

# CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY EDUCATION SESSION

## A G E N D A

Tuesday, May 18, 2021 at 5:00 p.m.

MEETING LOCATION: VIRTUAL MEETING  
(ACCESS DETAILS TO BE PROVIDED)

### CIRCULATION LIST

<b>Authority</b>	Bob Chapman, Chair	<b>Authority</b>	C. Darling Chief Administrative Officer
<b>Members:</b>	Elizabeth Roy, Vice Chair	<b>Staff:</b>	B. Boardman, Executive/Accounting Administrator
	Dave Barton		R. Catulli, Director, Corporate Services
	Ron Hooper		J. Davidson, Director, Watershed Planning & Natural Heritage
	Janice Jones		L. Hastings, Marketing & Communications Coordinator
	Sterling Lee		D. Hope, Land Management & Operations Supervisor
	Tito-Dante Marimpietri		C. Jones, Director, Planning & Regulation
	Ian McDougall		P. Lowe, Director, Community Engagement
	Don Mitchell		P. Sisson, Director, Engineering & Field Operations
	Rhonda Mulcahy		L.Vaja, Executive Assistant/Health & Safety Administrator/Recording Secretary
	John Neal		R. Wilmot, GIS Systems Supervisor
	Brian Nicholson		
	David Pickles	<b>Guest:</b>	K. Jull, Gardiner Roberts LLP
	Corinna Traill		
	Steve Yamada		

**In accordance with CLOCA's Administrative and Meeting Procedural By-Law, this meeting is closed to the public for Member training and education.**

SUPPORTING  
DOCUMENTS

### AGENDA ITEM:

#### **1. DECLARATIONS of interest by members on any matters herein contained**

#### **2. PRESENTATION**

- (1) The CAO will provide a review of Hearing Procedures pursuant to Subsection 28 of the Conservation Authorities Act and CLOCA's Hearing Procedures

pg. **ES1**

#### **3. ADJOURNMENT**



# Hearing Under Section 28 Conservation Authorities Act

Board of Directors Education Session





- *Board approved S.28 Hearing Guideline – 2014*
- *Conservation Authorities Act* provides that an applicant for a S. 28 permit be party to a hearing by the Conservation Authority Board for an application to be refused
- Authority (Board of Directors) sitting as a Hearing Board is a decision-making tribunal governed by the Statutory Powers Procedures Act (SPP Act)
- Hearing Board members are required to act fairly and to conduct the proceedings pursuant to the governing administrative law, which is the SPP Act. The SPP Act sets out duties of fairness, obliging Hearing Board members to avoid any bias but also to avoid the appearance or apprehension of bias.



- The Hearing Board is to determine if the application should be refused or approved, and if approved, subject to what conditions to approval. In doing so, the Hearing Board may only consider the permit application submitted by the applicant, this staff report, the applicant's report, the submissions to be made on behalf of the applicant and by and on behalf of CLOCA staff, and such evidence as may be given during the Hearing.
- Should Hearing Board members decide to refuse the application, the applicant has a further right of appeal to the Mining and Lands Tribunal, which will conduct a separate proceeding leading to a second Hearing.



- Pursuant to the SPP Act, hearings, including electronic hearings, are required to be held in public.
- The Conservation Authorities Act does not provide for third party status at the hearing.
- While others may be advised of the hearing, any information that they provide should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff.



- In accordance with case law relating to the conduct of hearings, those members of the Authority who will be sitting as the Hearing Board 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.



- Witnesses in the hearing are protected under provincial law so that their evidence cannot be used in any subsequent civil proceeding
- Prosecutions cannot be commenced under provincial law in relation to any evidence given by a witness.
- This does not apply to matters that relate to federal law (i.e. the Criminal Code). Accordingly, the appropriate warning notification has been provided in the Notice of the Hearing and the Chair will advise the applicant of such.



## **Presentation of Authority Staff Information**

- Staff of the Authority presents the reasons for the refusal recommendation.
- Staff 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.
- Consideration should be given to the designation of one staff member or legal counsel who coordinates the presentation of information on behalf of Authority staff and who asks questions on behalf of Authority staff.





## **Presentation of Applicant Information**

- The applicant has the opportunity to present information as it applies to the permit application at the conclusion of the Authority staff presentation.
- The applicant may be represented by legal counsel or agent, if desired
- The applicant's presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist etc.
- The applicant should not submit new information at the hearing as the staff of the Authority will not have had time to review and provide a professional opinion to the Hearing Board.



## Hearing Procedures

- Motion to sit as Hearing Board.
- 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.
- Staff will introduce the applicant/owner, his/her agent/expert witnesses
- Staff/legal counsel will present first
- Applicant questions to CLOCA staff
- Hearing Board questions to CLOCA staff
- Applicant presents
- CLOCA staff questions to applicant
- Hearing Board questions to applicant
- Closing statements from CLOCA staff/legal counsel
- Closing statements from applicant



- The Hearing Board will move into camera. For electronic meetings, the Hearing Board will separate from other participants for deliberation.
  - CA Act - Powers of authority
    - (13) After holding a hearing, the authority shall,
      - (a) refuse the permission; or
      - (b) grant the permission, with or without conditions.
- Grounds for refusing permission (5 tests are further expressed by CLOCA's Board-approved Policy)
- The authority,
  - may grant permission for development if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.
  - shall not impose conditions unless they relate to controlling pollution, flooding, erosion, dynamic beaches or the conservation of land.



- Members of the Hearing Board will move, second and approve a motion.
- The Hearing Board will move out of camera.
- The Chair will advise the owner/applicant and staff of the Hearing Board Decision.

## **Hearing Decision**

- The applicant will receive written notice of the decision and be informed of the right to appeal the decision within 30 days upon receipt of the written decision, to the Mining and Lands Tribunal.