



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

## CONSERVATION AUTHORITIES

G.H. Ferguson, Q.C. ) Monday, the 19th day  
Mining and Lands Commissioner ) of June, 1989.

AND IN THE MATTER OF

An appeal against the refusal to grant permission to dig a small lake and to place fill on Lot 5 in Concession VII in the Township of Zorra in the County of Oxford.

B E T W E E N :

JACK van den BERG and EVELYN  
van den BERG

Appellants

- and -

UPPER THAMES RIVER CONSERVATION  
AUTHORITY

Respondent

The appellant, in person.  
S.R. MacKay, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to dig a pond and place fill, within the meaning of Ontario Regulation 171/88 made by the respondent, on Lot 5 Concession VII in the Township of Zorra in the County of Oxford. 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 London on May 4, 1989.

For some time the appellants have owned a part of Lot 5 in Concession VII of the Township of Zorra which has been used for agricultural purposes. Two ponds have been constructed on the lands. One pond is for wildlife use. The other pond is for swimming.

Two years ago the appellants purchased a seventy-seven acre parcel lying to the south of their existing holdings. This tract of land forms part of the Golspie swamp and has been included in a schedule under Ontario Regulation 171/88. The proposal of the appellant was to dig a pond in the northeasterly part of the recently acquired lands for the purpose of raising

largemouth and smallmouth bass. Only the husband gave evidence at the hearing. He was unable to define the area that would become the pond. From his rough sketches it appeared that he was considering an area of approximately six acres in size. His evidence was that the pond would measure fifteen feet in depth at the centre and be sloped to the edges. It would be lined with clay. Some of the spoil would be placed around the edge of the pond as a roadway. His evidence was that the site was a low-lying area in which weeds, cattails and other vegetation grow. Some trees grow but they do not reach maturity in this area.

It was also proposed to create an overflow from the pond in an easterly direction to a drainage ditch known as the Campbell Drain. On cross-examination van den Berg denied that the purpose of the overflow was to dry out the swamplands surrounding the pond but rather was to create a route for excess surface waters to drain into the Campbell Drain through which such waters would ultimately return to the swamp at a more southerly location.

The evidence indicated that a series of roadways measuring seven miles have been constructed through the appellants' land for the purpose of managing the bush. These roadways were constructed of pieces of limestone, granite or fine screenings. Annual maintenance is done by way of filling in holes.

The respondent refused permission on the grounds that the Golspie swamp has been designated as a Class 2 wetlands in the provincial wetlands classification. This classification has been done on a provincial basis and there are seven classes of wetlands. The classification includes consideration of the hydrological, the biological and the social aspects of the area as well as the special features of the area. In an application of the principles, the subject lands were designated as Class 2. Classes 1 and 2 are considered to be wetlands that have a significance from a provincial point of view. Accordingly the

respondent in its policy has adopted the guidelines provided by the province and in order to conserve the characteristics of this Class 2 wetlands, the creation of the pond was refused.

Although it may not seem to a layman to be significant that a pond is created in a swamp, the creation of a pond in reality is the antithesis of good swamp management. Swamps play a key role in the control of the flows of waters in the watershed. Usually the headwaters of a stream are found in swamps or areas with springs. There are two levels of flows of water in swamps. In addition to the surface flow there is a subsurface flow of water and interferences with the subsurface flows have a deleterious effect on the operation of the swamps. The construction of roads by the method of placing of fill on the top of the existing muck soils interferes with the subsurface flows. The weight of the additional fill compacts the muck soils and a barrier is created interfering with the normal flows of the underground waters. Similarly the insertion of the pond with a clay liner would prevent the subsurface movement of water.

Swamps have a retention value in respect of the waters found in a swamp. The muck and organic soils act as a sponge. They absorb water at the time of rainfall or snow melt and release the water gradually. This action prevents downstream flooding and also has the effect of maintaining the flow in the dry periods. The swamp acts as a reservoir from which flows can be maintained in such periods.

Swamps have a purification effect on the water. The introduction of foreign material into the swamps interferes with this swamp process.

The creation of a pond and the removal of the organic and muck soils exposes a large portion of the waters to the rays of the sun with the result that there is a greater evaporation of water and a reduction of the quantity of water retained in the swamp, particularly in respect of temperature.

The wetlands program of the province recognizes these

characteristics and beneficial attributes of swamps. Conservation authorities are expected to implement the policies of the province when matters covered by the policy arise within the jurisdiction of the conservation authorities.

The tribunal is satisfied that the refusal of the respondent in this matter is in accordance with the principles of good swamp management and the guidelines of the province for the management of wetlands. Accordingly 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 be payable by either party to the matter.

SIGNED this 19th day of June, 1989.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.