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Ontario

The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Friday, the 24th day of
Mining and Lands Commissioner) May, 1985.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct an addition to an existing cottage on Lot 27 in Concession I in the Township of Rideau, formerly North Gower, in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

ESTHER PEARSON and
WILLIAM PEARSON

Appellants

- and -

THE RIDEAU VALLEY
CONSERVATION AUTHORITY

Respondent

The appellants, in person.
J.R. McIninch, for the respondent.

The appellants appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to construct an addition to an existing cottage on Lot 27 in Concession I 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.

In 1981 the appellants purchased a seasonal summer cottage measuring twenty-five feet by twenty-five feet on a one hundred foot property on the east side of the Ottawa River. The property is clearly within the floodway of the regional storm which in the area under the jurisdiction of the respondent is the one in one hundred year storm. The elevation of the one in one hundred year storm was established to be 287 feet or 87 metres. The elevation of the site of the existing cottage and the proposed addition is one-half metre lower than the elevation of the flood

created by the regional storm and the result would be that for a distance of at least 150 feet from the cottage the access to the cottage would be flooded to depths of approximately 1.5 feet.

In 1982 the appellants obtained permission from the respondent to raise and place a basement under the existing cottage. Although the appellant, William James Pearson, gave evidence that it was always the intention to use the property as a permanent residence there was no indication that this was made clear to the respondent at the time such permission was given.

In 1984 the appellants applied for permission to construct an addition measuring twenty-five feet by twenty-five feet on the downstream side of the existing cottage. The application was refused and extensive reasons were given by the respondent. These reasons were set out in a letter of December 10, 1984, a copy of which was filed as Exhibit 4. The tribunal is satisified that these reasons were valid and were established by the evidence produced at the hearing before this tribunal. The tribunal adopts the reasons given by the respondent and it is unnecessary to repeat them here.

A greater part of the evidence of the appellants related to other properties in the area in respect of which permission had been granted or on which the owners were proceeding with building projects. The evidence indicates that the area in question only came under the jurisdiction of the respondent in the year 1980 and that many of the buildings that were referred to as permanent year-round residences were in that condition at the time the regulation of the respondent was made. The evidence of the respondent indicates that there are a number of similar sites in the area of the appellants' land and that the area cannot be considered to be a built-up area of permanent homes as a general approach.

With reference to the first project raised by the appellants, the evidence indicates that the respondent had not issued permission for this work and the matter was under investigation. A second property, said to be owned by one David Weston, was situate two properties away from the subject lands. A

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very substantial addition was authorized on this property. The respondent distinguished between the application for the Weston property and the present application on the basis that the Weston property, at the time the area came under the jurisdiction of the respondent was a permanent home occupied on a year-round basis and the permission granted did not change the nature of that use. The application of the appellants in this case does involve a change in use from a seasonal use to a year-round residence.

A third property called the Phillips property was mentioned. During an adjournment enquiries were made by the witness for the respondent, who gave evidence that the property was situate in an area that had been under the jurisdiction of the respondent prior to 1980 and that the application involved the dismantling of an existing cottage and garage and the construction of a new building near the edge of the flood plain at a location where the depths of flooding were from six inches to approximately eighteen inches. Here again there was an existing use and it was required that the building be flood-proofed to a standard approved by an engineer. The matter was further compounded by a previous permission that had been granted prior to 1984 to a previous owner. The evidence of the respondent was that in both this instance and the Weston case the difficulty of access in the event of a regional flood was of little significance and in both cases there was a permanent use of the property for residential purposes. Reference was made to other cases in which refusal of requests for permission had been made.

Dealing with this evidence the opinion of this tribunal is that the respondent has dealt with the appellants in accordance with its policies whether they be expressed or implied from the granting of permission in individual cases and that the appellants have not been denied permission in circumstances in which other applicants have been granted permission.

It may be noted with reference to the provincial policy in respect of flood plain management that the construction of new

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buildings in areas that are within the floodways of regional storms is inconsistent with the provincial policy and more particularly where such buildings are for residences and in addition for permanent residences. The appellants indicated that they were prepared to engage the services of an engineer. If such were done, the appellants would be making a new application and it would have to be dealt with after the respondent had an opportunity of reviewing any revised proposals. Accordingly, this tribunal cannot deal with that submission at this time.

For the foregoing reasons, including the reasons given by the respondent, the appeal will be dismissed.

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

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

SIGNED this 24th day of May, 1985.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.