



Box 330
C.P. 330
24th floor, 700 Bay Street
24^e étage, 700, rue Bay
Toronto, Ontario
Toronto (Ontario)
M5G 1Z6

The Mining and Lands Commissioner Le Commissaire aux mines et aux terres

R. Yurkow)
Deputy Mining and Lands Commissioner)

Friday, the 25th day
of September, 1992.

IN THE MATTER OF THE CONSERVATION AUTHORITIES ACT

AND IN THE MATTER OF

An appeal to the Minister under section 28(5) of the Conservation Authorities Act against the refusal to grant permission to erect a new structure, place fill and install a septic system, on Part of Lot 9 in Concession I, in the Township of Pittsburgh, in the County of Frontenac.

B E T W E E N :

ROBERT WILLIS

Appellant

and -

CATARAQUI REGION CONSERVATION AUTHORITY

Respondent

D E C I S I O N

Mr. Estrin acted and appeared on behalf of the appellant for a portion of the appeal and the appellant acted and appeared on his own behalf for the balance of the appeal.

Mr. Olah acted and appeared on behalf of the respondent.

This was an appeal by Robert Willis (Willis) from a decision of the Cataraqui Region Conservation Authority (Authority) to refuse permission to place fill in an area subject to regulation by the Authority.

BACKGROUND

Willis is the owner of a parcel of land bordering on a bay. The lot starts at a height that does not need fill to support a home and drops to a low area ending in a swampy, marshy area known as the Madoma Marsh¹. At one time, the high portion had a small cottage. Today, this high portion has mature oak, hickory and maple trees. The low area has been designated as a wetland. To build on the high portion, Willis would have to cut down the mature trees.

Much of the shoreline in the area has been improved over the years and neighbouring lots have had fill added at the expense of the wetland. Willis' lot is the last one on the access road without an improved shoreline. Most of the improving and filling in the area was done without the Authority's permission. Much was done by the federal government over which the Authority had no control, much was done before the regulations giving the Authority jurisdiction were in place and some was done without the knowledge of the Authority.

Willis had approval to build from all regulatory agencies with jurisdiction over the area except the Authority.² His experience was that once one agency approved, the others followed suit. This case was the exception.

One of the questions arising in the appeal was whether the Authority unfairly discriminated against Willis in refusing permission.

In refusing permission, the Authority gave three reasons. The only one that I consider applies is that the fill would adversely affect the conservation of land.

DECISION

I find that Authority was not unreasonable in refusing permission and did not exceed its mandate or jurisdiction in refusing permission.

¹ Willis contends that the area within which he wants to fill is not known as Madoma Marsh but, rather, is separated from the marsh by hard land. Nothing in this decision rests on this distinction.

² Willis experienced considerable delay when he tried to resolve matters with the Ministry of Natural Resources that, no doubt, caused him some frustration. This was ultimately resolved in his favour. His dealings with the Ministry are not relevant to this appeal.

REASONS

Mandate to conserve natural resources

The Authority has a clear mandate to conserve and manage natural resources.³ In the exercise of this mandate, Regulation 159 of R.R.O. 1980⁴ was made prohibiting the placing of fill in a designated area. This outright prohibition is subject to the Authority allowing an exception if it is of the opinion that to do so will not affect the conservation of land.⁵

Government wetland policy adopted

The government has a policy designed to encourage the preservation of wetland. There are several classes of wetland based on several criteria that may change from time to time. The class of wetland is not relevant to this appeal or to the issue of the Authority's mandate. Also, it is accepted that government policy is not binding on authorities. However, authorities have adopted the government policy and tend to adhere to it. This, too, is clearly within their mandate.

Concern about further encroachment

In this appeal, the Authority was following government policy and took a decision that it considered would preserve the marshy area, or, at least, delay further encroachment into the marsh. The Authority was concerned that to allow Willis to fill would set a precedent for further fill. It was concerned that, as higher land is built on, the pressure to fill the marshy area would increase. It wants to stop further filling.

³ Section 20 of the *Conservation Authority Act* says that the objects of an authority are to establish and undertake a program to further conservation and management, among other things, of natural resources. Clauses 29(1)(e) and (f) authorize authorities to make regulations prohibiting and regulating the construction of any structure in a swamp or placing any fill in designated area.

⁴ Originally as O.R. 996/76

⁵ See sections 3 and 4 of the Regulation

Considerations on appeal

In Blake v. The Grand River Conservation Authority,⁶ I dealt with the position of this tribunal on an appeal. This appeal process is not intended to have the Commissioner substitute his or her opinion for that of a local authority set up to regulate a particular area within the province. The local authority has local representation and should be in the best position to be sensitive to local problems and needs. The Commissioner should step in only if the local decision is not reasonably supportable.

Willis' arguments

Willis' position is not unreasonable. He argues that preserving mature trees is part of conservation of land and that it is not desirable to cut these trees. He is right. However, as is often the case, there are competing priorities and values. In the opinion of the Authority, the preservation of the marsh is a greater priority. Not every one need agree, but the purpose of the Authority is to make these kinds of judgements. Unless it is clearly wrong, the opinion of the Authority should stand.

Willis had the consent of other bodies. These bodies are set up to regulate from a particular perspective. They all serve a different purpose. What may be desirable from a planning perspective may not be from a conservation perspective. If the approval of one implied the approval of all, there would be no need for several bodies to give approval.

Willis argued that the Authority did not object to the official plan when it was circulated among several regulatory bodies. The official plan showed the lot as residential. I place no weight on this argument. The want of objection to a general concept cannot be taken as approval of a specific placing of fill.

Willis, also, raised the matter of all the improvement that had gone on around him. One can understand his frustration in being denied when others were not

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⁶ March 20, 1992

stopped. Much of what went on before was beyond the power of the Authority to stop. It may even have been remiss in the few approvals it did give.⁷ There is, however, no evidence that Willis was unfairly singled out for discriminatory treatment.

Summary

Although one can understand why Willis would object to the decision of the Authority, that decision was a reasonable one for the Authority to make. Not all may agree with it but unanimity is not required. It is not enough to show that a different decision could, reasonably, have been made.

ORDER

The appeal is dismissed.

DATED this 25th day of September, 1992.

Original signed by R. Yurkow

R. Yurkow
DEPUTY MINING AND LANDS COMMISSIONER

⁷ I am not finding that it was remiss because that issue was not before me. I am saying that if there were errors in the past, they need not be perpetuated.