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Ontario

The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Wednesday, the 9th day of
Mining and Lands Commissioner) October, 1985.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct an addition to an existing dwelling on Lots 10 and 11, Registered Plan 53 in the E 1/2 of Lot 12 in Concession VI, E.H.S., in the Township of Mono, in the County of Dufferin.

(amended July 12, 1985)

B E T W E E N :

BRIAN G. SMITH

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 Resourses from the refusal of the respondent to issue permission to construct an addition to an existing dwelling on Lots 10 and 11, Registered Plan 53 which is situate in the East Half of Lot 12 in Concession VI, east of Hurontario Street, in the Township of Mono in the County of Dufferin. By 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 July 12, 1985.

Approximately nine years ago the appellant acquired a cottage situate on the southerly side of the Nottawasaga River from his grandfather who purchased Lot 11 and part of Lot 12, approximately sixty years ago. Situate on the land acquired from his grandfather was a log cabin containing 733 square feet. Following the acquisition of the property the appellant made some improvements to the cottage including the installation of a septic

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tank and tile bed without the approval of the Ministry of Health. In 1983 the appellant purchased Lot 10, which lies to the east of Lot 11. He has removed from this lot the existing cottage and outhouse which was situate closer to the river than his grandfather's cottage.

The subject lands are serviced by a private road shown on Plan 53. The existing cottage is situate within ten feet of this road and there is little room for expansion toward the road. There is a distance of approximately ninety-five feet from the rear of the existing dwelling to the rear of the lots and there is an area to the north of the lots which apparently has increased due to the movement of the bed of the river in a northerly direction with the result that the proposed building would be approximately 156 feet from the Nottawasaga River.

In 1984 the appellant made an application to the respondent for permission to construct a fairly large extension and that extension was refused. He made a second application in March of the year 1985 reducing the area of the proposed extension and retaining it behind the downstream side of the existing building with a view towards reduction, in his view, of the interference with the flow of the regional storm.

The regional flood elevation as calculated by Burnside and Associates Limited in 1979 on the basis of the Timmins storm criteria is 283.52 metres. The elevation of the subject lands is 281.4 metres. Accordingly in regional storm conditions the subject lands would be subject to 2.12 metres or 7.2 feet of flooding. The subject lands are also situate within the flood plain of the one in one hundred year storm. The elevation of such a flood would be 283.36 metres creating flooding to the extent of 1.96 metres or 6.4 feet. The evidence indicated that the access road was at a similar elevation to the subject lands and any access from the subject lands in the event of either of the two storms would be impossible with six to seven feet of flooding.

Three arguments were advanced on behalf of the appellant. Firstly, it was submitted that the entire area was a substantially

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built up area and that with the reduction in the size of the proposed building, keeping it on the downstream side of the existing building, there would be no increase in the interference with the flow of a regional flood. Secondly, it was argued that other landowners had been permitted to build or make extensions closer to the river than the proposed extension. Thirdly, and the Bench raised this issue, was the effect to be given to the removal of the two buildings from Lot 10. The position of the respondent related to the depths of flooding, both in the one in one hundred year storm and in the Timmins storm and the resultant risk to property, life and the social disruption of such a flood.

With reference to the first argument advanced on behalf of the appellant, the fact that other properties in the same area are subject to the same risks does not reduce the risk to property damage and to life resulting from the enlargement of the summer cottage into a permanent residence and by increasing the number of bedrooms from one to three. The only argument related to this aspect that could be made would be if there were some future or existing plans for creation of a special area and the evidence indicates that there was neither plans nor financing for such a project at this time.

With reference to the second argument, one of the properties mentioned was constructed in 1971, long before the flood plain mapping of the area had been done, which mapping would be necessary for the conduct of an essential enforcement program under the regulation of the respondent. A property referred to as the Moffatt property is serviced by a road shown on Plan 53 but is some distance to the south of the subject lands. A high ridge of land lies along the north side of this road and this ridge of land is outside of the boundaries of the regional flood plain. Accordingly, no permission was issued by the respondent as the area was outside of its jurisdiction. The crux of the argument of the appellant was that in building the residence an excavation had been made and sliding doors installed in the basement at an elevation which was below the regional flood elevation. However, this tribunal had no

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evidence of the actual elevations and the elevations were based on estimates of the appellant. The significant aspect of this point is that the respondent did not grant permission. The third property, namely the Gummerson property, was constructed shortly before the respondent assumed administration over the Township of Mono.

Accordingly, the tribunal is satisfied that since the respondent has adopted an enforcement program in respect of the Township of Mono there has been no implied policy of granting permission in cases analagous to the present application.

With reference to the third point, the position of the respondent was that while frequently, consideration is given to the improvements in the situation arising from the removal of buildings in the flood plain, in this case the depth of flooding was so serious that the subject lands should not be considered as a site for residential construction.

The tribunal adopts the reasons and positions taken by the respondent in this matter. The tribunal is not aware of any recognized principle of flood plain management by which residential property can be constructed in areas subject to 7 feet of flooding in the event of a regional storm or 6.4 feet of flooding in the event of a one in one hundred year storm. The tribunal has heard a number of appeals for such purpose and in all cases the tribunal has disallowed the appeal. Accordingly, 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 9th day of October, 1985.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.