



Box 330
C.P. 330
24th floor, 700 Bay Street
24^e étage, 700, rue Bay
Toronto, Ontario
Toronto (Ontario)
M5G 1Z6

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

G.H. Ferguson, Q.C.) Monday, the 14th day
Mining and Lands Commissioner) of May, 1990.

IN THE MATTER OF THE CONSERVATION AUTHORITIES ACT

AND IN THE MATTER OF

An appeal against the refusal to grant permission to place fill and construct a residence on Part 2, Plan 5R-11247 being part of Lot 22 in Concession A in the Township of Rideau (formerly Township of North Gower) in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

DWAYNE HADDAD

Appellant

- and -

RIDEAU VALLEY CONSERVATION AUTHORITY
Respondent

The appellant, in person.
H.W. Brodmann, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to place fill and construct a residence on Part 2, Plan 5R-11247 being part of Lot 22 in Concession A in the Township of Rideau (formerly Township of North Gower) in the Regional Municipality of Ottawa-Carleton.

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 Ottawa on March 20, 1990.

The subject lands are a parcel measuring approximately fifteen metres in width and thirty metres in depth fronting on the westerly bank of the Rideau River. The application was for permission to construct a one story frame cottage measuring thirty-two feet by twenty feet and to install a septic tank at the rear thereof.

At the time of the recent purchase by the appellant there was situate on the subject lands a dilapidated cottage which had not been used for a considerable

period of time. Prior to the purchase by the appellant a prospective purchaser had made an application for permission to rebuild the cottage and that application was refused. The appellant removed the old building after he purchased the property.

The subject lands are situate in the floodplain of the Rideau River, which floodplain is determined under the 100 year standard, the lowest standard applied in Ontario. The elevation of the regional flood is 87.3 metres above sea level. The elevations of the subject lands vary from 86.61 to 86.89 metres indicating that in a regional flood the entire parcel would be flooded with flood waters of depths of .69 metres or in excess of two feet. The foundations and the main floor of the proposed building are below the regional flood elevation. Access to the subject lands is provided over a public road known as Commodore Drive and a private right-of-way extension from a cul de sac to the subject lands measuring 880 metres. The greater part of the private right-of-way would be flooded in a regional flood.

The evidence also indicated that the subject lands were flooded in a 1976 flood which was estimated to be a flood of twenty-five years or thirty years return.

In its reasons for decision the respondent provided five reasons for the refusal, which reasons are set out in Exhibit 13 and basically deal with the amount of flooding in a regional storm, the implications of intensification of land use in the floodplain and the precedential implication. The evidence indicated that the respondent distinguished between renovations and complete reconstruction in its policies and the approach taken by the applicant in this case falls within the principles respecting reconstruction. While the distinctions may not appear significant to a lay person the tribunal is satisfied that the floodplain management principles behind the policy decision of the respondent are sound and that the decision of the respondent in the matter was in accordance with its policies and in particular the policy of the Province of Ontario respecting the building of new buildings in the floodway.

The appellant referred to a number of buildings many of which were larger than his proposed building that had received approval. The evidence given on

behalf of the respondent indicated that these buildings were constructed with approval, fell within the policies of the respondent and that the appellant had not been denied the application of any policies which would have warranted the granting of permission. There have been a number of decisions in the Rideau Valley which are analagous to the present situation, including the case of J. Edward Brown v. Rideau Valley Conservation Authority and the tribunal is satisfied that it should not reverse the decision of the respondent. The tribunal is satisfied that the appellant has not been denied permission in circumstances in which other applicants are given permission and that the refusal of permission was in accordance with the policies of the respondent and of the Province of Ontario.

1. THIS TRIBUNAL ORDERS that the appeal is dismissed.
2. THIS TRIBUNAL ORDERS that no costs shall be payable by either of the parties to the matter.

SIGNED this 14th day of May, 1990.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.