



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

AND IN THE MATTER OF

An appeal against the refusal to issue permission for the construction of a boathouse on part of Lot VI in Concession VIII in the Township of Georgina in the Regional Municipality of York.

B E T W E E N :

M.T. SIENIECKI

Appellant

- and -

SOUTH LAKE SIMCOE
CONSERVATION AUTHORITY

Respondent

The appellant, in person.
K.C. Hill, for the respondent.

The appellant appealed to the Minister of Natural Resources for the refusal of the respondent to issue permission to construct a boathouse on part of Lot VI in Concession VIII in the Township of Georgina. By Ontario Regulation 364/84 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 October 1, 1984.

At that time the respondent was unable to produce a copy of the plan attached to the application. After hearing the evidence and submissions of the parties, the tribunal reserved its decision leaving it open to the appellant to obtain and file a copy of his plan, of which he indicated he still retained the linen or master copy. The tribunal has not received any plans or communication from the appellant. The respondent has located the copies attached to the application and provided the tribunal with a copy thereof.

From the submissions, the only issue separating the parties was the failure of the appellant to sign an agreement of indemnification and restriction of use of the proposed boathouse by

agreeing that it would not be used for residential purposes. The position of the appellant who is an electrical engineer, was that he would "look stupid" in the eyes of subsequent owners of the lands if he so restricted the use of the lands.

The position of the respondent was that its policy was to issue permission for boathouses on the shore of Lake Simcoe on which the subject lands are situate provided such an agreement were executed. The concerns relate to ice damage which was said to be significant in the area in question and the risk to persons in the event of a regional storm in living, particularly at night, in a building that could be undermined in such a storm.

The appellant failed to bring any evidence or establish through the witness for the respondent that other landowners on the shore of Lake Simcoe had been granted permission in similar circumstances without entering into such an agreement. The concern regarding the potential use of the second storey of the boathouse was not unreasonable. The plan and the evidence given at the hearing indicated there would be full windows in the wall fronting the lake and a window in each side. The appellant when questioned regarding a septic system indicated that a holding tank would be the appropriate device, which is some evidence that human habitation had not been completely excluded in the intention of the appellant. Further the plan shows a balcony and railing on the lake side which are inconsistent with a use other than human habitation. The tribunal cannot conclude that the concerns of the respondent regarding such use were unfounded, notwithstanding the appellant's evidence that he could not foresee such use.

In contrast with the policy of the respondent, the appellant failed to bring to the tribunal any legal or scientific, i.e. engineering or flood plain management, principle that illustrates that the requirement of the respondent was unfounded or unreasonable. He criticized the program of the respondent as being bureaucratic or worse but failed to show the appreciation of the problems related to control of flooding that one would have thought an unbiased engineer would have recognized. The tribunal cannot

accept such an approach as creating a ground for an exception to the policy of the respondent.

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

AND IT IS FURTHER ORDERED that no costs shall be payable by either party to the appeal.

DATED this 19th day of December, 1984.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.