



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 single family dwelling on Part Lot 28 in Concession VII in the Township of King in the Regional Municipality of York.

B E T W E E N :

MRS. J. JANSSEN

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 a single family dwelling on part of Lot 28 in Concession VII 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 December 9, 1983.

The appellant owns a seven and one-half acre parcel composed of part of Lot 28 in Concession VII in the Township of King abutting the west limit of the road allowance between Concessions VI and VII. The appellant and her husband have lived on this parcel for approximately four years. An existing dwelling is situated on the northerly part of the parcel. A fairly large pond is located south of the existing residence. The appellant has made three applications to sever the southerly part of the parcel in order that the taxes on the parcel may be reduced and in order that her husband, who is nearing retirement, would not have as much work to do in looking after the property.

The parcel is situate at the eastern end of the

community known as Pottageville. The present proposal is to sever the southerly five acres, more or less, including the pond and to construct a residence immediately south of the pond using an aerobic sewage system which will permit a smaller tile bed than the normal septic tank system.

The subject lands are included in the Schedules to Regulation 179 of Revised Regulations of Ontario, 1980, which requires the obtaining of permission before placing fill. The present proposal does not require a significant amount of fill as the intention is to construct a fairly high basement and place the removed fill in part of the pond to obtain the necessary clearance for the tile bed. The subject lands have not been mapped for the purpose of determining the elevation of the regional flood. The evidence produced indicates that it is likely the lands would be included in the flood plain of a regional flood. The appellant produced evidence signed by persons who allegedly had been in the area since the year after Hurricane Hazel indicating that the lands were not flooded in that storm. On the other hand, the Regulations Officer of the respondent gave evidence that a witness in a hearing before the Ontario Municipal Board gave evidence that the area was flooded during Hurricane Hazel. The matter is further complicated by the fact that there was no evidence before the tribunal to show that the actual result of Hurricane Hazel was the equivalent of the regional storm particularly as that storm centred over the Humber River and the amount of rainfall on the subject lands may not have reached the standards of a regional storm. The matter is further complicated in that the road through which a tributary of the Holland River flows and which passes through the subject lands and feeds the pond thereon, was reconstructed and there was no evidence as to the size of the culvert in the road in relation to the requirements of passing the flows of the regional flood.

With reference to the mapping the evidence on behalf of the respondent was that certain preliminary information on the area has been prepared but that funding is necessary to complete the study. This study may be completed in the next two years. In the alternative the respondent suggested that at a price of

\$2,000 the appellant might obtain a study which could clarify the issue in respect of the subject lands. To enable such a study to be made the respondent would make available any information in its files in respect of the background data.

The evidence on behalf of the respondent indicated that in the community of Pottageville there are a number of ridges through the valleys of which a number of small streams flow. There has been some evidence of flooding in the general area in the past and there is every reasonable expectation that the subject lands would on a proper survey being completed be found to be susceptible to flooding in a regional storm.

The main concern of the respondent was that the application proposed the construction of a residential building in a flood plain with the inherent risks of damage to the building and loss of life that might occur in a regional storm. In the absence of proper evidence of the elevation of a regional storm it is impossible to determine whether any exception should be made for the subject lands based on recognized principles of flood plain management and secondly if such were appropriate the degree of flood proofing or other protection required.

The Bench asked the appellant if she was prepared to pay to undertake the survey necessary in respect of the subject lands or preferred to wait until the public authorities undertook the survey. The indication was that the appellant did not wish to make this expenditure. With reference to whether the appellant wished to have the matter adjourned until such a survey can be made by the respondent with whatever funding may be available from federal and provincial sources, the appellant indicated that she preferred that a decision be made and that she apply later if permission cannot be given at this time.

On the evidence before the tribunal, the tribunal is satisfied that the subject lands are subject to flooding in a regional storm. However, the degree of flooding is unknown and the tribunal concurs in the position of the respondent that the application is premature and should not be dealt with until such time as evidence is available to establish whether an exception

can be made to the general prohibition of the construction of buildings and structures in flood plains and, if so, the flood proofing conditions that should be required if such an exception could be made. Accordingly, the appeal will be dismissed.

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

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

Dated this 21st day of December, 1983.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.