

Board Hearing #2/16

October 19, 2016

DIRECTORS PRESENT: Art Versteeg, Deb Shewfelt, Alvin McLellan, Wilf Gamble, Alison Lobb, Roger Watt

ABSENT WITH REGRETS: Jim Campbell, Bob Burtenshaw,

ABSENT: Paul Gowing, David Turton, Matt Duncan

STAFF PRESENT: Phil Beard, General Manager/Secretary-Treasurer
Danielle Livingston, Admin/Financial Services Coordinator
Jayne Thompson, Communications Coordinator
Stewart Lockie, Conservation Areas Coordinator
Brandi Walter, Environmental Planner/Regulations Officer

COMMUNITY ATTENDEES: Morten, Helene and Lasse Jakobsen

The following motion was passed in session at the Board of Directors Meeting #9/16.

Motion FA #73/16

Moved by: Alvin McLellan

Seconded by: Deb Shewfelt

THAT the Board of Directors sit as a Hearing Board.

(carried)



A roll call of the Hearing Board was taken by Danielle Livingston.

	<u>Present</u>	<u>Absent</u>
Art Versteeg	√	
Jim Campbell		√
Deb Shewfelt	√	
Alison Lobb	√	
Alvin McLellan	√	
Bob Burtenshaw		√
David Turton		√
Matt Duncan		√
Roger Watt	√	
Wilf Gamble	√	

Hearing: Ontario Regulation 164/06: Jakobsen Development Application, Ashfield Ward, in the Township of Ashfield-Colborne-Wawanosh - Hearing Report #2/16 (attached).

Chair Art Versteeg began with his remarks.

We are now going to conduct a hearing under Section 28 of the *Conservation Authorities Act* in respect of an application by MORTEN and HELENE JAKOBSEN, for permission to: RECONSTRUCT A DECK WITHIN THE EROSION HAZARD OF THE LAKE HURON SHORELINE on Part lot 23, Front Concession North Town Plot, Registered Plan 22R5370, Parts 1, 3, 8 to 13 in the Township of Ashfield-Colborne-Wawanosh, Ashfield Ward.

The 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 have reviewed this proposed work and a copy of the staff report has been given to the applicant.

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 or, if the Authority so directs, before the Authority’s executive committee.”

In holding this hearing, the Authority Board/Executive Committee is to determine whether or not a permit is to be issued. 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 submission to be made on behalf of the applicant.

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 questions 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 shall be informal without the evidence before it being given under oath or affirmation unless decided by the hearing members.

If the applicant has any questions to ask of the Hearing Board or of the Authority representative, they must be directed to the Chair of the Board.

Environmental Planner/Regulations Officer Brandi Walter presented the application that was submitted by Morten and Helene Jakobsen to the Hearing Board and explained the nature and location of the subject application.

Morten and Helene Jakobsen constructed a new 839 square foot deck to replace a smaller older deck at the above-noted property in the Spring of 2016. They did not apply for MVCA permission prior to undertaking construction, nor did the applicants apply for a building permit with the Township of Ashfield-Colborne-Wawanosh.

The subject property is located on the Lake Huron shoreline within the 100 year erosion hazard, and the existing cabin and new deck are located on the mid-point of the bluff slope. The overall slope is 20 to 22 meters high and inclined at 2 to 3 horizontal to 1 vertical. The landowners received a letter from MVCA via Krantz Law in 2014 upon purchase of the property. The letter identifies the property as being located in a regulated area for development. The letter advised the landowners that MVCA permission is required for development and site alteration, prior to undertaking the work.

It is the policy of MVCA to work with landowners to try and bring potential violations into compliance with the authority's development policies related to *Ontario Regulation 164/06* if the landowner is amenable. MVCA staff met with Mr. Jakobsen and his contractor at the subject property to assess the new deck and to advise the Jacobsen's of MVCA's policies for development proposals along the Lake Huron shoreline. On that day, Mr. Jakobsen agreed to apply for MVCA permission to obtain compliance. After the site visit, staff sent a memorandum to Mr. Jakobsen as follow-up from the meeting, which formally outlined MVCA's application process and conditions for approval.

Hearing Report #2/16 is for the Boards review and to gain direction on the development application; Ontario Regulation 164/06: Morten and Helene Jakobsen Deck Construction Application, Ashfield Ward, in the Township of Ashfield-Colborne-Wawanosh - Hearing Report #2/16 (attached).

Environmental Planner/Regulations Officer Brandi Walter advised the Board that staff are recommending that this application should not be approved as it is not complete and doesn't comply with MVCA's development policies.

Chair Art Versteeg invited the applicants to speak.

Morten Jakobsen addressed the Hearing Board and explained they purchased the property in 2015 and weren't aware that a permit was required for reconstructing a deck. They proceeded with replacing the existing deck with a larger one that is more stable and is supported by sonotubes.

Mr. Jakobsen noted there are 110 trees located on the property and they planted dogwood shrubs. Mr. Jakobsen did note that they did have to remove some ash trees. He thinks if the vegetation was more mature, that this (the slope stability) wouldn't be an issue and that they haven't done anything to tamper with the property. At this time, Mr. Jakobsen submitted photographs of the property to the Directors to review.

Mr. Jakobsen explained he has focused on solving erosion problems with the ACLA and it is

overreacting (having a geological study) if the structure is designated safe by an Engineer, noting that if something happens, it will come back to us (the applicant) as being liable. Mr. Jakobsen doesn't see any of this being a problem as a major storm drainage project was constructed to stop runoff from going over the bluff.

Chair Art Versteeg opened discussion from the public. No comments were made.

Members of the Hearing Board asked Mr. Jakobsen several questions related to the location of deck with respect to the dwelling, the type of footings that the cottage is located on, slope stability, the cost to hire a geotechnical Engineer. These questions were answered to the satisfaction of the Board. Staff were asked by the Board who would be liable if the deck did cause the slope to fail. Staff advised the Board that the authority is responsible for ensuring that development does not cause the slope to collapse.

Chair Art Versteeg called for other questions, comments or concerns. There were no further responses.

Motion HM #2/16

Moved by: Alison Lobb

Seconded by: Roger Watt

THAT the Hearing Board move in camera for a property development matter.

(carried)

At this time, all attendees left the meeting with the exception of the Hearing Board Members, General Manager/Secretary-Treasurer, and the Administrative and Financial Services Coordinator.

The following motions were passed in camera at the Board Hearing Meeting #2/16.

Motion HM#3/16

Motion HM #4/16

Moved by: Wilf Gamble

Seconded by: Alvin McLellan

THAT the Hearing Board move out of in camera and resumes regular session.

(carried)

Attendees that were excused from the closed session were invited back to regular session. Director's Jim Campbell and David Turton joined the meeting.

Chair Art Versteeg advised applicants Morten and Helene Jakobsen that the Hearing Board had difficulty coming to a decision because the development was constructed without a permit, even though the applicants had been advised when they purchased the property that a permit would be required to develop in this area. However the Chair advised that the Board decided to approve application No. DEV40/2016 because the Board thinks that based upon the evidence that there is only a small chance that this development would impact the stability of the slope.

At this time, Jakobsen thanked the Board and noted that they now understand the process to follow should they decide to undertake additional development in the future.

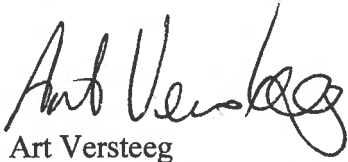
Motion HM #5/16

Moved by: Alison Lobb

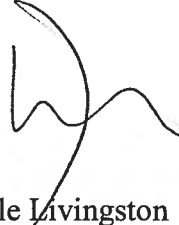
Seconded by: Roger Watt

THAT the Hearing Board now sits as Executive Committee.

(carried)



Art Versteeg
Chair



Danielle Livingston
Administrative and Financial Services Coordinator

