



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 erect a frame dwelling and construct a septic system on Lot 30 in Concession IV in the Township of East Luther in the County of Dufferin;

B E T W E E N:

JAN GAWRYLIK

Appellant

- and -

GRAND RIVER CONSERVATION AUTHORITY

Respondent

The appellant in person.
J. M. Harris for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to erect a frame dwelling and construct a septic system on part of Lot 30 in Concession IV in the Township of East Luther under O.Reg. 356/74. The power and duty of hearing and determining the appeal was assigned to the Mining and Lands Commissioner by O.Reg. 100/80.

The appellant had made a similar application in respect of the parcel of land in question and this tribunal dealt with an appeal by a decision dated the 28th day of July, 1978. The only difference between the present and the previous application is that the site of the proposed house was changed from the southerly part of the parcel to the northerly part of the parcel with the result that the site of the proposed house is at a higher elevation than the previous site.

The elevation of the present site is 1,504 to 1,506 feet above sea level. The elevation of the previous site was 1,501.5 feet. The elevation of the regional storm at the present site is 1,508 feet

and at the previous site was 1507.1 feet.

I will not comment on the concerns or the policies of the respondent as they have not changed since the previous decision. While the new site may have a lesser depth of flooding by three or four feet there is still a probability of three or four feet of flooding around the proposed residence in the event of a regional storm.

The evidence on behalf of the respondent clearly established that the present application is contrary to the policy of the respondent of not permitting construction of new residential buildings in floodplains and did not fall within any exception to that policy. The position of the appellant is based on personal hardship and the alleged fact that other controlling bodies such as the Land Division Committee and township officials had concurred in his proposal.

However the consent of the Land Division Committee contained a number of conditions including the obtaining of permission of the respondent and the obtaining of an amendment to the zoning provisions. The evidence before this tribunal in respect of zoning of the property was not conclusive and it may well be, if permission were granted under the regulation of the respondent, that the township officials would not be in a position to issue a building permit.

The reasons given on the previous occasion are still valid. Nothing was established before this tribunal that would warrant a different decision and the reasons given on the previous occasion are adopted. The safety considerations mentioned in the previous decision are still applicable although perhaps not so significant and the problems of the effect on the control of flooding as it affects not only the subject lands but upstream and downstream properties continue. Therefore 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 1st day of May, 1980.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.