



The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Monday, the 28th day of
Mining and Lands Commissioner) March, 1988.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a single family dwelling on Lot 32, Plan 768, in Concession VIII, in the Township of Innisfil in the County of Simcoe.

B E T W E E N :

KEN STEWART

Appellant

- and -

LAKE SIMCOE REGION CONSERVATION
AUTHORITY

Respondent

O.M. Stewart, agent for the appellant.
K.C. Hill, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to place fill and construct a single family cottage on Lot 32 according to Plan 768, in Concession VIII, in the Township of Innisfil in the County of Simcoe. By Ontario Regulation 364/82 the power and duty of hearing and determining such appeals were assigned to the Mining and Lands Commissioner. The appeal was heard in Toronto on February 1, 1988.

Plan 768 was prepared in 1930 and subdivides parts of Broken Lots 27 in Concessions VIII and IX in the Township of Innisfil into lots having a width of approximately one chain. A tier of lots along the westerly shore of Lake Simcoe was laid out. A road named Park Road on the plan was laid out behind the northerly half of these lots and a number of lots were laid out on the northwesterly side of Park Road. Buildings have been constructed on some of these lots but not all of them.

Lot 32 is one of the lots on the northwesterly side of Park Road. The proposal was to place fill on the lot to the depth of the fill placed on Lot 33 on which a cottage is erected and create swales in the vicinity of the lot lines. It was

proposed to erect a cottage measuring approximately thirty feet by thirty feet on the lot after the fill is placed. The lot is serviced with sewers and accordingly a septic tank and tile bed are not required.

The subject lot is situate in an area that is subject to a regional storm with regional flood elevations of between 722.3 and 722 feet above sea level. The elevation of the subject lands is 719 feet or approximately three feet or one metre below the regional flood elevation. An unnamed creek flows in a westerly direction in the area and the subject lands fall within the flood plain of that creek. In addition a smaller creek flows in a northerly direction joining the first-named creek at a location to the east of the subject lands. The flood plain of the regional storm extends from 300 to 400 feet both to the north and the south of the subject lands.

The thrust of the case of the appellant was that with the placing of fill and the construction of swales through which flood waters could flow, the difficulties associated with the control of flooding could be evaded. Reference was made to a number of properties in the area on which construction was being done and it was suggested that based on these projects the application should be allowed.

At the outset it should be noted that the presentation of the appellant failed to disclose any appreciation of the problems of the control of flooding in areas that are subject to regional storms or the law that is contained in the Conservation Authorities Act and the regulations made thereunder. It is a well accepted principle of flood plain management that both the placing of the fill and the placing of a building in a flood plain have unacceptable effects on the control of flooding. Firstly, there is a risk to the building and the fill if the velocities of a regional storm could damage either the building or its foundations. Secondly, the placing of the fill and the buildings interferes with the flow of the regional storm and creates additional flooding hazards and extends the risk of flooding to properties that are not within the flood plain. The interference with the flow and the reduction of the storage

capacity of the basin have the result of raising the elevations of the regional flood plain. It is for these reasons that new construction, particularly of residential buildings is not permitted in flood plains. Historically it may be noted that the basic problem that is met by the Conservation Authorities Act is the problem of construction over the centuries of buildings in flood plains and the purpose of the Act is to prevent the continuance of the unacceptable practices of the past.

It may also be noted that this tribunal has dealt in previous cases with the matter of creation of islands in flood plains. In addition to the risks associated primarily with flooding there are problems of access to and from the island and in this case the access would be through three feet of flood waters in a regional storm and accordingly a policy of permitting the creation of islands in flood plains has never been accepted as an exception to the prohibition contained in the regulations under the Conservation Authorities Act.

It may also be noted that much of the argument of the appellant was based on the storms that have existed in the last twenty years. Reference was made in the evidence of the appellant to the effect on cottages during Hurricane Hazel. The principle of the Hurricane Hazel standard is based on the conditions over the Humber watershed in that storm. The effects at the present site on that occasion are not necessarily the effects of a regional storm. The regional storm is the standard of the Act and the regulations and the arguments based on the evidence of the past twenty years are not helpful in determining whether a proposal affects the control of flooding.

In this case reference was made to a number of properties. The respondent, in recognition of the expenditures of the past has a policy of permitting renovations, reconstructions and additions to existing buildings provided there is no interference with the flows of the regional storm by the project and provided the building is floodproofed. Many of the buildings referred to in the evidence are examples of this policy and as the proposal of the appellant is the construction

of a new building the proposal does not fall within that policy of the respondent.

A significant proportion of the evidence and the argument referred to a property lying southwesterly of the intersection of Park Road and Hartley Street which was some distance to the south of the subject lands. The evidence indicates that part of the lot was outside the regional flood plain and that fill was permitted to raise the front portion of the lot above the elevation of the regional flood. Additional factors based on the elevations of roadways and the deflecting abilities of the roadways in the area were considered in the granting of the permission in this instance. In contrast the subject land is very close to the centre of the regional flood plain.

The matter of a study by the conservation authority was raised by the appellant. The study, although the report was not submitted in full dealt with the possibility of remedial action which might reduce the extent of the flood plain. The evidence indicates that the cost of any remedial works would be very expensive and that the effect on the extent of the regional flood plain would be negligible. Apparently a number of proposals were put forward in the report but these proposals would only have an effect in minor storm conditions and would only be expected to be helpful in storms from the one in two year to the one in five year categories. Accordingly, the proposal was not one which would reduce the extent of the regional flood plain so that the subject lands could be treated as being outside the flood plain.

It does not appear that the appellant has been refused the benefits of any policy of the respondent and that the treatment of the application by the respondent was in accordance with the policies followed by the respondent. Accordingly the appeal will be dismissed.

1. THIS TRIBUNAL ORDERS that the appeal is dismissed.
2. THIS TRIBUNAL ORDERS that no costs shall be payable by either of the parties to the appeal.

SIGNED this 28th day of March, 1988.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.