



The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Friday, the 22nd day of
Mining and Lands Commissioner) November, 1985.

AND IN THE MATTER OF

An appeal against the refusal to grant permission to place fill and construct a single family home on part of Lot 42 in Concession IV, (Part 1, Plan 5R-6167), in the Township of Rideau (formerly N. Gower), in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

JOHN D'AOUST and
LILLIAN D'AOUST

Appellants

- and -

THE RIDEAU VALLEY
CONSERVATION AUTHORITY

Respondent

J.T. Cannon, for the appellants.
P.A. Webber, Q.C., for the respondent.

The appellants appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to place fill and construct a single family home on part of Lot 42 in Concession IV being Part 1 according to reference Plan 5R-6167 in the Township of Rideau, formerly North Gower, in the Regional Municipality of Ottawa-Carleton. 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 September 18, 1985.

Part 1 lies on the westerly side of the Ottawa River immediately north of a subdivision known as the "Fairmile on the Rideau" subdivision which subdivision was registered as Plan 718 in 1954. The part has a frontage of 10.31 metres on the Rideau River and 31.55 metres on the west boundary which fronts on Fairmile Drive. The part was acquired along with two other parcels and was included in the sale at the insistence of the vendor who wished to

sell all of his holdings in the area. The elevation of the regional flood is 87.6 metres based on the one in one hundred year flood. The entire property is within the flood plain, with elevations ranging from 86.18 metres on the east boundary to 86.78 metres on the west boundary. It does appear, however that there is one point in the centre of the part where the elevation is 87.18 metres. Generally speaking, the entire part would be flooded to a depth of three feet in the event of a regional storm.

The proposal of the appellants was to place fill in the westerly part of the subject lands raising the driveway and the site of the proposed residence above the regional storm elevation. At this particular site the elevation of Fairmile Drive, which would appear from the aerial photographs to be constructed from fill, is above the regional flood elevation. Consequently the regional flood would extend considerably inland from the subject lands and the proposal is, in effect, to create a peninsula with a narrow isthmus of filled land leading to the building site. The tribunal is not aware of any assurance that the roadway would withstand the flows of a regional flood and that the proposed house, even if its floodproofing and protective works were sufficient, would be other than an island in the event of a regional flood. While the proposal may be distinguishable from other vacant sites in the Fairmile subdivision, the tribunal is not satisfied that the distinction is one warranting the construction of the residence and the placing of fill proposed by the appellants.

The evidence indicates that the subject lands have been completely flooded in the past particularly in the 1976 spring floods as illustrated by Exhibit 12. This exhibit indicates that not only the subject lands were flooded but the lands to the west for a considerable distance were inundated. The evidence also indicates that any building erected on the proposed location would be subject to ice damage in the event of ice flows moving across the property as a result of ice jams or wind movement.

Having regard to the policy of the respondent as it appears from the evidence, the tribunal is satisfied that the appellants have not been refused permission in circumstances where

other applicants have been granted permission. The evidence establishes that the respondent has a policy of permitting new construction in the second tier of lots from the River and of permitting certain exceptions in the front tier of lots where existing buildings are situate.

Bruce Alan Reid, the water resources co-ordinator of the respondent, was asked the reason for distinguishing between additions and new construction and the answer was given that additions do not add to the number of homeowners or occupants of homes in the flood plain which increase the responsibilities of a conservation authority in a time of flood. It also might have been noted that many of the additions are downstream or immediately upstream of the existing building with the result that there is only slight interference with the flow characteristics of the channel at a time of flood.

Following a hearing, the executive committee of the respondent refused the application of the appellants and gave eight reasons therefor, which refusal and reasons are filed as Exhibit 8. The tribunal is satisfied that the reasons fall within recognized principles of flood plain management and the tribunal adopts those reasons in addition to the reasons given above. Further, the tribunal notes that the proposal is to create a home on fill in an area that is subject to three feet of flood waters and the tribunal is not aware of any policy at a provincial level which would suggest that the placing of residential property in areas subject to such amount of flooding is an acceptable principle of flood plain management.

1. THIS TRIBUNAL ORDERS that the appeal in this matter is dismissed.

2. THIS TRIBUNAL ORDERS that no costs shall be payable by any of the parties to the appeal.

SIGNED this 22nd day of November, 1985.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.