



The Mining and Lands Commissioner  
In the matter of The CONSERVATION AUTHORITIES Act

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a structure on part of Lot 27 in Concession VIII in the Town of East Gwillimbury in the Regional Municipality of York.

B E T W E E N :

LOUIS CHALTAS and  
MARY CHALTAS

Appellants

- and -

SOUTH LAKE SIMCOE  
CONSERVATION AUTHORITY

Respondent

D. Dymont, for the appellants.  
K.C. Hill, for the respondent.

The appellants appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to construct a residence on part of Lot 27 in Concession VIII in the Town of East Gwillimbury. 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 November 13, 1984.

The appellants own a twenty-five acre parcel of land that was acquired in 1966. The parcel fronts on the west side of Miles Road. The Mount Albert Creek flows in a westerly and northwesterly direction through the parcel. Having regard to a topographic map filed as Exhibit 8 by the appellants the area is situate in the centre of a large, swampy, forested tract. At the time of purchase the driveway followed the southerly bank of the creek part way onto the property. In 1981 a pond was dug on the south side of the driveway at a location approximately seventy-five metres from Miles Road. Part of the fill from the pond was placed on the land to

the immediate east thereof and a portion of the fill was sold as topsoil.

The application of the appellants for approval to construct a residence on the area to the east of the pond was refused by the respondent. The respondent has not been able to arrange for flood plain mapping of the part of the watershed in question and expects to be able to do so within the next one or two years. However, the respondent has obtained flood plain mapping of the area know as Brown Hill which is situate approximately three kilometres north of the subject lands. Although the subject lands are approximately that distance upstream of the Brown Hill area, the appellants were given the benefit of the doubt and their application was considered in the light of the flood plain elevations at Brown Hill which are 229.7 metres for the regional storm, 228.4 metres for the one in one hundred year storm, 228.28 metres for the one in fifty year storm, 228.15 metres for the one in twenty-five year storm, 227.99 metres for the one in ten year storm and 227.88 metres for the one in five year storm. The only information available to the respondent regarding the elevations of the subject lands was an elevation on the Miles Road in the vicinity of the subject lands of 227.61 metres. Accordingly, the respondent refused the application on the basis that in a regional flood the land, which appeared to be lower than the road, would be subject to flooding in excess of two metres in regional storm conditions and would be flooded in a one in five year storm.

Subsequent to the hearing by the Executive Committee of the respondent and prior to the hearing of the appeal, the appellants obtained a survey of the elevations of the bridge on Miles Road at the east side of the subject lands and elevations of the fill and land to the east thereof which is proposed as the building site. No objection was taken to the validity of the survey, a copy of the plan of which was filed as Exhibit 3. The plan shows an elevation of 229.92 metres at the bridge and elevations on a parcel measuring 30 metres by 30 metres varying from 229.07 to 228.87 metres, which area encompasses the proposed building site.

The respondent introduced as Exhibit 10 a copy of an

aerial photograph taken in 1981 as a preliminary step in flood plain mapping. On cross-examination A.A. Timmins, the enforcement officer for the respondent, admitted that the aerial photograph indicated that the site on which the house was proposed was higher and drier than some of the surrounding areas. Otherwise, the evidence was unclear as to the elevation of the land surrounding the filled area. The witness, Louis Chaltas, refrained from giving an opinion on the elevation saying that due to grass and brush he was unable to estimate the elevation but he did admit that water lies on the area adjacent to the filled area much of the time. It may well be that this photograph was taken when snow was on the ground and the white areas could reflect open snow covered areas. However, no finding is made in this regard.

With regard to elevations of properties that are upstream from each other, Timmins indicated that usually the areas that are upstream have higher ground elevations and higher flood elevations than sections of the watershed that are downstream. Hence, notwithstanding this, the respondent had dealt with the matter on the assumption that the elevations of the regional flood and other floods were similar.

It was submitted on behalf of the appellants that the respondent had based its decision on an error, namely, that the elevations of the proposed building site were less than 227 metres and with the recent survey showing that the elevations were in the average of 229 metres the reasoning of the respondent is no longer applicable and the permission requested should be granted on the basis of the flood fringe doctrine outlined in the September, 1982 Flood Plain Criteria policy statement issued by the provincial government, a copy of which was filed as Exhibit 9.

It was submitted on behalf of the respondent that, based on the evidence of Timmins, this policy had not been adopted by the respondent and even if it were applicable it would be irresponsible to grant permission in the absence of flood plain mapping as there can be no assurance that the elevations of the regional flood in the section of the watershed including the subject lands may not be

higher than the elevations at Brown Hill. Counsel for the appellants submitted that this was unlikely as the Mount Albert Creek only contributes approximately one-third of the waters that pass through Brown Hill as the Black River into which the Mount Albert Creek flows carries approximately two-thirds of the water that flows through Brown Hill. In regard to this particular point one cannot make a layman's finding of fact without the benefit of a technical study of the matter. It may well be that there is a backwater effect created in regional storm circumstances from the larger flows in the Black River as contrasted with the Mount Albert Creek in respect of the lands near the confluence of the streams and estimation of the flood plain elevations at the location of the subject lands on principles which might appear applicable to a layman is so speculative that it cannot be accepted.

The most serious aspect of the argument of the appellants relates to the two-zone policy which on p. 5 of the report reads as follows:

POLICY NO. 2

CONSERVATION AUTHORITIES IN ONTARIO, OR WHERE NO AUTHORITY EXISTS, THE MINISTRY OF NATURAL RESOURCES, IN CO-OPERATION WITH THE WATERSHED MUNICIPALITIES, HAVE THE OPTION OF SELECTIVE APPLICATION OF THE TWO-ZONE FLOODWAY-FLOOD FRINGE CONCEPT;

It will be noted that the wording of the policy creates an option that is given to the conservation authority and accordingly, it is not the policy of the province nor of this tribunal to require a conservation authority to adopt a two-zone policy approach to its applications. The tribunal is satisfied that the proposed building site is within an area that is subject to the regional flood and would be surrounded by significant depths of water in the event of the regional flood and that the reasons for the decision given by the respondent are valid notwithstanding the assumptions made in reaching its decision.

Counsel for the appellants also suggested that the proposed structure could be flood-proofed and built in accordance with a balanced cut and fill principle. It was not apparent to the tribunal that such an approach could be adopted without knowledge

of the degree of flooding in a regional storm and further, with the evidence of the enforcement officer from his personal knowledge of the roads in the area, that the roads were impassable during recent spring thaws, the significant requirement of access to and from the site would not be met. It is not usual to adopt this principle where the end result is the creation of an island in a flooded area with roads which undoubtedly would be covered with water leading from the raised area. Mr. Chaltas indicated that he could escape in a westerly direction or he could leave the premises prior to the flood reaching its peak. Neither of these two principles are considered as adequate methods of access or egress. Accordingly, the tribunal is of the opinion that the decision of the respondent is sound and the appeal will be dismissed.

IT IS ORDERED that the appeal in this matter be and is hereby dismissed.

AND IT IS FURTHER ORDERED that no costs shall be payable by either parties to the matter.

DATED this 3rd day of December, 1984.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER