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The Mining and Lands Commissioner
 Le Commissaire aux mines et aux terres

IN THE MATTER OF THE CONSERVATION AUTHORITIES ACT

G.H. Ferguson, Q.C.) (Friday, the 1st day
 Mining and Lands Commissioner) (of December, 1989.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a trapper and duck hunters building on Lots 7 and 8 in Concession XII in the Township of Otonabee.

B E T W E E N :

HAYDEN BUTTERS

Appellant

- and -

THE OTONABEE REGION
 CONSERVATION AUTHORITY

Respondent

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

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to construct a trapper and duck hunter's building on part of Lots 7 and 8 in Concession XII in the Township of Otonabee. 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 Peterborough on Tuesday, the 24th day of October, 1989.

The appellant believes that he owns an island and a marshy area lying to the east thereof which are situate in the Otonabee River at a location approximately three miles west of Rice Lake. At one time he owned the mainland but he subdivided and sold the mainland portion of his property and he believes that he continues to own the island and the marshy area to the east thereof. The matter of title was not in issue in this appeal.

The appellant proposed to erect a trapper's cabin

measuring ten feet by fourteen feet at the southerly end of the island. Construction commenced but was terminated by order of the respondent and the building inspector of the Township of Otonabee. It was proposed to construct a frame building erected on concrete blocks and secured by the driving of steel fence posts at two opposite corners of the building.

The respondent revised its regulation in early 1989 with a regulation filed as O.Reg. 60/89. Under this regulation the regional storm applicable to the subject lands is the 100 year storm without consideration of the effect of ice jams or flooding caused by debris floating down the river. In view of the adoption of a 100 year standard there was no room for operation of a two-zone policy.

The elevation of the regional storm on the subject lands is 188.94 metres above sea level. The elevation of the subject lands is 187.4 metres at the highest point on the island. The elevation of the island in normal conditions is slightly above the elevation of the waters of the Otonabee River. However, in the regional storm, there would be a depth of flooding on the island of 2.2 feet. In a 50 year storm the evidence of the respondent indicated that there would be 2.07 feet of flood waters and in a 25 year discharge it was indicated that there would be two feet of water on the island. In addition there would be 5.5 inches, 3.9 inches and 3.2 inches of flood waters above the elevation of the floor.

The evidence also indicated that the method of construction of the cabin was such that it could not be expected to remain stable in a flood condition and could float off the island floating downstream causing damage to buildings or boats which frequent the river and also causing obstructions which would increase the flood elevations.

The evidence indicated that the river is subject to significant rises in elevation as a result of ice jamming. A witness called on behalf of the appellant indicated that at his property which is upstream from the subject lands, water has been

known to rise 40.75 inches in a period of three days on the Otonabee River.

The evidence indicated that the construction of the proposed building on the island was contrary to the policy of the respondent. The evidence further indicated that the policy of the Province of Ontario was contrary to the proposal made by the appellant. Several concerns of the respondent were documented in the evidence such as the loss of life to persons who might be occupying the building in flood conditions, the damage to property, not only of the building itself, but of other buildings in the area if the building were to float down the river and the victimization of owners who might acquire the property believing that the building was safe for residential construction and expansion of the use thereof.

The appellant referred to a number of properties which he suggested were precedents for the granting of permission in his case. However, the evidence indicates that the buildings referred to were either in an area where it was likely that the buildings were above the regional flood elevation or the building had been constructed prior to the enactment of the regulation of the respondent. The appellant did not establish before the tribunal that he had been denied a policy that had been applicable to other applicants in the area and further the evidence indicates that the decision of the respondent in the matter was in accordance with its written policies.

For these reasons the tribunal is satisfied that the decision appealed from was correct and that there was no provincial, municipal or federal policy which would justify the reversal of the decision made by the respondent in this matter.

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 matter.

SIGNED this 1st day of December, 1989.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.