Ontario

Room 569, Fifth Floor
Mowat Block, Queen's Park
Toronto, Ontario M7A 1A2

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 construct a dwelling on the southwest half of Lot 21 in Concession X in the Town of Halton Hills in the Regional Municipality of Halton, formerly in the Township of Esquesing in the County of Halton.

B E T W E E N :

ROLAND HAINES

Appellant

-and-

CREDIT VALLEY CONSERVATION AUTHORITY

Respondent

R. Haines for the appellant.
R. Winter for the respondent.

The appellant appealed to the Minister of Natural Resources under section 27c of The Conservation Authorities Act from the refusal of the respondent to grant permission to construct a dwelling on part of the southwest half of Lot 21 in Concession X in the Town of Halton Hills, formerly in the Township of Esquesing. By Ontario Regulation 797/77 the power and duty of hearing and determining the appeal was assigned to the Mining and Lands Commissioner.

The appellant, who is seventy-four years of age, was born in England and came to Canada in 1913. Since that time he has lived in

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the communities of Glen Williams and Terra Cotta. He was in the construction business during the working years of his life.

The subject lands are Part 4 on Reference Plan 20 R-2557. They contain approximately two and one-third acres and front on Main Street, the main street through the community of Glen Williams. There is approximately 150 feet of frontage on the easterly limit of Main Street. The parcel extends easterly a distance of approximately 500 feet and widens at the rear.

Part 4 is not laid out at right angles to either the Credit River which flows through the community of Glen Williams or Main Street. The reference plan shows that on Main Street the southeasterly corner of the part is 139.61 feet from the river. However there is a triangular portion lying between Part 4 and the river which widens as one proceeds easterly from Main Street. This area, which is shown on a plan that was filed as Exhibit 10 contains approximately four acres.

The reference plan included approximately twenty acres which at one time in the past were owned by a knitting mill. At that time the subject lands were used for recreational purposes as a lacrosse and a baseball field. During the forties the lands were pastured. In 1956 the appellant purchased the twenty acres. He cleared the property of brush that had grown. It was plowed and disced and levelled by the township grader. The area was seeded and it was again used for recreational purposes. In the mid-sixties the ballfield was moved to another location and until 1975 the appellant used the land for pasture purposes. For the purposes of implementing a sale the parcel was divided into four parts. The appellant resides on a portion at the southerly end of the property fronting on Prince Street. This site was laid out as Part 3. A small portion to the east of the subject lands which constitutes a right of way to Joseph Street was laid out as Part 1 and the balance was designated as Part 2. At the time the severance of Part 2 was permitted the appellant was required to establish a well on Part 4 by the land severance committee.

The subject lands are quite flat and quite low-lying. The

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regional storm elevation in the area is 775 feet. The elevations of the subject lands vary from 665 feet at the street to 667 feet at the rear which indicates that in the event of a regional flood there would be approximately eight feet of water at the rear of the lot where it was proposed to erect the house and ten feet of water between the house and the street. The appellant indicated that the Credit River floods in the village every spring and that every ten or twelve years there is a more dangerous flood. Such floods occurred in 1977 and 1962. In 1962 approximately one-half an acre of the four-acre parcel lying between the subject lands and the river was flooded and to the witness's knowledge the subject lands had never been flooded by any of the spring floods during his period of living in the community.

The arguments in support of the appeal were three-fold. It was submitted that the application was non-precedential, that it fell within the infilling principle and that the policy of the respondent was inconsistent as it had in cases having equal hazards permitted dwellings to be erected.

Dealing with these arguments in that order it may be said with reference to the argument based on non-precedential implications that it is apparent that there is substantial hazard to property and life in the event of a regional flood. I know of no case where this tribunal has permitted the construction of residences in areas that would be subject to eight to ten feet of flooding during a regional storm. The hazard itself is obvious and it cannot be said that the intent of The Conservation Authorities Act and the regulations made thereunder was to permit dwellings to be constructed with such serious hazards.

With reference to the infilling argument it was pointed that there are two conditions to this principle. The first principle is that the land has to lie above the maximum observed line. It was submitted that the evidence, particularly the evidence of the appellant quoted above, establishes a maximum observed line. I am not satisfied that this is the case. There was no evidence of the flooding during Hurricane Hazel or whether Hurricane Hazel had any appreciable effect in this area. Further the maximum observed line is usually

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established from floods of far greater significance than annual spring floodings. The principle has only been applied in areas were there are wide, sloping floodplains stretching for long distances and at the location involved the floodplain is approximately five or six hundred feet in width. Further the evidence indicates that the respondent does not adopt this policy and the general result of the policy is that building is permitted where the risks of flooding can be met with floodproofing conditions. In view of the depth of water that would be experienced in a regional flood I have considerable doubt that any floodproofing conditions could be created to remove the hazard to which a dwelling on the subject lands would be exposed. Also I would be most reluctant to impose a policy based on an infilling principle where the conservation authority does not apply the principle as a matter of general policy.

On turning to the third argument the appellant brought forward a number of instances in which residential buildings and other buildings have been constructed in areas of significant hazards. I shall deal with these individually.

The first property was referred to as the Norton home. This property is situate on the opposite side of the river and appears to be, according to the floodline mapping of the respondent and the location of the building by the appellant, within the floodplain. The file of the respondent indicated that the property had been inspected prior to the erection of the home and it was concluded that the proposed location was above the regional floodline.

Property No. 2 was situate immediately to the north of the Norton home. The appellant was unable to provide the name of the owner and the respondent was not able to provide any information regarding its dealing with this property.

Property No. 3 was situate on the east bank of the river and is situate slightly north of the subject property but in effect between the river and the subject property. The owner of this property was said to be Arno Veuhoff. There is a service station fronting on Main Street and a substantial residence has been constructed between it and the river. The respondent could not

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locate a file for this property and it may have been that the building was commenced prior to the effective date of the regulations.

Property No. 4 was a duplex type of residence constructed in 1974 and believed to be owned by a Mr. Sahapoglu. A permit was issued for this building in 1973 with the understanding that the cut and fill principle would be applied and that floodproofing measures would be taken in connection with the building. The photograph of the building indicated however that the building may have been constructed in breach of the condition.

Property No. 5 was an addition to a house owned by Doctor Ashenhurst. A permit had been granted for this addition to an existing residence. This permit was issued for the purposes of constructing a two-car garage. It was subject to an application of the cut and fill principle and the condition that the addition should not be used for living quarters.

Turning to Property No. 6 which would be the Michalov property the respondent was not able to locate any file regarding this property.

Proceeding southerly down the river Property No. 7 was a house that had been rebuilt in 1976 after its destruction by fire. The respondent's witness indicated that it had a policy of permitting houses that had been destroyed by fire to be rebuilt provided there was no increase in the size of the original foundation. It also appeared that some fill was being placed on the property across the road from this house and I would expect the respondent will be making an investigation of this situation.

Property 8 was a property leased by the Random Car Club. Here again was a case of a property that had been destroyed by fire and rebuilt.

Property No. 9 was a storage building erected three years ago by Nels Smith adjacent to a store. Properties No's 10 and 11 were also garages. The evidence for the respondent was that it had a policy of permitting the construction of garages and these three cases fell within this policy.

Property No. 12 was an extension to a grocery store. A

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four-foot addition was being added to the front of the store. Here again is a situation involving a non-residential extension.

Properties No's 13, 14 and 15 were houses constructed through the efforts of one Zorg. This appears to be an unofficial subdivision in an area where the regional storm elevation is approximately 750 feet and the elevation according to the 1965 plans of the respondent was 746 feet which would have approximately four feet of flooding in the event of a regional storm. The respondent was unable to find significant records regarding these properties as Mr. Zorg is a builder. The witness for the respondent indicated that the houses may have been constructed on the basis of the cut and fill principle.

In considering these various properties it is apparent that the treatment afforded by the respondent falls within certain defined principles. At least three principles are illustrated by these examples. Firstly, a number of the examples fall within the cut and fill principle which is now currently known as the stage storage doctrine. Secondly, other cases fall within the concept of non-residential addendums to existing structures. Thirdly, there is a policy of permitting the reconstruction of buildings destroyed by fire. In none of these examples do I see any illustration of a principle that the respondent has permitted the construction of new residential buildings without some recognized qualification such as the stage storage doctrine. It may well be that the applicant could satisfy the respondent that a house could be erected on the subject lands within the application of the principles of the stage storage doctrine. On the evidence provided before me it was not apparent that this was proposed nor was it apparent that such a doctrine could be applied with respect to the subject lands in themselves. It may well be that with the use of other lands some satisfactory proposal might be presented to the respondent but on the evidence before me there was nothing to warrant this tribunal issuing the permission requested.

In summation we have a proposed building which would be surrounded by ten feet of water in the event of a regional flood. In addition to the hazards created by such a flood there would be danger

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to the property itself and to the occupants thereof. Further one would expect that such building would have a considerable amount of fill added to the subject lands in connection therewith and while such fill may be minimal in respect of the entire storage capacity of the river the cumulative effect of the authorization of fill is a significant matter unless there is an application of the stage storage doctrine. Accordingly, I have no alternative but to dismiss the appeal.

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 to this matter.

DATED this 22th day of December, 1977.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.