

**Environment and Land Tribunals  
Ontario**

Ontario Municipal Board

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**Tribunaux de l'environnement et de  
l'aménagement du territoire Ontario**

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de L'Ontario

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IN THE MATTER OF subsection 47(10) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Request by: St. Mary's Cement Inc. (Canada)  
Subject: Application to revoke the Minister's Zoning Order, Ontario  
Regulation 138/10  
Property Address/Description: Part of Lots 1, 2 and 3, Concession 11  
Municipality: City of Hamilton  
OMB Case No.: MM100037  
OMB File No.: MM100037

**NOTICE OF PREHEARING CONFERENCE**

The Ontario Municipal Board will conduct a prehearing conference respecting this matter.

**If you do not attend the prehearing conference, the Ontario Municipal Board may proceed in your absence and you will not be entitled to any further notice of these proceedings.**

**TIME AND PLACE OF PREHEARING CONFERENCE**

A prehearing conference will be held

**at: 10:00 AM**

**on: Friday, April 1, 2011**

**at: OMB Hearing Room #6  
McMaster Learning Centre (Old Court House Hamilton)  
50 Main Street East  
Hamilton ON L8N 3V9**

The Board has set aside **1 day** for this conference.

DATED at Toronto, this 20th day of January, 2011.

PATRICK HENNESSY  
SECRETARY

## ONTARIO MUNICIPAL BOARD DRAFT PROCEDURAL ORDER

*This is a sample of the Procedural Order that the Board issues for most matters (except expropriation) after holding a prehearing conference. For further explanations and meanings of the terms used, see the attachment to this sample order. Note that the Board expects that the terms of the procedural order when issued will be met. If a party has not complied with a requirement of a procedural order, the Board will decide whether or not any part of or step in the proceeding, or any written or visual evidence or order is not valid as a result.*

### **This is an appeal (referral)...**

#### **OMB Case and File Number:**

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

#### **Organization of the Hearing**

2. The hearing will begin on ..... (year) at ...a.m./p.m. at .....in the municipality of .....[Optional:.. An evening session will be held on .....]
3. The length of the hearing will be about .....days.
4. The parties and participants identified at the prehearing conference (*see the Attachment for the meaning of these terms*) are: [Optional: listed in Attachment 1 to this Order.]
5. The Issues are: [Optional:... set out in the Issues List attached as Attachment 2.] There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.
6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

#### **Requirements Before the Hearing**

- [7]. [Optional] Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.
- [8]. [Optional] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least .....calendar days before the hearing.
9. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
- [10]. [Optional] A [witness] [participant] must provide to the Board and the parties a [witness] [participant] statement at least ..... calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].
12. On or before .....[a minimum of 30 calendar days before the hearing date], the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the Clerk of .....

## ATTACHMENT TO SAMPLE PROCEDURAL ORDER

### Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-212-6349 or Toll Free 1-866-448-2248, or from the Board website at [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca).

### Meaning of Terms Used in the Procedural Order

**Party** is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

**NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

**Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing these statements. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

**Written and Visual Evidence:** **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

**Witness Statements:** A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

### Additional Information

**Summons:** A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

**The order of examination of witnesses:** is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Board;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Board.

**24. Return of Exhibits** Exhibits of all types introduced at a hearing will be kept for 180 days after the Board decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, the exhibit becomes the property of the Board and may be archived.

**25. Final Approval of Plans of Subdivision** When a final plan is prepared for the Board's approval, the following wording shall be inserted on the original plan and copies:

**This plan is approved by the Ontario Municipal Board under file [insert OMB case number] pursuant to the *Planning Act*, section \_\_\_\_\_.**

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**Date** **Secretary, Ontario Municipal Board**

## **DOCUMENT EXCHANGE**

A document may be served on another party or participant by e-mail, fax or such other manner as may be directed by the Board.

**26. Service by Fax or E-mail** Where any document is required to be served or filed, including the one commencing a proceeding or a motion or providing notice, it shall be served by fax or e-mail (unless a statute or the Board requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented, to that party directly, where that party has provided a fax number and/or an e-mail address;
- (c) where that party is a corporation and is not represented, to the corporation directly, to the attention of an individual with apparent authority to receive the document; or
- (d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the document.

Subject to Rule 27, if a document is served by fax or e-mail, then service is effective on the date of service.

**27. If Faxed or E-mailed After 4:30 p.m.** Any document served by fax or e-mail after 4:30 p.m. is deemed to have been served on the next business day.

**28. Permission to Fax if More Than 30 Pages** If a document is more than 30 pages including the cover page, it may only be served by fax between 8:00 a.m. and 4.30 p.m. with the prior consent of the person receiving the document. If more than 30 pages, it cannot be served by fax at any time without prior permission.

**29. Contents of Cover Page** A fax cover page must include (a) the Board's case and file number, (b) the type of matter, (c) the municipality in which the matter arose, and (d) full identification of the sender and receiver.

**30. Proof of Service by Fax or E-mail** A confirmation printout received by the sender is proof of the full transmission and receipt of the fax or e-mail.

**31. No Hard Copy Needed** A hard copy of a faxed or e-mailed document need not be sent by another means of transmission unless requested, and may then be sent by ordinary mail.

August 11, 2008

79. **Methods of Holding Hearing Events** The Board may, in a proceeding, hold any or a combination of written, electronic or oral hearing events.

August 11, 2008