



The Mining and Lands Commissioner In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Tuesday, the 3rd day of
Mining and Lands Commissioner) February, 1987.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to reconstruct and replace an existing dwelling on the property municipally known as 19 East Beach Road, in the Town of Newcastle (formally the Town of Bowmanville) in the Regional Municipality of Durham.

(amended - January 29, 1987)

B E T W E E N :

DOUGLAS R. MENZIE

Appellant

and

THE CENTRAL LAKE ONTARIO
CONSERVATION AUTHORITY

Respondent

The appellant, in person.
R.I.R. Winter, Q.C., for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to reconstruct part of an existing frame dwelling, to demolish the remaining part of the dwelling and to replace the removed part with a mobile home which would be built onto the reconstructed part. By Ontario Regulation 364/82 the power and duty of hearing and determining such appeals were assigned to the Mining and Lands Commissioner. The appeal was heard in Toronto on January 29, 1987

The subject lands are situate on the east side of a private right-of-way along the east bank of the Bowmanville Creek. It is the most southerly building erected along that right-of-way and consequently is the first building north of Lake Ontario at that location. There is presently situate on the subject lands a rectangular building measuring twenty feet by forty feet. The building is placed on the lot in a north-south direction. It was proposed to remove the northerly twenty-eight

feet and place a mobile home measuring fourteen feet by seventy feet in an east-west direction immediately to the north of the reconstructed part of the existing building. The combined area would be 1,220 square feet, an increase in the floor area of 420 square feet.

It was proposed to place the addition on concrete piers or footings which would raise the building some three feet from the grade elevation.

The evidence, both oral and pictorial showed that the existing building was settling and as a result of the deterioration of the sills the building has an uneven appearance. The subject lands are owned by the Port Darlington Harbour Company and are held by the appellant under a five year lease expiring in 1989 which is subject to a right of renewal for a further period of five years. The appellant paid the previous tenant \$5,000 for the building and the remainder of the term of the lease. The appellant stated that the building was presently being used for a summer cottage only but he would be retiring in five years and contemplated the creation of a retirement home.

The grade elevation of the subject lands is 250 feet above sea level. The elevation of the regional storm is 256.9 feet. Accordingly, the subject lands would be flooded by a depth of 6.9 feet in a regional storm. The appellant admitted that he acquired the property knowing it was in the flood plain. In addition, the subject lands were said to be subject to 2.6 feet of flooding from wave uprush, the calculated distance of the uprush of Lake Ontario in a regional storm. Wave uprush is the upward movement of water following the breaking of a wave.

The policy of the respondent is that it will not permit new residential dwellings or the expansion or major reconstruction of existing structures in the flood plain unless there is some method of providing flood relief. Reference was made to a boat factory and a marina with a motel. These commercial buildings had been authorized by the respondent. Some older buildings were removed and principles of floodproofing were made conditions of the permission. The existing hotel in the

flood plain was constructed prior to the regulation of the respondent.

The evidence indicated that the subject lands were not capable of an application of the stage-storage principle or the cut and fill principle as that principle was originally referred to. The additional width of the proposed building would create a more serious constriction of the flood plain than the existing building. The appellant submitted that his proposed new building would create an improved appearance in the area. He referred to requests from municipal officers to maintain or improve the appearance of buildings in the area. He submitted that the fact that he would raise the building three feet would constitute an improvement from the point of view of flood plain management and control of flooding.

It was submitted on behalf of the respondent that the facts indicated an increase in risk, both to property and persons. The increased area not only reduced the storage capacity but made a greater interference with the flow of the regional flood by reason of the increase in the width of the building from twenty feet to seventy feet. Reference was also made to the change in the nature of the use of the property which would create a major risk to persons, both residents and rescuers, as the number of residents in the area would be increased on a permanent basis. The additional risk from the waters of Lake Ontario was pointed out. Reference was made to the inability to apply any recognized principles of flood plain management to the application.

The tribunal has reviewed the reasons given by the respondent in rejecting the application. It is apparent to the tribunal that the usual principles of flood plain management have been applied by the respondent in coming to its decision. Further, there was no evidence that the applicant was being deprived of any policy of the respondent under which permission is granted by the respondent. The tribunal is satisfied that the applicant has not been denied the benefit of any exception which would be applicable to any other applicant.

There is no evidence of any overriding municipal,

provincial or federal matter to warrant the reversal of the decision of the respondent.

In summation, the application increased the risk of flooding both from the point of view of constriction of the channel and the reduction of the storage capacity. There is no possible application of any of the usual exceptions to the prohibition of construction in the flood plain. While floodproofing was questionable it is pointless to rely on floodproofing solely and access to residents should be provided in any exception. In this case the depth of flooding from which residents would be required to escape would be 6.9 feet of flood waters and this tribunal has never heard of an exception being made for the construction of residential premises where the depth of water in a regional storm is this significant. With this depth of flood waters there would be no hope of escape or rescue for the occupants of the proposed building.

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

SIGNED this 3rd day of February, 1987

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER