



The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Tuesday, the 29th day of
Mining and Lands Commissioner) October, 1985.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to move a cottage from 82 Curtis Street to Lot 25, R.P. 192, P.T., to construct a concrete block foundation and to erect a 2-car garage to be added to house, in the Township of Yarmouth in the County of Elgin.

B E T W E E N :

WILLIAM A. BARBER

Appellant

- and -

KETTLE CREEK CONSERVATION
AUTHORITY

Respondent

O R D E R

THE APPEAL came on for hearing at the City of London on the 29th day of October, 1985 in the presence of the appellant and S.H. Gibson, counsel for the respondent, upon hearing the evidence adduced on behalf of the parties and the submissions of the appellant and counsel for the respondent and for oral reasons delivered,

1. THIS TRIBUNAL ORDERS that the appeal is dismissed.
2. THIS TRIBUNAL ORDERS that no costs shall be payable by either party to the appeal.

SIGNED this 12th day of November, 1985.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.



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The appellant, in person.
S.H. Gibson, for the respondent.

ORAL REASONS FOR JUDGMENT

The appellant appealed to the Minister of Natural Resources from a decision of the Kettle Creek Conservation Authority refusing permission to permit the placing of an existing cottage from another site on part of Lot 25, Registered Plan 192 on Sunset Drive in St. Thomas. Appeals to the Minister are dealt with by Ontario Regulation 364/82. That Regulation provides that appeals will be heard and determined by the Mining and Lands Commissioner.

The subject lands in this matter form part of a fairly large lot lying on the southwesterly shores of Kettle Creek. An existing house is situate on the lands of the appellant. A considerable depth of fill has been placed on the lands of the appellant. I will say at the outset with regard to the fill, the tribunal has some concern that not only could this case involve a consideration of flooding but it might also involve, had it been examined, the question of conservation of land. As well as the control of flooding there may be an additional problem related to the fill. Mr. Barber's evidence was that while the fill was

originally slag and melted rock it has reverted to sand and there may well be erosion problems in the event of flood flows that should be considered if one were to utilize the site in addition to the matter of the actual flooding of the property itself.

The purpose of the building to be placed on the subject lands is the creation of a residence. The proposal is to move an existing cottage from another site approximately one mile away where it is situate well above the flood plain and in a location which presumably is a better location than the present site, keeping in mind the evidence of the flood elevation for the subject lands. The evidence indicated that the cost of the removal of the cottage is estimated to be in the range of \$5,000 and this cost is fairly significant.

The appellant in making his plans to move the cottage did not obtain any scientific advice from an engineer to determine the problems associated with this site or to determine whether there would be any method of dealing with those problems. Turning to those problems, in particularly with regard to the aspect of control of flooding, the evidence before me indicates that the respondent has made a regulation based on the Hurricane Hazel standard and the regulation prohibits the construction of a building in an area subject to the regional storm unless permission is obtained from the respondent under section 4 of the Regulation. The evidence indicated that the elevation of a regional storm is 207.85 metres or 682 feet. The evidence also clearly establishes that the elevation of the proposed site to which the cottage would be moved is 205.63 metres or 674.64 feet which would give a depth of flooding in the event of a regional storm of 2.24 metres or 7.35 feet. These figures were contained in the reasons of the Conservation Authority. A subsequent survey was conducted by the Conservation Authority after the decision and that survey not only confirms the aforementioned figures but indicated there would be a slightly higher depth of flooding in the event of a regional storm. The subsequent survey that was conducted also established the elevation of the one in one hundred year storm which is not as severe a flood condition as the Hurricane Hazel flood. The figures for this storm

indicate that there would be in excess of two feet of flooding in that event.

The evidence of the respondent was that its policy is to completely prohibit the construction of buildings in the flood plain according to the Hurricane Hazel standard. There was no evidence produced before me that there were any exceptions to this policy with regard to residential housing under which the appellant's case could be placed and no evidence was brought before the tribunal of cases which would establish an actual policy of granting such permission.

A conservation authority has an option under provincial policy of adopting what is called a two-zone policy and it is assumed that the reason for establishing the one in one hundred year elevation has reference to this option. However under the recommended provincial policy there is an absolute prohibition of any construction in the area below the one in one hundred year elevation. As the subject lands would fall within that part of the flood plain which is commonly called the floodway, under provincial policy there would be an absolute prohibition against the construction of buildings and in particular, residential buildings. Residential buildings have to be treated more seriously than other buildings. Many of the principles that apply in flood plain management are equally applicable to all buildings but residential buildings are more serious because they involve human life more than factories, sewage plants or bridges. I can see nothing in the evidence on which I could reverse the decision of the Conservation Authority in this matter. Accordingly the appeal will be dismissed. As is usual in these cases unless there is some unusual facts, there will be no order as to costs. Mr. Gibson has indicated that he is not asking for costs. A formal order will issue dismissing the appeal without costs.

DELIVERED ORALLY on the 29th day of October, 1985.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.