Room 569, Fifth Floor
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Toronto, Ontario M7A 1A2

# The Mining and Lands Commissioner

## In the matter of The CONSERVATION AUTHORITIES Act

IN THE MATTER OF

An appeal against the refusal to issue permission to erect a residential building on lots 69 and 70, Block 2, Northeast of Albert Street, formerly in the Village of Alton in the County of Peel and now in the Town of Caledon in The Regional Municipality of Peel.

B E T W E E N :

RONALD JOHN CATCHER and
BONNIE JANE CATCHER

Appellants

\- and -

CREDIT VALLEY CONSERVATION AUTHORITY

Respondent

G. T. Mullin for appellants.
R. I. Winter for respondent.

The appellants appealed to the Minister of Natural Resources from a decision of the respondent dated July 22, 1975 refusing the issue of permission to erect a home on lots 69 and 70, Block 2, Village of Alton in the Township of Caledon. By O. Reg. 878/75 made under The Ministry of Natural Resources Act, 1972 the power and duty of hearing the appeal was assigned to the Mining and Lands Commissioner. The appeal was heard at the Peel County Court House on January 20, 1976.

John Catcher, the father of the male appellant, acquired under the provisions of the Veterans' Land Act but has not yet obtained title to a number of lots in the Village of Alton. He

has resided on these lots for a period of twenty years and approximately two years ago, on the marriage of his son, he gave lots 69 and 70 to the appellants as a wedding present. The title has not yet been transferred to the appellants by reason of the doubt as to the obtaining of permission to erect a building. Lots 69 and 70 are 60.12 feet in width and 182.20 feet in length. Lot 69 lies to the north of Margaret Sreet with the length of the lot being along Margaret Street, a street running in an easterly and westerly direction and being opened with ditches and street lighting along Lot 69 and a short distance to the east. An unopened street known as Albert Street and running northerly and southerly, intersects Margaret Street and Lot 69 is at the north-east corner of this intersection. Lot 70 is immediately north of Lot 69. The two lots contain approximately half an acre in area.

The appellants, during the last two years have taken various steps towards the obtaining of the necessary authorities to erect a home on the lots. On April 10, 1974 the Peel County Health Unit issued a preliminary approval for obtaining a building permit, pointing out that a permit to construct or alter a private sewage system was still required. On March 29, 1974, the Chief Building Inspector indicated that in accordance with the building by-laws of the Town of Caledon, a building permit would be available. The letter pointed out that the written approval of the Peel County Regional Health Unit would be required before a permit would issue. The appellants became aware that permission of the respondent was necessary and applied under O.Reg.211/73. The respondent did not have regional flood maps of the relevant part of this

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tributary of the Credit River known as Shaw Creek and after some delay, a very cursory hearing was held at which Mrs. Catcher and her father-in-law attended without any opportunity of presenting their case. Subsequently, based on estimates of the peak flow of the waterway during a regional flood, the permission was refused. The reason for the refusal was that on these calculations, the properties would be subject to fifteen feet of flooding during a regional storm.

In March 1974, the appellants caused a well to be put in, excavated a site for a basement in the northerly part of Lot 70 and acquired tile for drainage of the lot. There are some minor problems of water in connection with the lots. The evidence indicated that during the spring runoff water has flowed across the northerly part of Lot 70 and lain on the property for a period of two or three weeks. At one time water crossed the property from a spring on lots lying to the west. The spring has been covered with fill and may or may not create a problem. A culvert in the northerly ditch of Margaret Street at a location easterly of the lots which formerly serviced a driveway to a house which no longer exists has been removed and would require replacement.

The appellant's case was based on the evidence of the applicants, who had both been brought up in the area, John Catcher, the father of the male applicant, Alexander Clarke Raeburn, a member of the respondent who lives two miles from the site, John Martin Lak who operated a woodworking plant that had been powered by water power from a dam on Shaw Creek at a location approximately 250 feet south of the subject property for a period of forty years, with the exception of the last ten years during which electricity had been used, William Fred Crisp, a service station operator since 1939, and William John Smith a road

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foreman with the Township of Caledon who had been responsible for the roads in the area for a period of fifteen years during his seventeen years of employment with the municipality. The evidence was that over a period of at least forty years and perhaps even sixty years, there was no knowledge of the subject lots being affected by flooding of Shaw Creek and that during severe storms, of which Hurricane Hazel appears to have been the most severe, the creek had been contained within its banks or within the dikes that had been erected to contain the headpond of the dam providing water power to the Lak plant.

There was some difference of opinion in the evidence as to whether the lots were marshy and the officer of the respondent, in inspecting the properties may not have correctly identified the location of the two lots in question. Had the inspection been made at a time when the appellants or Mr. Catcher, Sr. had been present, there would have been room for a better understanding of the boundaries of the properties in the area. However, had the officer mistaken a property lying to the west for the appellant's property, the difference in elevations is insignificant in respect of the real issue in this case. In any event, it appears that the lots are quite flat with the exception of a depression or a slope along the northerly side of Lot 70. The soil is very rocky and has a gravel base, with the result that problems of surface drainage should be readily dealt with. The lots are cleared with the exception of four cedar trees.

The significant issue in this case is not whether the land has been flooded during the last forty or sixty years but whether the land is subject to flooding during a regional storm. The respondent produced a plan prepared by Kilborn Limited

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showing the elevations and the compiled regional storm lines for the area in question. This plan was received on the Friday preceding the date of the hearing and was marked "preliminary". According to this plan the elevations of the subject lots are 1,297.5 and 1,300 feet above sea level. The regional flood line, as calculated by Kilborn Limited was at 1,305 feet and was, according to scale, situate approximately 70 feet northerly of the north boundary of Lot 70. The plan also shows that the residence of Mr. Catcher, Sr. is within the regional flood plain. Cross sections of the area were produced confirming the various levels.

The respondent also produced a copy of the official plan of the Township of Caledon which was approved by the Ontario Municipal Board on April 28, 1970 and prohibits building in the flood plain land which was said to cover the subject lands. While the argument was raised that the respondent had no jurisdiction to enforce the official plan, it would certainly be irresponsible for it to knowingly issue permission in conflict with the official plan and the official plan would certainly reflect on the appropriateness of the letter of the building inspector indicating that the proposed erection of the home was in accordance with the building by-laws.

As indicated above, the significance in this case is whether the location of lots 69 and 70 in the regional flood plain, with its adherent problems of safety to persons and hazards to adjoining lands resulting from the potential creation of additional flood hazards such as constriction of the channel of the watercourse and the creating of obstructions during periods of flood can be overlooked in this case. None of the

recognized exceptions based on the public interest are apparent in this case.

I enquired as to whether the cut and fill principle, now referred to as the stage storage principle, is applicable. It appears that all of the land owned by Mr. Catcher, Sr. is within the flood plain and this doctrine could not be made operable in respect of his lands.

Admittedly, the problem is not as serious as it appeared to be when the Executive Committee made a decision on the application. However, there is still a potential of five feet of flooding during a regional storm. In this regard it is not appropriate to argue that Hurricane Hazel is evidence of the effect of a regional storm on this property. While Hurricane Hazel affected a large part of Ontario, it only reached the intensity of a regional storm on parts of the Humber watershed and the potential risk in this situation cannot be assessed in the light of what happened at this location during that storm. There still remains a potential of five feet of flooding. Coupled with this potential, the flood plain is quite narrow at this location being only 400 feet in width by scale and appearing to constrict at this area. In view of the hazards mentioned above of such a location the appeal must be dismissed.

However, the applicants, by reason of the fact that the new plans are so recent and have not been studied or accepted by the respondent, should have the opportunity of making a further application to the conservation authority at a time when the situation is confirmed. Once the boundaries of the regional flood plain are confirmed the appellants should be

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entitled to apply again if they so desire and on that occasion they may find some method of bringing the stage storage principle into effect in respect of the lands in question. At such time, the appellants should be given a full opportunity to present their case. I make this remark, keeping in mind that it appeared that the appellants were not afforded a hearing of the nature contemplated by section 27 (2a) of The Conservation Authorities Act.

I DO HEREBY ORDER that this appeal be and is hereby dismissed.

There shall be no costs payable by either of the parties.

DATED at Toronto this 27th day of January, 1976.

Original signed by G. H. Ferguson

MINING AND LANDS COMMISSIONER.