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Toronto (Ontario)  
MSG 126

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

File No. CA 005-00

H. Dianne Sutter )  
Deputy Mining and Lands Commissioner )  
Lorne F. G. Carter )  
Deputy Mining and Lands Commissioner )

Wednesday, the 31st day  
of January, 2001.

## 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 the placement of fill for grading on Part of Lot 34, Concession 2, in the Township of Rideau, in the Regional Municipality of Ottawa-Carleton, municipally known as 7357 Rideau Valley Drive, Kars, Ontario.

### BETWEEN:

WAYNE ROBBINS

Appellant

- and -

RIDEAU VALLEY CONSERVATION AUTHORITY

Respondent

## ORDER

**WHEREAS** an appeal to the Minister of Natural Resources was received by this tribunal on the 23<sup>d</sup> day of June, 2000, having been assigned to the Mining and Lands Commissioner (the "tribunal") by virtue of Ontario Regulation 571/00;

**AND WHEREAS** a hearing was held in this matter on Friday, the 3<sup>rd</sup> day of November, 2000, in the New Brunswick Room, at the Westin Hotel, 11 Colonel By Drive, in the City of Ottawa, in the Province of Ontario;

**UPON** hearing from the parties, the witnesses and reading the documentation filed;

1. **THIS TRIBUNAL ORDERS** that the appeal by Mr. Wayne Robbins from a refusal of the Rideau Valley Conservation Authority to grant permission for the placement of fill, for grading purposes on Part Lot 43, Concession 2, in the Township of Rideau, in the Regional Municipality of Ottawa-Carleton, municipally known as 7357 Rideau Valley Drive, Kars, Ontario, be and is hereby dismissed.

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

**DATED** this 31st day of January, 2001

original signed by

H. Dianne Sutter

H. Dianne Sutter  
Deputy Mining and Lands Commissioner

original signed by

Lorne F.G. Carter

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RIDEAU VALLEY CONSERVATION AUTHORITY

Respondent

### REASONS

This matter was heard on Friday, November 3<sup>rd</sup>, 2000, in the New Brunswick Room, of the Westin Hotel, at 11 Colonel By Drive, in the City of Ottawa, Province of Ontario.

## Appearances

Mrs. Raye Robbins: Agent for the Appellant, Mr. Wayne Robbins  
Mr. Helmut Brodmann: Counsel for the Respondent, the Rideau Valley  
Conservation Authority

## OPENING COMMENTS

This appeal was heard pursuant to subsection 28(15) of the **Conservation Authorities Act** against a refusal by the Rideau Valley Conservation Authority to grant permission for the development of property through the placing of fill on the property. Under subsection 28(15) of the **Act**, a person who has been refused permission may, within 30 days of receiving the written reasons required under subsection 28(14), appeal to the Minister of Natural Resources. The Mining and Lands Commissioner and/or the Deputy Commissioners have been assigned the authoritative powers and duties to hear the appeal by virtue of subsections 6 (1) clause 6 (6)(b) of the **Ministry of Natural Resources Act** (R.S.O. 1990, c.M.31) and Ontario Regulation 571/00. It is also noted that the regulations had actually changed from O. Reg. 795/90 to O. Reg. 571/00 on October 20<sup>th</sup>, 2000. The context of the regulation was unchanged, the earlier appeal provision was found in subsection 28(5) and now appears in subsection 28(15) of the **Act**. Further it was noted that the tribunal visited the site of the property on November 2<sup>nd</sup>, 2000 accompanied by the appellant, Mr. Wayne Robbins.

## BACKGROUND

The property is situated at 7357 Rideau Valley Drive South, Part of Lot 34, Concession 2, in the Township of Rideau, Regional Municipality of Ottawa-Carleton, Kars, Ontario. It was purchased by Mr. Wayne Robbins in 1987 and is located on the western bank of the Rideau River which flows to the northeast.

The flood lines for the property, adopted by the Rideau Valley Conservation Authority (R.V.C.A.) in 1990 through Ontario Regulation 166/90, are inscribed on a map entitled Rideau Valley Conservation Authority Floodline Mapping of the Rideau Valley [Ex.8]. The solid line depicts the 100 year storm event and the broken line identifies the fill line. The Conservation Authority applies the two zone approach for this stretch of the river. Generally, both lines are substantially back from the river's edge, positioning the Robbins property, as well as, neighbouring properties below the flood line and the fill line and fully within the flood plain of the Rideau River.

The property has been the subject of five applications to the R.V.C.A. dating back to 1981. In 1981 the current building structure was approved and built complete with a floodproofing grade apron surrounding the structure. The current application was the culmination of an application process started in September 1999 (denied), and by revised submission to the R.V.C.A. in November 1999 (denied), and heard by the Executive Committee of the R.V.C.A. in May 2000. The application was refused by the Executive Committee and the following reasons were provided to the applicant by letter dated, May 31,2000 [Ex.1, C]:

*It was concluded that the application could have implications for issues related to control or flooding, pollution and conservation of land. The specific reasons for the Authority's refusal to grant permission are as follows:*

1. *The entire property has been identified as being within the 1:100 year flood plain of the Rideau River;*
2. *Placing of approximately 325 cubic metres of fill for the purpose of raising an existing residential lot is considered a significant amount of fill and the requirement for a balanced cut and fill cannot be waived;*
3. *The applicant has not established that the placement of the proposed fill on the septic bed is in conformity of the Ontario Building Code;*
4. *There is no evidence of Parks Canada approval for the placement of fill on Federal Crown Land;*
5. *Entirely flooded in March 1976 and partially flooded in April 1993;*
6. *Granting of permission will be inconsistent with the approved Development Policies adopted by the Conservation Authority & Provincial Policy, 1996;*
7. *The granting of permission will have precedential implications.*

*Mr. Robbins appealed the decision to the Minister of Natural Resources under subsection 28(15) of the Act on October 20<sup>th</sup>, 2000.*

## RELEVANT LEGISLATION

Subsection 28(15) of the **Conservation Authorities Act**, R. S.O., 1990, Chapter C.27, states;

*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 permission;*

*or*

*(b) grant the permission, with or without conditions.*

An appeal to the Minister under the above noted subsection 28(15) of the **Conservation Authorities Act** from a refusal to grant permission allows the tribunal, which has been assigned the powers of the Minister, to determine whether the appeal should be dismissed or whether permission should be granted. The wording of the subsection does not require the Minister to review the decision of a Conservation Authority. Therefore the hearing is considered to be a new hearing or **de novo**.

## ISSUES

1. Will the application for development, through the purposed placement of fill in the flood plain, alleviate flooding and erosion or affect the control of flooding and the potential for pollution?
2. Will an approval for the placement of fill create a precedent within the decision making authority of the Rideau Valley Conservation Authority and throughout the rest of the Province with regard to allowing further fill placement in a flood plain?

## WITNESSES

The **appellant**, Mr. Wayne Robbins, appeared giving evidence on his own behalf. Mr. Steven Simmering, a Consulting Engineer (Simmering & Associates Ltd.) also appeared on behalf of the appellant.

Appearing on behalf of the **respondent** (Rideau Valley Conservation Authority) were Ms. Shelley Macpherson, Regulations Planner (R.V.C.A.), Mr. Bruce Reid,

Professional Engineer and Management Coordinator of Water Resources (R.V.C.A.) and Mr. Clare Sanderson, Realty Manager at Parks Canada, responsible for Crown Lands in the Rideau Canal catchment area.

## EVIDENCE

**Helmut Brodmann**, counsel for the R.V.C.A., provided the setting for the appeal and introduced certain exhibits for the tribunal's reference. He entered into evidence:

1. the site location map (Kemptville 31G/4, Edition 7, published in 1982, taken from aerial photographs in 1979, Surveys and Mapping Branch, Department of Energy, Mining and Resources Canada) [Ex.7];

2. a photomap of the Rideau Valley Conservation Authority Floodline Mapping of the Rideau River (Smith Falls to Kars) - Schedule No.6, produced by Kenting Earth Sciences Ltd. for the National Capital Commission from 1971 Air Photos, signed by James F. MacLaren Limited - Environmental Consultants [Ex.8].

The Robbins site was clearly outlined on the maps, indicating its location fully within the flood plain of the Rideau River. He pointed out further that the flood line elevation levels at 87.60 metres above sea level were references from a 100 year storm event and the Conservation Authority's regulation, O.Reg. 166/90, was based on these flood line elevations.

**Shelley Macpherson**, Regulations Planner for the Conservation Authority, was requested to provide the background for the fill placement application. She indicated that she has worked for the Conservation Authority for ten years and was familiar with the Robbins file. She noted that this application was filed as number RV6 -10/99. She made reference to the RVCA submission filed in advance of the hearing, and the documents contained therein [Ex. 1].

Ms. Macpherson stated that the Robbins' application was for the placement of approximately 325 cubic metres of fill on an existing residential property for the purpose of raising the grade. The R.V.C.A. had considered the following items within the application process:

1. the regulatory flood level of 87.6 metres geodetic,
2. the significant amount of fill proposed with no cut and fill process possible,

3. the implications for loss flood plain storage capacity,
4. the implications of precedence,
5. the proposed fill to be placed over the existing septic system,
6. the proposed fill to be placed on an area described as "*filled lands*" on Crown land (approximately 20 feet by 118 feet),
7. the Development Policy of the R.V.C.A., under O. Reg. 166/90, subsection 2.0 (ii) & (viii).

Ms. Macpherson stated that staff recommended the refusal of the Robbins application, based on the reasons set out in their report to the Authority, dated May 1<sup>st</sup>, 2000 [Ex. 1, B]. The application as submitted did not indicate the quantity of fill requested, nor did it provide a plan showing existing and proposed grades. The estimate of the proposed fill was calculated by the staff based on the information provided by the applicant. This information included the lot size (110 ft. x 118 ft.), minus the house area multiplied by the depth of two feet of fill. The resulting calculation was 510 cubic metres (25,960 cubic feet) of fill. Through follow up correspondence with the applicant, the staff were able to establish the actual needs to be 325 cubic metres (18,000 cubic feet) of fill.

At the Executive Committee hearing on September 9<sup>th</sup>, 1999, attended by Mr. Robbins and his landscaping contractor, Mr. Mulrooney, the Authority reviewed the document entitled "Policies Regarding Development Including The Construction of Buildings and Structures, Placement of Fill and Alterations to Waterways, under Section 28 of the **Conservation Authorities Act of Ontario**" [Ex.1, F]

By way of clarification, Ms. Macpherson pointed out that a "*small quantity of fill*" could be for gardening or top soil to fill minor lawn ruts. Referring to an air photo reproduction [Ex.1, B], Ms. Macpherson pointed out that the flood lines portrayed a 1 in 25 year storm event. A photo reproduction, dated April 1993 [Ex.1, B], taken by Ms. Macpherson, showed the degree of flooding on the Robbins property in that year. The April 1993 photo showed the property fully flooded, except for the house and the protective apron surrounding it. Ms. Macpherson explained that the 1993 photo was taken at random to record flooding along the Rideau River. The flooding, at the time, extended to the back boundary of the property adjacent to Regional Highway 13, but did not flood the roadway.

The Conservation Authority maintained that this application, if approved for fill placement, could result in other applications for similar approvals which would have an overall significant effect on the watershed and its storage capacity.

Ms. Macpherson, reviewing concerns regarding the twenty year old septic system, stated that sufficient information was not available to assess the resulting affects on the septic system if the fill was allowed. Current Ontario Building Code standards call for no greater than 3 feet or 0.9 metres of overburden being placed on a septic system of the type found on the Robbins property. There was no information regarding the current depth of cover or the status of the tile bed.

Referring to the air photo map [Ex.1, B], Ms. Macpherson pointed out that the Robbins lot has a frontage on the Rideau River of 118 feet. At the shoreline, an area approximately 8 feet by 118 feet by 20 feet along the river was filled lands, which in fact, are Crown Lands under Parks Canada jurisdiction. It is a mystery when these lands were filled. To the Conservation Authority's knowledge, no permission to place fill had been issued by Parks Canada. The tribunal was advised that the Conservation Authority has no direct jurisdiction over Crown Lands, filled or otherwise.

On May 16<sup>th</sup>, after the subject submission was denied, Ms. Macpherson visited the Robbins home to discuss the refusal. She stated that she had pointed out to Mr. Robbins that the Conservation Authority had no objection to the placing of fill to correct ruts in the lawn, but the policies allowed no exceptions for the placing of fill as proposed over all of the property. A proposed boat slip diagram was provided to her by Mr. Robbins in an effort to satisfy cut and fill regulations. She advised Mr. Robbins that it looked like the boat slip would be too close to the septic system bed and regulations required a minimum setback of 15 metres (50 feet) from the water's edge to a tile bed. In addition, the cut and fill regulation was not applicable to the boat slip proposal.

For clarification, Ms. Macpherson stated that the information requested of the appellant and their agent prior to the Executive Committee hearing was required to complete the submissions for that hearing. It included the septic system issue which the Conservation Authority could rule on as it relates to water resource management and the potential for pollution.

**Mrs. Raye Robbins**, agent for the appellant, introduced a two page document, sub-titled "Points for Discussion" [Ex.9] and the document is paraphrased below:

~ The home was purchased by the Robbins approximately 13 years ago. It is a permanent residence and fronts on the Rideau River.

~ The original application in 1999 to the Rideau Valley Conservation Authority was to improve the shoreline by removing an existing log retaining wall, and to install riprap along the extent of the shoreline, place two gabion baskets on the shore and to place fill on the property in order to make the grade more comparable with the surrounding properties. It was expected this would reduce the risk of flood damage to the house, property and storage sheds. The R.V.C.A. gave approval to remove the existing log retaining wall, install riprap along the shoreline and place two gabion baskets, but denied the permit to fill.

~ The property is lower in grade than the adjacent property immediately to the north. It is apparent that, in the past, fill was added to that property. To the south there is an abandoned property that has not been used by anyone in years. The proposed fill was intended to redress the imbalance in the grade in relation to other neighbouring property, and reduce some of the flooding.

~ The application that was originally submitted did not specifically indicate the quantity of fill requested but proposed raising the grade by up to two feet. As a result the R.V.C.A. estimated that approximately 510 cubic metres of fill would be required and that this amount was considered a significant amount of fill and the requirement of a balanced cut and fill could not be waived.

~ The R.V.C.A. indicated that allowing the placement of fill would create a precedent and was inconsistent with policies to not allow the placement of fill in the flood plains.

~ In a facsimile from Shelley Macpherson, dated September 7, 1999, to Pat Mulrooney, the landscaping contractor, it was stated that this application required:

1. a geodetic survey,
2. a profile showing the existing and proposed grades,

The facsimile closed with the comment by its author, S. Macpherson, that the committee may not entertain frivolous applications. Based on this facsimile the appellant found it was necessary to hire a lawyer and a consulting engineer, to review the situation.

~ Upon his review, Mr. Simmering, a Consulting Engineer hired by the Robbins, calculated the actual amount of fill required to raise the grade in a tapered manner up to 2 feet, to be 325 cubic metres by volume. This, by the appellant's estimation, was not a significant quantity of fill. Mr. Simmering's recommendation reduced the

amount estimated earlier by the R.V.C.A. by 36%. It was the appellant's understanding that the R.V.C.A. agreed that this amount of fill would have no significant affect on the upstream water levels, local stream flow velocity, the control of flooding, pollution nor the conservation of lands. However the application was still denied.

~ The Authority also expressed concern about the potential for pollution regarding the proposed fill placement on top of an existing septic tile bed. Mrs. Robbins introduced a letter, dated October 31<sup>st</sup>, 2000 [Ex. 10], from a Mr. J. Devereaux, who is licensed by the Ministry of the Environment to inspect and install septic systems. This letter also included certain diagrams and cross-sections of the Robbins tile field [Ex. 11] which indicated that the system is in good working order and appears to have been installed according to Ontario Building Code standards. Mr. Devereaux estimated the depth of the existing tile bed to be 23 to 24 inches (0.6 metres).

~ It was the appellant's view that the policies regarding a placement of fill permit only relates to significant quantities of fill and does not apply to applications involving small quantities of fill where there is an insignificant affect on the control of flooding, pollution or the conservation of land. As such, the policies were not intended to apply to what is proposed. This application was for a limited area of land in a relatively isolated area. No incremental balanced cut and fill procedure would reasonably apply.

~ Mrs. Robbins stated that the fill placement was not merely for cosmetic reasons but was expected to:

1. reduce the imbalance created by past filling on the property to the north,
2. have no noticeable impact on the abandoned property to the south (which is roughly the same grade),
3. reduce flood damage to the home, property and the storage sheds,
4. provide better and improved safety to the residents,
5. facilitate the planting of shoreline vegetation, shrubs and trees.

~ Mrs. Robbins concluded that the appellant also understands that the RVCA considers the filled lands to be an issue. She noted further that it was understood, according to the Parks Canada letter [Ex. 12], that if the filled land was privately owned, a permit would not be required from them for fill placement. In solving this issue, the appellant had contacted Parks Canada requesting to purchase this land and the confirmation/clarification letter [Ex.12] was received.

**Mr. Steven Simmering**, a Consulting Engineer (in direct examination by Mrs. Robbins), was recognized as having been retained by the appellant as an expert witness in water resources management and the Rideau River area in particular. He prepared a geodetic survey examining the effect of placing fill on the property. In so doing, he established the general location of the sewage system and the septic bed. He also reviewed the flood plain policies of the R.V.C.A. Referring to Mr. Devereaux's letter and the cross-section drawing of the septic system [Ex. 10 & 11], Mr. Simmering stressed their relevance and emphasized that the author believed the elevations to be accurate. He explained that the Ontario Building Code requires the overburden of a tile bed to be a minimum of 1 foot and a maximum of 2 feet. Mr. Devereaux's letter states that there will be 23 to 24 inches of overburden on the tile bed after the tapered placement of fill. This, he determined, was acceptable under the code requirements. The geodetic survey [Ex.2,1&2] of fill estimates and placement shows approximately two feet of fill over the tile bed which agrees with Mr. Devereaux's figures.

Mr. Simmering pointed out that regulations are in place to protect lands and that he was sensitive to the Conservation Authority's need to minimize fill to be consistent with the Authority's policies. However, the elevations of lands to the north, downstream of the Robbins' property, show a considerable difference in height. The greater height could be a barrier to reasonable flood water run-off during the high water season. He stated that the fill proposed and outlined in the design maps is not likely to cause any barrier to run-off and would be expected to drain well. According to the Conservation Authority's own calculation, the levels of fill are consistent with a one in three year (1:3) event and would add the seasonal protection needed for such flooding. There are no statistics that clearly indicate the effect that the placing of this amount of fill would have on the downstream of the Rideau River in subsequent flooding events. Such a determination could be made only after an in-depth hydraulic analysis of the area. Mr. Simmering gave his opinion that the volume of fill (325 cubic metres) is an insignificant quantity, given that no future development is planned for the property and recommended the distribution as outlined/described in the grading and cross-section maps [Ex.2,1&2].

**Mr. Simmering**, in cross-examination by Mr. Brodmann, stated that he was not aware of any hydraulic analysis that was done concerning the application. He added that the property to the north of the Robbins location was approximately one metre higher and the small amount of fill placement proposed will provide some protection from a one in three (1:3) year storm event. The elevation is determined at 86.6 metres and a 1:100

year storm event flood line is one metre above that. In that regard, the placement of fill will provide only an extra buffer of protection from flooding.

Mr. Simmering stated that the affect of placing fill by fifty property owners could be significant. The Authority's policies call for using reasonable discretion in reaching decisions regarding small fill placements. In Mr. Simmering's view precedence was pivotal in the Conservation Authority's refusal and the question still remained as to what is an allowable amount of fill.

Mr Simmering further stated that he was not aware of other requests for the placement of fill being granted in the area. However, by his observations, the placement of fill on the adjacent property to the north could not have been long ago and based on the vegetation, it could have been within the last 10 to 20 years. Referring to the Old Cottage photo [Ex.1, B], he pointed out that the property to the north appeared to be higher in elevation in 1981. The annual flooding on the Robbins property, makes the situation there unsafe as a result of being lower in elevation.

Mr. Simmering stated that the fill, along with the placement of the gabion baskets at the water's edge, will provide a buffer of material to assist in protection during seasonal flooding. If erosion occurs, then this fill buffer will give better protection for the house. The placement of fill, as proposed, will protect against normal river flows only and some seasonal flooding. There is better protection with gabion baskets on the shoreline as they will hold the fill against erosion.

Referring to Mr. Devereaux's letter [Ex. 10], Mr. Simmering stated that he had no physical evidence to confirm the claims in the letter. In his opinion, Mr. Devereaux, as an expert in the field, established the numbers based on his knowledge and the position of the outlet pipe. His calculations indicate that it was a 0.5% grade. The measurements provided would be from the crushed stone at the bottom of the trench to the top as seen on Exhibit 11. Mr. Simmering stated that the best way to measure the depth of the tile bed would be to dig a hole. He concluded that it would be a fair and reasonable request to include, for any approval, a condition that before work was done that the septic system be measured to confirm its location.

**Mr. Wayne Robbins**, in cross-examination by Mr. Brodmann, stated that it was their intentions to place fill to protect the property from annual flooding wash outs at the back of the existing shoreline wall and debris from other property owners. He stated that it would meet a 1 in 3 year storm event. Mr. Robbins referred to the April 1993 photo [Ex.1] as being indicative of the flooding experienced. He stated that there is

flooding annually, placing the property (house, sheds, docks and the dry-docked boat) at risk of damage. Mr. Robbins concluded that they experienced flooding every year, but a major storm like Hurricane Hazel happened a long time ago and it is unlikely that it would happen again. The intention is to place fill as indicated on the maps and drawings, providing a degree of protection for the property in a 1 in 3 year storm event.

**Mr. Clare Sanderson**, in direct examination by Mr. Brodmann, was introduced as the Realty Manager at Parks Canada responsible for Crown Lands in the Rideau Canal catchment area. According to Mr. Sanderson, the Rideau River bed is deemed to be Federal Crown Land. He confirmed that a portion of the property noted in the appeal comes under the control of Parks Canada. The placement of fill on Crown Lands adjacent to the private property owned by Mr. Robbins does not effectively transfer ownership of those Crown Lands to him, rather it is still considered to be the bed of the river, with ownership remaining under the Crown. In effect the fill placement would be on the bed of the river, owned by the Crown. He noted that some infilling had taken place in 1987, but that was not unusual for the area. Mr. Sanderson stated that fill cannot be placed without a permit or outright ownership of the lands. Parks Canada is going through a process to sell the lands to Mr. W. Robbins as he requested. Although the purchase request is recent, it is likely that it will be approved. The review process takes about three to four weeks.

In response to the tribunal's query, Mr. Sanderson stated that the Authority's regulations do not take precedence over Parks Canada, but would not be disregarded.

**Ms. Macpherson**, in cross-examination by Mrs. Robbins, responded to questions dealing with the facsimile message [Ex.1], pointing out that she had dealt with the landscaper, Mr. Mulrooney, acting as the Robbins' agent and a letter had been directed to him with the material requirements for the application. The facsimile mentioned was only for follow-up information.

Ms. Macpherson stated that the 1981 application for a permit to renovate and place fill was awarded, based on providing safe access to the property and the floodproofing around the reconstructed house. Both were allowable under the guidelines at that time.

Ms. Macpherson noted that flooding causes concern for the risk of pollution from a septic system that is not properly constructed. The R.V.C.A. has entertained and approved permits in the area for the construction and reconstruction of septic systems that meet O.B.C. standards.

She pointed out that it was the cumulative impact that was at issue in this application. Whether it is ten, fifteen or two hundred and fifty applications for fill placement, the precise cumulative effect is not known. However, more applications to place fill would have a significant affect on the river system.

**Mr. Bruce Reid**, in direct examination by Mr. Brodmann, was introduced as a Professional Engineer and the Management Coordinator of Water Resources with the Rideau Valley Conservation Authority. He outlined how the Authority viewed the application in question. He stated that there is no actual specific figure for what is called insignificant fill levels. The Conservation Authority looks at the volume of fill placement and the purpose of the fill on the lands. No reasonable request is refused. In addition, with regard to a septic system, it must meet Ontario Building Code standards. The placement of fill causes a loss of flood plain storage capacity and requires pollution control measures. To put this in perspective, a 500 cubic metre fill placement over 100 hectares of agricultural property is less significant than 500 cubic metres of fill placed on a 1 or 2 acre lot. The decision of the Executive Committee was based on the merits of fill placement. The application did not show any specific purpose for the placement and therefore, little merit could be applied. In addition, the water storage capacity would be affected in an adverse way by any fill placement.

Mr. Reid concluded that the flood plain management here and elsewhere along the river is the issue. The study of hydrology reveals that there is the potential for higher flood levels and water forces (increased velocity) downstream as a result of higher filled land levels upstream. Studies in hydrology on the Mississippi River show that conditions are worsened downstream because of dikes, berms and the like being constructed upstream. The concern here is the cumulative effects of fill placement on the water storage capacity and hence possible increased flood levels leading to flood damage and risk to the public.

## **FINAL ARGUMENT**

**Mrs. R. Robbins**, in her argument for the appellant, indicated that the appellant had found the application process with the R.V.C.A. confusing. As a result, they had sought the costly assistance of both a lawyer and a consulting engineer in order to prepare the case.

It had been understood from the Conservation Authority staff's itemized list of concerns and their directions to the Robbins' agent, that the application for fill placement was reasonable and only further technical information was required to

complete the application. Therefore, it was disturbing for them when the application was finally refused on the basis of precedence.

The appellant made every effort to prevent the application from being considered "*frivolous*". Their purpose was to preserve the integrity of their land. Providing for protection against the annual or 1 in 3 year flood conditions was worth the cost and effort on their part. Attempts were made to resolve all application issues by initiating:

- the assistance of a consulting engineer;
- the preparation of a proper landscape plan;
- a septic system inspection; and
- correspondence with Parks Canada concerning their intentions to purchase the filled lands.

It was the appellant's position that the situation was unique. There was no negative impact since the amount of fill was small. As well, there was the added benefit of reducing possible flood damage to the house and property. The appellant understands that the goals and objectives of the R.V.C.A. for flood plain management include:

- minimizing property damages and social disruption attributed to flooding;
- encouraging a coordinated approach to the use of the land as it relates to water management.

The appellant felt that both issues had been addressed in their submission.

In closing, Mrs. Robbins stated that the appellant was concerned that the Authority, in considering the application to be inconsistent with the approved development policies, did so without carefully considering the specifics of this unique application.

**Mr. H. Brodmann**, in his final statement for the respondent, submitted that the process of a hearing and the information required to present an application can seem cumbersome.

Applications to the Rideau Valley Conservation Authority are each dealt with on a case by case basis for the consideration of the Executive Committee. The merits of the matters before the tribunal are based on the discretionary powers of the Conservation Authority, that is afforded to all applications under Ontario Regulation 166/90 [Ex.1] Subsections 3. & 4. state:

