



The Mining and Lands Commissioner  
Le Commissaire aux mines et aux terres

NOTICE OF DECISION

pursuant to a hearing on November 19, 1990 under subsection 28(5) of the Conservation Authorities Act held in the City of Toronto, Ontario.

W. Dennis Tieman  
Mining and Lands Commissioner

IN THE MATTER OF THE CONSERVATION AUTHORITIES ACT

AND IN THE MATTER OF:

An appeal to the Minister under subsection 28(5) of the Conservation Authorities Act against the refusal of the Executive Committee of the Lake Simcoe Region Conservation Authority to grant permission to construct a single family dwelling and to install a septic system on Part of Lot 25 in Concession V in the Township of Uxbridge in the Regional Municipality of Durham.

BETWEEN:

MARGARITA FLORES (LANDRY)

Appellant

- and -

LAKE SIMCOE REGION CONSERVATION  
AUTHORITY

Respondent

Edward E.P. Iglar, Esq., for the appellant.  
K.C. Hill, Esq., for the respondent.

The appellant submitted this appeal to the Minister of Natural Resources on February 26, 1990 under subsection 28(5) of the Conservation Authorities Act. It is an appeal from a decision taken by the Executive Committee of the Lake Simcoe Region Conservation Authority on January 12, 1990.

By Ontario Regulation 364/82 it is the responsibility of the Mining and Lands Commissioner for the Province of Ontario to hear and decide all such appeals.

This application for permission to construct a single family dwelling and to install a septic system on part of Lot 25 in Concession V in the Township of Uxbridge is the same as an earlier application submitted by the appellant and denied by the Lake Simcoe Region Conservation Authority. An appeal of that decision was dismissed

by this Tribunal at a hearing in Toronto of April 17, 1989. Written reasons for that decision were given by the then Commissioner, G.H. Ferguson, Q.C. on May 24, 1989.

The first submission put forward on behalf of the appellant was that of jurisdiction. It was submitted that because the appellant had constructed on the property a building envelope above the elevation of a regional flood, that site was no longer an "area susceptible to flooding during a regional storm" and therefor was outside the regulatory powers of the Conservation Authority.

That phrase is used in the regulation of the respondent. Clause 3(c) of Regulation 179 of the Revised Regulations of Ontario, 1980 reads:

3. Subject to section 4, no person shall
    - (a) construct any building or structure or permit any building or structure to be constructed in or on a pond or swamp or in any area susceptible to flooding during a regional storm;
- .....

While there is no legal or other written definition of "susceptible", this Tribunal accepts the judgment of the Commissioner at the earlier hearing of this case as well as the evidence that the said property and the proposed building site are "in an area susceptible to flooding" and are therefor subject to Regulation 179 governing the powers of the Lake Simcoe Region Conservation Authority.

New evidence, not heard at the previous hearing on this appeal was submitted on behalf of the appellant in respect to the stability of the bank between Pefferlow Brook and the building envelope. Mr. Brian Plezck, a professional engineer and consultant with experience in flood plain mapping testified that it is unlikely that the bank would suffer any significant erosion in a regional flood. In the absence of any evidence or testimony to the contrary, this Tribunal is prepared to accept the position of the appellant that there "is virtually little or no chance of any type of erosion or washing away and that the bank is very stable".

At the previous hearing of this appeal, Mr. A.A. Timmins, a former employee of the respondent, gave testimony on eleven cases where it was alleged that

permission had been granted by the respondent in circumstances similar to that of the appellant. A further seven cases of apparent precedent were outlined by Mr. Timmins at this hearing.

From a review of the eleven cases presented at the earlier hearing and the related decisions of Commissioner Ferguson; and a review of the testimony presented at this hearing, it is impossible for this Tribunal to determine whether any or all of these cases involve more or less exposure and risk in a regional flood as compared with the proposed building site of the appellant.

However, it is apparent to this Tribunal that a major concern of the respondent in many of these cases, as in the case of the appellant, is that of dry or safe access to and from the building site.

Implementation Guidelines issued jointly by the Ministries of Natural Resources and Municipal Affairs in 1988 under the Planning Act read as follows:

It is the policy of the Province of Ontario that:

Any new development permitted in the flood plain in accordance with this policy statement, be protected by acceptable flood proofing actions or measures.

Ingress/egress for new buildings be such that vehicular and pedestrian movement is not prevented during times of flooding.

This Tribunal is satisfied that the appellant could make further improvements to the property and take such other measures as may be required by the respondent consistent with its policies as they have been applied to the construction of other residential buildings in areas susceptible to flooding.

This Tribunal allows the appeal on condition that the appellant submit a new application that meets the requirements of the respondent for safe and dry ingress and egress to a residential site.

This Tribunal makes no order as to costs.

SIGNED this 31st day of January, 1991.

Original signed by W. Dennis Tieman

W. Dennis Tieman

MINING AND LANDS COMMISSIONER