

Full Authority
25 February 2021
Agenda Item: 10

Amendments to the Conservation Authority Act

On the 8th of December 2020, amendments to the Conservation Authorities Act under Bill 229 received Royal Assent. Fortunately, most of the amendments will be dealt with regulations to be developed during 2021. The new Conservation Authorities Working Group will provide additional information, support and advice for these regulations.

However, there are a few of the amendments that were proclaimed in 2020 and the first round of proclamations come into effect as of 2 February 2021. The CVCA received correspondence on the 5th of February from Keley Katona Director, Conservation and Source Protection Branch Ministry of the Environment, Conservation and Parks. Advising CAs that provisions of the Act related to governance are now in effect and need to be addressed.

In summary the changes are:

- Limit Board Chair and Vice Chair appointees to two (2) consecutive 1-year terms;
- Require successors to the positions of Chair and Vice Chair to be from a different municipality to the incumbent.
- Require no less than 70% of a municipality's appointed Board members to be members of municipal council.
- Require the Authority to send a copy of the minutes to each member of the Authority and to make them available to the public within 30 days after any meeting of the Authority or of an executive committee.
- Altered Authority powers under Section 21 of the Act.
- Minister of Municipal Affairs & Housing powers to allow him/her to order a CA to not issue a permit; and the power to issue a permit or direct the Authority to do so.
- Allow permit applicants to appeal directly to the Minister for review and/or to the Local
- Planning Appeal Tribunal.

Governance

a) Chair and Vice Chair

The Province has proclaimed in Section 14 of Bill 229 there are limits to the term of Board Chairs to 2 consecutive years unless an exemption is received from the Minister.

CAs are awaiting clarification from the province regarding whether the 2-year clock:

- Starts effective the date of proclamation on 2 February 2021.
- Applies retroactively to those currently in the position of Chair.

Since the CVCA has declared its Chair prior to 2 February 2021, staff are confident the appointment will stand, especially given the significant changes facing the Authority over the next one to two years arising from Bill 229.

However, if MECP challenges the appointment, staff would recommend the CVCA request an exemption with the appropriate reasons at that time.

b) Municipal Appointees to the Board

The above notice to conservation authorities states that sitting “members (of the Board) should complete the remaining duration of their appointments” and that there is no need to make application for a change at this time for an exemption from the 70% limit. However, should a member be replaced, municipalities will be required to adhere to this limit and to make an application to the Minister for any exemption from it.

c) Board Minutes

Currently, the CVCA Board members are circulated with the draft minutes for a week. If there are no comments or revisions required, the minutes are then posted on the CVCA website. At the subsequent Board meeting, the minutes are then approved.

The Act now requires issuance of minutes within 30 days for both Board and Executive Committee meetings. The Act is silent on whether the minutes can be draft. Essentially, the process employed by the CVCA adheres to the new provision. The Authority will just have to be diligent to meet the timeline.

d) Powers of the Authority

The following language has been removed from the Powers of CAs:

to study and investigate the watershed and to determine programs and services whereby the natural resources of the watershed may be conserved, restored, developed and managed.

And, has been replaced with the power:

to research, study and investigate the watershed and to support the development and implementation of programs and services intended to further the purposes of this Act.

The other most significant change is the removal of our power to expropriate land.

e) Powers of the Minister

The power of the Minister of Municipal & Housing to issue Ministerial Zoning Orders (MZOs)

related to Section 28 permit applications has significant implications for the Authority:

- The Authority could be mandated by the Minister to issue a permit despite professional technical concerns and non-compliance with Authority regulation by-laws.
- Any conditions the Authority may wish to impose cannot conflict with the MZO.
- Applicants can appeal any conditions proposed by the CA.
- The above matters have implications for the liability held by the Authority for issuing a permit in accordance with a Ministerial directive.
- MZO can requires the CA (and possibly a municipality) to enter into an agreement with the developer to compensate for ecological impacts and any other impacts that may result from development of the project.

CVCA has no business processes, fee structures, or offsetting program to administer MZOs. Nor does it appear that most municipalities or the province have anything in place either.

In the short time since these came into force in December, Conservation Ontario has observed an inconsistency in approach and oversight of MZOs. Of particular concern is an apparent lack of verification of facts by the stakeholders in this MZO process. There is no venue to contact CAs to verify statements and information provided by applicants for MZOs. This lack of opportunity to provide technical expertise and comment before approval or endorsement of an MZO application could have tremendous implications on natural features in the watershed.

As such, staff recommended the following steps be implemented in a timely manner:

- Request member municipalities to contact CVCA for comment prior to considering endorsement of an MZO application.
- Develop a fee structure that allows for cost recovery for the management of MZO files.
- CVCA staff engage with other area CAs when possible to develop a program to administer MZO applications.

In addition to the foregoing, the Minister of Environment, Conservation and Parks upon his/her recommendation enable the province to appoint a temporary administrator to assume control of a CA's operations following an investigation or the issuance of a binding directive, if the directive is not followed. Immunity is provided for the administrator.

Enable the Minister to issue a binding directive to a CA following an investigation.

Staff Recommendation

That staff be directed to make the necessary changes to the CVCA Administrative By-Law to address amendments to Sections 14, 15, 17 and 21 of the Act for approval by the CVCA Board at the next scheduled meeting.

Board Decision

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