



Lake Simcoe Region Conservation Authority Hearing Guidelines and Procedures

Conservation Authorities Act, Section 28
O.Reg.179/06

March 2012

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1.0 PURPOSE OF HEARING GUIDELINES

The Conservation Authorities Act (Section 28) requires the applicant be party to a hearing by the local Conservation Authority Board, for an application to be refused or approved with conditions. Further, where staff are recommending that a permit be revoked under Ontario Regulation 179/06 a hearing will be held to provide the applicant with the opportunity to show cause why the permit should not be cancelled. Ontario Regulation 179/06 allows the Authority to restrict or refuse development in areas where the control of flooding, erosion, dynamic beaches, pollution or the conservation of land may be affected by development in order to prevent the creation of new hazards or the aggravation of existing ones.

The Board of Directors is empowered by law to make a decision, governed by the Statutory Powers Procedures Act. The Conservation Authority Board will conduct a proceeding by tribunal for these applications. The Board will evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and decide if the application will be approved with or without conditions, refused or revoked.

2.0 PREHEARING PROCEDURES

2.1 Apprehension of Bias

In considering the application, the 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 a reasonable apprehension of bias where it is likely to arise:

- (a) No member of the Authority taking part in the hearing should be involved, either through participation in committee or intervention on behalf of the applicant or other interested parties with the matter, prior to the hearing. Otherwise, there is a danger of a reasonable apprehension of bias which could jeopardize the hearing.
- (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.
- (c) In instances where the Authority requires a hearing to help it reach a determination as to whether to give permission with or without conditions or refuse a permit application, a final decision shall not be made until such time as a hearing is held. 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 is required where staff is recommending refusal of an application or where there is some indication that the Authority may not follow staff's recommendation to approve a permit or the applicant objects to the conditions of approval. The applicant is entitled to reasonable notice of the hearing pursuant to the Statutory Powers Procedures Act.

The applicant must notify the Authority of their intent to seek a hearing within 60 calendar days of notice that their application cannot be recommended for approval or recommended for approval with conditions deemed unsuitable by the applicant.

2.3 Notice of Hearing

The Notice of Hearing shall be sent to the applicant a minimum of 30 calendar days prior to the hearing to allow the applicant to prepare for the hearing. To ensure that reasonable notice is given, prior to sending the Notice of Hearing, the applicant will be consulted to determine an agreeable date and time based on the Conservation Authority's regular meeting schedule.

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

Note: If the applicant is not the landowner but the prospective owner, the applicant must have written authorization from the registered landowner to submit a permit application and to act on behalf of the landowner at a hearing

- (d) The reasons for the proposed refusal or conditions of approval shall be specifically stated. The reasons in the staff report to the Board will contain sufficient detail to enable the applicant to understand the issues so he or she 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.

- (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.

Except in exceptional circumstances, it is recommended that the hearing not proceed in the absence of the applicant.

- (f) Reminder that the applicant is entitled to be represented at the hearing by counsel or agent, if desired.

It is recommended that the Notice of Hearing be directed to the applicant and/or landowner by registered mail, e-mail, courier or hand delivered. Please refer to **Appendix "A"** for an example of Notice of Hearing.

2.4 Pre-submission of Reports

The applicant shall be given at minimum three weeks to prepare a report once the reasons for the staff recommendations have been received. The applicant's report will accompany the staff hearing report provided with the agenda to the Members. Subsequently, this may affect the timing and scheduling of the staff hearing reports. The applicant will be provided a copy of the staff hearing report at the same time the report is provided to the Members.

2.5 Hearing Information

Prior to the hearing, the applicant shall be advised of the Lake Simcoe Region Conservation Authority's hearing procedures.

3.0 HEARING

3.1 Public Hearing

Pursuant to the *Statutory Powers Procedure Act*, hearings are required to be held in public. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that confidential financial, personal, legal or other matters would be disclosed at hearings. In these rare instances and under these circumstances, a meeting may be moved into closed session.¹

¹ A closed meeting, or portion of a meeting, may be convened for an item deemed appropriate for a closed meeting in accordance with the Lake Simcoe Region Conservation Authority By-Laws Hearing Guidelines and Procedures
Conservation Authorities Act, Section 28
O.Reg. 179/06 – March 2012

3.2 Public Participation

The *Conservation Authorities Act* does not provide for third party status at a hearing.

3.3 Attendance of 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 or cancel the permit in tribunal must be present during the full course of the hearing. If it is necessary for a member to leave, the hearing may be adjourned and resumed when the member returns. If the hearing proceeds, only those members who were present throughout the entire hearing can participate in the remaining portion of the hearing and the decision. In the event of an adjournment, only those members who attended the entire hearing may participate in the discussion and decision on the hearing when it is reconvened.

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.

Any adjournments form part of the hearing record.

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. A hearing procedures example has been included as **Appendix "B"**.

3.6 Information Presented at Hearings

- (a) The *Statutory Powers Procedure Act*, requires that a witness be informed of his 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. This information should be provided to the applicant as part of the Notice of Hearing.
- (b) It is the decision of the hearing members as to whether information is presented under oath or affirmation. It is not a legal requirement. The applicant must be informed of the above, prior to or 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 take into account 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.
- (f) New information shall not be presented at the hearing by the applicant or staff.

3.7 Conduct of Hearing

3.7.1 Record of Attending Board Members

A record shall be made of the members present at the hearing.

3.7.2 Opening Remarks

The Chair of the Authority shall convene the hearing with opening remarks which generally; identify the applicant, the nature of the application, and the property location; outline the hearing procedures; and advise on requirements of the Canada Evidence Act. Please reference Appendix "C" for the Opening Remarks model.

3.7.3 Presentation of Authority Staff Information

Staff of the Authority presents 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.

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

The Manager, Planning, Regulations and Enforcement will coordinate the presentation of information on behalf of Authority staff and will respond to questions on behalf of Authority staff. LSRCA legal counsel or technical staff may also be requested to respond to questions.

3.7.4 Presentation of Applicant Information

The applicant has the opportunity to present information at the conclusion of 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. 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, etc.

The applicant and/or agent can make any comments or questions on the staff report.

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

The applicant must identify and list all person/s representing on behalf of their respective application. The applicant must provide this information no later than two weeks prior to the hearing.

3.7.5 Questions

Members of the Board may direct questions to each speaker as the information is being heard.

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. Please note that the courts have been particularly sensitive to the issue of limiting questions and there is a tendency to allow limiting of questions only where it has clearly gone beyond reasonable or proper bounds.

3.7.6 Deliberation

After all the information is presented, the Board members should debate and vote on the permit in open session to provide a timely and transparent decision. The Board may adjourn the hearing. If adjourned, the Board members shall not discuss the hearing with others prior to the decision of the Board being finalized. Closed meetings may be held as noted in the previous footnote ¹.

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 Minister of Natural Resources.

It is important that the hearing participants have a clear understanding of why the application was refused or approved or why the application was denied. The Board shall itemize and record information of particular significance which led to their decision.

4.1 Notice of Decision

The notice of decision should 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 and any applicable conditions or cancel the permit. A copy of the Board resolution should be attached.

It is recommended that the written Notice of Decision be forwarded to the applicant by registered mail, e-mail or courier. A sample Notice of Decision and cover letter has been included as **Appendix "D"**.

4.2 Adoption

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

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 Minister of Natural Resources/Mining and Lands Commissioner. 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) The minutes of the meeting made at the hearing.
- (f) The decision and reasons for decision of the Board.
- (g) The Notice of Decision sent to the applicant.

Appendix “A” – Notice of Hearing

Month XX, 20XX

Applicant Name
Applicant address

Dear Applicant:

Re: Application for Permission (#XXX/XX) Pursuant to Ontario Regulation 179/06 Proposed construction of a residential addition at XX YYYY Drive, Municipality

This will advise you that your application will be heard by the Board of Directors of the Lake Simcoe Region Conservation Authority according to Section 28(12) of the Conservation Authorities Act 1990 as amended. The corresponding Ontario Regulation is Number 179/06, Lake Simcoe Region Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses.

Enclosed are the following:

Hearing Guidelines and Procedures for Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses Regulation applications at the Lake Simcoe Region Conservation Authority.

Notice of Hearing

The staff report and presentation will be provided to you at the same time it is provided to the General Membership prior to the hearing. If you wish to submit a brief report for distribution to the tribunal, please return the report to the attention of the Manager of Planning, Regulations and Enforcement and the Coordinator, Board of Directors/CAO at this office two weeks before the scheduled hearing.

The hearing will be held on XX (Day) XX (Month), 20XX at XX a.m. in the Administration Building, 120 Bayview Parkway, Newmarket, Ontario.

If you cannot appear on (insert XXX date), the Conservation Authority will only reschedule the hearing when you indicate an appropriate time more convenient to you.

Sincerely,

Chief Administrative Officer / Secretary Treasurer

Appendix “B” – Hearing Procedures

HEARING PROCEDURES

1. The Conservation Authority Board will pass a motion to conduct a proceeding by tribunal for a hearing under Ontario Regulation 179/06 (as amended).
2. Roll Call followed by the Chair’s opening remarks.
3. The Chair will request members of the tribunal declare any prior participation in the matter before the tribunal, either through participation in committee or intervention on behalf of the applicant or other interested parties.
4. Staff will introduce the applicant/owner and his/her agent(s) to the Board.
5. Staff will indicate the nature and location of the subject application and the conclusions.
6. Staff will present the staff report included in the Conservation Authority agenda package.
7. The applicant and/or his/her agent may speak and may also make comments on the staff report.
8. The Board will question, if necessary, both the staff and the applicant/agent.
9. Members of the Board will move and second a motion.
10. A motion will be carried which will culminate in the decision.
11. The Chair will advise the owner/applicant of the Board decision (with confirmation of the decision to follow in writing).
12. The Chair shall notify the owner/applicant of his/her right to appeal the decision to the Minister of Natural Resources within 30 days of receipt of the reasons for the decision.
13. Motion to conclude the hearing and rise from tribunal to return to the General Membership meeting of the Conservation Authority Board.

Appendix “C” – Opening Chair Remarks

CHAIR'S REMARKS WHEN DEALING WITH HEARINGS WITH RESPECT TO ONTARIO REGULATION 179/06 (as amended)

We are now going in tribunal to conduct a hearing under section 28 of the Conservation Authorities Act in respect of an application by _____; for permission to: _____

The Authority has adopted Regulations under Section 28 of the Conservation Authorities Act which require the permission of the Authority for development within an area regulated by the Authority, alteration to a shoreline or watercourse or interference with a wetland. The Authority will assess the permit application to ensure there is no adverse affect on the control of flooding, erosion, dynamic beaches or pollution or conservation of land.

Staff has reviewed this proposed work and a copy of the staff report has been given to the applicant.

The Conservation Authorities Act (Section 28 [12]) provides that:

"Permission required under a regulation made under clause (1) (b) or (c) shall not be refused or granted subject to conditions unless the person requesting permission has been given the opportunity to require a hearing before the authority or, if the authority so directs, before the authority's executive committee."

In holding this hearing, the Authority Board is to determine whether or not a permit is to be _____ (issued / cancelled). In doing so, we can only consider the application in the form that is before us, the staff report, such evidence as may be given and the submissions to be made on behalf of the applicant.

The hearing is a proceeding by tribunal and will be conducted according to the Statutory Powers Procedure Act. Under Section 5 of the Canada Evidence Act, a witness may refuse to answer any question on the ground that the answer may tend to criminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

If the applicant has any questions to ask of the Board or of the Authority representative, they must be directed to the Chair of the Board.

Members of the tribunal are asked to declare any prior participation in the matter before the tribunal, either through participation in committee or intervention on behalf of the applicant or other interested parties that will exclude them from the proceedings

Appendix “D” – Notice of Decision

(Date)

(name)

(address)

Dear:

RE: NOTICE OF DECISION
Hearing Pursuant to Section 28(12) of the Conservation Authorities Act
Applicant Name
Proposed Residential Development
XX Drive, Municipality (Application #)

In accordance with the requirements of the Conservation Authorities Act, the Lake Simcoe Region Conservation Authority provides the following Notice of Decision:

On (meeting date), the Authority refused/approved your application/approved your application with conditions. A copy the Board’s resolution # has been attached for your records. Please note that this decision is based on the following reasons:

(insert reasons in the staff report and resolution)

In accordance with Section 28 (15) of the Conservation Authorities Act, an applicant who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Minister who may refuse the permission; or grant permission, with or without conditions. For your information, should you wish to exercise your right to appeal the decision, a letter by you or your agent/counsel setting out your appeal must be sent within 30 days of receiving this decision addressed to:

The Honourable XX Minister of Natural Resources
Queen’s Park, Whitney Block
99 Wellesley Street West, 6th Floor, Room 6630
Toronto, ON M7A 1W3
TEL: (416) 314-2301 FAX: (416) 314-2216

Should you require any further information, please do not hesitate to contact Beverley Booth, Manager of Planning, Regulations and Enforcement at 905-895-1281, ext. 230.

Sincerely,
Chief Administrative Officer / Secretary Treasurer
Attachment