



The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Wednesday, the 27th day of
Mining and Lands Commissioner) July, 1988.

AND IN THE MATTER OF

An appeal against the refusal to grant retroactive permission to construct an addition to an existing building on part of Lot 30, in the Broken Front Concession, in the Township of Osgoode in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

DARYL DICK

Appellant

- and -

THE RIDEAU VALLEY
CONSERVATION AUTHORITY

Respondent

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

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant retroactive permission for the construction of an addition to a residence on part of Lot 30 in the Broken Front Concession in the Township of Osgoode. Under 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 April 21, 1988.

The appellant acquired in 1983 a property situate between the easterly bank of the Rideau River and the westerly limit of the right-of-way of Regional Road No. 19 measuring approximately 55.26 metres by 15.24 metres. At one time Regional Road No. 19 was relocated and the boundary of the subject lands does not now touch the existing right-of-way of Regional Road No. 19. The easterly portion of the lands of the appellant compose a right-of-way which is below the old Regional Road No. 19 and is used for access. This private right-of-way runs approximately 500 feet to the north before joining the existing Regional Road No. 19.

Although the building on the land was used for seasonal purposes at the time the land was acquired the appellant has used

the building as a full time residence. This building contained 811 square feet. Without a township permit or permission of the respondent the appellant in 1987 constructed an addition containing 294 square feet to the west and to the north of the northwesterly corner of the existing building. This area is used as a sun room and utility room to house the water pump and laundry facilities and is not used as a bedroom.

Although there was some issue as to the fact, it is apparent that all of the lands owned by the appellant are below the elevation of the regional flood for the area. The appellant insisted that there was a narrow part of his property through which access could be obtained but the tribunal is not satisfied that any reasonable access for the removal of sick or aged persons during a regional flood is available. The elevation of the regional flood, which is the flood resulting from the one in one hundred year storm and which is the lowest of the three standards used in Ontario, is 287.2 feet or 87.5 metres. Reid, the engineer for the respondent, took elevations at the relevant corners of the existing building and the addition and established at the southwest corner of the original building there would be 1.34 metres of flooding in a regional storm. At the southwest corner of the addition there would be 1.19 metres of flooding. At the northwest corner of the addition there would be 1.1 metres of flooding. He also established that the elevation on the right-of-way was 86.62 metres which indicates that the right-of-way would be subject to approximately one metre of flooding in a regional flood.

The evidence also indicates that in the flood of March 29, 1976 which was estimated to be a one in twenty-five year flood the entire subject lands were flooded as well as the right-of-way. There was also evidence that flooding occurred in 1978.

Before refusing the application the respondent afforded the appellant an opportunity of floodproofing his addition. However without any proof of consultation with an expert, either

engineer or house raiser, the appellant refused to take this action and the respondent refused the application.

The appellant's argument was that it was not possible to floodproof the addition without dealing with the original building. He submitted that the fact that the addition had been constructed did not increase the risk of flooding to the original building and that the addition would not affect water coming into his property in the event of a regional flood. These latter submission fail to take into account principles of loss of storage capacity causing increased water levels on the subject lands and other lands in the floodplain and of interference with flows which creates increases in elevations of and velocities of flood waters.

The tribunal is satisfied that the decision of the respondent is made in accordance with recognized principles of flood plain management and that the concerns expressed by the respondent are justified. The appellant has not brought to the attention of the tribunal any principle of flood plain management on which the permission sought should be granted. Further the appellant has not drawn to the attention of the tribunal any circumstances under which other applicants were granted permission in similar circumstances and has not established that he has been deprived of permission where other applicants were granted permission. He made some reference to the property immediately to the north but the evidence indicates that in that case the applicant was required to raise the building above the elevation of the regional flood, which approach the appellant in this case is refusing to do. Under the circumstances the tribunal has no alternative but to dismiss the appeal.

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 appeal.

SIGNED this 27th day of July, 1988.

Original signed by G.H. Ferguson
MINING AND LANDS COMMISSIONER.