



**Conservation Authorities Act**

**Section 28**

**Hearing Procedures**

**Nickel District Conservation Authority**

**Revised October 2021**

## **1.0 PURPOSE OF HEARING PROCEDURES**

The *Conservation Authorities Act* (CA Act) requires that the applicant be provided 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 the Authority, the proposed development adversely affects the control of flooding, erosion, dynamic beaches, or pollution or conservation of land.

The Hearing Board is empowered by law to make a decision, governed by Section 25.1 of 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. In the case of hearings related to applications submitted pursuant to Section 28.0.1, the Hearing Board shall determine what conditions, if any, will be attached to the permission. See Appendix B for further details.

At the Nickel District Conservation Authority (NDCA), the Regulation Review Committee (RRC) consists of the Chairperson and three members of the General Board, plus an alternate member. The following procedures were adopted by NDCA General Board resolution 2018-57. These procedures have been prepared to provide a step-by-step process to conducting hearings required under Section 28 (7), (12), (13), (14) of the *CA Act*.

## **2.0 PREHEARING PROCEDURES**

### **2.1 Apprehension of Bias**

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

- (a) No member of the Authority taking part in the hearing should have prior involvement with the application that could lead to a reasonable apprehension of bias on the part of that member. Where a member has a personal interest, the test is whether a reasonably wellinformed person would consider that the interest might have an influence on the exercise of the official's public duty. Where a member is a municipal councilor, the Municipal Conflict of Interest Act applies. In the case of a previously expressed opinion, the test is that of an open mind, i.e. is the member capable of persuasion in participating in the decision making
- (b) If material relating to the merits of an application that is the subject of a hearing is distributed to RRC members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material. These materials can be distributed electronically.
- (c) The applicant will be given an opportunity to attend the hearing before a decision is made; however, the applicant does not have to be present for a decision to be made.

## 2.2 Application

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

## 2.3 Notice of Hearing

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

The Notice of Hearing shall contain or append the following:

- a) Reference to the legislation under which the hearing will be held (*CA Act*).  
The time, place and the purpose of the hearing, or the time, purpose and details of the meeting if held electronically

Note: for electronic hearings the Notice must 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.

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

Note: If the applicant is not the landowner but the prospective owner, the applicant must provide the Committee with an original written authorization from the registered landowner.

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

## 2.4 Pre-submission of Reports

The applicant shall be provided with all reports from staff that will be provided to the Authority. The applicant shall be given two weeks to prepare a report once the reasons for the staff

recommendations have been received. Subsequently, this may affect the timing and scheduling of the staff hearing reports.

## **2.5 Hearing Information**

Prior to the hearing, the applicant shall be advised of the Authority's hearing procedures.

## **3.0 HEARING**

### **3.1 Public Hearing**

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

### **3.2 Hearing Participants**

The *CA Act* does not provide for third party status at the local hearing., Any information provided by third parties should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff as appropriate.

### **3.3 Attendance of Committee Members**

In accordance with case law relating to the conduct of hearings, those members of the Authority who will decide whether to grant or refuse the application must be present during the full course of the hearing. If it is necessary for a member to leave, the hearing must be adjourned and resumed when either the member returns or 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 RRC 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.

For electronic meetings, the hearing is not considered adjourned unless any member departs due to technical issues for more than 15 minutes.

### **3.5 Orders and Directions**

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

### **3.6 Information Presented at Hearings**

- (a) 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 no 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 procedural in general, will be informal without the evidence before the Board being given under oath or affirmation.
- (c) The RRC may authorize receiving a copy rather than the original document, however, the RRC 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 RRC 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 Members**

A record shall be made of the members of the Committee present.

#### **3.7.2 Opening Remarks**

The Chair shall convene the hearing with opening remarks that 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*.

#### **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 technical information at the hearing, as the applicant will not have had time to review and provide a professional opinion to the Committee.

#### **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 or extension application in question. For instance, does the requested activity affect the control of flooding, erosion, dynamic beach or conservation of land or pollution? The hearing does not address the merits of the activity or appropriateness of such a use in terms of planning.

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

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

### **3.7.5 Questions**

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

Pursuant to the *Statutory Powers Procedure Act*, the Committee can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. It should be 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 Committee may adjourn the hearing and retire in private to confer. The Committee may reconvene on the same date or at some later date to advise of its decision. The Members shall not discuss the hearing with others prior to the decision of the Committee being finalized.

## **4.0. DECISION**

The applicant must receive written notice of the decision. The applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision, to the Ontario Land Tribunal. The Committee shall itemize and record information of particular significance, which led to its decision.

### **4.1 Notice of 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 to refuse or approve the application or request for extension. A copy of the RRC resolution should be attached. The written Notice of Decision shall be forwarded to the applicant by registered mail.

## **5.0 RECORD**

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

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

## Appendix A

### HEARING PROCEDURES

1. Motion for the Regulation Review Committee to sit as the Hearing Board of the Nickel District Conservation Authority.

2. Roll Call followed by the Chairperson's opening remarks.

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. Staff will introduce to the Committee 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.
6. The Applicant will have the opportunity to ask questions of staff based on their presentation.
7. Following the Applicant, the members of the Committee 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 Committee.
10. The Committee will move *In Camera* for deliberation. For electronic meetings, the Hearing Board will separate from other participants for deliberation.
11. Members of the Hearing Board will move and second a motion.
12. A motion will be carried which will culminate in the decision.
13. The Committee will move out of deliberation and reconvene in public forum.
14. The Chairperson will advise the owner/applicant of the Committee's decision.
15. Where the decision is "to refuse permission" or "approve with conditions", the Chairperson shall notify the owner/ applicant of the right to appeal the decision to the Ontario Land Tribunal within 30 days of receipt of the written Notice of Decision.
16. Motion to adjourn the hearing.

## Appendix B

### 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.

Understanding that 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.

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.

Sections of the Hearing Guidelines	Specific Guidance and/or processes for S.28.0.1 (7) Hearings
1.0 Purpose of Hearing Guidelines	<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 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>
2.1 Apprehension of Bias	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.
2.2 Application	The right to a hearing arises where staff is recommending refusal of an application or is recommending conditions to the approval of an application. Additionally, in the case of applications submitted pursuant to s. 28.0.1 of

	<p>the CA Act, the authority shall 19 not attach conditions to a permission unless the applicant has been given an opportunity to be heard by the authority. The applicant is entitled to reasonable notice of the hearing pursuant to the Statutory Powers Procedures Act.</p>
4.1 Notice of Decision	<p>The decision notice should also include the following:</p> <ul style="list-style-type: none"><li>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. A copy of the Hearing Board resolution should be attached.</li></ul>