



# The Mining and Lands Commissioner

## In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C. ) Monday, the 19th day  
Mining and Lands Commissioner ) of June, 1989.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a storey and a half addition to the east side of an existing dwelling on Lots 14 and 15, Registered Plan 53, in the Township of Mono in the County of Dufferin.

B E T W E E N :

KENNETH DAVIES

Appellant

- and -

NOTTAWASAGA VALLEY CONSERVATION  
AUTHORITY

Respondent

The appellant, in person.  
G.W. Luhowy, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to construct a storey and a half addition to the east side of an existing dwelling on Lots 14 and 15, Registered Plan 53, in the Township of Mono in the County of Dufferin. 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 April 10, 1989.

The appellant and his wife acquired the subject lands in 1982. The building presently located on the subject lands was located thereon at the time of purchase. This building consists in part of a log cabin constructed in 1920 approximately. A previous owner had enlarged the log cabin so that there now is a 990 square foot building on the subject lands. In addition there is a small storage shed. The foundation of the existing building is composed of logs that are situate on the ground and a cement

slab which exists at the easterly part of the building. The building contains a living-family room, two bedrooms, kitchen, laundry and washroom. The proposal was to provide additional facilities for the family of the appellant which presently consists of two sons.

The proposal was to add a 20 foot square family room and two bedrooms to the building. It did not appear possible to raise the existing building so that the entire building could be placed on a complete new foundation.

The subject lands are situate near the intersection of Airport Road and Hockley Road. Airport Road is laid out basically in a north-south direction. Hockley Road is laid out in a south-westerly direction from the intersection. The plan of subdivision is laid out along the easterly side of the Nottawasaga River with one tier of lots along the river. At the easterly side of the tier of lots in the part of the subdivision in question there is a road that provides access to the cottage lots. Easterly of the road there is an open area which was said to be a bird sanctuary. Between the sanctuary and Hockley Road there are approximately six lots.

The elevation of the subject lands is 282 metres or 925.2 feet. The elevation of the flood of the regional storm, i.e. the Timmins storm, is 283.62 metres or 930.51 feet. Consequently in a regional storm there will be 1.6 metres or 5.3 feet of flooding on the subject lands. In addition the elevation of the flood in the 100 year storm is 283.24 metres which would result in 1.42 metres of flooding or 4.65 feet of flooding. The subject lands are within the fill line, the regional floodline and the 100 year floodline.

In an effort to provide flexibility the respondent has developed a policy of permitting the construction of buildings where the flood waters of the regional storm do not exceed three

feet and the velocity thereof does not exceed three feet per second. It will be noted that the elevations in the present case are in excess of the three foot elevation adopted by the respondent.

In addition it is a condition of the granting of permission in cases falling within the area of less than three feet of flooding to require that floodproofing of the building be done. The evidence of B.J. Boland, the Regulations Officer of the respondent, was that floodproofing would not be practical in five feet of flooding particularly as one of the requirements of floodproofing is the provision of safe access in a regional flood and such was nsubmissions of the appellant were twofold. Firstly it was said that he had been provided with varying information in respect of the depth of the regional flood. Secondly it was argued that there had been the granting of permission in analogous circumstances. With reference to the first submission there was a certain amount of generality in the letters referred to by the appellant but the tribunal is satisfied with the evidence indicating that there is in excess of five feet of flooding in a regional storm and the scientific evidence of the depth of flooding is probably a more relevant consideration than any correspondence that may have been exchanged between the parties.

With reference to the properties referred to, the Gummerson property was built prior to the making of the regulation of the respondent. The evidence indicated that the municipal building permit was one of the last building permits issued prior to the regulation coming into effect.

Reference was made to the Smith property. The original application for approval was refused by the respondent and by this tribunal on appeal. Ultimately approval was given for a remodeling of the second storey which would, of course, not increase the loss of storage capacity of the flood plain. The

appellant referred to the Micin property and the evidence of the appellant was that permission had been refused. This property was one of the lots lying to the east of the sanctuary. Reference was also made to the Moffat property but the evidence indicates that this lot, which was also easterly of the sanctuary and to the south of the Micin property, was not located in the flood plain.

Reference was made to a number of other properties including a house under construction. The appellant did not know the name of the owner or the builder and had only noticed this property in the last ten days. Without more accurate identification the respondent's witness was unable to indicate whether the lands were within the exception or whether permission had been granted or whether the building was proceeding without permission.

Reference was also made to the Kenalty property but the witness for the respondent was unable to provide any information on this property.

Counsel for the respondent referred to the risk of loss of life resulting from the depth of flooding and also from the short warning time of floods which was established in the evidence. Reference was also made to the loss of storage capacity, the adverse effects on upstream and downstream flood elevations and the damage to property which would flow from the construction of a building in five feet of flood waters in flows which were said to be 468 cubic metres per second.

With reference to general principles the tribunal is satisfied that the decision of the respondent is within the recognized principles of flood plain management. The respondent has created a very significant exception to the general principles of flood plain management but the subject property has risks associated with it that are far in excess of the risks associated with the levels and velocities accepted in the exception. The tribunal cannot find on the evidence that the

appellant had been refused permission in circumstances in which permission has been granted to other landowners and cannot conclude that the respondent has a policy either express or implied under which permission would be granted to the appellant.

As the decision of the respondent is in line with flood plain management principles and as there is no express or implied policy of the respondent to grant permission in such cases the appeal will be dismissed.

1. THIS TRIBUNAL ORDERS that the appeal in this matter is dismissed.

2. THIS TRIBUNAL ORDERS that no costs shall be payable by either party to the appeal.

SIGNED this 19th day of June, 1989.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.