



**NORTH BAY-MATTAWA
CONSERVATION
AUTHORITY**

**SECTION 28 (3)
CONSERVATION AUTHORITIES ACT
HEARING PROCEDURES**

**The North Bay-Mattawa Conservation Authority
HEARINGS AND PROCEDURAL MANUAL**

Approved by the North Bay-Mattawa Conservation Authority
15 Janey Ave., North Bay, ON P1C 1N1

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SECTION 28 (3)

CONSERVATION AUTHORITIES ACT

NBMCA HEARINGS AND PROCEDURAL MANUAL

Summary of Revisions

Revision No.	Date	Comments	Approval Authority
0	November 24, 2010	CA Act Hearings and Procedural Manual approved	NBMCA Board of Directors Resolution No. 105-10
1	October 28, 2020	1. Changes as a result of the <i>Building Better Communities and Conserving Watersheds Act, 2017</i> to include the Mining and Lands Tribunal in the appeal process. 2. Amendments made to incorporate the use of electronic hearings.	NBMCA Board of Directors

**The North Bay-Mattawa Conservation Authority
Section 28 (12), Section 28 (13), Section 28 (14)
Conservation Authorities Act
Hearing Procedures**

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1.0 PURPOSE OF HEARING GUIDELINES

The purpose of the Hearing Guidelines is to reflect the changes to the 1998 *Conservation Authorities Act*. The Act requires that the applicant be party to a hearing by the North Bay-Mattawa Conservation Authority (NBMCA) Board of Directors or Executive Committee (the "Hearing 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, pollution or conservation of land*. The Hearing Board 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 have been prepared to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) of the *Conservation Authorities Act*. Similar to the 2005 Hearing Guidelines developed for Conservation Ontario, it is the intent that these procedures will promote the necessary consistency across the Province and ensure that hearings meet 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 and will 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 steps will be taken to avoid apprehension of bias where there is the possibility for it to arise.

- a) No staff member of the NBMCA taking part in the hearing should be involved, either through interaction with Hearing Board members, 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 Hearing Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material. These materials can be distributed electronically.

- c) In instances where the NBMCA requires a hearing to help it reach a determination as to whether to give permission with or without conditions or refuse a permit application, a final decision shall not be made until such time as a hearing is held. The applicant will be given an opportunity to attend the hearing before a decision is made; however, the applicant does not have to be present for a decision to be made.

2.2 APPLICATION

The right to a hearing is required where:

- a) Staff is recommending refusal of an application, or
- b) There is some indication that the NBMCA or Authority Board of Directors may not follow staff recommendations to approve a permit, or
- c) The applicant objects to the conditions of approval.

The Notice of Hearing shall be sent to the applicant within sufficient time to allow the applicant to prepare for 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 NBMCA will contact the Applicant prior to sending the Notice of Hearing.

The Notice of Hearing will contain the following:

- a) Reference to the applicable legislation under which the hearing will 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 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.

- 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 homeowner 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. An example *Notice of Hearing* can be found in Appendix A.

2.4 PRE-SUBMISSION OF REPORTS

It is the practice of the NBMCA to submit reports to Hearing Board members in advance of the hearing.

The applicant shall be provided with all reports from staff that will be provided to the Hearing Board. The applicant shall be given two weeks to prepare and submit a report once the reasons for the staff recommendations have been received.

2.5 HEARING INFORMATION

Prior to the hearing, the applicant shall be advised of the North Bay - Mattawa Conservation Authority's hearing procedures upon request.

3.0 THE 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

- a) 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.
- b) 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.

3.3 ATTENDANCE OF HEARING BOARD MEMBERS

In accordance with case law relating to the conduct of hearings, those members of the Hearing Board 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 Hearing Board member to leave, the hearing should be adjourned and resumed when the member returns. If the hearing proceeds, even in the event of an adjournment, only those members who were present after the member departed can sit to the conclusion of the hearing.

3.4 ADJOURNMENTS

The Hearing 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 Hearing Board is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes. A hearing procedures example can be found in 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*.

- i) The *Canada Evidence Act* indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating.
 - ii) Answers provided during the hearing are not admissible against the witness in any criminal trial or proceeding.
 - iii) This information should be provided to the applicant as part of the Notice of Hearing.
- b) The hearing procedure, in general, will be informal without the evidence before the Hearing Board being given under oath or affirmation.
 - c) The Hearing Board may authorize receiving a copy rather than the original document. However, the Hearing Board can request certified copies of the documents 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 Hearing 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.

3.7.2 Opening Remarks

The Chairperson shall convene the hearing with opening remarks which generally;

- a) Identify the applicant, the nature of the application, and the property location;
- b) Outline the hearing procedures; and
- c) Advise on requirements of the *Canada Evidence Act*.

An Opening Remarks model can be found in Appendix C. 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 the NBMCA presents the reasons supporting the recommendation for the refusal or conditions of approval of the application.

- a) Any reports, documents or plans that form part of the presentation shall be properly indexed and received.
- b) 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.
- c) NBMCA staff's presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist etc.

Consideration should be given to the designation of one staff member or legal counsel who coordinates the presentation of information and who asks questions on behalf of NBMCA staff.

3.7.4 Presentation of Applicant Information

The applicant has the opportunity to present information at the conclusion of the NBMCA staff presentation.

- a) Any reports, documents or plans which form part of the submission should be properly indexed and received.
- b) 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, conservation of land or pollution?*
- c) The hearing does not address the merits of the activity or appropriateness of such a use in terms of planning.
- d) The applicant may be represented by legal counsel or agent, if desired.
- e) The applicant may present information to the Hearing Board and/or have invited advisors to present information to the Hearing Board.

- f) The applicant(s) presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist etc.
- g) The applicant should not submit new information at the hearing as the NBMCA staff will not have had time to review and provide a professional opinion to the Hearing Board.

3.7.5 Questions

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

- a) The applicant and/or agent can make any comments or questions on the staff report.
- b) Pursuant to the *Statutory Powers Procedure Act*, the Hearing Board 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 of the information is presented, the Hearing Board will deliberate and make a decision on the application. A resolution advising of the Hearing Board's decision and the particulars of the decision will then be adopted.

The Hearing Board members shall not discuss the hearing with others prior to the decision of the Hearing Board being finalized. This is of particular relevance in the case of an adjournment occurring before a decision can be rendered.

4.0 DECISION

The applicant must receive written notice of the decision.

- a) The applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision to the Mining and Lands Tribunal.
- b) The Hearing Board shall itemize and record information of particular significance which led to their decision, thus providing the applicant with a clear understanding of why the application was refused or approved.

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. A copy of the Hearing Board resolution should be attached.

Written Notice of Decision shall be forwarded to the applicant by registered mail. A sample Notice of Decision has been included as Appendix D.

4.2 Adoption

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

5.0 RECORD

The Authority shall compile a record of the hearing.

In the event of an appeal, a copy of the record should be forwarded to the Mining and Lands Tribunal. The record must include the following:

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

Appendix A

NOTICE OF HEARING

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 North Bay-Mattawa Conservation Authority Hearing Board will be held under Section 28, Subsection 12 of the *Conservation Authorities Act* at the offices of the said Authority (15 Janey Avenue, North Bay Ontario), at the hour of , on the **XX** day of, **2020**, [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 the Authority in order to ensure no adverse affect on (***the control of flooding, erosion, dynamic beaches or pollution or conservation of land or the alteration or interfere with a watercourse, shoreline or wetland***) on **Lot XX, Plan/Lot XX, Concession XX, (Street Address)** in the City/Town/Village of **XXX**, Municipality of **XXX**, **XXX River** Watershed.

TAKE NOTICE THAT you are invited to make a delegation and submit supporting *written* material to the Hearing Board for the meeting of (***meeting date, number***). If you intend to appear, [For electronic hearings: or 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 Hearing Board of the North Bay-Mattawa Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

DATED the ____ day of _____, 202X.

The North Bay-Mattawa Conservation Authority Hearing Board

Per: Chief Administrative Officer/Secretary-Treasurer

Appendix B

HEARING PROCEDURES

HEARING PROCEDURES

1. Motion to sit as Hearing Board.
2. Roll Call followed by the Chairperson's opening remarks. For electronic hearings, the Chairperson shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.
3. Staff and/or counsel will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.
4. Staff and/or counsel 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 and/or his/her agent will have the opportunity to ask questions of staff if reasonably required for full and fair disclosure of matters presented at the Hearing.¹
7. Following the Applicant, the members of the Hearing 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 if reasonably required for a full and fair disclosure of matters presented at the Hearing².
10. The Hearing Board will question, if necessary, the applicant/agent.
11. The Hearing Board will move into camera. 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 Hearing Board will move out of camera.
15. The Chairperson or Acting Chairperson will advise the owner/applicant of the Hearing Board decision.

¹ As per the Statutory Powers Procedure Act a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

² As per the Statutory Powers Procedure Act a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

16. If decision is "to refuse", the Chairperson or Acting Chairperson shall notify the owner/applicant of his/her right to appeal the decision to the Mining and Lands Tribunal within 30 days of receipt of the reasons for the decision.
17. Motion to move out of Hearing Board and sit as Executive Committee.

Appendix C

CHAIRPERSON'S REMARKS WHEN DEALING WITH HEARINGS WITH RESPECT TO ONTARIO REGULATION 177/06

CHAIRPERSON'S REMARKS WHEN DEALING WITH HEARINGS WITH RESPECT TO ONTARIO REGULATION 177/06

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 North Bay-Mattawa Conservation 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 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.

Under Section 28 (12) of the *Conservation Authorities Act*, the person requesting permission has the right to a hearing before the Authority's Hearing 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 Authority's Hearing 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 criminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

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

The rules of evidence before this Hearing Board are informal.

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

The Hearing will proceed as follows:

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

Appendix D

NOTICE OF DECISION

(Date)

BY REGISTERED MAIL

(name)

(address)

Dear:

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

In accordance with the requirements of the *Conservation Authorities Act*, the North Bay-Mattawa Conservation Authority provides the following Notice of Decision:

On ***meeting date and number***, the Hearing Board for the North Bay-Mattawa Conservation Authority **refused/approved** your application/**approved your application with conditions**. A copy of the Hearing 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:

Mining and Lands Tribunal
655 Bay Street, Suite 1500
Toronto, Ontario M5G 1E5

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