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

File No. CA 006-05

H. Dianne Sutter)
Deputy Mining and Lands Commissioner)

Wednesday, the 18th day
of January, 2006

THE CONSERVATION AUTHORITIES ACT

IN THE MATTER OF

An appeal to the Minister under subsection 28 (15) of the Conservation Authorities Act against the refusal to grant permission for development through the retroactive approval of changes made during construction of an addition on an existing residence located at part of Lot 13, Concession 9 in the former Municipality of South Gower, now in the Township of North Grenville, municipally known as 1299 Hilly Lane.

BETWEEN: KIMBERLEY HOPE

Appellant

- and -

RIDEAU VALLEY CONSERVATION AUTHORITY

Respondent

ORDER

WHEREAS this appeal to the Minister of Natural Resources was received by the tribunal on the 12th day of April, 2005, having been assigned to the Mining and Lands Commissioner ("the tribunal") by virtue of Ontario Regulation 795/90;

AND WHEREAS a hearing was held in this matter on the 13th day of September, 2005, in the McDonald Room of the Days Inn - Ottawa Airport Hotel, 366 Hunt Club Road, in the City of Ottawa, Province of Ontario;

UPON visiting the site, hearing from the parties and reading the documentation filed and submitted at the hearing as well as receiving some clarification regarding measurements after the hearing;

1. IT IS ORDERED that the appeal to the Minister under subsection 28 (15) of the **Conservation Authorities Act** against the refusal to grant permission for development through the retroactive approval of changes made during construction of an addition on an existing residence located at part of Lot 13, Concession 9 in the former Municipality of South Gower, now in the Township of North Grenville, municipally known as 1299 Hilly Lane be and is hereby dismissed.

2. IT IS FURTHER ORDERED that the appellant be granted approval for an expanded residential structure of 1.335.6 square feet on two floors over a base floor print of 29.5 feet by 32 feet with an open porch 13 feet in length and 29.5 feet in width and that the applicant be granted a period of two years from the date of this order in which to comply.

3. IT IS FURTHER ORDERED that no costs shall be payable by either party to this matter.

DATED this 18th day of January, 2006.

Original signed by H.D. Sutter

H. Dianne Sutter
DEPUTY MINING AND LANDS COMMISSIONER



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BETWEEN: KIMBERLEY HOPE

Appellant

- and -

RIDEAU VALLEY CONSERVATION AUTHORITY

Respondent

REASONS

The matter was heard in the McDonald Room of the Days Inn - Ottawa Airport Hotel, 366 Hunt Club Road, in the City of Ottawa, Province of Ontario on the 13th day of September, 2005.

The tribunal undertook a site visit on the afternoon of Monday, the 12th day of September, 2005.

Appearances

Ms. Kimberley Hope : appeared on her own behalf

Mr. Helmut Brodmann : Counsel for the Respondent

Opening Comments

This appeal came before the Mining and Lands Commissioner pursuant to subsection 28 (15) of the **Conservation Authorities Act**, R.S.O. 1990, as amended, whereby:

“A person who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Minister who may (a) refuse the appeal or (b) grant the permission with or without conditions.”

The proper procedure was followed by the appellant with regard to this appeal.

The Mining and Lands Commissioner and/or the Deputy Mining and Lands Commissioners have been assigned the authoritative powers and duties to hear the appeal pursuant to subsection 6 (1) and clause 6 (6) (b) of the **Ministry of Natural Resources Act**, R.S.O. 1990, c. M. 31, as amended, and Ontario Regulation 571/00. In addition, the principles outlined in the **Statutory Powers Procedure Act** apply to the hearing.

By virtue of subsection 6 (7) of the **Act**, the proceedings are governed by Part VI of the **Mining Act** with necessary modifications. Pursuant to section 113 (a) of the **Mining Act**, these proceedings are considered to be a hearing *de novo*. The tribunal stressed this point at the commencement of the hearing and noted that the purpose of the proceedings was to hear all of the evidence in order to make a fair judgment regarding the appeal.

Preliminary Matters

It was noted at the outset of the Hearing that the respondent had received correspondence from the solicitors for the Bank of Nova Scotia, the holder of the mortgage on 1299 Hilly Lane in the name of Ms. Kimberley Hope, which indicated that the mortgage was in default and that the bank, in exercising its rights, had taken possession of the property and was commencing a Power of Sale process. The tribunal, during the visit to the property, noted that the property was not inhabited and that the building exhibited signs indicating that the property was being maintained on behalf of the bank.

It also was noted that the Office of the Mining and Lands Commissioner had not been able to secure an address for Ms. Hope, which did not provide the certain knowledge that the correspondence had been received. Neither the Commissioner's office nor the Conservation Authority had received any response from Ms. Hope to the September correspondence. As a result of this, there was a concern as to whether Ms. Hope would appear at the September 13th Hearing.

Ms. Hope provided a letter to the solicitors for the Bank of Nova Scotia from her solicitors, Laushway Law Office of Prescott, Ontario in which was stated that the possession of the property was illegally done and that possession should be restored to Ms. Hope. This letter was dated August 31, 2005. Ms. Hope stated that her solicitors fully expect the Hilly Lane property to be returned to her shortly.

Based on this possible action and rather than deferring the matter, the tribunal ruled that the Hearing should proceed. Both parties agreed to this ruling.

Background

Kimberley Hope purchased the property at 1299 Hilly Lane in 1998. The house, apparently constructed in 1959, is located along the eastern shore of the Rideau River, north of Kemptville on a private road known as Hilly Lane, which is accessed from County Road 19, also known as River Road. A former seasonal property, Ms. Hope planned to make this the principal residence for her family with the knowledge that the property was totally within the floodplain of the Rideau River.

In 1999, Ms. Hope received approval to construct a new foundation under the existing house. In 2001, Ms. Hope hired a contractor to extend the size of the home and was told that permits had been secured. In early 2002, a Stop Work Order was issued as the municipal and the Rideau Valley Conservation Authority's (hereinafter referred to as RVCA) approval had not been requested or received.

Ms. Hope proceeded to apply for permission to continue with the construction as planned, but her application was refused by the Executive Committee of the RVCA as the construction was in excess of the approved Authority policy for additions. A compromise was approved by the RVCA, which acknowledged the loft space, but reduced the depth of the building by eight (8) feet, resulting in an exposed foundation which could be used only as an open deck or porch

Construction proceeded as per the RVCA's approval, except that the loft space over the exposed foundation was maintained, creating a covered deck/porch. It was at this time that an extra five (5) feet of foundation was discovered. Ms. Hope believed that the municipal building inspector had secured the Authority's approval to allow this loft space to remain since she was issued a temporary occupancy permit. However, the RVCA staff had never been consulted. The approved square footage was exceeded by this construction and again, the construction violated the RVCA's policy for additions.

An appeal was made to the Ontario Court of Justice by the RVCA at which time (September 15, 2003), Ms. Hope was ordered to bring the property into compliance with the RVCA's approval with a completion date of September 2004. Ms. Hope did not meet this deadline and although the RVCA did not force the issue, they did take steps to register the Court's decision on title.

In March of 2005, Ms. Hope again presented her case to the RVCA Executive Committee with regard to a further application requesting a "retroactive" approval of the "as built" structure. This application was denied. (Ex. 1 - tab D)

This final application for retroactive approval of the "as built" structure is before the tribunal. In her letter of appeal to the Minister, dated April, 2005, and received by the Administrator on April 12, 2005, Ms. Hope maintains that the RVCA Executive Committee did not look at all the factual information presented to them, in particular, with regard to the size of the original structure. (Ex. 2 -tab 1)

ISSUES

1. Is the tribunal required to have regard to the provincial policies and through them the policies of the Rideau Valley Conservation Authority?
2. Assuming that the tribunal finds that it will adopt the application of the Rideau Valley Conservation Authority's policy with respect to additions, is the size of the structure proposed by Ms. Hope within the allowable parameters of the policy?

EVIDENCE

Evidence of the Appellant

Ms. Hope relied on her written submissions in Exhibit 2 as the evidence she wished to submit to the tribunal. She acknowledged that the property was totally located within the floodplain of the Rideau River and noted that in 2005, she experienced a flood for the first time since acquiring the property. She indicated that she and her family vacated the property before the flooding occurred due to the Flood Warning System operated by the RVCA.

A major portion of the evidence was included in the "Defendant's Brief" submitted to the Ontario Court of Justice, dated September 15, 2003. (Ex. 2-tab 1)

According to the 1998 real estate information at the time of purchase, the structure was listed as a bungalow consisting of an approximate floor area of 827 square feet with five rooms including two bedrooms. No loft space is mentioned in the real estate information. Ms. Hope maintains that

the Real Estate agent did not enter the house, so he was not aware of the loft space.

Ms. Hope stated that the home, when purchased, was a seven room, one and a half storey structure consisting of a first floor of 877.2 square feet and a half storey loft of 689.6 square feet with stair access for a total of 1566.50 square feet. She further indicated there was a sketch by Ms. Hope's contractor at the time, Mr. Jason Willard, dated July 27, 1999 but this sketch was not submitted in evidence. This is a substantially larger building than that indicated in the real estate information. (Ex. 1-C-Photo #6)

First Application: In 1999, Ms. Hope secured the approval of the RVCA for the construction of a new perimeter crawl space foundation under the existing building, in order to flood proof the structure. (Ex. 5) At this time, the application indicated that the foundation would be 30 feet by 30 feet for a total of 900 square feet. The approval indicated that no increase in the living space would be allowed.

During cross examination by Mr. Brodmann, Ms. Hope indicated that Mr. Willard had filled out the application for her and she had signed the document, accepting the information as provided by Mr. Willard.

Second Application: In 2001, Ms. Hope hired contractors to build three additions to her original home adding an 8 X 29.5 foot extension on the front of the house, and a 5 X 6 foot and a 6 X 12 foot extension for a first floor area of 1184 square feet (29.6 feet by 40 feet) and increasing the half storey (herein after referred to as loft space) to 882.08 square feet (29.6 feet by 29.8 feet) for a total of 2066.08 square feet.

In late December, 2001, and with the advice of a local carpenter, this work began without any approval permits. A Stop Work Order was issued on January 31, 2002 when Ms. Hope apparently found that no permit applications had been submitted to any approval body. The roof framework was almost complete at this stage. (Ex. 1- C – Photographs 8 and 9)

On February 5th, 2002, Ms. Hope filed a retroactive application with the RVCA, based on the proposed 2,066.08 square foot plan, of which only 1540 square feet was considered gross floor area, due to the slope of the roof trusses. At this time, the contractor indicated that the original building was 874 square feet, a fact accepted by the RVCA. (Ex. 4) This application was denied by the RVCA Executive Committee.

Third Application: Supported by the RVCA staff, Ms. Hope subsequently made a further application for a smaller addition consisting of 944 square feet on the first floor (32 feet X 29.5 feet) and 384 square feet (12 feet X 32 feet) allowing for only the head room section in the loft for a total of 1328 square feet. This third application was approved by the RVCA Executive Committee on February 22, 2002 on the basis that a portion of the construction facing the roadway, measuring 8 X 29.5 feet (236 square feet), be removed with a *“deck or uncovered veranda or uncovered porch may be utilized over the exposed foundation wall”*.

Ms. Hope indicated she agreed with this decision, that all necessary documents were filed with the Authority and construction continued. Ms. Hope stated that her carpenter, Mr. Roger Daigle, removed the required area of the main floor back to where the original "green floor" had been located, apparently measuring 29.5 feet X 32 feet but maintaining the loft space at the same as the former first floor with the usable portion being 29.5 X 12 feet. Ms. Hope maintained that the RVCA letter of February 22, 2002 allowed the loft space to be the same as the first floor wherein it stated:

"That amended plans be submitted to the Conservation Office for the file to reflect the full first floor measuring 32 feet X 29.5 feet and the 1/2 storey measuring the same

Ms. Hope took this to mean that she was allowed to have the 29.5 X 32 foot space (29.5 X 12 feet of usable space) in the loft as well, maintaining the loft as it was being constructed over the newly exposed foundation where the 8 X 29.5 foot main floor area had been removed. (This, of course, created a covered porch.) Ms. Hope indicated that she was told by the Town's Building Inspector, Mr. Randy Wilkinson, that the revised structure would be within code and that he would "deal with Shelley Macpherson", who, the tribunal notes, is the Regulations Officer for the RVCA, with regard to any conformance issue with the RVCA. According to a letter submitted by Mr. Roger Daigle, he was present with Ms. Hope when Mr. Wilkinson made this statement. It was Mr. Wilkinson's advice Ms. Hope accepted since her Occupancy Permit would come from his Department. The covered porch was maintained. A temporary Occupancy Permit was issued by the Town in April, 2002.

According to Ms. Hope, there were some conflicting views regarding the foundation walls and crawl space at this time between the RVCA and the Town staff which delayed the finalization of repairs. The two other issues were the size of living space. Ms. Hope cited the list of conflicting issues (Ex. 2 -Tab 2) in her evidence before the Court and also presented it to the tribunal, using it as an example of how she felt she had difficulty receiving "straight answers" from the RVCA.

Ms. Hope stated that she sought legal advice on the issue of who she should listen to regarding the discrepancies in direction, but could secure no definitive advice.

On June 13, 2002, following a visit to the property by Ms. Shelley Macpherson, Ms. Hope indicated that the RVCA's letter of permission was revoked on the basis that both the first floor and the half storey loft exceeded the approved limits. The first floor (after the removal of the 8 X 29.5 foot area creating the porch) now was measured by Ms. Macpherson as 29.5 X 37 feet instead of the approved 29.5 X 32 . An extra five feet made its appearance at this time. The second floor's size was correct at 12 X 32 feet, but only 23 feet extended over the first floor with the remaining in the porch overhang area. Ms. Hope maintained that the Building Inspector again stated that the Town had no concerns since the construction met the Building Code. She forwarded a letter to the RVCA on June 19, 2002, following the approval revocation, indicating her concern over who she was to listen to. (Ex. 2 - Tab 2)

On December 18, 2002, Ms. Hope was served with a Summons to appear before the Ontario Court of Justice to explain the non-compliance with the RVCA's approval of February, 2002.

A Court Order, dated September 15, 2003, required Ms. Hope to comply with the RVCA's approved construction plan.

Ms. Hope acknowledged that she had not complied with the Court's direction-because she continued to not know what she was actually supposed to do, especially since the extra 5 X 29.5 foot space had become an issue. Ms. Hope did acknowledge, in Cross Examination, that she did receive a letter from Ms. Macpherson, dated October 18, 2004, which outlined the status of the application and "*suggested*" how Ms. Hope could comply. Ms. Hope indicated that she did not view this letter as clear direction from the RVCA since it used words as "*suggestion*" and "*for your consideration only*". (Ex. 1 - Tab A)

With regard to the extra five feet, Ms. Hope explained that it was Mr. Wilkinson from the Town and her contractor, Mr. Roger Daigle, who enlarged the foundation to 45 feet in order to allow for a separate electrical room. This was done without consultation with Ms. Hope who continued to use the 29.5 X 32 feet as the size of the first floor. (Ex. 2 Tab 1)

Ms. Hope advanced the position that she had attempted to comply with the approval but had accepted advice from the wrong source and was unaware of the original size expansion of the foundation. She continued to seek the maintenance of the 29.5 X 37 foot floor area and the overhanging space from the loft and appeared again before the Executive Committee on March 3, 2005. This application was denied.

Several emails followed between herself and Ms. Macpherson in May, 2005 attempting to reach a compromise solution by reducing the interior loft space by 8 X 12 feet in the area overlooking the living space of the first floor and to also maintain the overhang space. (Ex. 2 Tab 5) This would be less costly for her than the removal option. However, Ms. Macpherson made it clear that this option would still not comply with the approval by the RVCA since the covered porch remained an issue.

Ms. Hope stated she does not have the financial or emotional means to do anything more with the house. She continued to maintain that the home is now smaller than the original house and therefore should meet the criteria of the RVCA. This is based on her view that the original house had a loft of 689 square feet which she maintains was usable space within the original house.

Over the last four years, Ms. Hope feels that all reasonable attempts to settle the matter and secure straight answers were made but failed. She is looking to the tribunal for a "*reasonable response*".

Evidence of the Respondent

Mr. Brodmann introduced the respondent's evidence as a request by the appellant for a retroactive approval of work carried out on site by Ms. Hope without the approval of the Rideau Valley Conservation Authority Ms. Hope has stated that the process from the 1999 foundation approval by the Authority to this appeal has spanned a period of four years. She believes she

listened to the advice of the wrong people and apologized for this to the RVCA, but now believes straight answers are needed from the conservation authority. Mr. Brodmann indicated that evidence will be shown that direction was clearly provided to Ms. Hope, but she appears to have listened to what suited her purposes.

Ms. Shelley Macpherson, who holds a BA in Geography, was sworn and accepted as an expert witness in dealing with applications affected by the RVCA approved Regulations and Policies, including infractions against these Policies and Regulations. She has been the Regulations Planner at the RVCA since 1990.

First Application: Ms. Macpherson referred to Exhibit 5, the documents submitted by Ms. Hope in her application for a new foundation under the original 1299 Hilly Lane, dated July 28, 1999. These documents included copies of the following:

- the original real estate information when Ms. Hope purchased the property,
- a survey sketch of the lot,
- a contour map of the Hilly Lane area,
- a contractor's drawing/description of the proposed foundation, and
- the foundation approval letter, including conditions, from the RVCA, dated August 5, 1999.

The contractor's document indicated that the application sought approval for a new foundation, approximately 900 square foot (30' X 30') in size, with no increase in the living area. The Real Estate Information sheet states that the house was a bungalow of approximately 827 square feet. (Ex. 4 – 837 square feet) No loft space is described, although a window can be seen located above the main floor entrance and at the rear. Exhibit. 6 – Photo "B" shows a rear view of the original house and Ms. Macpherson highlighted the location of a specific tree in the rear yard. Photo "C" portrays the original house on its new foundation. The tree location was again referenced. In both photographs, the tree was seen to be in the same location, with reference to the structure. This application was approved on August 5, 1999 by the staff of the RVCA on the basis that there was to *"be no increase in the total living space"*. (Ex.5)

Exhibit 6 -Photos "D" through "G", all dated January 31, 2002, provide visual evidence of the construction of a new roof, as well as the way in which the new construction was *"squaring off"* the original home and with a further addition, increasing the living space. The increase in the height of the building (beyond its new height after foundation construction) also was illustrated. Photos "F" and "H" clearly show that the previously referenced tree now is much closer to the structure. It is this structure that was the subject of the January 30, 2002 retroactive application to the RVCA.

In January of 2002, the RVCA became aware of construction at 1299 Hilly Lane for which no application had been made nor approvals given. According to Ms. Macpherson, the work that was underway consisted of an addition to the existing ground floor with a new roof, including roof trusses of a size and height to allow for a second floor. Ms. Hope was issued a Stop Work Order on this project until an application could be reviewed.

Second Application: Ms. Hope submitted an application in February, 2002 for additions to the original structure which was stated by the contractor, to be 874 square feet in size at the time of the application. The additions included:

- a 5 foot by 6 foot addition on the north west corner of the structure (30 sq. ft.);
- a 6 foot by 12 foot addition at the north east corner of the original structure (72 sq. ft.), and
- a further addition of 8 feet by 29.6 feet over a foundation (236 sq. ft)
- a second floor space of 12 feet by 30 feet with side storage space, not forming part of the area calculations for the structure. (360 sq. ft.)

Based on these calculations, the proposal was for a building 29.6 feet by 40 feet for a total ground floor of approximately 1180 square feet and a 360 square foot second floor for a total of 1540 square feet. Ms. Macpherson stated that the Authority accepted the 874 square feet as the base size of the original structure at that time.

Under the RVCA's most recent amendment (February, 2002) of their Policies Regarding Development including the Construction/Reconstruction of Buildings and Structures, placing of Fill and Alterations to Waterways, small additions may be permitted in areas susceptible to flooding as long as:

"the size of the addition does not exceed 20% of the gross floor area of the existing building or 20 square metres (216 square feet) whichever is the lesser;"
(Ex. 3-Tab A)

Based on this Policy, the RVCA staff were in a position to approve an addition amounting to 174.8 square feet (20 %) for a total square footage of living space of 1052 square feet, whereas, Ms. Hope was requesting an addition of 666 square feet (approximately 76%). A hearing was held by the Executive Committee of the RVCA in February 2002, at which time, Ms. Hope's application was refused.

The Executive Committee, however, noting that the work was in progress, did indicate to staff that they would accept the following:

- the original footprint of 24.5 feet by 32 feet for a total of 784 square feet plus 90 square feet for the existing side entrance; (874 square feet)
- the squaring of the main floor for a new footprint of 29.5 by 32 feet for a total of 944 square feet;
- an allowance for Ms. Hope's submission that the original structure included a loft, accepting an approximate 12 foot by 31 foot loft space for a further 372 square feet of living space. (total square footage of 1316)
- since the "under construction" footprint was thought to be 29.5/29.6 feet by 40 feet, the rear walls of the structure had to be pulled back by eight feet along the entire width of the structure and the remaining eight feet of foundation could be maintained as an open porch;
- the majority of the roof trusses could be maintained except in the area of the pull back;

Ms. Hope appeared to accept this compromise since she resubmitted the application based on these conditions, which would allow a total living space of 1304 square feet on a base foot print of 29.5 by 32 feet. She received a retroactive approval to continue the construction on February 22, 2002. (Ex. 1- Tab c-10)

However, a subsequent site visit, on or about June, 2002, uncovered the following facts:

- the contractor had pulled back the living space by 8 feet by 29.6 feet BUT on only the ground floor leaving the second floor overhanging, creating a covered porch situation, while only an open porch had been allowed.
- the foundation was found to be 45 feet in length, not 40 feet as stated on the application. The original foundation from 1999 had been built under the existing structure and was 32 feet in length. The Authority has no idea when the 45 foot foundation was built, nor was Ms. Hope able to shed much light on it other than to say the Building Inspector indicated the need for an extra 5 feet to allow for an above grade electrical room beyond the living space. Certainly no application ever requested a 45 foot foundation. An approval had been given, initially for the 32 feet, not a 40 or 45 foot foundation.

The impact of this was 13 extra feet of foundation of which only eight feet had been pulled back, leaving 5 extra feet within the living space on the ground floor.

These facts left the ground floor at 29.5 X 37 feet for a ground floor living space of 1091.5 square feet and a second floor loft of 12 X 31 feet (372 square feet) for a total living space of 1463.5 square feet or 411.5 feet larger than the original allowed size plus the 20% or 42% and 159.5 square feet (12%) larger than that approved in February, 2002. All of this comprised a 68% increase over the floor space of the original structure (874 square feet)

In each case, Ms Hope continued to exceed the allowable 20%. She was required to comply with the approval granted in February, 2002 allowing for 1304 square feet of living space and an open porch over the extra foundation. The upper floor over the extra foundation had to be removed along with the trusses connected with that construction.

In June, 2002, the RVCA laid charges under the **Conservation Authorities Act**. R.S.O.,1990 as amended, The following evidence appears in Ex. 3 – Application Summary:

“Ms. Hope was found guilty on September 15, 2003. The Conservation Authority asked for an “order” from the Court to bring the premises into compliance with the Conservation Authority’s requirements. The Authority did not seek a fine, noting that the work required to bring the structure into compliance would be costly to the property owner. It was required that the work be undertaken by September 15, 2004 at which time the RVCA and Ms. Hope appeared again before Justice of the Peace Stewart. An extension until April 30, 2005 was further ordered.”

By letter dated October 18, 2004 and in an effort to finalize the compliance matter, the RVCA suggested that the rear loft area be removed to line up with the ground floor pull back location, eliminating the covered porch. The whole structure would be 29.5 by 37 feet reducing the square

footage by 96 square feet, leaving the structure approximately 63 square feet over the approved size. (Ex. 1 –Tab A) This was not acceptable to Ms. Hope who indicated that the loft bathroom room is located in the overhang space and that the cost to remove this space would be prohibitive. Ms. Hope suggested the interior removal of the same amount of space, but wanted to maintain the overhang on the porch.

In the meantime, Ms. Hope submitted another application to the RVCA in January, 2005, requesting a further retroactive approval for what has been constructed including the foot print of 29.5 X 45 feet, a ground floor of 29.5 X 37 feet and the second floor loft overhang which created the covered porch, providing 1463.5 square feet of living space. An Executive Committee hearing on March 3, 2005, denied Ms. Hope's application for the following specific reasons: (Ex. 3-Tab B)

1. *The entire property and private right of way has been identified as being within the 1:100 year floodplain of the Rideau River and safe access is not available for approximately 1.4.km.*
2. *The application is for an increase in gross floor area of 135 square feet¹ over and above that which has been permitted in the Approval letter of 2002 which was allowing for the squaring off of the existing foot print of the structure and a new roof pitch to allow for the ½ second storey which was measured as 12 X 32 square feet;*
3. *The granting of permission would be inconsistent with the approved Development Policies, in particular, the policies respecting additions greater than 20% in areas where safe access is not available;*
4. *The granting of permission would set a precedent;*
5. *The granting of permission may have cumulative impacts respecting the control of flooding, pollution and the conservation of land.*

Due to the upcoming Court compliance date of April 30, 2005 and because of Ms. Hope's stated financial difficulties, the RVCA decided that its "interest" in Ms. Hope's property could be reserved by registering an Order on Title, an action which would allow Ms. Hope additional time and some flexibility regarding the compliance situation. Ms. Hope was provided with a letter from Bell Baker, LLP, dated April 8, 2005 (Ex. 2- Tab 6) outlining the intention of the RVCA to follow this course of action. Mr. Brodmann wrote the following:

*"I have instructions from the Conservation Authority that no further action be taken at this time to enforce the order of Justice of the Peace Stewart issued on September 15th, 2003. As you know, Justice of the Peace Stewart ordered that your premises located at 1299 Hilly Lane, R. R. #1, Kemptville, Ontario be brought into compliance with the requirements of the **Conservation Authorities Act** and regulations thereunder. This work was to have been completed by September 15, 2004.*

¹ Earlier evidence indicated that this figure was 159.5 feet

While no further action will be taken to enforce the order at this time, you should be aware that we are in the process of registering Justice of the Peace Stewart's order on title to your property. In this way, anyone interested in acquiring your property would be made aware of the order and its contents."

The letter further stated that the RVCA reserved its right to take action in the future, if it was necessary. Ms. Hope suggested that the RVCA reneged at the hearing before Justice of the Peace Stewart on what she perceived as a statement saying that no further action would be taken. Ms. Macpherson stated that the lawyer's letter did not say this ... it said only that court action would not be taken to solve the problem. Compliance with the approval by the Authority always was and will be required.

In April, 2005, Ms. Hope appealed the RVCA's decision to the Minister of Natural Resources, but also renewed her request for an interior reduction in square footage to the RVCA, further requesting specific instructions as to what she had to do to conform. (Ex. 3 – Tab B)

Ms. Macpherson referred to her response to Ms. Hope through a registered letter date of May 6, 2005 in which she stated:

"The 8 X 12 foot removal of gross floor area is only relevant if the scenario of pulling back the ½ storey 2nd floor at the road side is considered."(Ex. 3 – Tab B)

This letter again indicated that a building of 1328 square feet was what had been approved and it was this approval that required compliance. She indicated that what had been built (1463.5) was 135.5 square feet over that approval. The removal of the overhang would reduce this figure by 96 square feet, a compromise that would be acceptable to the RVCA. Ms. Macpherson stated that it was the only scenario that would be accepted and one that still exceeded the approval of 2002.

During Ms. Hope's cross examination of Ms. Macpherson, reference was made to part 3 of the first paragraph in the RVCA's letter of February 22, 2002:

"the continuation of the new roof line and truss installation to accommodate living space on the second floor over the new foot print which will measure 32 feet X 29.5 feet.(The original building was 24.6 feet X 32 feet with a 90 square foot add on some time after.) The roof line and truss installation will permit a legal ½ storey"

Further, Ms. Hope referenced part 1 at the top of the second page.

"That amended plans be submitted to our office for the file to reflect the full first floor measuring 32 feet X 29.5 feet and the ½ storey measuring the same. The addition at the rear of the road side of the property measuring 8 feet X 29.5 feet will be removed."

Ms. Hope maintained that ambiguity exists in this letter in that Ms. Macpherson implied that

- new roof line and trusses could continue; and
- the second floor would measure the same as the first floor (12 foot width not mentioned);

