



# The Mining and Lands Commissioner In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C. ) Friday, the 17th day of  
Mining and Lands Commissioner ) June, 1988.

AND IN THE MATTER OF

An appeal against the refusal to grant permission to excavate and place fill on Part of Lot 27, Broken Front Concession, Part 1 on Plan 5R-8630, in the Township of Osgoode in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

RICHARD CRAIG  
- and -  
Appellant

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 permission to excavate and place fill on part of Lot 27 in the Broken Front Concession, known as Part 1 on Reference Plan 5R-8630, in the Township of Osgoode, in the Regional Municipality of Ottawa-Carleton. The power and duty of hearing and determining such appeals were assigned to the Mining and Lands Commissioner by Ontario Regulation 364/82. The appeal was heard in Ottawa on the 19th day of April, 1988.

Although details of ownership were not provided at the hearing, the appellant apparently owns part of Lot 27 in the Broken Front Concession of the Township of Osgoode shown as Part 1 on Reference Plan 5R-8630. Part 1 has a width of approximately 125 metres. The length of the north boundary is 469.18 metres. The length of the south boundary is 417.62 metres. The frontage along Regional Road No. 19 measures 147.29 metres. The westerly boundary of the part is the easterly bank of the Rideau River. There is a wooded area along the river. The area lying to the

east of the wooded area is presently used as a cornfield. The regional storm elevation in the area is 287 feet or 87.5 metres.

The appellant's application was for permission to place fill for a driveway and a house on an area shown as 100 feet by 100 feet on a copy of Reference Plan 5R-8630. The proposed site was shown immediately to the west of Regional Road No. 19 and measured 100 feet by 100 feet. However, according to scale the measurements are approximately fifty metres by fifty metres or in the vicinity of 150 feet by 150 feet. His covering letter indicated that his proposal was to fill an area approximately 150 feet by 150 feet to a depth of 2.5 feet. The covering letter also indicated that the fill would be obtained from the removal of the top soil between the site of the placing of the fill and the river and from a ditch that might be dug to the river. The application was also supported by a letter dated July 17, 1987 from Glenn Jessiman of H.A. Ken Shipman Surveying Ltd. indicating that the location of the proposed fill was 2.5 feet below the regional flood elevation, the centre line of Regional Road No. 19 was near the regional flood elevation and its shoulder was slightly below the elevation.

The subject lands are zoned as hazard lands and under the official plan the use of land "should respect its natural constraints and limitations in order not only to protect life and property but also to minimize the alteration of the natural environment".

The appellant's position was that he was prepared to reduce the size of the filled area to 100 feet by 100 feet. In the view of the tribunal this is not appropriate and further is not really relevant to the principles involved in the consideration of the case.

The appellant was of the view that by using the fill from the existing lot he was not affecting either the flow or the storage capacity of the flood plain.

The evidence of the respondent indicated that the subject lands were completely flooded in a one in twenty-five year storm that occurred on March 29, 1976. It was pointed out

that the proposal did not comply with the incremental staged storage principle. Reference was also made to the policy of the respondent that such lands are not available for development and the respondent has consistently taken this position.

It may be pointed out at the outset that under clause 1(c) of Regulation 175 fill is defined as including earth that originates on the site. The clause reads,

- 1. In this Regulation,

.....

- (c) "fill" means earth, sand, gravel, rubble, rubbish, garbage or any other material whether similar to or different from any of the aforementioned materials, whether originating on the site or elsewhere, used or capable of being used to raise, lower or in any way affect the contours of the ground;

.....

The prohibition contained in section 3 of Regulation 175 reads,

- 3. Subject to section 4, no person shall,

.....

- (b) place or dump fill or permit fill to be placed or dumped in the areas described in the Schedules whether such fill is already located in or upon such area, or brought to or on such area from some other place or places; or

.....

Section 4 permits the granting of permission where the authority is of the opinion that the dumping of the fill "will not affect the control of flooding or pollution or the conservation of the land".

Although the appellant attempted to limit his future intentions in regard to the property it is apparent that the purpose of the placing of the fill is the establishment of a residence whether it be by the appellant or someone to whom he might sell the land. The placing of the fill in the circumstances proposed by the appellant fails to take into consideration the basic principle of flood plain management that changes should not be made in the flood plain which affect the

flow or the storage capacity of the flood plain. The proposal by the appellant in this case conflicts with both principles of flood plain management. Although it may appear to the layman that there is no loss of storage capacity and that there is the same area through which water may flow, the engineering principle is that any changes in the floodway must permit the flow of the regional flood in the same condition as it does in a state of nature. The movement of fill from one part of a property to another part of the property does not comply with this principle and the only exception in flood plain management that is adopted is the incremental staged storage principle. Under this principle any changes in storage must occur at the same elevation and accordingly the reduction of the storage capacity at a higher elevation affects the elevation of the regional flood. The reason for this is that the areas at the lower elevations are filled in the earlier stages of the flood and in the peak stages of the flood where the existing capacity is reduced by the placed fill there is a loss of storage capacity at the time it is most needed. Accordingly unless the fill complies with the incremental staged storage doctrine the proposal does not fall within recognized flood plain management principles. Similarly there is an element of constriction of the flow in periods of high flow and this too is a matter for consideration in dealing with applications.

The tribunal is satisfied that the decision of the respondent in this matter was correct in principle and in line with its decisions that it makes in other cases. Accordingly the appeal is dismissed.

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

SIGNED this 17th day of June, 1988.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.