

KAWARTHA REGION CONSERVATION AUTHORITY

By-Law # 3

Section 28 (3) Conservation Authorities Act

Hearing Procedures April, 2010

Revised Hearing Procedures September, 2010

Revised Hearing Procedures March, 2011





Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised) BOD – Resolution 43/11 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011

KAWARTHA REGION CONSERVATION AUTHORITY
Section 28 (3) Conservation Authorities Act
Hearing Procedures – April, 2010

TABLE OF CONTENTS

	<u>Page</u>
1.0. Introduction and Purpose	1
2.0 Prehearing Procedures	1
2.1 Apprehension of Bias	1
2.2 Application	2
2.3 Notice of Hearing	2
2.4 Presubmission of Reports	3
2.5 Hearing Information	3
3.0 Hearing	3
3.1 Public Hearing	3
3.2 Hearing Participants	3
3.3 Attendance of Hearing Board Members	3
3.4 Adjournments	4
3.5 Orders and Directions	4
3.6 Information Presented at Hearings	4
3.7 Conduct of Hearing	4
3.7.1 Record of Attending Hearing Board Members	4
3.7.2 Opening Remarks	5
3.7.3 Presentation of Authority Staff Information	5
3.7.4 Presentation of Applicant Information	5
3.7.5 Questions	5
3.7.6 Deliberation	6
4.0 Decision	6
4.1 Adoption	6
4.2 Notice of Decision	6
5.0 Record	7
 Appendices	
A. Notice of Hearing – model	(i)
B. Hearing Procedures – model	(ii)
C. Opening Chair Remarks – model	(iii)
D. Notice of Decision – model	(v)



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS – By-Law # 3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010
Revisions:	Page 1 of 7	

1.0 PURPOSE OF HEARING PROCEDURES:

The purpose of the Hearing Procedures is to guide the Kawartha Region Conservation Authority Hearing Board in conducting hearings under Section 28 of the *Conservation Authorities Act*. These procedures reflect the changes to the 1998 *Conservation Authorities Act*. The Act requires that the applicant be party to a hearing by the local Conservation Authority Board, for an application to be refused or approved with contentious conditions. Further, 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. The Hearing Board, which is comprised of the members of the Kawartha Region Conservation Authority Board of Directors, is empowered by law to make a decision, governed by the *Statutory Powers Procedures Act*. It is the purpose of the Hearing Board to evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and to decide whether the application will be approved with or without conditions, or refused.

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*. The procedures are designed to ensure that hearings are conducted in a manner consistent with the legal requirements of the *Statutory Powers Procedures Act* without being unduly legalistic or intimidating to the participants.

2.0 PREHEARING PROCEDURES

2.1 Apprehension of Bias

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 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 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 an 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.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS – By-Law # 3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010
Revisions:	Page 2 of 7	

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*.

2.3 Notice of Hearing

Applicants shall be sent a Notice of Hearing within 30 to 90 days from the date that a requirement for a Hearing is identified a per Section 2,2. It is recommended the applicant be consulted to determine an agreeable date and time based on the Authority's regular meeting schedule. Along with The Notice of Hearing, applicants will be provided with the hearing procedures.

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.

- (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 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 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.

Except in extreme 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, if desired.

The Notice of Hearing shall be directed to the applicant and/or landowner by registered mail. Please refer to **Appendix A** for an example Notice of Hearing.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS – By-Law # 3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010
Revisions:	Page 3 of 7	

2.4 Presubmission of Reports

The Hearing process shall be guided by the principle of full disclosure by the parties (The Applicant and the Authority staff).

From the date the applicant receives the Notice of Hearing outlining the reasons for Authority staff recommendations, the process shall provide sufficient time for the parties to prepare information including such materials as the application proposal; supporting technical documents (plans, drawings, studies etc.) and any summary reports or presentation material that the Hearing Board will consider in arriving at a decision. The parties shall ensure that a complete set of their respective information materials are exchanged a minimum of two weeks prior to the Hearing to provide time for review.

In scheduling the Hearing date with the applicant, Authority staff must give consideration to the timelines required to provide for the preparation of Hearing information, exchange and review by the parties as set out above.

2.5 Hearing Information

Prior to the hearing, the applicant shall be advised of the local Conservation Authority's hearing procedures upon request.

3.0 HEARING

The following outlines the process for a Hearing. It should be noted at the beginning of the Hearing if there are any Conflict of Interest concerns or issues. (Reference: Kawartha Region Conservation Authority By-Law # 2 – Meeting Procedures, Item # H – Conflict of Interest).

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 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 local hearing. While others may be advised of the local hearing, any information that they provide should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff.

While the hearings will be held in public and are also open to attendance by the press, the filming of the hearing or the taking of pictures will not be permitted during the hearing by any person or persons unless permitted by the Chair.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS – By-Law # 3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010
Revisions:	Page 4 of 7	

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: 1) the hearing must be adjourned and resumed when the member returns, or 2) if the hearing proceeds, even in the event of an adjournment, only those members who were present after the member left can sit to the conclusion of the hearing.

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) The Hearing is a formal procedure. However, the evidence before the Board is not required to be given under oath or affirmation.
- (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.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS – By-Law # 3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010
Revisions:	Page 5 of 7	

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; 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 and/or legal counsel 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.

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 presentation shall be made by one only of either the applicant or his/her agent.

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 have only one designated spokesperson 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 information at the hearing as the Staff of the Authority will not have had time to review and provide a professional opinion to the Hearing Board.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS – By-Law # 3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010
Revisions:		Page 6 of 7

3.7.5 Questions

Members of the Hearing Board may direct questions, through the Chair, 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. 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.

The hearing board must subjectively have reasonable and probable grounds on which to base a decision, information presented must be relevant in the context of the decision to be made. Those grounds must, in addition, be justifiable from an objective point of view, such that a person of ordinary and prudent judgment placed in the position of the hearing board must be able to conclude that there were reasonable and probable grounds for limiting facts or circumstances presented that would not be relevant for a decision to be made.

3.7.6 Deliberation

After all the information is presented, the Board will deliberate and make a decision on the application in camera.

4.0. DECISION

Upon making its decision, the Board will rise from in camera and report its decision and particulars of the decision.

4.1 Adoption

A resolution advising of the Board’s decision and particulars of the decision will be adopted. The Chair will call a vote by a show of hands.

4.2 Notice of Decision

The applicant must receive written notice of the decision within 15 days 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.

The Board shall itemize and record information of particular significance which led to their decision.

The decision notice 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 and reasons to refuse or approve the application. A copy of the Hearing Board resolution should be attached.

The written Notice of Decision be forwarded to the applicant by registered mail. A sample Notice of Decision and cover letter has been included as **Appendix D**.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS – By-Law # 3 Section 28 (3) Conservation Authorities Act – Hearing Procedures	
Responsibility: CAO	Approved by: BOD – Resolution 75/10 BOD – Resolution 180/10 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010
Revisions:	Page 7 of 7	

5.0 RECORD

The Authority shall compile a record of the hearing. Recording devices may be used for this purpose. 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

IN THE MATTER OF

The Conservation Authorities Act,
R.S.O. 1990, Chapter 27

AND IN THE MATTER OF an application by

FOR THE PERMISSION OF THE CONSERVATION AUTHORITY

Pursuant to Regulations made under
Section 28, Subsection 12 of the said Act

TAKE NOTICE THAT a Hearing before the Board of Directors of the Kawartha Region Conservation Authority will be held under Section 28, Subsection 12 of the Conservation Authorities Act at the offices of the said Authority, 277 Kenrei Road, Lindsay, Ontario K9V 4R1, at the hour of ____, **on the ____ day of _____, 2010**, with respect to the application by (**NAME**) to permit development within an area regulated by the Authority in order to ensure no adverse affect on (**the control of flooding, erosion, dynamic beaches or pollution or conservation of land./alter or interfere with a watercourse, shoreline or wetland**) on Lot ____, Plan/Lot ____, Concession ____, (**Street**) in the City of _____, Regional Municipality of _____, _____ Watershed.

TAKE NOTICE THAT you are invited to make a delegation and submit supporting written material to the Board of Directors of The Kawartha Region Conservation Authority for the meeting of (**meeting number**). If you intend to appear, please contact (**name**) . Written material will be required by (**date**), to enable the Committee members to review the material prior to the meeting.

TAKE NOTICE THAT this hearing is governed by the provisions of the Statutory Powers Procedure Act. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the Ontario Evidence Act. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the Canada Evidence Act that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as this tribunal has no knowledge of the affect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that if you do not attend at this Hearing, the Board of Directors of the Kawartha Region Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

DATED the ____ day of , _____ 2010

The Board of Directors of the
Kawartha Region Conservation Authority

Per:
Chief Administrative Officer/Secretary-Treasurer



APPENDIX B

HEARING PROCEDURES

1. Motion to sit as Hearing Board.
2. Roll Call followed by the Chair's opening remarks.
3. Staff will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.
4. Staff will indicate the nature and location of the subject application and the conclusions.
5. Staff and/or counsel will present the staff report included in the Authority agenda and the reasons why the application was recommended for denial, if applicable.
6. The Applicant and/or his/her agent will have the opportunity to ask questions of staff based on their presentation.
7. Following the Applicant, the members of the Board can ask the staff questions.
8. The applicant and/or his/her agent will make a presentation.
9. The staff and/or counsel will have the opportunity to ask questions of the applicant and/or his/her agents followed by questions from the Board.
10. The Hearing Board will move into camera.
11. The Hearing Board will, once it has reached a decision, move out of camera, to reconvene in public forum.
12. Members of the Hearing Board will move and second a motion
13. A motion will be carried which will culminate in the decision.
14. The Chair or Acting Chair will advise the owner/applicant of the Hearing Board decision.
15. If decision is "to refuse", the Chair or Acting Chair shall notify the owner/applicant in writing 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.
16. Motion to move out of Hearing Board.

APPENDIX C

CHAIR'S REMARKS WHEN DEALING WITH HEARINGS WITH RESPECT TO ONTARIO REGULATION 158

We are now going 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 requires the permission of the Authority for development within an area regulated by the Authority in order to ensure no adverse affect on the control of flooding, erosion, dynamic beaches or pollution or conservation of land or to permit alteration to a shoreline or watercourse or interference with a wetland.

The 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".

In holding this hearing, the Authority Board/Executive Committee is to determine whether or not a permit is to be issued. 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 proceedings will be conducted according to the Statutory Powers Procedures Act. Further to this, Section 5 of the Canada Evidence Act states:

1. No witness shall be excused from answering any questions on the ground that the answer to the question may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or any person.
2. Where with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person and if but for this *Act* or the *Act* of any provincial legislature, the witness would therefore have been excused from answering the question, then although the witness is by reason of the *Act* or the provincial *Act* compelled to answer, the answer so given shall not be used or admissible in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place other than a prosecution for perjury in giving of that evidence or for the giving of contradictory evidence.

The procedure in general will be informal without the evidence before it being given under oath or affirmation.

The rules of evidence before this Board are informal.

If the applicant has any questions to ask of the Board of Directors, he/she is free to do so providing all questions are directed to the Chair of the Board.

The Hearing will proceed as follows:

1. Staff and/or counsel of the Kawartha Region Conservation Authority will present an overview of the application and the reasons why the application was recommended for denial, if applicable. The Applicant will then have the opportunity to ask questions of staff based on their presentation. Following the Applicant, the members of the board may ask the staff questions.
2. Next will be the presentation by the Applicant followed by questions by Kawartha Conservation staff and/or counsel and then questions by members of the Board of Directors.
3. Lastly, the Board of Directors will deliberate and make a decision on the application. A resolution advising of the Board of Directors decision and the particulars of the decision will then be adopted.

APPENDIX D

(Date)

BY REGISTERED MAIL

(name)

(address)

Dear:

RE: NOTICE OF DECISION
Hearing Pursuant to Section 28(12) of the Conservation Authorities Act
Proposed Development
Lot , Plan ; ?? Drive City of
(Application #)

In accordance with the requirements of the Conservation Authorities Act, the (**name**) Kawartha Region Conservation Authority provides the following Notice of Decision:

On (**meeting date and number**), the Hearing Board for the Kawartha Region Conservation 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: (**the proposed development/alteration to a watercourse or shoreline adversely affects the control of flooding, erosion, dynamic beaches or pollution or interference with a wetland or conservation of land**).

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

Should you require any further information, please do not hesitate to contact (**staff contact**) or the undersigned.

Yours truly,

Chief Administrative Officer/Secretary Treasurer

Enclosure

