



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 addition to an existing dwelling on the east half of Lot 1 in Concession II W.H.S., in the Town of Caledon, in the Regional Municipality of Peel.

B E T W E E N :

KATHLEEN M. O'DONNELL

Appellant

- and -

CREDIT VALLEY CONSERVATION AUTHORITY

Respondent

D. H. Carruthers, Q.C. for respondent.

This appeal was held in the Peel County Court House on April 23rd, 1975. Mrs. O'Donnell and her husband, Leonard O'Donnell, appeared but were not represented by counsel.

In early 1973 the appellant obtained an offer to purchase of part of Lot 1 in Concession II W.H.S., in the Township of Caledon, containing .08 of an acre which included part of the bed of the Credit River. A small winterized cottage measuring approximately 20 feet by 20 feet was located on this property on the bank of the Credit River on the northerly outskirts of Inglewood. It is situate within the flood plain of the Credit River and the contour of the property is

870 feet above sea level. The regional storm contour at this location is 887.5 feet above sea level with the result that the property is 17.5 feet below the regional storm contour.

The offer to purchase contained several conditions, one of which was that the necessary approval of the respondent to the enlargement of the buildings should be obtained. For the purpose of satisfying themselves on this condition the O'Donnells attended upon William A. Hamilton, a regulation enforcement officer of the respondent who vaguely recalls their attendance. As this meeting took place more than two years ago, it is difficult to rely on the memories of the parties for minute details as to the conversation. However, the officer gave evidence that his recollection of the meeting was that there was considerable doubt at that time as to the identity of the property and as the prime description of the property given at that meeting was that it was in the northerly part of Inglewood and across from the arena, the officer concluded that the property may have been one of several properties on a tract of land that is above the regional storm contour and was outlined by him in pencil on Exhibit 4. The arena is circled in red on that exhibit. Although Mr. O'Donnell in giving his evidence attempted to convince the tribunal that the officer had made a mistake and had led them to believe that they only required a building permit from the township, the letter of August 26, 1974, from Mrs. O'Donnell to the Minister of Natural Resources which was put in evidence by them as their statement of the facts of the case reads:

"At the time we visited the Conservation office we were not absolutely sure of the location of the lot but advised the gentleman in that office that it was a property on the river and opposite the

arena, which does locate it fairly accurately. He advised that he did not believe it was flood land, but of course our application for a building permit would have to be considered by their committee."

The letter goes on to state that they had attended at the Caledon Township office and were informed "that all that would be required, in order to obtain a building permit, would be to obtain the authority of the Peel County Health Unit to install a septic tile bed".

The land was purchased on May 1, 1973, and without obtaining either a construction permit, required by Ontario Regulation 211/73, from the respondent or a building permit from the township, the O'Donnells renovated the existing building, installed a septic tank system at a cost of \$1,600.00 and added a 20 foot by 20 foot extension. This extension has been completed. Mr. O'Donnell stated that they had spent \$30,000.00 on the property.

On July 10, 1974, the township inspector visited the property and left a Field Violation Notice pointing out that no building permit had issued and that a permit from the respondent would be required before further construction would be permitted. On July 12, 1974, Mrs. O'Donnell made an application for permission to construct an "addition to the existing cottage/dwelling (now a permanent residence) of 20 feet by 20 feet." The purpose was a bedroom addition to the existing one room building.

A hearing was held by the Executive Committee of the respondent on July 23, 1974, and on that date a decision was rendered refusing permission on the grounds that the

dwelling would be approximately 20 feet below the regional storm line and on the flood plain. An appeal was made to the Minister of Natural Resources from this refusal and by Ontario Regulation 130/75 filed on February 24, 1975, the power and duty to hear the appeal was assigned to the Mining and Lands Commissioner.

Mr. O'Donnell gave evidence that a survey of the property had been produced to Mr. Hamilton at the time of the preliminary meeting. Mr. Hamilton's evidence in this regard was that his recollections were that the survey was produced at the time the application for permission was made in July, 1974. I find that the latter is a more acceptable view of the evidence as surveys are infrequently handed over prior to closing of transactions and particularly as Mr. O'Donnell mentioned in his early evidence that he and his wife were unsure of the location when they attended at the office. In any event the letter of August 26th makes it adequately clear that the O'Donnells were aware when they left the office of the respondent that their case would require review by the Executive Committee. Even a cursory examination of Exhibit 4 would indicate that the property had not been properly identified to the officer at the time of the preliminary visit, because it is certainly not across the road from the arena and if it had been properly identified it is so clearly within the flood plain that there could be no mistake as to this fact. Mr. O'Donnell alleged that the arena had been rebuilt without a permit and he had been told this by the Chairman and other members of the Executive Committee at the hearing of July 23rd.

William A. Hamilton, the regulation enforcement

officer of the respondent, who had been a Commissioner of Works for the Town of Streetsville prior to his appointment to his present position in 1972, gave evidence that a permit had been granted for the arena. However, it appears that the arena project was not an original construction of the arena but a remodelling thereof.

When cross-examined with respect to the policy of authorizing two-car garages and trailers in the flood plain, the witness indicated that this was against the policy of the respondent. Reference was made to the property of a Mr. Bernard Woldenza. Mr. O'Donnell suggested to the witness that Mr. Woldenza had been granted a permit for a garage but the witness pointed out that the permit had merely been for a carport. In answer to Mr. O'Donnell's questions regarding the building of roads by the County of Peel, the witness confirmed that the county had obtained a permit. The witness also confirmed that although the arena was an exception to their general policy, there were no residential facilities in the arena.

Mr. O'Donnell's argument in this matter was not helpful either from a legal or an engineering point of view. He suggested that the respondent could have prevented the mistake, which he alleged to have arisen, from occurring if they had clearly pointed out to him that permission from the authority was required. The evidence in my opinion is consistent with the authority having taken that approach and is not inconsistent, to say the least, with an intentional proceeding with construction without obtaining either a municipal building permit or the permission of the respondent. It is clear that the O'Donnells

had legal advice prior to the acquisition and they were or ought to have been well aware of the legal requirements. It was suggested that this matter should be dealt with on a humane basis taking into account that a mistake had been made resulting in the expenditure of the bulk of the financial resources of the appellant and further, that the tribunal should not take into consideration the fact that they had proceeded without permits. He also mentioned the fact that there is a housing shortage and that even the type of housing under review should be permitted to relieve this shortage.

In dealing with these points, I fail to see that even if the matter were reviewed from a humane point of view, such an approach would warrant the granting of permission. One of the objectives of the program of the conservation authorities is the prevention of the unsuspecting purchase of land in flood plains which are subject to regional storms. I cannot conceive of how one could be expected to find that the creation of a situation where an unknowing person might buy such a property could be considered humane.

With reference to the point regarding the proceeding of construction without a permit, I am quite prepared to accede to the suggestion that I ignore this point in coming to my conclusion.

On the point of the housing shortage, no such housing shortage was established in the evidence and I am not aware of any policy that permits housing in flood plains, particularly those that are subject to a 17.5 foot flood condition merely on the basis of a general or particular housing shortage.

On the other hand counsel for the respondents argued that the decision of the respondent was sound both as to facts and the law and that there is no reason to reverse its decision. While I do not necessarily endorse his suggested approach to an appeal of this nature, I concur with the conclusion of his argument. The property is, from the engineering evidence, 17.5 feet below the regional storm line and the prevention of the construction of residential premises or, as in this case, the extension of residential premises is the prime objective of the regulation. The hazards in this situation are quite obvious and I have no alternative but to dismiss the appeal. However, no costs shall be payable by either of the parties.

DATED at Toronto this 2nd day of May, 1975.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.