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Executive Committee Meeting

Thursday, November 15, 2021
7:00 pm

Meeting Will be Held Electronically due to COVID-19.

Please contact Michelle Paton at michelle.paton@rvca.ca or 1-800-267-3504 ext. 1177 to join.

AGENDA

Meeting 7/21

- 1) Roll Call
- 2) Approval of Previous Hearing Minutes (October 14, 2021)
- 3) Review of Revised Executive Committee Guidelines
- 4) Adjournment

**Proudly working in partnership
with our 18 watershed municipalities**

Athens, Augusta, Beckwith, Central Frontenac, Clarence-Rockland,
Drummond/North Elmsley, Elizabethtown-Kitley, Merrickville-Wolford, Montague,
North Dundas, North Grenville, Ottawa, Perth, Rideau Lakes, Smiths Falls, South Frontenac, Tay Valley, Westport



**3.0 Updated Hearing Procedures Under Section 28
Report #: 1-211115**

To: RVCA Executive Committee
From: Megan Peacock, Regulations Officer
Terry Davidson, Director of Engineering & Regulations
Date: November 5, 2021

| | |
|-------------------------------------|-----------------|
| <input type="checkbox"/> | For Information |
| <input checked="" type="checkbox"/> | For Direction |
| <input type="checkbox"/> | For Adoption |
| <input checked="" type="checkbox"/> | Attachment |

Recommendation:

That the Executive Committee of the Rideau Valley Conservation Authority recommend the attached *Hearing Procedures under Section 28 of the Conservation Authorities Act* to the Board of Directors for approval.

Purpose

To seek direction from the Executive Committee to recommend updated Hearing Procedures to the Board of Directors for approval.

Background

Under Section 28 of the *Conservation Authorities Act*:

- A conservation authority cannot refuse permission or grant permission subject to conditions under its “Development, Interference with Wetlands and Alterations to Shorelines and Watercourses” regulation unless the applicant has been given an opportunity for a hearing before the authority or, if the authority so directs, before the authority’s executive committee.
- After holding a hearing, the authority or executive committee, shall refuse the permission or grant the permission, with or without conditions.

Under RVCA’s Administrative By-Law, it is the Executive Committee that hears applications for permission associated with Ontario Regulation 174/06 (“Development, Interference with Wetlands and Alterations to Shorelines and Watercourses” Regulation). The by-law states the Executive Committee shall evaluate the information presented at a hearing by both Conservation Authority staff and the applicant and decide whether the application will be approved with or without conditions or refused, or if a permit will be cancelled. Applicants can appeal decisions of the Executive Committee to the Minister or the Ontario Land Tribunal.

Analysis

In 1992, the Ministry of Natural Resources and Forestry and Conservation Ontario issued Hearing Guidelines to provide conservation authorities with a step-by-step process to conduct hearings. It was hoped that the provincial guidelines would promote consistency across the province and ensure hearings met the legal requirements of the *Statutory Powers Procedures Act*. Each conservation authority was required to develop a document outlining its own hearing procedures which the RVCA did.

These provincial hearing guidelines were then updated in 2005 to reflect changes to the *Conservation Authorities Act* and were updated again in September 2021 to reflect the most recent legislative changes.

RVCA staff reviewed the most recent provincial hearing guidelines and prepared the attached version for adoption by the RVCA. The attached document would replace RVCA's current Executive Committee Rules of Procedures once adopted by the Board of Directors.

Input From Other Sources

The attached document is based on the updated 2021 provincial hearing guidelines issued by Conservation Ontario.

Financial Considerations

N/A

Legal Considerations

The proposed Hearing Procedures adhere to the *Conservation Authorities Act* and the *Statutory Powers Procedures Act*.

Adherence to RVCA Policy

The proposed Hearing Procedures would replace RVCA's Executive Committee Rules of Procedure and would be consistent with RVCA's Administrative By-law.

Link to Strategic Plan

N/A

Attachment:

- *RVCA Hearing Procedures Under Section 28 of the Conservation Authorities Act* (Draft Version: November 9, 2021)



RVCA Hearing Procedures

Under Section 28 of the
Conservation Authorities Act

DRAFT

Draft Version: October 9, 2021

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1.0 PURPOSE OF HEARING PROCEDURES

Section 28 of the *Conservation Authorities Act* requires that an applicant be provided with an opportunity for a hearing by the Conservation Authority Board or Executive Committee sitting as a Hearing Board, for an application to be refused or approved with conditions. The Hearing Board shall hear and decide whether the application will be approved with or without conditions or refused. A permit may be refused if in the opinion of the Authority the proposal adversely affects the control of flooding, pollution or conservation of land, and additional erosion and dynamic beaches. In the case of hearings related to applications submitted pursuant to Section 28.0.1, the Hearing Board shall determine what conditions, if any, will be attached to the permission. The Hearing Board is empowered by law to make a decision, governed by the *Statutory Powers Procedures Act*.

These Hearing Procedures are adopted under the authority of Section 25.1 of the *Statutory Powers Procedures Act*. The *Statutory Powers Procedures Act* applies to the exercise of a statutory power of decision where there is a requirement to hold or to afford the parties to the proceeding an opportunity for a hearing before making a decision. The *Statutory Powers Procedures Act* sets out minimum procedural requirements governing such hearings and provides rule-making authority to establish rules to govern such proceedings.

These procedures are intended to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) of the *Conservation Authorities Act* in a manner that meets the legal requirements of the *Statutory Powers Procedures Act* without being unduly legalistic or intimidating to participants.

2.0 PREHEARING PROCEDURES

2.1 Role of the Hearing Board

In considering the application, the Hearing Board is acting as a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or reasonable apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.

- (a) No member of the Authority taking part in the hearing should have prior involvement with the application that could lead to a reasonable apprehension of bias on the part of that member. Where a member has a personal interest, the test is whether a reasonably well-informed person would consider that the interest might have an influence on the exercise of the official's public duty. Where a member is a municipal councillor, the *Municipal Conflict of Interest Act* applies. In the case of a previously expressed opinion, the test is that of an open mind (i.e. is the member capable of persuasion in participating in the decision making)

