



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 construct an extension to an existing dwelling on Lot 1, Concession I, in the Town of Caledon, in the Regional Municipality of Peel.

B E T W E E N :

GEORGE H. BUCHANAN

Appellant

- and -

CREDIT VALLEY CONSERVATION AUTHORITY

Respondent

The appellant in person.
G. Bent for respondent.

The appellant appealed to the Minister of Natural Resources under section 27 c of The Conservation Authorities Act from the decision of the respondent by its Executive Committee on January 9, 1975 refusing to grant permission to the appellant to construct an addition to an existing dwelling on part of Lot 1 in Concession I in the former Township of Caledon, now in the Town of Caledon. By Ontario Regulation 315/75 the power and duty of the Minister of Natural Resources, to hear the appeal were assigned to

the Mining and Lands Commissioner.

The appellant has owned for a period of approximately twenty years a parcel of land having two hundred feet of frontage on Maple Avenue and having a depth varying from two hundred feet on the east to one hundred and eighty-nine feet on the west. During the forties a small frame house with aluminum siding providing accommodation for a husband and wife and a garage were erected on the property. The house has no basement and is erected on a cement block foundation that is four blocks in height. During the appellant's ownership of the property the crawl space under the house had never been flooded and was never damp.

On October 10, 1974, the appellant applied to the respondent for permission under O. Reg. 211/73 to construct an extension to the house measuring twenty-five feet by eighteen feet and containing a livingroom, bathroom and bedroom. The application was refused on the grounds that the location of the building was ten feet below the flood line of the regional storm as established by the respondent, hereinafter referred to as the "regional flood line". The regional flood line as established by the respondent and as illustrated by Exhibit 1 is at contour 885 feet in the area of the appellant's land. The 875 foot contour crosses the appellant's land diagonally and passes through the existing building. The lot slopes towards the Credit River but no part of the lot is higher than the 877.5 contour.

According to scale from Exhibit 1 the southeasterly corner of the appellant's property is approximately 500 feet

west of a straight line that would represent the general location of the regional flood line. In places the regional flood line is only 200 feet from the appellant's land but this is by reason of a small area with high elevations protruding towards the appellant's land from a straight line that would represent the general location of the regional flood line. The northwesterly corner of the appellant's land is quite close to the river and a now unused millrace. The elevation of the river is 870 feet. The appellant gave evidence that in some springs in the past the spring run-off had covered this corner of the lot.

The appellant took the position that the respondent was properly performing its duties in refusing his application but that he was appealing solely on the grounds that additional space was necessary to properly house his 84 year old mother and provide her with a separate bedroom and living accommodation other than kitchen facilities. The alternatives of an apartment or living in a senior citizens home were not acceptable to the appellant, his wife, and his mother. He relied on his twenty years of experience of the site of the proposed extension not being flooded.

However the evidence of twenty years of experience in itself does not reflect upon the validity of the hydrologic theories of the regional storm or the hundred year storm. The appellant made no attempt to question the application of the regional storm theory to his land and accepted the regional flood line and accordingly, while I do not doubt the veracity of his evidence, I cannot give any weight to the evidence of twenty years of experience.

The position of the respondent was that the location is in an area subject to ten feet of flooding in a regional storm. The respondent had suggested an alternative of converting the existing building into a two story house which would not further interfere with the natural storage capacity of the watershed but the appellant and his wife did not wish to convert the building to a two story house and preferred a bungalow type building.

Although the appellant did not give evidence upon or raise in his presentation the application of the acceptable exceptions to the prohibition of building in flood plains, the tribunal inquired as to whether any of these exceptions should be applied. The appellant owns no land abutting the regional flood line which could be used as a source of fill for the application of the "cut and fill principle". There was no evidence of any overriding public need of a municipal, provincial, or federal nature justifying the issue of permission. There are a number of other residential buildings in the area on the north and on the south of Maple Avenue within similar flood lines and the building of the appellant is closer to the river than these other residential properties. The granting of permission to the appellant would create a serious precedent in respect of other buildings in the area which are in the flood plain but further away from the river than the appellant's land.

Returning specifically to the grounds of appeal presented by the appellant, namely the need to house an 84 year old woman, this concern must be weighed against the purposes of the regulation of the respondent. The purposes

of the regulation are several.

Firstly, the regulation is designed to provide protection of human life and prevent tragedies such as those that occurred in the watersheds of the Humber River during Hurricane Hazel and the Mattagami River during the Timmins floods.

Secondly, the regulation prevents the construction of buildings which are subject to flooding and could be sold in the future to unsuspecting purchasers.

Thirdly, the regulation of construction of buildings is necessary to prevent increased flooding of other properties in the watershed. The utilization of part of the natural storage capacity of the watershed by the construction of the building or the placing of fill in the watershed increases the hazard of flooding and, pro tanto, increases the contour of the regional flood line.

Fourthly, the construction of buildings which may be flooded away during a regional storm could create additional flooding hazards by blocking constrictions in the watersheds particularly at road crossings and thus, create a greater hazard of flooding. Lastly, the increased flooding causes silting and erosion of the land in the watershed itself.

Weighing the long term purposes of the regulation against the specific concerns of the appellant which can only be characterized as short term concerns, and keeping in mind that the respondent was prepared to approve an alternative method of construction I cannot reverse the decision of the respondent. Further there was no evidence

that the property was not saleable in its present condition and the objective of the appellant might also be achieved by selling this property to a person to whom the existing building is satisfactory and applying the proceeds and the funds that would be necessary to construct the extension towards the purchase of a home that would be suitable for the purposes of the appellant and his family. Lastly, the appellant did not attempt to bring his case within any of the recognized exceptions and the evidence does not suggest that such is the case.

Accordingly the appeal is dismissed.

No costs shall be payable by either of the parties.

DATED at Toronto this 20th day of June, 1975.

Original signed by G.H. Ferguson
MINING AND LANDS COMMISSIONER.