



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

G.H. Ferguson, Q.C. ) Friday, the 16th day of  
Mining and Lands Commissioner ) January, 1987.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to erect a new building and install a septic system on part of Lot 12 in Concession VI in the Township of Hungerford in the County of Hastings.

B E T W E E N :

DIANE WHITE

(amended - November 19, 1986)

Appellant

- and -

MOIRA RIVER CONSERVATION  
AUTHORITY

Respondent

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

An appeal was brought on behalf of the appellant to the Minister of Natural Resources from the refusal of the respondent to grant permission to place fill and construct a dwelling and a septic tank on the subject lands. By Ontario Regulation 364/82 the power and duty of hearing and determining such appeals were assigned to the Mining and Lands Commissioner. The hearing was heard in Belleville on November 19, 1986.

The subject lands are Part 10 on Reference Plan HSR-193 and a right-of-way over Part 23 on that plan. Part 10 lies on the westerly shore of the east branch of the Moira River. Stoco Lake outlets at its southeasterly and southwesterly corners into channels which converge approximately two miles to the south of the lake creating an area known as Sugar Island. The east channel is quite sinuous and in the area of the subject lands there is a very pronounced oxbow. In fact there is a double oxbow with the channel running southerly, then northerly past the area where it begins to run southerly and after making a sharp turn continuing to flow in a southwesterly direction. The .

subject lands are situate in the easterly tract of land within the oxbows.

Although no proper plans were produced to the tribunal the evidence indicates that the subject lands have a frontage of approximately 146 feet on the river, a depth of approximately 400 feet and an area of approximately one acre. They were acquired by the husband of the appellant in 1970 and apart from a small cabin that was erected shortly after purchase and which has subsequently fallen into disuse the subject lands are in a state of nature. Some clearing had been done at one time but the natural growth has replaced this clearing.

The application to the respondent was made to comply with an offer to purchase the subject lands which was conditional on the issue of a building permit. The application was very brief and consisted merely of an outline of a proposed dwelling and septic tank. There were no plans of the building or the amount of fill or the depth to which fill would be placed on the subject lands. The offer has lapsed but the appellant feels that a further offer could be obtained if a building permit were available. Not all of the parts in the reference plan have been built on and many of those that have been built upon are used for permanent residence. The Township by-laws were said to restrict occupation to seasonal residences. The general understanding was that the purchaser would be unable to build a dwelling capable of full-time occupancy.

The flood plain of the Moira River has been mapped in respect of the regional flood which in the area is the one in one hundred year flood, the minimum standard of regional floods applicable in Ontario. The subject lands are subject to .8 metres or thirty-two inches approximately of flooding in the event of a regional storm. The area is serviced by a private road presumably over Part 23 on the reference plan and the evidence indicates that this road as constructed would be subject to approximately one metre of flooding in a regional storm. The evidence indicates that in 1981 there was severe flooding in the area by a storm which did not achieve the levels of a regional

storm and that the access road was undoubtedly flooded on that occasion.

The evidence for the respondent indicates that the area surrounding the subject lands has been recognized as an area requiring remedial works and has been given a fourth priority out of seventeen such areas. The type of remedial work has not been investigated and no decision as to the nature or the location of such work has been made to date.

The evidence of the respondent further indicated that the area in question is very prone to flooding from ice jamming by reason of the sinuosities of the river and the local temperatures in winter conditions. The determination of the regional storm elevations did not take such matters into account and the significance is that in the rare event of both flood hazards occurring on the same occasion the flooding would be deeper than forecast by the existing mapping. Further, the result of such ice jamming in floods of less than a regional flood would result in greater flooding than would otherwise occur from such floods.

The policy of the respondent in respect of construction in the flood plain is more flexible than the policy as is understood by the tribunal in other jurisdictions having the one in one hundred year flood standard. Under this policy the respondent permits infilling in the flood plain where the floodwaters do not exceed one metre in depth provided certain other conditions can be met. Perhaps the most significant of these conditions is the requirement that the intrusion does not create a constriction in the flood plain which would create a greater hazard for the subject lands and other properties in the flood plain. More particularly, as is the case in other areas, the respondent requires that any residential building or other building be provided with appropriate access in the event of a regional storm. As indicated above the subject lands are now accessible only over a road that is some one kilometre in length in the regional flood plain and would be subject to approximately one metre of flooding in the event of a regional flood.

Accordingly the proposed application did not meet this requirement of the exception to the general prohibition contained in the regulation of the respondent.

The appellant suggested in submissions but without proof that the Township was considering raising the road in order that it might provide access. Such a project would require the approval of the respondent and bears with it a serious consideration of the issue of constriction in the flood plain and the subsequent implications respecting backwater effects.

The respondent submitted that the application was dealt with in accordance with its policy and that the applicant had not been deprived of any policy which, since the flood plain mapping, had been available to any other applicant. There was no evidence to dispute this position and accordingly this tribunal in accordance with its normal practice can see no reason for overturning the decision of the respondent.

There was a further argument submitted on behalf of the respondent, namely, that the application was premature. As indicated above the application was premature in the sense that access might in the future be provided. Secondly, the application is premature in the sense that at some time in the future, without any suggestion as to when such might occur, if it were to occur at all, there may be remedial works which would have the effect of removing the subject lands and the access thereto from the flood plain of the river during a regional flood with the result that it would not be necessary to obtain permission or provide flood-proofing to the proposed building which will undoubtedly result in additional cost of construction of the building and the grading and landscaping of the land surrounding the building.

A further aspect was that the applicant had no intention of constructing a building on the subject lands and was applying for the permit solely for the purpose of being able to sell the subject lands. There is a technical question as to whether or not such permission is assignable. Perhaps more serious is the

fact that the application in itself contained no specific plans or proposals of flood-proofing which can be assessed.

For the above reasons this tribunal is of the opinion that the appeal should be dismissed.

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 16th day of January, 1987.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.