



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 place fill and construct a residence on Lot 17, Registered Plan 43 in the Village of Grand Valley in the County of Dufferin.

B E T W E E N :

JAMES R. TAYLOR

Appellant

- and -

GRAND RIVER CONSERVATION AUTHORITY

Respondent

The appellant in person.
J. M. Harris and R. Kao for the respondent.

In October 1971 the appellant, a professional fire fighter for the City of Toronto, purchased lots 16 and 17, Registered Plan 43, being the plan of the Village of Grand Valley in the County of Dufferin. The lots lie between Amaranth Street and the northwesterly bank of the Grand River. The Grand River flows in a southwesterly direction at this point. At the time of purchase a house was situate on Lot 16 and it was the appellant's intent to renovate the house, sell it and use the proceeds to build a new house on Lot 17.

Renovations were carried out and an agreement of sale was negotiated. An application to sever the two lots was made and the hearing before the land division committee was held two years ago. The application was refused but the reasons for the dismissal were not produced. The appellant was of the opinion that the sole reason was that the respondent had requested that the land be

established as a green belt. An appeal has been taken to the Ontario Municipal Board but the Board has not heard the appeal.

During his application for severance the appellant became aware that it was necessary to obtain permission from the respondent for the purpose of placing fill and erecting a building on Lot 17. On August 16, 1974 an application was made to the respondent for permission under O. Reg. 356/74 to place fill and erect a house on Lot 17. In September of the year 1974, the executive committee held a hearing and on September 13, 1974 tabled the application pending a meeting with the representatives of the Village of Grand Valley. On April 11, 1975 the respondent denied the permit and gave the appellant the following reasons:

"It is the opinion of the Authority that the construction of a dwelling in this location would not only add to the constriction of the channel and result in higher flood flows, but would expose the future owners of the dwelling to unnecessary victimization during high flood flows. Since the proposed structure would be placed below the levels of the spring runoff of 1974, the Authority would not approve of the building being constructed."

The appellant appealed to the Minister of Natural Resources and by O. Reg. 664/75 the power and duty of hearing the appeal was assigned to the Mining and Lands Commissioner. The appeal was heard in Toronto on October 8, 1975.

The appellant's evidence was that there was no documented or oral proof that the lot had been flooded other than a flood caused by an ice jam in 1974 by a beaver dam. He stated that he had some familiarity with the area as his mother-in-law had lived in the vicinity prior to his purchase of the lots. From his discussions with neighbours who had lived in the area for many years, he concluded that there was no evidence of serious flooding

in the past. He further indicated that the lot is serviced with a town sewer and a drilled well is located on the lot and although he has not applied for a building permit, he expects that the municipality has no objection to the granting of a building permit.

The appellant gave evidence that he did not intend to fill the part of Lot 17 abutting the river and only intended to fill the back portion where the elevation is approximately two feet lower. He felt that the filling of this back portion of the lot would not impede the flow of the river. He also felt that the removal of the beaver dam would remove the cause of flooding and would prevent the flood hazard, pointing out that in 1975 there was no flooding. With reference to the building of future protective devices his evidence was that with the removal of the beaver dam there would be no need for such devices.

By By-law No. 72-11 enacted on the 26th day of October, 1972, the council of the Village of Grand River adopted the Official Plan of the Grand Valley Planning Area. The official plan was approved by the Minister of Treasury, Economics and Intergovernmental Affairs on June 14, 1973. The official plan designates Lot 17 as open space. Open space is described on page 9 of the official plan as follows:

d) "The Open Space classification of land shall mean that the predominant use of land shall be for the conservation of soil or water, agriculture, outdoor recreation, public or private parks, nursery gardening and forestry. Lands having inherent environmental hazards, such as, poor drainage, organic soils, flood susceptibility, erosion, steep slopes or any other physical condition which endangers the environment shall also be designated in this category.

Accessory buildings for the noted uses on a seasonal basis may be constructed in open space areas but no

permanent buildings shall be contemplated. Neither buildings nor the placing or removal of fill shall be permitted in areas subject to periodic flooding without the written consent of the Conservation Authority having jurisdiction in the area."

While the official plan indicates that privately owned lands may be made the subject matter of applications for amendments in the zoning law, at which time the matter of purchase by a public agency will be considered, the official plan concludes at page 11,

"It is intended that no new urban development will be permitted to encroach on the banks of the Grand River within the Village limits. Cooperation will be offered to the Grand River Conservation Authority in setting up firm policies concerning the future use of individual areas along the river banks and when such a programme is prepared and approved by the Authority and the Village, the details will be included in this Plan by amendment."

On August 13, 1975, the Village of Grand River enacted zoning By-law No. 75-7 and applied to the Ontario Municipal Board for approval, advertising that the last date for filing objections was September 30, 1975. The appellant admitted that he was aware of the by-law and other material that had been circulated but he did not make any objections to the by-law. The by-law designates lots 16 and 17 as "Open space - conservation". Section 9.01 states the following permitted uses in such zones:

"(a) Rural Uses

- (i) a farm other than a residence used in connection with a farm,
- (ii) a forest management operation,
- (iii) a nursery,
- (iv) a garden.

(b) Open Space Uses

- (i) a park or recreation area."

Charles William Stevens, a graduate civil engineer and a professional engineer, is the operations engineer for the respondent. He has been employed by the respondent for four and one-half years. Originally he was involved with the drafting and enforcement of the regulations of the respondent and in more recent years his efforts have been related to operations but he has continued to provide advice with respect to the regulations.

Mr. Stevens gave evidence that he was personally familiar with the property in question. On Sunday, April 16, 1972, he was dispatched by his superiors to observe the ice jam affecting the village and on that occasion he took a movie film of the flood that was occurring as a result of the ice jam. This film was shown at the hearing and indicated that parts of the village were flooded and ice and debris was left on properties along the river banks. A blow-up of one of the frames was produced as Exhibit 12 illustrating an area in the near vicinity of the appellant's property if not directly in front thereof. The exhibit showed that the water had risen almost half way up the trunk of a cedar tree growing along the edge of the river but had receded at the time of taking the film.

The witness stated that waters of higher levels resulted from flooding two days later that was caused by runoff and rainfall. He also gave evidence that the regional flood line has not been formally established in the Village of Grand Valley although studies are currently under way for this purpose. However, he gave evidence indicating the levels of various floods determined from existing records.

Following the 1974 flooding a survey crew was sent into the area and from physical evidence observed and discussions with local residents lines were established through the village indicating

the flood lines resulting from the ice jam and the subsequent flooding. These lines were shown as heavy black lines on Exhibit 5, which outlines the village plan along the edge of the river and was prepared in connection with the erection of the sewage pumping station that is situate downstream from and in the vicinity of, the appellant's property.

On October 6, 1975, surveyors were sent into the area to establish elevations in the vicinity of Lot 17 and upon adopting and relating to an established bench mark i.e. one of the concrete steps of the sewage pumping station having an assigned elevation of 1496.1 feet, the following elevations were established:

1. Edge of Amaranth Street - 1493.16 feet.
2. Highest point of the river bank - 1490.85 feet.
3. Top of the abrupt bank - 1490.07 feet.
4. Water surface - 1483.82 feet.
5. Top of the concrete at the sewage pumping station - 1492.05 feet.
6. Base of cedar tree shown in Exhibit 12 - 1489.73 feet.

The witness indicated that the highest point along this part of the river was the concrete at the sewage pumping station and that this area was under water in the flood of April 18, 1972. Accordingly, he concluded that there would have been considerable flooding of the subject property on that date.

The witness also produced records published by the federal government of stream flows at stations operated by the Inland Waters Branch of Environment Canada. This document was filed as Exhibit 14 and includes information on 3 gauges on the Grand River in the vicinity of Grand Valley. Using engineering principles, the witness converted the recorded mean daily flows to instantaneous flows, which flows are higher than the average

flows, and calculated the flood levels from such flows. Similarly, he considered reports of the Grand River Conservation Commission in respect of gauges operated by that commission on the Conestoga River and on the Grand River in the Village of Grand Valley. The witness concluded that the flood levels for the subject property were:

- (a) 1494.5 feet in the 1947 flood;
- (b) 1492.5 feet in the 1948 flood;
- (c) 1492.3 feet in the 1972 flood; and
- (d) 1497.5 feet in a regional flood.

These figures were illustrated on a stage-discharge curve filed as Exhibit 18. The regional flood figure was based on a rudimentary calculation involving an estimated flow of 34,000 cfs and the volume of the watershed but it did not take into consideration backwater effects resulting from constrictions in the river, the dumping of fill or the erection of buildings or other structures in the flood plain. Accordingly, the witness was of the opinion that his estimate of the regional flood line was a minimum level.

This evidence, which was not seriously attacked, illustrates that the part of the appellant's property, which he proposed to fill and which by his evidence was approximately two feet below the top of the bank and accordingly would have an elevation of approximately fourteen hundred and eighty-eight feet, would have been subject to four feet of flooding in the 1948 and 1972 floods, six feet of flooding in the 1947 flood and nine feet of flooding in a regional storm.

The witness indicated that pending the establishment of a regional flood line, the respondent is using the lines established in 1974 as guidelines and is applying the recommendations of His

Honour Judge W. W. Leach in the report of the Royal Commission Inquiry into the Grand River Flood 1974 wherein it was recommended,

(a) Recommendation 13 -

"That no further building or development be allowed within the regional flood lines. No channel infilling should be allowed without express permission.

The GRCA should be supplemented to enforce the prohibition against flood plain building.

If any building, development or renovation, is allowed in the flood plain, the property owners should be required to sign a hold-harmless agreement. This should run with the land and be registered on title. It should covenant that neither the municipality, the GRCA, or the Ontario Government will be responsible for or be expected to provide compensation toward any flood damage to the new work."

and

(b) Recommendation 18 -

"This village is flooded almost every spring due to ice jams. I recommend that the GRCA be prepared each spring with available personnel, equipment and explosives to deal with ice jams in this village or anywhere else in the watershed, so as to prevent flooding."

The argument of the appellant was that there was no concrete or proven evidence that his land was subject to flooding during the floods that have occurred in the past particularly if the hazard of the beaver dam is removed and accordingly, counsel for the respondent did not establish that there was any real objection to granting him permission to fill Lot 17, Registered Plan 43 and to erect a house thereon. In this regard I am prepared to accept the evidence produced by the respondent as the best evidence available. This evidence indicates that the property is subject to a risk of 9 feet of flooding in a regional storm with

lesser flooding in less serious storms.

In addition, the placing of fill and the erection of a building has the accompanying concerns of interference with the stream flow during floods that raise the water above the level of the banks and reduction of the storage volume of the flood plain. With reference to the former point, the Grand River is quite tortuous at this area with the bed forming an elbow or an ox-bow and would appear to be significantly susceptible to interferences with the flow. Such is evident from the history of ice jams causing flooding. With reference to the second point, the details of the reduction in storage volume were not dealt with in the evidence and even though it may be slight, the escalating effect of subsequent applications arising from the granting of such permission must be prevented and such prevention can best be achieved by not establishing a precedent, particularly where the evidence does not deal with the issue.

The proposal of the appellant is prohibited by the Official Plan of the Grand Valley Planning Area. Similarly, it is prohibited by the zoning by-law which has been enacted by the municipality and in respect of which no objections have been made to the Ontario Municipal Board. In the absence of objections by the owner, it is difficult to foresee that the by-law would not be approved and there is every reasonable expectation that the provisions of the by-law respecting the subject property will be approved.

In conclusion, as the proposal is contrary to the official plan, the zoning provisions and the recommendations of His Honour W. W. Leach and as evidence of a serious flooding

hazard has been presented by the respondent, it would not be appropriate to grant the permission requested.

IT IS HEREBY ORDERED that the appeal be and is hereby dismissed.

No costs shall be payable by either of the parties.

DATED at Toronto this 16th day of October, 1975.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.