



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 building on part of Lot 21 in Concession VIII in the Town of East Gwillimbury in the Regional Municipality of York.

B E T W E E N :

CHRIS BONCHEFF

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 under Regulation 179 of Revised Regulations of Ontario, 1980 to construct a building on part of Lot 21 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 22, 1982.

In 1973 the appellant purchased a thirty-two acre tract of swamp land lying on the east side of Highway 48 a short distance northerly of the Queensville Sideroad which is northerly of the community of Mount Albert. He has been developing the tract into a trout farm and has been extracting peat for the purpose of creating trout ponds. Three fairly significant ponds have been created and the appellant is experiencing considerable problems with vandalism on his property, such as destruction of machinery, and he considers it advisable to have a house from which constant supervision of the

property can be maintained.

There was some evidence of discussions a number of years ago with officials of the respondent both in respect of the construction of a residence or an administrative type of building but these matters were not followed up at the time. As part of the appellant's case he produced photographs of a number of houses that he felt were in areas that were subject to flooding to the same degree as the subject lands. In passing it may be noted that these houses were situate in the Keswick area and in the Holland Marsh area. The evidence of the respondent in this regard was that in all cases, except one, the houses were built outside the flood line of the regional storm or the buildings were built in contravention of the regulations without the benefit of a permit or a breach of a condition of the permit or was an agricultural or accessory building permitted in the flood plain in accordance with the existing policy of the respondent.

The difficulty in the present case arises from the fact that the susceptibility of the subject lands to flooding has not been quantified. The respondent has not obtained flood plain mapping of the specific area which is probably within the watershed of the Mount Albert Creek which ultimately flows into the Black River.

The evidence submitted on behalf of the respondent by A.A. Timmins, its Regulations Officer, indicated that the Vivian Creek joins the Mount Albert Creek upstream of the subject property and carries with it the flows of the Franklin fish ponds. This witness had some personal knowledge of the area and indicated that in the years 1971, 1972 or 1973 there was spring flooding to the edge of the pavement of Highway 48. His evidence was that, notwithstanding the evidence of the appellant that the highway had been raised in the rebuilding of Highway 48, there was only an insignificant increase in elevations. The witness was familiar with the property that was referred to as

"Pate's Place", where he had seen water crossing the gravel road during spring runoff. Photographs produced indicated considerable spring flooding in the area and as a result this tribunal can only conclude that the subject lands are subject to flooding during a regional storm and probably subject to flooding during a hundred year storm.

The witness indicated that it was the policy of the respondent not to permit the construction of residential housing in a flood plain by reason of the potential loss of life to occupants of the building and the hazard to buildings in flood plains. The respondent was concerned with the precedent of permitting this type of development in a flood plain and was concerned that the placing of fill would reduce the storage capacity of the flood plain and create a constriction in the flow of a regional flood.

On the evidence submitted to this tribunal there was no evidence that the policy of the respondent, either as laid down in words or as might be determined from the practice of actually granting permission, is to permit construction of residential housing in flood plains. The evidence indicated and was relied on by the appellant that permission had issued for other buildings and the principle should be extended to his application. However, these buildings were non-residential buildings and permission was only issued for accessory or agricultural buildings or industrial installations where there would not be the risk of life that is associated with a residence.

There is nothing in the evidence of the appellant or of the respondent that leads this tribunal to the conclusion that it is the policy of the respondent to permit residential construction in flood plains. Further, no principle of flood plain management has been brought to the attention of the tribunal under which an exception to the regulation which

prohibits the building of structures in flood plains should be granted. The tribunal is satisfied that the appellant has been dealt with in the same manner as other applicants to the respondent and in the absence of any evidence of an acceptable principle to create an exception to the prohibition of the regulation this tribunal has no alternative but to dismiss the appeal.

In addition the regulation prohibits the construction of buildings in a swamp. The evidence indicates that the subject lands probably are a swamp but no evidence was produced to show any principle of swamp management which would justify the construction proposed by the appellant.

It is noted that counsel for the respondent indicated that there is a certain element of prematurity in the application and it may be that the appellant at such time as mapping is prepared either by the respondent or by the appellant himself to establish the relevant elevations in respect of the subject lands can re-apply and at such time consideration might be given to the implications of placing fill and constructing a residential building or some other type of building that might suit the purposes of the appellant on the subject lands. This paragraph should not be construed as indicating that this tribunal anticipates any particular conclusion from such studies.

1. IT IS ORDERED that the appeal 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 17th day of December, 1982.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.