



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

AND IN THE MATTER OF

An appeal against the refusal to issue permission to place fill on lands known as Part of Block "L", Plan 628, North Gower in the Township of Rideau, formerly in the Township of North Gower, in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

ROBERT D. WHITE

Appellant

- and -

THE RIDEAU VALLEY CONSERVATION AUTHORITY

Respondent

R. C. E. Wilson for the appellant.  
P. A. Webber for the respondent.

The appellant applied to the respondent for permission under Ontario Regulation 875/76 filed on November 1, 1976 for permission to place fill on lands known as part of Block "L", Plan 268, North Gower, in the Township of Rideau, formerly in the Township of North Gower, in the Regional Municipality of Ottawa-Carleton. Although the application did not include a request for permission to construct a residential building it became apparent that such was the ultimate objective. Upon refusal of permission the appellant appealed to the Minister of Natural Resources under subsection 2c of section 27 of The Conservation Authorities Act, as amended by The Conservation Authorities Amendment Act, 1973. By Ontario Regulation 900/77 the power and duty of hearing and disposing of the appeal was assigned to the Mining and Lands Commissioner. The appeal was heard in Ottawa on April 18, 1978.

In 1976 the appellant and his mother acquired a parcel of land at the intersection of Main Street and Highway No. 16 in the community of North Gower. This property, although not perfectly rectangular measured approximately 450 feet by 450 feet. At this time there was no regulation under The Conservation

Authorities Act applying to the lands. The applicant applied to the local municipality for a building permit for the purpose of erecting a home on the part of the parcel fronting on Main Street. In order to install a septic tank the Ministry of Health required the appellant to place fill on this part of the parcel to a depth of one foot above the elevation of Main Street.

It was apparent from the evidence that the area in the state of nature was fairly susceptible to periodic floods. The elevation at the intersection of Main Street and Highway No. 16 is 293.2 feet and photographic evidence indicated that in the past as a result of spring runoffs there has occurred a depth of water of approximately one foot at this location which water extended a considerable distance.

For many years a watercourse which appeared not to be a stream but an indentation for the runoff of snow and rains crossed the lands acquired in 1976 in a general southeasterly direction. The watercourse was approximately eight feet in width and outletted on Highway No. 16 at a location approximately two hundred and fifty feet easterly of Main Street. The watercourse entered the lands at a location on the northerly limit closer to Main Street and meandered through the property. The watercourse had become a drainage works under The Drainage Act and is known as the Taylor Drain. The evidence indicated that in the past the watercourse dried up during the course of the year.

As part of the excavation process in obtaining fill for the house to be constructed in 1976 the appellant arranged for the diversion of the drainage ditch and the reconstruction of a new channel in a more or less perpendicular direction across the parcel of land but outletting at substantially the same location. This in effect meant that the major portion of the drain was moved in an easterly direction. The spoil from the construction of the new location of the drain was used to fill the site of the new house.

This watercourse had been used for a number of years by the volunteer fire brigade in North Gower as a source of water. At the time the appellant changed the elevations of the part of the parcel of land on which the house was to be built and moved the location of the

drain he also arranged for the widening of the drain from eight feet to approximately thirty feet in order that there would be a larger holding basin for the purpose of retaining water for firefighting. The witness' evidence was that the reservoir that had been constructed was silting fairly quickly, a significant amount of filling had occurred in a period of one year since the new channel had been constructed and there is a need to clean it out again.

Having completed one house the appellant now proposes to sever the property and have the easterly part of the property built up along the south side in order that a site for a further house could be constructed on the easterly 200 feet of the parcel. It is this easterly 200 feet that form the subject matter of this application. The proposal was to further widen the Taylor Drain and place the spoil along the southerly one hundred feet approximately of the easterly part of the parcel. It was not proposed to import any fill onto the site but rather to use the fill from the widening of the drain to raise the potential site of a second residence on the property.

Although there was consultation between the employees of the respondent and the appellant there appeared to be some confusion as to the quantity of fill that was proposed to be moved. The respondent appeared to be under the impression that the entire easterly part of the parcel would be raised but at the hearing the appellant indicated that he was only interested in placing fill along the hundred feet northerly from Highway No. 16 to support a residence and a tile bed.

The drainage ditch flows into Stevens Creek a short distance from the subject lands. S. Van Ingen Shenau, P.Eng., of the firm of J. L. Richards & Associates Limited prepared the flood mapping for Stevens Creek in 1971. The regional floodline for the subject lands is 295 feet. From an inspection during the recent runoff it appeared to this witness that the spring runoff had reached an elevation at 292.3 feet on the subject lands. According to the regional flood mapping the elevation of Highway No. 16 immediately in front of the subject lands is 297.1 feet. Immediately to the north of this highway the land slopes very abruptly and the elevation of 290

feet is reached in a very short distance.

Although the appellant in his evidence indicated that in his opinion the amount of fill involved was 1,200 to 1,400 cubic yards, I have considerable difficulty in accepting this figure. If an area of 100 feet by 100 feet were filled to a depth of 6 feet there would be 2,310 cubic yards filled. If the intention of the appellant is to fill the complete frontage on Highway No. 16 there would be in the vicinity of 5,000 cubic yards involved. The witness Van Ingen Schenau estimated the storage capacity of the Stevens Creek in this area on the east side of the creek to contain only 890,000 cubic yards and 5,000 cubic yards is more than one-half of one per cent which is a fairly significant proportion of the storage capacity. However it must be remembered that in this case the appellant did not propose to import the fill and the significant question is not whether there is a loss of storage capacity but whether the stage storage doctrine should be applied to prevent the proposal of the appellant. The appellant would be providing an amount of new storage equivalent to the amount of storage filled in but the significant question is the effect of providing the alternative storage at an elevation below 290 feet. In other words should the straight cut and fill principle be adopted or should the more modern version known as the stage storage doctrine which requires the provision of storage at the equivalent elevation be required in this case.

The second aspect of the matter is whether the needs of the local volunteer fire brigade should create a public interest sufficient to warrant the adoption of the older cut and fill principle. In this latter regard the appellant proposed to introduce a letter from T. E. Mills, the local Fire Chief, outlining the past use of the Taylor Drain as a source of water and the increasing area of responsibility of the fire department. It is pointed out that while they may acquire better equipment, facilities and men, their operations are limited by the supply of water and unless there is an "imminent danger of flooding as a result of the ponding" it was submitted that the application be approved. This letter was objected



to but admitted on the grounds that section 15 of The Statutory Powers Procedure Act, 1971 removes the application of the exclusionary rule of evidence respecting hearsay evidence. However it was pointed out that with the removal of the rule there should be a correspondingly increasing scrutiny of the relevance and the accuracy of the document produced.

My concern in connection with the position of the fire department is that the evidence of the appellant, while it was not evidence of an engineer or a person with any expertise in connection with hydraulics or hydrology matters, indicates that the proposal may not be of any real assistance in providing a greater reservoir of continuous water. The witness indicated that during 1977 there was a significant amount of siltation of the enlarged channel. In the course of one year he indicated that it had been "silting up pretty good." It is quite understandable that when the channel was eight feet in width there would be sufficient velocity to keep the channel scoured out but with the widening of the channel a settling process of the silt would occur. It is quite possible that a further widening and deepening of the reservoir would only tend to further slow down the current through the Taylor Drain.

There are two concerns regarding such a reduction in current. Firstly, the increased infilling from settling of the silt carried by the water may exhaust the storage capacity of the reservoir and the position of the fire department may not be improved. The appellant indicates, that after one year it would be necessary to clean out the widened reservoir. With an increase in the settling process there is a strong possibility that the proposal may not enhance the position of the supply of water unless there is a regular program of dredging out the silt which will have periodic costs.

Secondly, the increased filling from the settling process will remove the replaced storage capacity of the watershed created to compensate for loss of storage capacity arising from the placing of fill on the higher elevations in the floodplain. In effect the proposed advantage of the cut and fill process is in fact non-existent or negligible, or cost recurring at periodic intervals. Further there

may be a subsequent change of ownership and the new owner might not have the same interests in firefighting that were exhibited by the appellant with the result that even if funds were available to dredge out the reservoir, the landowners might not be co-operative.

In the absence of appropriate engineering evidence that the alleged benefits of an enlarged reservoir can be reasonably expected and the replaced storage capacity of the watershed can be expected to remain, I have considerable difficulty in giving significant weight to this aspect of this appeal. If there is a serious concern on the part of the municipalities, either the township or the regional municipality, it would be expected that an appropriate municipal engineer would have been called as a witness to justify this aspect of the case or to establish that in fact the proposal would have the results that the appellant and the other members of the volunteer fire brigade think it would have.

Accordingly, I am left solely with the question of whether the stage storage doctrine should prevail. This doctrine was fully explained by the witness Van Ingen Schenau. As indicated by that evidence the significant concern arises when the flow from a regional storm reaches the higher elevations at which time the storage capacity has been reduced creating a number of effects such as increased flooding by reason of the loss of storage and changes in current patterns which may result in downstream erosion above that which would otherwise occur. The doctrine is required by all conservation authorities in Ontario that I am aware of in respect of alternative storage capacity and there not having been established any public interest or public need that would justify the adoption of the straight cut and fill principle, assuming it is validly applicable, I have no alternative but to dismiss the appeal.

I inquired from the appellant as to whether it was possible to obtain the fill necessary to fill along Highway No. 16 at an equivalent elevation but it appeared that his property did not include lands lying to the east from which alternative storage at the same elevation might have been obtained.

IT IS ORDERED THAT the appeal in this matter be and is

hereby dismissed.

IT IS FURTHER ORDERED that no costs shall be payable by either of the parties hereto.

DATED this 28th day of April, 1978.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.