the Provincial Policy Statement.

5.1 The Impact of OMB Decisions on Policy within the Municipality

The OMB is expected to be an objective third party. The Board member considers the municipal Official Plan, and Zoning By-law (if relevant), and the Provincial Policy Statement. If there is other relevant policy (i.e. agricultural policy) it will be considered as well. From the review of the agricultural cases heard in 2000-2001 (Section 3) and the three in-depth case studies (Section 4), a third party review offers an impartial assessment of the situation. If the Board is considering a policy question, the decision effectively clarifies the policy direction.

The adversarial approach of the traditional OMB hearings often results in at least one party not being pleased with the Board's decision. From the perspective of designing policy for a local community, it is potentially unproductive to launch a new policy founded in confrontation and disappointment. For some policy decisions, incorporating mediation into the OMB decision would likely result in a more amicable decision.

5.2 The Impact of OMB decisions on Policy in other Municipalities

OMB decisions potentially impact policy in municipalities other than the community where the hearing is being held. The relevance of the decision to other jurisdictions is dependent on the nature of the land use conflict being considered. In the case of the West Perth Zoning By-law, several stakeholders believe that the case was influential in other municipalities, as many other rural municipalities have been wrestling with policy direction for large livestock operations. The Ministry of Municipal Affairs planner stated that several municipalities contacted his office following the hearing regarding the City of London Official Plan. However, the hearing of Nichol vs. Township of Plympton, Lambton County involved a consent application, the most common type of dispute in agricultural community. Stakeholders involved in this hearing reported that the OMB case did not have any impact on other jurisdictions.

OMB hearings also impact the province's decision to appeal a municipal land use decision. According to Susan Brown, a member of the OMAF team working on provincial Nutrient Management policy, the West Perth decision means that OMAF will not appeal similar municipal by-laws in the future. Brown stated that in her experience, while OMB decisions are not supposed to be precedent setting, in practice they are (Personal communication with Susan Brown, July 25, 2002).

5.3 The Role of OMB Decisions in Influencing Provincial Policy

Analysis of stakeholder involvement in OMB hearings (Section 3.4) indicates that only a small number (6%) of OMB hearings involve provincial ministries. As discussed in Section 3.4, this would suggest that OMB hearings involve dispute resolution at a local level and are not very relevant to the province. The specific concern of the province is

that planning policy be represented by the local level of government. Provincial appeals occur when it is believed that the Provincial Policy Statement has not been properly considered. Both the West Perth and City of London hearings are good examples of this.

Susan Brown of OMAF attended the West Perth OMB hearing. When asked if the West Perth OMB hearing would influence provincial nutrient management policy, Brown responded with an emphatic “no” (Personal communication with Susan Brown, July 25, 2002).

Further research could provide greater insight into the role of the OMB in influencing policy in other municipalities and at the provincial level. A first step would be to identify a series of landmark OMB cases; perhaps cases that consider new controversial land uses or cases that the Board member hearing the case suggests will impact policy in other communities. Following the identification of these cases, a survey with provincial policy direction and interviews of provincial policy-makers, as well as municipalities facing similar issues, would help construct any connection between OMB decisions and the impact on policy.

6.0 Conclusion

The Ontario Municipal Board is a central component of Ontario’s planning process, a formal adjudicative tribunal that resolves local land use conflicts. In this capacity, it fulfils a critical function of offering conflicting stakeholders the opportunity for an objective hearing by an impartial third party.

The small number of hearings related to agriculture, relative to the total number of OMB hearings, has many potential explanations. This may be due to the difference in population between rural and urban Ontario. It may suggest that land use conflicts are not

common in the agricultural community or it may be because other levels of government, boards, agencies or the community adjudicate agricultural conflicts. Due to its prescribed jurisdiction, the OMB can only resolve an agricultural dispute where an application has been made under the *Planning Act*. Further research could explore which other agencies are adjudicating agricultural conflict and the relationship between the OMB and these agencies.

Of the 34 hearings involving agricultural conflict in 2000 and 2001, most (42%) involved consent applications to sever land for both farm and residential use. Creating new lots can cause considerable conflict in a community with an active agricultural industry because of restrictions on surrounding land through minimum distance separation. There is also a fear in the farming community, as illustrated by the *Nichol vs. Township of Plympton* case, that permitting non-farm residences allows people who are not connected to agriculture to settle in a farming community. Farmers anticipate that these residents will complain about agricultural operations. In the *Nichol vs. Township of Plympton* case, the municipality is considering policy revisions to prevent severances due to the (potential) conflict associated with them.

Livestock operations are the most significant “farm issue” causing conflict, resulting in 21% of the agricultural cases heard by the OMB in 2000 and 2001. The expansion and establishment of livestock facilities is a pressing concern in rural Ontario. Many municipalities have been dealing with conflicts between large livestock operations and other community stakeholders while searching for legislative tools to manage large livestock facilities and the nutrients from these facilities. The hearing for the Township

of West Perth Zoning By-law 100-1998 is an example of conflict arising from one municipality's legislative efforts.

Because of the wide spread controversy about large livestock operations, the West Perth case received much attention and media coverage. In fact, the OMB hearing brought new community awareness to the issue. However, when OMB hearings address conflicts which are not of broad, popular concern, they receive little, if any, public or media attention. Likewise, while a Board decision is theoretically not precedent setting, in practice it can be - especially with regards to new land uses or exceptionally controversial issues. The West Perth case paved the way for other municipalities to confidently implement similar policies under the *Planning Act*. Board decisions regarding severance applications tend to have a far less reaching impact because they are so common.

Another trend identified in Section 3 is that the proponent of developments most often initiates an OMB hearing while stakeholders opposed to development are the second most likely to appeal a decision. The tendency for the proponent to appeal the case to the OMB is probably driven by the fact that the proponent has the most (financially and emotionally) at stake and they obviously want the development to be approved. It is uncommon for any level of government to appeal a land use application involving agricultural conflict.

The OMB process emphasises the local government's responsibility to fairly interpret land use policy. Local decision-makers can be influenced away from policy in response to strong messages from the community, as the Nichol vs. Township of Plympton case demonstrated. A hearing allows local governments to present their

position at the same level as other community stakeholders. A significant role of the Board is to weigh both provincial and local land use policies influencing the proposed use.

The three case studies provide some insight into the local perception of the Ontario Municipal Board. With the exception of municipal staff and planners, stakeholders interviewed had very little experience with the OMB. Many thought the hearing was run fairly and professionally and the OMB offered an impartial decision. Those who did not hold the same opinion were consistently party to the side that did not win the case. These observations suggest a person's opinion of the OMB may be tainted by the outcome of the hearing.

Despite the fact that the OMB has been using mediation to resolve disputes during the period 2000-2001, mediation was not attempted in any of the 34 hearings involving agricultural conflict. All conflicts were adjudicated through a formal hearing process. While most of the stakeholders interviewed found formal hearings to be successful in resolving the immediate conflict, several mentioned that the conflict could have been resolved through mediation, thus saving time, money, and resulting in a more harmonious outcome. One planner thought that mediation should always be attempted prior to a formal hearing. Some of the stakeholders in the City of London case said they often try to reach a settlement on their own, prior to a scheduled hearing.

The OMB is successful in adjudicating land use conflict in agricultural communities. However, it can only play a role in resolving agricultural disputes appealed under the *Planning Act*. The agricultural community must rely on themselves, other

levels of government, agencies or boards to assist them with resolving conflict which may arise in other situations.

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Appendix 1

Who can Appeal to the Board, and How?

The Board hears matters under more than 100 pieces of legislation. The legislation that applies to your situation states who may appeal and how appeals are to be made. See the Chart on the next page for more detail. The notice of decision usually tells you how to appeal. (Note that in some cases you must have taken an active part in the public meetings or the Board may be asked to dismiss your appeal)

Usually any person, public body, or incorporated group can appeal either a decision or a failure to make a decision to the Board. However, an unincorporated neighbourhood association cannot appeal in the name of the association. The association must appeal under the name of one of its Members.

You must pay a filing fee. The Board's Information Office will tell you the amount. Time limits for filing appeals are set out in legislation. **The Board cannot extend the time limit or accept late appeals.**

NOTE: ALWAYS INCLUDE APPEAL FEE WITH NOTICE OF APPEAL FOR PLANNING ACT APPLICATIONS

*Approval Authority could be the Minister of Municipal Affairs, Regional or Local Council - Check with your Municipal Clerk to determine which in your particular case.

The Planning Act has been amended from time to time and generally, the date that an application is made to a local authority will govern which version of the Act the application will be processed under. Call Board staff if your concern relates to a Planning Application made prior to May 22, 1996.

OFFICIAL PLANS

Type of Application	How to Get It to the Board	Time Limit for Appeals/Referrals	Who Sends Notice of Board Hearing	Who Usually Goes First at a Hearing
objecting to a decision on an official plan or amendment	Write to the Approval Authority*.	Within 20 days of decisions made by Approval Authority*	Municipality - if Plan/Amendment adopted by Council	Municipality

objecting to an Approval Authority's* failure to announce a decision on an Official Plan Amendment within 90 days of receipt	Write to the Approval Authority*.	No time limit.	Applicant - if Plan/ Amendment adopted	Municipality
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ZONING BY-LAWS

Type of Application	How to Get It to the Board	Time Limit for Appeals/Referrals	Who Sends Notice of Board Hearing	Who Usually Goes First at a Hearing
appealing a municipality's by-law	File a letter of appeal with reasons, with the clerk of the municipality	Within 20 days after the date of the notice of the by-law	Municipality	Municipality (unless appellant is represented by Counsel)
appealing a municipality's failure or refusal to amend a by-law within 90 days of request	File a letter of appeal with the Board. A form outlining the required material is available free of charge from the Board	No time limit	Appellant	Appellant

PLANS OF SUBDIVISION

Type of Application	How to Get It to the Board	Time Limit for Appeals/Referrals	Who Sends Notice of Board Hearing	Who Usually Goes First at a Hearing
appealing a decision to approve a plan, withdrawal or refusal to approve a plan or appealing conditions imposed or changed	Write to the Approval Authority*	Within 20 days after the date of the notice of decision	Subdivider or Municipality	Subdivider or Municipality
appealing failure to decide		Within 90 days after receipt of application		

CONSENTS (severances)

Type of Application	How to Get It to the Board	Time Limit for Appeals/Referrals	Who Sends Notice of Board Hearing	Who Usually Goes First at a Hearing
appealing the decision of a body that grants provisional consents	File a letter of appeal with reasons, with the Secretary Treasurer of the Land Division Committee or Committee of Adjustment	Within 20 days of date of Notice of Decision	Board	Original Applicant
appealing conditions or changed conditions	Same as above	Same as above	Board	Original Applicant
appealing a Committee's failure to make a decision within 60 days of request		No time limit	Board	Original Applicant

MINOR VARIANCES

Type of Application	How to Get It to the Board	Time Limit for Appeals/Referrals	Who Sends Notice of Board Hearing	Who Usually Goes First at a Hearing
appealing a decision of a Committee of Adjustment	File a letter of appeal with reasons, with the Secretary Treasurer of the Committee of Adjustment	Within 20 days of the decision	Board	Original Applicant

OTHER LEGISLATION

Development Charges

Type of Application	How to Get It to the Board	Time Limit for Appeals/Referrals	Who Sends Notice of Board Hearing	Who Usually Goes First at a Hearing
appealing against a charge	File a letter of appeal with the municipal clerk.	Within 20 days after mailing of notice of decision or notice of passage	Board	Appellant

		of by-law		
objecting to a front-ending agreement		Within 21 days of giving of notice		

Expropriation

Type of Application	How to Get It to the Board	Time Limit for Appeals/Referrals	Who Sends Notice of Board Hearing	Who Usually Goes First at a Hearing
asking for compensation for land taken to be determined	File the statutory form (Notice of Arbitration and Statement of Claim) with the Board.	No time limit	Expropriating authority	Claimant

Source: Ontario Municipal Board. October 2000. Your Guide to the Ontario Municipal Board. www.omb.gov.on.ca June 28, 2002.

Appendix 2

Issues causing conflict resulting in agriculture-related OMB hearings, 2000, 2001

Issue	Case Number	Date
Livestock operations	PL001007	05-Jan-01
Total # of hearings: 8 of 34 (23%)	PL010693	07-Nov-01
	PL010060	08-Jun-01
	PL010466	06-Sep-01
	PL01106	23-Feb-01
	PL000318	13-Jun-00
	PL000343	16-Nov-00
	PL00064	18-Jul-00
Agriculture related Development Charges By-law	DC990037	16-Nov-00
Total # of hearings: 1 of 34 (3%)		
Tax Assessment	963	16-May-00
Total # of hearings: 1 of 34 (3%)		
Golf course	PL990538	29-May-01
Total # of hearings: 2 of 34 (6%)	PL001218	22-Feb-01
Zoning amendment, Temporary Use By-law	PL000297	20-Feb-01
Total # of hearings: 8 of 34 (23%)	PL990212	12-Apr-01
	PL010147	13-Jun-01
	PL010317	30-Aug-01
	PL991028	13-Apr-00
	PL000420	15-Sep-00
	PL990538	29-May-01
	PL001055	24-Jul-01
	PL001085	02-Jan-01
	PL00064	18-Jul-00
Interim Control By-law	PL010060	08-Jun-01
Total # of hearings: 2 of 34 (6%)	PL01106	23-Feb-01
By-law infraction	PL010466	06-Sep-01
Total # of hearings: 1 of 34 (3%)		

Minor variance	PL001007	05-Jan-01
Total # of hearings: 7 of 34 (21%)	PL010693	07-Nov-01
	PL990538	29-May-01
	PL001218	22-Feb-01
	PL001149	26-Feb-01
	PL000318	13-Jun-00
	PL000343	16-Nov-00
Severances: Farm land	PL010244	12-Dec-01
Total # of hearings: 7 of 34 (21%)	PL001149	26-Feb-01
	PL010220	08-Aug-01
	PL000791	15-Nov-00
	PL010160	22-Jun-01
	PL991106	06-Sep-00
	PL000273	15-Sep-00
Severances: Residential development	PL000141	10-Jan-01
Total # of hearings: 7 of 34 (21%)	PL000320	01-Feb-01
	PL010160	22-Jun-01
	PL990780	19-Oct-00
	PL990212	12-Apr-01
	PL991030	27-Jan-00
	PL000791	15-Nov-00
Official Plan Amendment	PL001244	7-Sep-01
Total # of hearings: 8 of 34 (24%)	PL001144	11-Apr-01
	PL010226	30-Jul-01
	PL991030	27-Jan-00
	PL991106	06-Sep-00
	PL000406	19-Oct-00
	PL000273	15-Sep-00
	PL001055	24-Jul-01
Water-taking	PL001055	24-Jul-01
Total # of hearings: 1 of 34 (3%)		
Greenhouses	PL001085	2-Jan-01
Total # of hearings: 1 of 34 (3%)		

Appendix 3

Stakeholders initiating OMB Hearings

Appellant	Case Number	Date
Local Government	PL001144	11-Apr-01
County Government	PL010244	12-Dec-01
	PL010317	30-Aug-01
Provincial Government	PL010226	30-Jul-01
Proponent of Development	PL991030	27-Jan-00
	PL991106	06-Sep-00
	PL000791	15-Nov-00
	PL000273	15-Sep-00
	PL000343	16-Nov-00
	PL010466	6-Sep-01
	PL01106	23-Feb-01
	PL001218	22-Feb-01
	PL000297	20-Feb-01
	PL990212	12-Apr-01
	PL010147	13-Jun-01
	PL000141	10-Jan-01
	PL001149	26-Feb-01
	PL00320	1-Feb-01
	PL010160	22-Jun-01
	PL001244	7-Sep-01
	PL010226	30-Jul-01
	PL001055	24-July -01
	PL010220	08-Aug-01
	PL001085	02-Jan-01
	PL00064	18-Jul-00
Opponent of Development	PL000318	12-Jun-00
	PL991028	13-Apr-00
	PL000420	15-Sep-00
	PL000408	19-Oct-00
	PL990780	19-Oct-00
	PL001007	5-Jan-01
	PL010693	7-Nov-01
	PL010060	8-Jun-01
	PL990538	29-May-01
	PL010226	30-Jul-01
	PL001085	2-Jan-01
Other	963	16-May-00

	DC990037	16-Nov-00
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Appendix 4

Stakeholder involvement in OMB Hearings related to Agriculture 2000, 2001 by case

Stakeholder	Case Number	Date
Local Government	PL000318	13-Jun-00
Present at 85% of the hearings	PL991028	13-Apr-00
	PL991030	27-Jan-00
	PL000420	15-Sep-00
	PL991106	06-Sep-00
	PL000791	15-Nov-00
	PL000408	19-Oct-00
	PL000273	15-Sep-00
	PL000343	16-Nov-00
	DC990037	16-Nov-00
	PL001007	5-Jan-01
	PL010060	8-Jun-01
	PL010466	6-Sep-01
	PL01106	23-Feb-01
	PL001218	22-Feb-01
	PL000297	20-Feb-01
	PL990212	12-Apr-01
	PL010147	13-Jun-01
	PL010244	12-Dec-01
	PL010317	30-Aug-01
	PL000141	10-Jan-01
	PL001149	26-Feb-01
	PL010160	22-Jun-01
	PL010220	8-Aug-01
	PL001244	7-Sep-01
	PL001144	11-Apr-01
	PL001055	24-Jul-01
	PL010226	30-Jul-01
	PL00064	18-Jul-00
County Government	PL000343	16-Nov-00
Present at 23% of the hearings	PL010244	12-Dec-01
	PL000141	10-Jan-01
	PL000320	01-Feb-01
	PL010220	8-Aug-01
	PL001144	11-Apr-01

	PL001055	24-Jul-01
	PL00064	18-Jul-00
Provincial Government	PL010226	30-Jul-01
Present at 6% of the hearings	PL00064	18-Jul-00
Ontario Property Assessment Corporation	963	16-May-00
Present at 3% of the hearings		
Proponent of Development	PL000318	13-Jun-00
Present at 91% of the hearings	PL001028	13-Apr-00
	PL991030	27-Jan-00
	PL000420	15-Sep-00
	PL991106	06-Sep-00
	PL000791	15-Nov-00
	PL000408	19-Oct-00
	2 parties PL000273	15-Sep-00
	PL9900780	19-Oct-00
	PL000343	16-Nov-00
	PL001007	5-Jan-01
	PL010693	7-Nov-01
	PL010060	8-Jun-01
	PL010466	6-Sep-01
	PL01106	23-Feb-01
	PL990538	29-May-01
	PL001218	22-Feb-01
	PL000297	20-Feb-01
	PL990212	12-Apr-01
	PL010147	13-Jun-01
	PL010244	12-Dec-01
	PL000141	10-Jan-01
	PL001149	26-Feb-01
	PL000320	01-Feb-01
	PL010160	22-Jun-01
	PL010220	8-Aug-01
	3 parties PL001244	7-Sep-01
	PL001055	24-Jul-01
	PL001085	02-Jan-01
	2 parties PL01026	30-Jul-01
	2 parties PL00064	18-Jul-00

Opponent of Development	4 parties PL000318	13-Jun-00
There was some opposition to a proposed development at 41% of the hearings.	5 parties PL991028	13-Apr-00
	2 parties PL000420	15-Sep-00
	2 parties PL000408	19-Oct-00
	1 party PL990780	19-Oct-00
	1 party PL001007	5-Jan-01
	6 parties PL010693	7-Nov-01
	PL990538	29-May-01
	PL000320	01-Feb-01
	4 parties PL001244	7-Sep-01
	4 parties PL001055	24-Jul-01
	PL001085	24-Jul-01
	PL010226	30-Jul-01
	PL00064	18-Jul-00
Other	963	16-May-00
	2 parties DC990037	16-Nov-00

Do's for LACs	Don'ts for LACs
<ul style="list-style-type: none"> ▪ listen before you speak ▪ avoid being judgmental ▪ be open to all points of views ▪ use open questions ▪ ask clear direct questions ▪ acknowledge the limits of your mandate ▪ clearly explain your role when meeting others ▪ clearly explain options to people if you are unable to come to a resolution ▪ involve government when appropriate ▪ seek more information when required 	<ul style="list-style-type: none"> • don't become argumentative • don't rely on questions that only require yes or no answers • don't be judgmental • don't allow yourself or your committee to become involved where you have no authority or jurisdiction • don't come to conclusions until you have heard all the information • don't make decisions or recommendations in the absence of required information
<p><i>Agricultural Conflict Resolution Project, Caldwell & Ball, University of Guelph.</i></p>	

<u>Healthy Ways to Reduce Conflict</u>	<u>Important Things to Remember</u>
<ul style="list-style-type: none"> ▪ Focus on problems not personalities ▪ Separate people from problems ▪ Speak to be understood ▪ Prepare ▪ Invent options for mutual gain ▪ Seek win/win ▪ Put yourself in their shoes ▪ Welcome differences in opinions and ideas ▪ Try to achieve self solving of problem 	<ol style="list-style-type: none"> 1. Almost always, the complaint will be legitimate to the complainant. 2. All parties have an interest in the issue (and these may be different). 3. Lack of effective communication is the principal evil of all conflict. 4. Ideally, all parties need to win, this will not always occur. 5. Confidentiality is essential. 6. Situations are unique and require the willing participation of each party. 7. Allow parties to determine solutions – you'll get better commitment.
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