



The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Tuesday, the 4th day of
Mining and Lands Commissioner June, 1985.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct an addition to an existing building on Lot 6 in Concession I N.S. in the Township of King in the Regional Municipality of York.

B E T W E E N :

HARM HORLINGS

Appellant

- and -

SOUTH LAKE SIMCOE
CONSERVATION AUTHORITY

Respondent

The appellant, in person.
K.C. Hill, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to construct an addition to an existing building on part of Lot 6 in Concession I, N.S. in the Township of King in the Regional Municipality of York. Under 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 the 21st day of May, 1985.

The appellant acquired the subject lands approximately six years ago from his father. The subject lands are composed of a ten acre parcel situate in the part of the Holland Marsh lying to the west of Highway No. 400. The lands are used for the purpose of growing vegetables including onions, cauliflower, lettuce and celery. Situate on the subject lands are a residence, a vegetable storage building and greenhouses. Although access to the buildings on the subject lands is provided over Rupki Road the property extends southerly to Highway No. 9.

Permission was sought to construct an addition to a residence measuring approximately twenty-four feet by forty-two

feet. The northerly eight and one-half feet of the residence is a projection northerly of the easterly part of the building and the proposal was to make the building rectangular, filling in an area at the northwest corner of the house. The house is situate within thirty feet of the Holland River.

The house is small containing approximately eight hundred and sixty square feet of floor space. The appellant has two children and his wife is expecting a third child shortly with the result that the residence is not large enough for a family of five. The appellant admitted that the size of the holdings were such that there was an economic restriction on the overall revenue that could be obtained from such a small acreage and in fact he had acquired a farm elsewhere to which he might ultimately move.

The elevation of the regional storm at the subject lands was established by Marshall, Macklin, Monaghan Limited in the late seventies at 724 feet, the flood level reached during Hurricane Hazel. The elevations of the subject lands are between 715 and 716 feet with a result that in a regional storm the subject lands would be flooded to a depth of eight to nine feet. The appellant admitted that in Hurricane Hazel the building had floated away from and had to be brought back to its location.

A general policy of the respondent as set out in a document entitled "Watershed Development Policies" and filed as Exhibit 12 permits some development in floodprone areas. On p. 2 the following extract appears setting out five requirements of the granting of permission in such areas;

.....

While it is the Authority's general policy to discourage development in floodprone areas, the Authority shall review all applications for development having regard for but not necessarily limiting itself to the following criteria:

- (a) That the building site be subject to one metre or less of flooding under regulatory storm conditions.
- (b) That the building site be subject to one metre or less per second of flow under regulatory storm conditions.
- (c) That the building site have dry access to lands located above the regulatory floodline elevation.

- (d) That the proposed dwelling is capable of being floodproofed to the satisfaction of the Authority. The structure must also be capable of withstanding the effects of hydrostatic pressures.
- (e) That the application of accepted balanced cut and fill techniques indicate that the floodwater storage capability of the subject lands is not reduced to any significant amount.

The respondent has treated the area in the Holland Marsh as a special area and has reduced the above-mentioned criteria. The criteria respecting the maximum depth of flooding has been dropped as in an area subject to eight or nine feet of flooding a one metre restriction would completely prevent any construction in the part of the marsh in which the subject lands are situate. In addition, the principle of access to a location above the regional flood elevation has been dropped. Thirdly, the respondent has adopted an elevation of 724 feet as the elevation of the regional storm in respect of the subject lands although the lands outside of the dyke have been given an elevation of the regional flood of 725 feet. Consequently, the only serious requirement that is left is the requirement of criteria (d) and the practice of the respondent in issuing permission for agricultural buildings in the area has been to require flood-proofing to 724 feet.

The only issue in this appeal, if there is an issue at all, arises around criteria (d). The appellant has proceeded with the construction and in effect requests permission to construct a building with openings below the regional storm elevation and without raising the first floor above that elevation and adequately flood-proofing the basement.

The appellant gave evidence of a number of projects in respect of which permission has been issued subject to this condition and that have proceeded in breach of the condition. The response of the witness for the respondent was that such matters were under consideration.

In support of his position the appellant produced a resolution of the Township of King suggesting that the respondent should amend its policy and permit additions to and replacements of dwellings within this area without any flood-proofing requirements other than a "flood alarm". In passing it is not apparent what was

contemplated by a flood alarm. He also expressed his opinion that the requirements of flood-proofing and construction of the first floors above the regional flood elevation were unrealistic from a practical point of view.

Dealing with these two aspects in reverse order it may be said that with the reduction of the normal principles of flood plain management permitted by the respondent the waiving of the final requirement would amount to a complete abdication of the jurisdiction and responsibility of the respondent. In this regard it may further be pointed out that the requirement is not pointless. While the requirement may create some aesthetic abnormalities, its observance will provide a haven where those persons who do not attempt to leave an area in the event of a flood could remain in safety.

With reference to the former matter, such changes in policy are matters for the respondent to determine and it is not proper for this tribunal to establish the policy of the respondent, particularly based on resolutions of municipalities that are members of the respondent, even though they are more affected than other members.

There is nothing in any provincial policy which would authorize the extension requested by the appellant in this case. The construction of residential buildings in an area that is subject to eight feet of flooding in a regional storm does not fall within any recognized principle of flood plain management.

The tribunal is satisfied that the appellant has been afforded the benefit of all policies of the respondent and that he is not being refused permission in circumstances where other applicants have been granted permission. 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 party to the appeal.

SIGNED this 4th day of June, 1985.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.