



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

G.H. Ferguson, Q.C. ) Monday, the 17th day of  
Mining and Lands Commissioner ) April, 1989.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a three storey addition onto an existing house on Lots 469 and 470 in Block YY, Plan 83 in the Town of Uxbridge in the Regional Municipality of Durham.

B E T W E E N :

PETER DOLL and HOLLISTER DOLL  
- and -  
Appellants  
LAKE SIMCOE REGION CONSERVATION  
AUTHORITY  
Respondent

R.I. Fitzhenry, agent for the appellants.  
K.C. Hill, for the respondent.

The appellants appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to construct a three storey addition onto an existing house on Lots 469 and 470 in Block YY, Plan 83 in the Town of Uxbridge in the Regional Municipality of Durham. Under 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 April 13, 1989.

The Uxbridge Brook rises in spring fed streams situate approximately one mile south of Uxbridge. The history provided to the tribunal indicated that at one time there were three ponds in Uxbridge created by dams across the brook which provided power to a grist mill, two saw mills, a foundry and tannery. One of the ponds no longer exists. One of the ponds, known as Sander's or Wheeler's Pond, has been converted to a park area known as Centennial Park. The remaining pond, known as Elgin Pond, is created by a dam which has become Mill Street. The history further indicated that some remedial work has been done on the dam by way of gabions and enlargement of the outlet. There was no evidence of the area or depth of the pond but it apparently extends upstream a considerable distance and is crossed by

another street to the south of Mill Street. It was suggested that apart from a release of water from two upstream ponds without notice to Uxbridge, there has been no overflowing of the dam.

The subject lands are situate on the downstream side of Mill Street. The existing house is situate at the centre of the floodway of the regional storm. The elevation of the regional flood is 269.6 metres at the pond. A spot elevation on Mill Street has an elevation of 269.1 metres. The expert evidence indicated that during a regional storm approximately one metre of water would flow over Mill Street and descend upon the existing house. The evidence indicated that such a flow would have a significantly high velocity.

The elevation downstream from the subject property of the regional flood is 268.5 metres. The elevations surrounding the existing building and the proposed addition have a significant downstream slope which indicates to the tribunal that the evidence respecting velocities is sound and that the risk to buildings, particularly residential buildings, in the location is serious. By way of illustration, plans received by the respondent after the application was made indicate that the elevation of the basement floor of the proposed addition would be 266.176 metres, a depth in excess of two metres below the regional flood elevation downstream from that location. These plans also show the elevation of the first floor at 268.638 metres, an elevation below the elevation of Mill Street.

The submissions of the appellants were based on the history of the area and the standard of the regulation of the respondent. It was submitted that the application was a request to make more comfortable and utilize a safe home that has been in existence for more than a century.

The position of the respondent was that the depth of water in a regional flood, the velocities of a regional flood, the location of the building in the central part of the floodway and the risks of damage to property and loss of life associated

with the building justified the position taken by the respondent.

The submission of the appellants regarding the standard contained in the regulation administered by the respondent is the view that a regional storm as defined in the regulation is unlikely to occur. Although the evidence did not deal with the scientific aspect of this matter, the tribunal is well aware that regional storms occur in parts of Ontario annually and that storms of slightly less intensity occur at fairly regular intervals. Such storms have occurred since Hurricane Hazel in the Highland Creek and Rouge River watersheds which are not far from Uxbridge and reliance cannot be made on an allegation that the standard contained in the regulation is theoretical or hypothetical.

The tribunal can find no errors in the position taken by the respondent. The location is on the downstream side of an existing dam and is in the central part of the floodway of the regional storm. Notwithstanding the remedial works indicated in the evidence the risk remains and reliance cannot be made upon the remedial works in extreme situations. Consequently the tribunal is satisfied that the position of the respondent was sound in regard to the risks involved with the proposed extension.

Evidence was given in respect of a number of properties for which permission had been granted. These properties were either outside of the flood plain or at the edge of the flood plain and there was a capacity for flood-proofing and provision of access to and from the building in the event of a regional flood. On the evidence this tribunal cannot find that either of these procedures are applicable to the present proposal.

The tribunal is satisfied that the respondent has dealt with the appellants in accordance with its policies both express and implied and that the appellants have not been denied permission in circumstances analogous to those in which permission has been granted. There was no evidence of overriding

federal, provincial or municipal concerns or of provincial policy inconsistent with the decision of the respondent and accordingly the appeal will be dismissed.

1. THIS TRIBUNAL ORDERS that the appeal is dismissed.
2. THIS TRIBUNAL ORDERS that no costs shall be payable by any of the parties to the matter.

SIGNED this 17th day of April, 1989.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.