



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 to place fill and erect a structure on part of Lot 23 in Concession V in the Township of Georgina in the Regional Municipality of York.

B E T W E E N :

ROBERT RENNIE

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 from the refusal of the respondent to issue permission to construct a new structure and install a septic system on part of Lot 23 in Concession V in the Township of Georgina. 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 December 6, 1983.

The subject lands are what might be called an elliptical parcel of land lying between a tributary of the Pefferlaw Brook and Brock Street or as it appears on some of the plans, Pefferlaw Road, in the southerly part of the community of Pefferlaw and containing .61 acres. The appellant acquired the subject lands in 1974 at a price of \$500 from a friend. While the appellant lived in Pefferlaw for many years, after the purchase he moved to Oshawa and acquired a residence in Oshawa. His objective with respect to the subject lands is to acquire a building permit in order that he may sell the

subject lands to pay part of his mortgage on his Oshawa residence.

Although the appellant admitted that he did not understand the meaning of the phrase "regional storm" his position was that he felt the flood plain mapping was an inaccurate calculation of the regional storm. Secondly he referred to two other situations where residences had been constructed at what he considered to be lower elevations than the elevation of the subject lands. The position of the respondent was that the application was premature in that it did not define the nature of the structure that would be constructed and assuming that the proposed structure was a residence it would be subject to the considerations relating to damage to property, loss of life and effect on other properties resulting from the construction of such a building in the flood plain.

The engineering firm of Marshall, Macklin, Monaghan Limited has prepared flood plain mapping of the area. The elevation of the regional flood according to this mapping is from 229.5 to 228.4 metres. The study indicates that the velocity of such flood would be 6.9 feet per second.

The point of the appellant regarding inaccuracy of the flood plain mapping related to the existence of a dam downstream from the subject lands and the view of the appellant that by reason of this dam the floodwaters of the regional storm would not inundate the subject lands as they presently are some five feet above the elevation of the stream. He further stated that he was in the vicinity on the occasion of Hurricane Hazel and although there were high winds which blew down trees and tore off roofs the subject lands were not flooded. The evidence of the respondent was that Hurricane Hazel, while it passed over the subject lands, was centred on the Humber watershed and the rainfall in the area of the subject lands on that occasion was not equivalent to the rainfalls of a regional storm.

The tribunal cannot conclude from the foregoing evidence that there is an error in the flood plain mapping and the appeal will be dealt with on the basis that the flood plain mapping established by Marshall, Macklin, Monaghan Limited is accurate.

The appellant frankly admitted that he did not wish to construct a structure on the subject lands for his own purpose and that his sole objective in applying for permission was to obtain a building permit in order that he might sell the subject lands or convince the respondent that it should acquire the subject lands as part of its program. The only relevant aspect of this approach for the purposes of the appeal relates to the question of the nature of the structure that should be considered in an application for permission. Subsection 6(1) of Regulation 179 of Revised Regulations of Ontario, 1980 reads,

6.--(1) A signed application for permission to construct a building or structure shall be filed with the Authority and shall include,

- (a) four copies of a plan of the property showing the proposed location of the building or structure, its elevation and the proposed final grade plan;
- (b) four copies of a complete description of the type of building or structure to be constructed, including drainage details;
- (c) four copies of a statement of the dates between which the construction will be carried out; and
- (d) four copies of a statement of the proposed use of the building or structure following completion of the construction.

A similar provision is contained in subsection 2 in respect of applications to place fill. The only material that was filed with the application was a copy of the survey showing the boundaries of the property and an area in the centre shown as "possible building area". There were no plans of the elevation of the proposed building under clause (a) nor was there any material to comply with clause (b). The evidence indicated that the only type of structure that the appellant had considered was a residential building consisting of three bedrooms but technically his application was not so framed. While his application referred to permission to place a septic tank he had not consulted with the health authorities to determine whether the site was suitable for the installation of a septic tank or the amount of fill that would

be required to make a septic tank operable in the event the site was otherwise acceptable.

In all fairness to the appellant, but without comment on the particular application, it may well be that the subject lands could provide a site for a structure other than a residential building. One qualification respecting velocity will be mentioned later. However, an application on the broad basis of the present application is completely impossible for a conservation authority to deal with and particularly so when it is related to an objective of merely disposing of the lands and having a building permit to justify a sale. It is apparent from the section quoted above that an application to a conservation authority requires the material mentioned in the section in order that the considerations relevant to flood plain management may be made. Any application can only be related to the relevant considerations if the nature and the detail of the proposed structure is available. It is not possible, let alone reasonable, for a conservation authority to be expected to award the type of permission that was requested by the application. One might say that on purely technical legal grounds as contrasted with matters of flood plain management the respondent was justified in rejecting the application.

Similarly, this tribunal is in the position that there is no specific proposal before it to review. Even assuming that the proposed structure is a residence it must be remembered at the outset that a residence is the least desirable type of construction to be placed in a flood plain. Apart from the risk of damage to the property itself which applies to other structures as well, there are the risks to the inhabitants particularly the young, the old, the ill and the infirm, who may not be capable of dealing with a flood situation. The evidence indicates that in a regional flood there may be four or five feet of floodwater around the proposed building and that it would not be possible for an occupant to escape from the building. Frequently floods peak at night and the history has been that occupants panic and attempt to escape through floodwaters which they are incapable of crossing. Accordingly, matters of the

protection of the life of the occupants as well as persons who might attempt to rescue the occupants are serious considerations.

The matter of the effect on flooding of the residence is significant in this matter. The flood plain is quite narrow and the placing of a residence on the subject lands would have the effect of acting as a partial dam and cause additional upstream flooding and might affect downstream properties as well. Accordingly, the matter of the effect of the proposed residence on flooding is a proper consideration and provides an additional grounds for rejection of the application.

A third matter that is apparent to this tribunal for consideration is the velocity of the regional flood flows. The evidence indicates that the velocity would be 6.9 feet per second. Although there was no engineering evidence in this case, the tribunal is aware from other appeals that a velocity of this extent is a very serious velocity with serious erosive capabilities. The risk of damage to a structure would appear to be greater than the average building could sustain and if permission for any structure whether it be a residence or otherwise is to be considered it would be necessary for special consideration to be given to the matter of the velocity of the regional flood.

For the foregoing reasons the appeal will be dismissed.

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

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

DATED this 4th day of January, 1984.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.