



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

G.H. Ferguson, Q.C.)
Mining and Lands Commissioner) Tuesday, the 28th day of
April, 1987.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to place fill on part of Lot 10 in Concession XI in the Township of Hungerford in the County of Hastings.

B E T W E E N :

RAY CASSIDY

Appellant

- and -

MOIRA RIVER CONSERVATION
AUTHORITY

Respondent

The appellant, in person.
W. Fairbrother, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to place fill on part of Lot 10 in Concession XI in the Township of Hungerford in the County of Hastings. 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 Belleville on April 3, 1987.

The appellant, according to his evidence, owns part of Lot 10 and part of Lot 9 in Concession XI in the Township of Hungerford. The part of Lot 10 in issue lies on the west side of the Moira River. Apparently the appellant only owns part of the northeast quarter of Lot 10. He has obtained three severances and sold three parcels along the west bank of the river. A road known as the French Settlement Road runs along the west bank of the Moira River. The three parcels front on this road and each have approximately 150 feet of frontage and an area of one acre with an approximate depth of 300 feet. The subject lands lie to the south of the three parcels and measure approximately 300 feet

by 300 feet. At the south side of the subject lands a culvert through the French Settlement Road permits flood waters to flow in a westerly direction. In the spring much of the subject lands are covered with such water and the water also floods to the rear of the severed parts with a result that debris and other accumulations are carried forward onto the subject lands. To the west of the subject lands there is an area of tree growth and further to the west there is farm land which has been laid out in a number of fields.

The proposal of the appellant was to remove the stones which presently form a stone fence on his farm and place them in the northerly side of the subject lands raising the elevation of the northerly part of the subject lands to the same elevation as the three parcels that have been severed. The appellant had made no previous calculations of the volume of the stones but at the hearing concluded that there was approximately 600 cubic yards of such material. He had made no attempt to find a purchaser of these stones and thought that the best way of disposing of the stone in order that the fields could be made larger and more easily worked in farming operations was to place the stones on the north side of the subject lands thereby preventing the spring floods from covering the greater part of the subject lands.

The evidence indicated that the subject lands are a low marshy area covered with bulrushes, sedge grass and shrubs. The appellant did not propose to completely fill the subject lands and would leave an area along the south and east side of the subject lands in their present condition.

The appellant brought no scientific advice to the tribunal in support of his application. His position was that he could not understand that the placing of the stones would affect the spring flooding that he has observed over the years.

The evidence on behalf of the respondent was that the subject lands are part of the flood plain of the Moira River as shown on flood plain mapping, a copy of which was filed as Exhibit 1. The elevation of the regional flood of a one in one hundred year storm which is the regional storm in the area under

the jurisdiction of the respondent is 149.4 metres. The elevation of the subject lands is 147.3 metres indicating a flood depth of 2.1 metres of flooding or approximately seven feet of flooding in the event of a regional storm. The evidence of the respondent also indicated that there was an island downstream from the subject lands which would have an effect in the event of ice jams in a spring flood, which matters were not taken into consideration in determining the regional flood elevation. Accordingly, the risk of flooding could be greater than the calculated elevation if the flood were accompanied with ice jamming. The evidence also indicates that the elevation of the French Settlement Road is lower than the elevation of the regional storm and would be covered with flood waters in such an event.

The evidence of the respondent further indicated that its policy was to refuse permission where the application did not fall within the guidelines of the respondent, a copy of which were filed as Exhibit 3. Section 3 of the guidelines set out a number of exceptions which will be given consideration and the evidence was that the policy provisions did not extend to the type of filling proposed by the appellant. It was further pointed out that even if the purpose fell within one of the exceptions, there were qualifications of the exceptions contained in section 2 of the guidelines which restrict the amount of infilling to areas where the depth of flooding in the regional storm did not exceed one metre. The depth of flooding in a regional storm in respect of the subject lands being in excess of two metres the application was refused. The evidence of the respondent was that since its establishment of its policies these principles had been applied and had been applied uniformly. The appellant brought no evidence to meet this evidence of the respondent and accordingly the tribunal can only find that the respondent applied its policies uniformly.

The serious issue in the light of the evidence of the respondent was the insertion of 600 cubic yards of fill in a flood plain. This amount was considered to be serious by the

engineer of the respondent and there being no evidence to the contrary the tribunal cannot question this evidence or make any finding inconsistent therewith. The flood concern arising from such an insertion of fill is the loss of storage capacity and the consequential additional flooding of other lands as a result of that loss of storage capacity. On the evidence the tribunal can only find that the application did not fall within the policies of the respondent, both express or implied, there being no evidence of applications in which permission was granted in circumstances similar to the existing application. There was no evidence that the appellant had been refused permission in circumstances in which other applicants had been granted permission and the decision appearing to be made in accordance with the recognized principles of flood plain management there would appear to be no grounds on which this tribunal should reverse the decision of the respondent.

There was no evidence of overriding federal, provincial or municipal concern on which an exception could be based and the treatment of the application by the respondent being in accordance with its policies and in accordance with accepted principles of flood plain management the tribunal has no alternative but to dismiss the appeal.

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

SIGNED this 28th day of April, 1987.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.