



RVCA Hearing Procedures

Under Section 28 of the
Conservation Authorities Act

Approved: November 25, 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, erosion, dynamic beaches or pollution or the conservation of land. In the case of hearings related to applications under 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 councilor, 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)
- (b) If material relating to the merits of an application that is the subject of a hearing is distributed to Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material. These materials can be distributed electronically.

- (c) The applicant will be given an opportunity to attend the hearing before a decision is made; however, the applicant does not have to be present for a decision to be made.

2.2 Application

The right to a hearing arises where staff is recommending refusal of an application or is recommending conditions to the approval of an application. The applicant is entitled to reasonable notice of the hearing pursuant to the *Statutory Powers Procedures Act*.

2.3 Notice of Hearing

The Notice of Hearing shall be sent to the applicant within sufficient time to allow the applicant to prepare for the hearing. To ensure that reasonable notice is given, it is recommended that prior to sending the Notice of Hearing, the applicant be consulted to determine an agreeable date and time based on the local Conservation Authority's regular meeting schedule.

The Notice of Hearing shall contain the following:

- (a) Reference to the applicable legislation under which the hearing is to be held (i.e. the *Conservation Authorities Act*).
- (b) The time, place and purpose of the hearing.

For electronic hearings the Notice must also contain details about the manner in which the hearing will be held and a statement that the applicant should notify the Authority if they believe holding the hearing electronically is likely to cause them significant prejudice. The Authority shall assume the applicant has no objection to the electronic hearing if no such notification is received.

- (c) Particulars to identify the applicant, property and the nature of the application which are the subject of the hearing.

If the applicant is not the landowner, the applicant must have written authorization from the registered landowner to act as the owner's agent and to proceed with a hearing.

- (d) The reasons for the proposed refusal or conditions of approval shall be specifically stated. This should contain sufficient detail to enable the applicant to understand the issues so they can be adequately prepared for the hearing.

It is sufficient to reference in the Notice of Hearing that the recommendation for refusal or conditions of approval is based on the reasons outlined in previous correspondence or a hearing report that will follow.

- (e) A statement notifying the applicant that the hearing may proceed in the applicant's absence and that the applicant will not be entitled to any further notice of the proceedings.

It should be noted that a hearing will only proceed in the absence of the applicant in extreme circumstances.

- (f) Reminder that the applicant is entitled to be represented at the hearing by a representative such as legal counsel, if desired. The conservation authority may also be represented at the hearing by counsel and/or staff.
- (g) Date by which the applicant must provide information to be included in the agenda submitted to Hearing Board members in advance of the hearing.
- (h) A statement informing the applicant that witnesses have the right to object pursuant to the *Canada Evidence Act*, that the Act indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating, and that answers provided during the hearing are not admissible against the witness in any criminal trial or proceeding.
- (i) A statement informing the applicant that information presented at the hearing will be presented under oath or affirmation.

2.4 Presubmission of Reports

Members of the Hearing Board shall receive an agenda at least five calendar days in advance of the hearing and the agenda shall be made available to the public on the Authority's website at the same time unless the hearing is closed to the public.

The applicant shall be given a minimum of 14 calendar days to prepare a report once the reasons for the proposed refusal or conditions of approval have been provided by staff. The applicant's report will accompany the staff's hearing report provided with the agenda to the members of the Hearing Board. The applicant will be provided a copy of the staff hearing report at the same time the report is provided to the members.

3.0 HEARING

3.1 Public Hearing

Pursuant to the *Statutory Powers Procedure Act*, hearings, including electronic hearings, are required to be held in public. For electronic hearings, public attendance should be synchronous with the hearing. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that intimate financial, personal or other matters would be disclosed at hearings.

3.2 Hearing Participants

The *Conservation Authorities Act* does not provide for third party status at the hearing. The hearing however is open to the public. Any information provided to the Hearing Board must be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff as appropriate.

3.3 Attendance of Hearing Board Members

In accordance with case law relating to the conduct of hearings, those members of the Authority who will decide whether to grant or refuse the application must be present during the full course of the hearing. If it is necessary for a member to leave, the remaining members can continue with the hearing and render a decision.

3.4 Adjournments

The Board may adjourn a hearing on its own motion or that of the applicant or Authority staff where it is satisfied that an adjournment is necessary for an adequate hearing to be held.

3.5 Orders and Directions

The Authority is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes.

3.6 Information Presented at Hearings

- (a) In accordance with the *Statutory Powers Procedure Act*, witnesses will be informed of their right to object pursuant to the *Canada Evidence Act*. The *Canada Evidence Act* indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating. Further, answers provided during the hearing are not admissible against the witness in any criminal trial or proceeding.
- (b) Information will be presented under oath or affirmation. The applicant will be informed of this in the Notice of Hearing and at the start of the hearing.
- (c) The Board may authorize receiving a copy rather than the original document. However, the Board can request certified copies of the document if required.
- (d) Privileged information, such as solicitor/client correspondence, cannot be heard. Information that is not directly within the knowledge of the speaker (hearsay), if relevant to the issues of the hearing, can be heard.
- (e) The Board may consider matters of common knowledge such as geographic or historic facts, times, measures, weights, etc. or generally recognized scientific or technical facts, information or opinions within its specialized knowledge without hearing specific information to establish their truth.

3.7 Conduct of Hearing

3.7.1 Record of Attending Hearing Board Members

A record shall be made of the members of the Hearing Board.

3.7.2 Opening Remarks

The Chair shall convene the hearing with opening remarks which generally identify the applicant, the nature of the application and the property location, as well as outline the hearing procedures and advise on requirements of the *Canada Evidence Act*.

3.7.3 Presentation of Authority Staff Information

Staff of the Authority will present the location and nature of the application and the reasons supporting the recommendation for the refusal or conditions of approval of the application. Any reports, documents or plans that form part of the presentation shall be properly indexed and received.

- The Authority may be represented by legal counsel or other, if desired
- Staff may present information to the Board and/or have invited advisors to present information to the Board
- The Authority's presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist, etc.

Staff of the Authority should not submit new technical information at the hearing as the applicant will not have had time to review and provide a professional opinion to the Hearing Board.

3.7.4 Presentation of Applicant Information

The applicant has the opportunity to present information following the Authority staff presentation. Any reports, documents or plans which form part of the submission should be properly indexed and received.

The applicant shall present information as it applies to the permit application in question. For instance, does the requested activity affect the control of flooding, erosion, dynamic beach or conservation of land or pollution? The hearing does not address the merits of the activity or appropriateness of such a use in terms of planning.

- The applicant may be represented by legal counsel or agent, if desired
- The applicant may present information to the Board and/or have invited advisors to present information to the Board
- The applicant's presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist, etc.

The applicant should not submit new technical information at the hearing as Staff of the Authority will not have had time to review and provide a professional opinion to the Hearing Board.

3.7.5 Questions

Members of the Hearing Board may direct questions to each speaker as the information is being heard. The applicant and /or agent can make any comments or questions on the staff report.

Pursuant to the *Statutory Powers Procedure Act*, the Board can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. It is recognized that the courts have indicated that the limiting of questions should only be allowed where it has clearly gone beyond reasonable or proper bounds.

3.7.6 Deliberation

After all the information is presented, the Board shall adjourn the hearing and retire in private to confer. The Board may reconvene on the same date or at some later date to advise of the Board's decision. The Board members shall not discuss the hearing with others prior to the decision of the Board being finalized.

4.0. DECISION

The applicant must receive written notice of the decision. The applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision to the Ontario Land Tribunal.

The Board shall state the reasons which led to their decision.

4.1 Adoption

A resolution advising of the Board's decision and particulars of the decision shall be adopted.

4.2 Notice of Decision

The decision notice shall include the following information:

- (a) The identification of the applicant, property and the nature of the application that was the subject of the hearing.
- (b) The decision to refuse or approve the application with or without conditions. A copy of the Hearing Board resolution will be attached.

The written Notice of Decision will be forwarded to the applicant by registered mail.

5.0. RECORD

The Authority shall compile a record of the hearing. In the event of an appeal, a copy of the record should be forwarded to the Ontario Land Tribunal. The record must include the following:

- (a) The application for the permit.
- (b) The Notice of Hearing.
- (c) Any orders made by the Board (e.g., for adjournments).
- (d) All information received by the Board.
- (e) Attendance of Hearing Board members
- (f) The decision and reasons for decisions of the Board.
- (g) The Notice of Decision sent to the applicant.