



***Conservation Authorities Act***

**Section 28**

**Hearing Procedures**

**Nickel District Conservation Authority**

Revised July 2018

## **1.0 PURPOSE OF HEARING PROCEDURES:**

The *Conservation Authorities Act* (CA Act) requires that the applicant be party to a hearing by the local Conservation Authority Board for an application to be refused or approved with contentious conditions. Further, a permit may be refused if, in the opinion of the Authority, the 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 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.

At the Nickel District Conservation Authority (NDCA), the Regulation Review Committee (RRC) is the *de facto* Hearing Board and 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 (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 apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.

(a) No member of the Authority taking part in the hearing should be involved, either through participation in committee or intervention on behalf of the applicant or other interested parties with the matter, prior to the hearing. Otherwise, there is a danger of an apprehension of bias, which could jeopardize the hearing.

(b) If material relating to the merits of an application that is the subject of a hearing is distributed to 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.

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

### **2.2 Application**

The right to a hearing is required where staff is recommending refusal of an application, the Board of Directors cannot support a permit application, the applicant objects to the conditions of approval, or the Authority cannot support a request for an extension of a permission. 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 the following:

- (a) Reference to the legislation under which the hearing will be held (*CA Act*).
- (b) The time, place and the purpose of the hearing.
- (c) Particulars to identify the applicant, property and the nature of the application, which are the subject of the hearing.  
Note: If the applicant is not the landowner but the prospective owner, the applicant must provide the Committee with an original 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.

### **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 are required to be held in public. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that intimate financial, personal or other matters would be disclosed at hearings.

### **3.2 Hearing Participants**

The *CA 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.

### **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.

### **3.5 Orders and Directions**

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

A hearing procedures example has been included as Appendix B.

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

(a) The *Statutory Powers Procedure Act*, requires that a witness be informed of his right to object pursuant to the *Canada Evidence Act*. The *Canada Evidence Act* indicates that 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 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 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. Except for decisions related to requests for an extension to a permission, the applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision, to the Minister of Natural Resources. The 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 Office of 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 Committee (e.g., for adjournments).

(d) All information received by the Committee.

(e) The minutes of the meeting made at the hearing.

(f) The decision and reasons for the decision of the Committee.

(g) The Notice of Decision sent to the applicant.

## Appendix B

### 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.
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*.
  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 to 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", the Chairperson shall notify the owner/ applicant of the right to appeal the decision to the Office of the Mining and Lands Tribunal within 30 days of receipt of the written Notice of Decision.
16. Motion to adjourn the hearing.