

KAWARTHA CONSERVATION

By-Law # 2 – Hearing Procedures

Section 28 (3) Conservation Authorities Act

Hearing Procedures April, 2010

Current Revision: November, 2021

Previous Revisions:

Sep 2010, Mar 2011, Nov 2012, Mar 2013,

Jan 2019, Nov 2020



**KAWARTHA
CONSERVATION**

Discover • Protect • Restore



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
		Page 2 of 9

KAWARTHA CONSERVATION
Section 28 (3) Conservation Authorities Act
Hearing Procedures – effective December 1, 2021

TABLE OF CONTENTS

	<u>Page</u>
1.0. Purpose of Hearing Procedures	1
2.0 Prehearing Procedures	1
2.1 Role of the Hearing Board	1
2.2 Application	2
2.3 Notice of Hearing	2
2.4 Pre-submission of Reports	3
3.0 Hearing	3
3.1 Public Hearing	4
3.2 Hearing Participants	4
3.3 Attendance of Hearing Board Members	4
3.4 Adjournments	4
3.5 Orders and Directions	4
3.6 Information Presented at Hearings	4
3.7 Conduct of Hearing	5
3.7.1 Record of Attending Hearing Board Members	5
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	6
3.7.6 Deliberation	6
4.0 Decision	6
4.1 Adoption	6
4.2 Notice of Decision	6
5.0 Record	7
Schedules	
1 Hearings under Section 28.0.1 of the Conservation Authorities Act (Permission for Development, Zoning Order)	i
Appendices	
A. Notice of Hearing	iii
B. Notice of Hearing, MZO	iv
C. Hearing Procedures	v
D. Opening Chair Remarks (application)	vi
E. Opening Chair Remarks (cancellation)	viii
F. Opening Chair Remarks (MZO)	x
G. Notice of Decision (approval with conditions)	xiii



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
	Page 3 of 9	

H.	Notice of Decision (refusal)	xiv
I.	Notice of Decision (cancellation)	xvi
J.	Hearing Process	xviii



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
Page 1 of 9		

1.0 PURPOSE OF HEARING PROCEDURES:

The purpose of the Hearing Procedures is to guide the Kawartha Conservation Hearing Board in conducting hearings under the *Conservation Authorities Act*.

The Conservation Authorities Act requires that the applicant be provided with an opportunity for 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 Kawartha Conservation the proposal adversely affects the control of flooding, pollution or conservation of land, and additional erosion and dynamic beaches. In addition, a Hearing may be convened at the request of a holder of a permission (“permit holder”) when it is Kawartha Conservation’s intention to cancel a permission. Ontario Regulation 182/06, pursuant to the *Conservation Authorities Act*, provides for the cancellation of permissions (a permit or other form of written authorization), if Kawartha Conservation is of the opinion that the conditions of the permit have not been met.

The Hearing Board, which is comprised of the members of the Kawartha Conservation Board of Directors, is empowered by law to make a decision, governed by the *Statutory Powers Procedures Act*.

The Hearing Rules are adopted under the authority of Section 25.1 of the Statutory Powers Procedures Act (SPPA). The SPPA 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 SPPA sets out minimum procedural requirements governing such hearings and provides rule-making authority for to establish rules to govern such proceedings.

The Hearing Board shall hear and decide whether the application will be approved with or without conditions, or refused. In the case of hearings related to applications submitted purposed to Section 28.0.1, the Hearing Board shall determine what conditions, if any, will be attached to the permission (see Schedule 1 outlining applicable sections of the by-law).

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. These procedures also incorporated considerations related to hearings under Section 28.0.1 (7).

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 apprehension of bias. The following are three examples of steps to be taken to avoid reasonable 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.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
Page 2 of 9		

- (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/permit holder at the same time. The applicant/permit holder may be afforded an opportunity to distribute similar pre-hearing material. These materials can be distributed electronically.
- (c) In instances where Kawartha Conservation 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/permit holder will be given an opportunity to attend the hearing before a decision is made; however, the applicant/permit holder 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 the cancellation of a permission, 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

Applicants shall be sent a Notice of Hearing within 30 to 90 days from the date that a requirement for a Hearing is identified as per Section 2.2. It is recommended the applicant be consulted to determine an agreeable date and time based on Kawartha Conservation’s regular meeting schedule. Along with The Notice of Hearing, applicants will be provided with the hearing procedures.

When a permission is being cancelled, there is a need to act quickly to inform the permit holder of Kawartha Conservation’s intention to cancel the permission as the permission would normally involve an aspect of the development or activity which in the opinion of Kawartha Conservation is unauthorized. Should a permit holder request a hearing when advised of Kawartha Conservation’s intention, Kawartha Conservation shall give the holder at least 5 days notice of the date of the hearing. Notice of a Hearing date may be given verbally to provide as much lead time to the permit holder as is reasonably possible. Verbal notice shall be followed-up with a written notice.

The Notice of Hearing must contain or append 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, or for electronic hearings, the time, purpose of the hearing and details about the manner in which the hearing will be held.

Note: For electronic hearings, the Notice will also contain 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/permit holder, property and the nature of the application/permission 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 intended permit cancellation, refusal of a permit or conditions of approval shall be specifically stated. This should contain sufficient detail to enable the permit holder to understand the issues so he or she can be adequately prepared for the hearing.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
		Page 3 of 9

It is sufficient to reference in the Notice of Hearing that the recommendation for cancellation, 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/permit holder that the hearing may proceed in the applicant/permit holder’s absence and that the applicant/permit holder 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/permit holder.

- (f) Reminder that the applicant/permit holder is entitled to be represented at the hearing by a representative such as legal counsel, if desired. The conservation authority may be represented at the hearing by counsel or staff.

- (g) A copy of the Hearing Guidelines

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

2.4 Pre-submission of Reports

The Hearing process shall be guided by the principle of full disclosure by the parties (the applicant/permit holder and Kawartha Conservation staff).

From the date the applicant/permit holder 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/permit holder, 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.

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 Conservation By-Law # 2 – Meeting Procedures, Item # H – Conflict of Interest).

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 by third parties should be incorporated within the presentation of information by, or on behalf of, the applicant/permit holder or Authority staff as appropriate.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
		Page 4 of 9

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.

3.3 Attendance of Hearing Board Members

In accordance with case law relating to the conduct of hearings, those members of Kawartha Conservation who will decide whether to grant the application, refuse the application or cancel the permission, must be present during the full course of the hearing. If it is necessary for a member to leave, 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/permit holder 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. For electronic meetings, the Board is not considered adjourned unless any member departs due to technical issues for more than 15 minutes.

3.5 Orders and Directions

Kawartha Conservation 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 C**.

3.6 Information Presented at Hearings

- (a) The Statutory Powers Procedure Act, requires that a witness 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. This information should be provided to the applicant/permit holder 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.

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.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
		Page 5 of 9

3.7.2 Opening Remarks

The Chair shall convene the hearing with opening remarks which generally; identify the applicant/permit holder, 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 D or Appendix E** for the Opening Remarks model. In an electronic hearing, all the parties and the members of the Hearing Board must be able to clearly hear one another and any witnesses throughout the hearing.

3.7.3 Presentation of Authority Staff Information

Staff of Kawartha Conservation presents the reasons supporting the recommendation for the cancellation, 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 Kawartha Conservation should not submit new technical information at the hearing as the applicant/permit holder will not have had time to review and provide a professional opinion to the Hearing Board.

3.7.4 Presentation of Applicant/Permit Holder Information

The applicant/permit holder (and/or agent) has the opportunity to present information at the conclusion of Kawartha Conservation 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/permit holder (and/or agent).

The applicant/permit holder (and/or agent) shall present information as it applies to the permit application or the cancellation of a permission 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/permit holder may be represented by an agent (e.g., legal counsel, consultant etc.), if desired
- The applicant/permit holder may have only one designated agent as a spokesperson to present information to the Board
- The applicant/permit holder presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist etc.

The applicant/permit holder (and/or agent) should not submit new technical information at the hearing as the Staff of Kawartha Conservation 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, through the Chair, to each speaker as the information is being heard. The applicant/permit holder (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



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
		Page 6 of 9

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 may 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.

Upon making its decision, the Board will rise from in camera and report its decision, itemizing and recording information of particular significance which led to 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/permit holder are to receive written notice of the decision within 15 days of the decision. The applicant shall be informed shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision to the Ontario Land Tribunal.

There is no provision in the *Conservation Authorities Act* that provides the permit holder for appeal in situations where a permit is cancelled.

The decision notice should include the following information:

- (a) The identification of the applicant/permit holder, property and the nature of the application that was the subject of the hearing.
- (b) The decision and reasons to cancel, refuse or approve the application. A copy of the Hearing Board resolution should be attached.

The written Notice of Decision will be forwarded to the applicant/permit holder by registered mail. Sample Notices of Decision and cover letter has been included as **Appendix G-I**.

5.0 **RECORD**

Kawartha Conservation 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 Ontario Land Tribunal. The record must include the following:

- (a) The application for the permit or the permit in the case of a cancellation of a permission.
- (b) The Notice of Hearing.
- (c) Any orders made by the Board (e.g., for adjournments).
- (d) All information received by the Board.



Section ADMINISTRATION	Title ADMINISTRATIVE BY-LAWS - By-Law #2 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) BOD – Resolution 170/12 (revised) BOD – Resolution 29/13 (revised) BOD – Resolution 18/19 (revised) BOD-Resolution 112/20 (revised) BOD -Resolution XX/21 (revised)	Date of Approval: April 28, 2010 Revisions approved Sept 22, 2010 Revisions approved March 23, 2011 Revisions approved November 28, 2012 Revisions approved March 27, 2013 Revisions approved January 30, 2019 Revisions approved November 26, 2020 Revisions approved November 25, 2021
Page 7 of 9		

- (e) Attendance of hearing Board members.
- (f) The decision and reasons for decision of the Board.
- (g) The Notice of Decision sent to the applicant/permit holder.

Schedule 1: Hearings under Section 28.0.1 of the Conservation Authorities Act (Permission for Development, Zoning Order)

Section 28.0.1 of the Conservation Authorities Act came into force with the Royal Assent of Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020. This section applies to any application submitted to an authority under a regulation made under Section 28 of the Act for permission to carry out all or part of a development project associated with an approved Minister’s Zoning Order (MZO).

For such applications, an Authority must grant permission to the applicant to carry out the activity, provided an MZO has been made by the Minister of Municipal Affairs and Housing, and provided that the authority’s regulated area in which the development activity is proposed to take place is not located in the Greenbelt Area designated under section 2 of the Greenbelt Act. A permission which is granted under s.28.0.1 may be subject to conditions as prescribed by the issuing Authority.

An Authority *must grant permission* for applications submitted pursuant to an approved MZO (pending the above-noted conditions are met). Hearings for these applications differ from those under Section 28(12) of the Act, in that a hearing cannot be held to determine if a permission should be refused. The Authority may refuse to grant a permit only if:

- i) a zoning order has not been made to authorize the development project,
- ii) the project is proposed to be carried out in the Greenbelt Area, and
- iii) if all other prescribed requirements have not been satisfied.

Per s.28.0.1 (7) of the Act, the applicant for a permission will be given the opportunity to be heard by the Authority prior to any conditions being attached to the granted permission.

The following table is intended to provide a step-by-step process to conducting hearings required under Section 28.0.1 (7) of the Conservation Authorities Act. It is recognized that much of the guidance provided in the body of the Section 28 Hearing Guidelines will be applicable to the s. 28.0.1 (7) hearing process. Where processes differ, the table outlines the necessary considerations for the s. 28.0.1 (7) processes. Where the processes are the same, the table refers to the appropriate sections of the Section 28(3) hearing guidelines.

Hearing Guidelines Sections	Specific Guidance and/or Processes for S. 28.0.1 (7) Hearings differing from a standard hearing
1.0 Purpose of Hearing Guideline	<p>In the case of hearings related to applications submitted pursuant to s. 28.0.1 of the Conservation Authorities Act, the Authority must grant permission to the applicant, provided the requirements set out under this section are met. In this scenario, a hearing will only be held to determine conditions which will be attached to a permission.</p> <p>In the case of applications submitted pursuant to s. 28.0.1 of the Conservation Authorities Act, the Authority may refuse to grant a permit only if:</p> <ul style="list-style-type: none"> i. a zoning order has not been made to authorize the development project ii. the project is proposed to be carried out in the Greenbelt Area, and iii. if all other prescribed requirements have not been satisfied. <p>The Hearing Board is empowered by law to make a decision, governed by the Statutory Powers Procedures Act.</p>
2.0 Prehearing Procedures	Not applicable to S.28.0.1(7) hearings

2.1 Role of the Hearing Board	<p>Additional point identified:</p> <p>(d) Where a hearing is required for applications submitted pursuant to s. 28.0.1 of the Conservation Authorities Act (e.g., to determine the conditions of the permission), final decisions on the conditions shall not be made until such a time as the applicant has been given the opportunity to attend a hearing.</p>
2.2 Application	<p>Additionally, in the case of applications submitted pursuant to s. 28.0.1 of the CA Act, the authority shall not attach conditions to a permission unless the applicant has been given an opportunity to be heard by the authority.</p>
4.1 Notice of Decision	<p>The decision notice should include the following information:</p> <p style="padding-left: 40px;">b) The decision to refuse or approve the application, and in the case of applications under s. 28.0.1 of the CA Act, the decision to approve the application with or without conditions.</p>
Appendix B	<p>A new Appendix has been prepared which provides an example “Notice of Hearing” for hearings under Section 28.0.1 (7) of the Conservation Authorities Act.</p>
Appendix F	<p>A new Appendix has been prepared which provides an example “Notice of Decision” for hearings under Section 28.0.1 (7) of the Conservation Authorities Act</p>

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/cancellation (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 (12) of the Conservation Authorities Act **OR** Subsection 8 (2) of O.Reg 182/06 at the offices of the said Authority, 277 Kenrei Road, Lindsay, Ontario K9V 4R1, at the hour of ____, **on the ____ day of _____, 20____**, [for electronic hearings, include details about the manner in which the hearing will be held] with respect to the application by (**NAME**) to permit **OR** with respect to the cancellation of Permit # _____, granted to (**NAME**), that allows the permission of development within an area regulated by Kawartha Conservation 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**). [For electronic hearings: If you believe that holding the hearing electronically is likely to cause significant prejudice, 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, _____ 20 ____

The Board of Directors of the
Kawartha Region Conservation Authority

Per:
Chief Administrative Officer/Secretary-Treasurer

APPENDIX B

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 28.0.1. Subsection 7 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 28.0.1. subsection 7 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 _____, 20____, [for electronic hearings, include details about the manner in which the hearing will be held] with respect to the application by (**NAME**) to permit development within an area regulated by Kawartha Conservation in association with a Minister's Zoning Order (REGULATION NUMBER) 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**). [For electronic hearings: If you believe that holding the hearing electronically is likely to cause significant prejudice, 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 pursuant to Section 28.0.1 of the Conservation Authorities Act, a conservation authority is required to grant the permission applied for and may only impose conditions to the permission. The Hearing will therefore focus on the conditions to be imposed to the granting of the permission.

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, _____ 20____

The Board of Directors of the
Kawartha Region Conservation Authority

Per:
Chief Administrative Officer/Secretary-Treasurer

APPENDIX C

HEARING PROCEDURES

- 1 •Motion to sit as Hearing Board
- 2 •Roll Call followed by the Chair's opening remarks. For electronic hearings, the Chair shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.
- 3 •Staff introduce to the Hearing Board the applicant and/or agent
- 4 •Staff will indicate the nature and location of the subject application and the conclusions.
- 5 •Staff (or counsel) will present the staff report included in the agenda and the reasons for the recommendation.
- 6 •The applicant/permit holder (or agent) will have the opportunity to ask questions of staff based on their presentation
- 7 •Following the applicant/permit holder (and/or agent), the members of the Board can ask the staff questions
- 8 •The applicant/permit holder (and/or agent) will make a presentation
- 9 •The staff and/or counsel will have the opportunity to ask questions of the applicant/permit holder (and/or agent) followed by questions from the Board
- 10 •The Hearing Board will move into deliberation. For electronic meetings, the Hearing Board will separate from other participants for deliberation
- 11 •The Hearing Board will, once it has reached a decision, move out of deliberation, to reconvene in public forum. For electronic meetings, the Hearing Board will separate from other participants for deliberation
- 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 applicant/permit holder of the Hearing Board Decision
- 15 •If decision is "to refuse" or "approve with conditions", the Chair or Acting Chair shall notify the applicant in writing of his/her right to appeal the decision to the *Ontario Land Tribunal* within 30 days of receipt of the reasons for the decision. *Note: There is no provision in the Conservation Authorities Act that provides for appeal in situations where a permit is cancelled*
- 16 •Motion to move out of Hearing Board

APPENDIX D

CHAIR'S REMARKS WHEN DEALING WITH HEARINGS (Section 28, Subsection 12 of the *Conservation Authorities Act*) WITH RESPECT TO ONTARIO REGULATION 182/06 – APPLICATION FOR A PERMIT

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: _____

Kawartha Conservation has adopted regulations under section 28 of the *Conservation Authorities Act* which requires the permission of Kawartha Conservation for development within an area regulated by Kawartha Conservation 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 prepared a staff report, a copy of which has been given to the applicant and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

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 Kawartha Conservation Board is to determine whether or not a permit is to be issued, with or without conditions. 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. Only information disclosed prior to the hearing is to be presented at the hearing.

The proceedings 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 incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

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 Kawartha Conservation 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 (and/or agent) 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 E

CHAIR'S REMARKS WHEN DEALING WITH HEARINGS (Section 28, Subsection 12 of the *Conservation Authorities Act*) WITH RESPECT TO ONTARIO REGULATION 182/06 – CANCELLATION OF A PERMIT

We are now going to conduct a hearing under Section 8 of Ontario Regulation 182/06 pursuant to the *Conservation Authorities Act* in regards to the cancellation of Permit No. _____, issued to _____

Kawartha Conservation has adopted a regulation under section 28 of the *Conservation Authorities Act* which allows Kawartha Conservation to cancel permissions if the conditions of the permit have not been met.

The Staff has reviewed this proposed work and prepared a staff report, a copy of which has been given to the permit holder and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

Ontario Regulation 182/06 pursuant to the *Conservation Authorities Act* indicates that:

“The authority may cancel a permission if it is of the opinion that the conditions of the permission have not been met”

In holding this hearing, the Kawartha Conservation Board is to determine whether or not a permit is to be cancelled. In doing so, we can only consider the evidence as presented to us.

The proceedings 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 incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

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 permit holder (and/or agent) 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 Kawartha Conservation will present an overview of the cancellation and the reasons why the permission is being cancelled. The permit holder will then have the opportunity to ask questions of staff based on their presentation. Following the permit holder, the members of the board may ask the staff questions.
2. Next will be the presentation by the permit holder (and/or agent) 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 cancellation. A resolution advising of the Board of Directors decision and the particulars of the decision will then be adopted.

APPENDIX F

CHAIR'S REMARKS WHEN DEALING WITH HEARINGS (Section 28.0.1. Subsection 7 of the *Conservation Authorities Act*) WITH RESPECT TO ONTARIO REGULATION 182/06

We are now going to conduct a hearing under section 28.0.1 of the *Conservation Authorities Act* in respect of an application by _____: , for permission to: _____

Under Section 28.0.1 of the Conservation Authorities Act, an Authority is required to grant permission for any application submitted under a regulation made under subsection 28(1) for permission to carry out all or part of a development project, in an area regulated by the Authority, associated with a Minister's Zoning Order, provided the criteria listed under subsection 28.0.1 (1) are met. A permission is subject to any conditions as may be prescribed by the Authority.

The Staff has reviewed this proposed work and prepared a staff report, including the proposed conditions of approval for the proposed work, which has been given to the applicant and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

Under Section 28.0.1 (7) of the *Conservation Authorities Act*, the person requesting person requesting permission has the right to a hearing before the Authority Board.

In holding this hearing, the Kawartha Conservation Board is to determine the prescribed conditions to be attached to the approved permission. 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. Only information disclosed prior to the hearing is to be presented at the hearing.

The proceedings 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 incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

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 Kawartha Conservation will present an overview of the application and the conditions applicable to the permit, 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 (and/or agent) 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 G
Approval of an Application with Conditions

(Date)

BY REGISTERED MAIL

(name)

(address)

**RE: NOTICE OF DECISION (Approval of an Application with Conditions)
Hearing Pursuant to Section 28(12) of the Conservation Authorities Act
Proposed Development (Application No.)
Municipal Address (Roll # if known)
Lot XX, Concession X, Choose an item. (Geographic Township)
Choose an item. (Municipality)**

Dear _____:

In accordance with the requirements of the *Conservation Authorities Act*, we provide the following Notice of Decision:

On (*meeting date*), the Hearing Board for the Kawartha Region Conservation Authority approved (or approved with Conditions) your Permit application, subject to Conditions (outlined below).

Please note that the decision is based on the following reason(s):

- **the proposed development represents interference with a wetland**
(Or other reason provided pertaining to the five tests of the regulation – flooding, erosion, dynamic beaches, pollution, conservation of land or interference with a wetland; alter or interfere with a watercourse, shoreline or wetland).

A copy of the Hearing Board’s decision is provided for your records:

RESOLUTION #XX/XX	MOVED BY: _____	SECONDED BY: _____
<i>RESOLVED THAT, the permit be approved with the following conditions:</i>		
a) _____		
b) _____		
<i>CARRIED</i>		

In accordance with Section 28(15) of the *Conservation Authorities Act*, an applicant who objects to conditions imposed on a permission may, within 30 days of receiving the reasons provided 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:

Ontario Land Tribunal

655 Bay Street, Suite 1500

Toronto, Ontario M5G 1E5

Should you require any further information, please do not hesitate to contact (Director of Planning, Development and Engineering) at _____@kawarthaconservation.com or the undersigned.

Yours truly,

Chief Administrative Officer

Enclosure

APPENDIX H

Refusal of an Application

(Date)

BY REGISTERED MAIL

(name)

(address)

RE: NOTICE OF DECISION (Refusal of an Application)
Hearing Pursuant to Section 28(12) of the Conservation Authorities Act
Proposed Development (Application No.)
Municipal Address (Roll # if known)
Lot XX, Concession X, Choose an item. (Geographic Township)
Choose an item. (Municipality)

Dear _____:

In accordance with the requirements of the Conservation Authorities Act, we provide the following Notice of Decision:

On (***meeting date***), the Hearing Board for the Kawartha Region Conservation Authority refused your application. A copy the Board's resolution # has been attached for your records.

Please note that the decision is based on the following reason(s):

- **the proposed development represents interference with a wetland**
- (*Or other reason provided pertaining to the five tests of the regulation – flooding, erosion, dynamic beaches, pollution, conservation of land or interference with a wetland; alter or interfere with a watercourse, shoreline or wetland).*)

A copy of the Hearing Board's decision is provided for your records:

RESOLUTION #XX/XX	MOVED BY: _____	SECONDED BY: _____
<i>RESOLVED THAT, the permit be denied due to the following reasons:</i>		
a)	_____	
b)	_____	
<i>CARRIED</i>		

In accordance with Section 28 (15) of the Conservation Authorities Act, an applicant who has been refused permission may, within 30 days of receiving the reasons provided 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:

Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto, Ontario M5G 1E5

Should you require any further information, please do not hesitate to contact (Director of Planning, Development and Engineering) at _____@kawarthaconservation.com or the undersigned.

Yours truly,

Chief Administrative Officer

APPENDIX I
Cancellation of Permission

(Date)

BY REGISTERED MAIL

(name)

(address)

RE: NOTICE OF DECISION (Cancellation of a Permission)
Hearing Pursuant to Section 8(1) of O. Reg 182/06, pursuant to the *Conservation Authorities Act*
Development (Permit No.)
Municipal Address (Roll # if known)
Lot XX, Concession X, Choose an item. (Geographic Township)
Choose an item. (Municipality)

Dear _____:

In accordance with Ontario Regulation 182/06, pursuant to the *Conservation Authorities Act*, the (Kawartha Region Conservation Authority provides the following Notice of Decision:

On (*meeting date*) the Hearing Board for the Kawartha Region Conservation Authority cancelled your permission for development.

Please note that the decision is based on the following reason(s):

- The conditions of the permission have not been met, specifically,
 - *List relevant conditions not met*

Not adhering to these conditions for development **adversely affects the control of flooding** (*or adversely affects the control of erosion, dynamic beaches or pollution or interference with a wetland or conservation of land; alter or interfere with a watercourse, shoreline or wetland*).

A copy of the Hearing Board's decision is provided for your records:

RESOLUTION #XX/XX MOVED BY: _____ SECONDED BY: _____

RESOLVED THAT, the permit be cancelled due to the following reasons:

- a) _____
- b) _____

CARRIED

Further, there is no statutory option for the appeal of a cancelled permission under Conservation Authorities Act. Should you require any further information, please do not hesitate to contact (Director of Planning, Development and Engineering) at _____@kawarthaconservation.com or the undersigned.

Yours truly,

Chief Administrative Officer

APPENDIX J Hearing Process

