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

NOTICE OF DECISION

pursuant to a hearing under subsection 28(5) of the Conservation Authorities Act, R.S.O. 1980, Chapter 85.

W. Dennis Tieman)
Mining and Lands Commissioner) Friday, the 31st day
of January, 1992.

IN THE MATTER OF THE CONSERVATION AUTHORITIES ACT

AND IN THE MATTER OF

An appeal to the Minister under section 28(5) of the Conservation Authorities Act against the refusal to construct a new residence and place fill on Lot 38, Concession II, in the Township of South Gower, Part 4, Plan 15R-239, in the United Counties of Leeds and Grenville.

B E T W E E N :

WILLIAM M. COMERFORD and MARILOU COMERFORD

Appellants

- and -

RIDEAU VALLEY CONSERVATION AUTHORITY

Respondent

R. Wilson, Q.C., Counsel for the Appellants.
H. Brodmann, Esq., Counsel for the Respondent.

This is an appeal to the Minister from a decision taken by the Executive Committee of the Rideau Valley Conservation Authority at an initial hearing held on

December 13, 1990 pursuant to subsections 28(3) and 28(4) of the Conservation Authorities Act.

At that initial hearing, the Executive Committee accepted a staff recommendation to reject the appellants' application for permission to construct a residential building on Lot 38, Concession II, Part 4 on Registered Plan 15R-239 in the Township of South Gower. The decision of the Executive Committee to reject the application was transmitted to the appellants by letter of December 17, 1990 signed by Dell R. Hallett, General Manager and Secretary-Treasurer.

The appellants then filed an appeal of that decision with the Minister of Natural Resources under subsection 28(5) of the Conservation Authorities Act.

By Ontario Regulation 364/82 it is the duty and responsibility of this Tribunal to hear and finally determine all such appeals to the Minister.

Findings

One major issue was identified by counsel for the appellants -- that is a question of jurisdiction of Conservation Authorities. And more particularly, what is the jurisdiction of the Rideau Valley Conservation Authority in this case?

The jurisdiction of any Conservation Authority in Ontario to regulate the

construction of any building is set out in subsections 28(1) and 28(1)(e) as follows:

28.--(1) Subject to the approval of the Lieutenant Governor in Council, an authority may make regulations applicable in the area under its jurisdiction,

(e) prohibiting or regulating or requiring the permission of the authority for the construction of any building or structure in or on a pond or swamp or in any area susceptible to flooding during a regional storm, and defining regional storms for the purposes of such regulations; and

Provided the vertical elevation of a Regional Storm has been calculated by qualified experts pursuant to an approved Regulation it has been the practice and it is the policy of this Tribunal to accept the flood plain elevation as the basis for the regulation of construction on any land which is below that elevation.

Pursuant to Regulation 175, and based on the evidence presented, the vertical elevation of a regional storm in this reach of the Rideau River is 87.6 metres above sea level. Below this level no new construction is permitted.

Conclusion

It was agreed by both parties that the proposed building site was below the elevation of 86.7 metres.

THIS TRIBUNAL ORDERS that the appeal is hereby dismissed.

AND THIS TRIBUNAL FURTHER ORDERS that no costs should be payable
by either party to the matter.

DATED this 31st day of January, 1992.

Original signed by

W. Dennis Tieman
MINING AND LANDS COMMISSIONER.