



The Mining and Lands Commissioner
Le Commissaire aux mines et aux terres

G.H. Ferguson, Q.C.)
Mining and Lands Commissioner)

Thursday, the 10th day
of May, 1990.

IN THE MATTER OF THE CONSERVATION AUTHORITIES ACT

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a single family dwelling and install a septic system on Lot 9 in Concession VI in the Township of Nottawasaga in the County of Simcoe.

B E T W E E N :

AUDREY NELSON and WILLARD NELSON
Appellants

- and -

NOTTAWASAGA VALLEY CONSERVATION
AUTHORITY
Respondent

A. Scott, agent for the appellants.
G.W. Luhowy, for the respondent.

The appellants appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to construct a single family dwelling and install a septic system on part of Lot 9 in Concession VI in the Township of Nottawasaga in the County of Simcoe. 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 April 5, 1990.

The appellants did not appear in the Court Room of the tribunal and the agent was unable to give any evidence respecting the facts associated with the subject lands and the ownership of the appellants.

Ms. Scott submitted a statement in writing that was filed as Exhibit 10. The statement makes three points. The first point is that the appellants are concerned that the subject lands are not subject to the degree of flooding shown on the flood mapping for the area. Secondly, it was submitted in the statement, although no evidence was given that new homes and subdivisions were being built in the outskirts of the villages of Creemore and Avening in circumstances that are presently

subject to flooding and it was submitted that these areas are more likely to flood and have a greater history of flooding than the subject lands. Thirdly, it was submitted that the refusal to issue permission would create a financial hardship on the appellants but no evidence to deal with this point was submitted.

Evidence was produced on behalf of the respondent. The floodplain mapping indicates that the subject lands are subject to 1.15 metres or 3.77 feet of flooding in a regional storm. In addition studies by the consultants for the respondent have concluded that the area would be subject to serious flows in the event of a regional storm with flows of 375 cubic metres per second. In addition in such circumstances there would be a high velocity estimated at 2.7 metres per second or 8.98 feet per second. The evidence also indicated that the subject lands, having an elevation of 274 metres is situate both within the floodplain of the regional storm and the 100 year storm. The latter fact indicates that the subject lands are situate within the floodway as contrasted with the floodfringe of the floodplain and the construction of any building in the floodway, particularly residential building is contrary to the express policies of the Province of Ontario. The tribunal accepts this evidence rather than the doubt of the appellants firstly noted in the statement filed as Exhibit 10.

With reference to the policies of the respondent, its witness indicated that the respondent applies a "3 by 3" rule. Consideration is given to construction in the floodplain provided the depth of flooding in the regional storm does not exceed three feet and the velocities of the flows of a regional flood do not exceed three feet per second. In this case the proposal does not fall within the policy of the respondent as the depth of flooding is 1.77 feet above the elevation permitted by the policy and the velocity is approximately three times the acceptable velocity.

The evidence of the respondent also indicated that the respondent was concerned in connection with the application by reason of the potential of the area to be subject to flooding from ice jams in the spring. A further element of concern was

the loss of floodplain storage created by the construction of the building and the placing of the fill associated therewith.

No evidence was produced to show that the construction in the Creemore area did not fall within the policy of the respondent. As mentioned above there was no evidence before the tribunal regarding any permissions that are inconsistent with the refusal in the present case. Accordingly this tribunal can only conclude that the refusal by the respondent was in accordance with its policies and that the appellants were not denied permission in circumstances in which other applicants have been granted permission. In addition the proposed building is located in the floodway and the issue of permission in such circumstances is contrary to the policies of the Province of Ontario.

With reference to the point respecting hardship this tribunal has never recognized hardship as a grounds for the placing of investment in a floodplain. The construction of a building in the circumstances would only add to the capital placed at risk by the appellants and the prevention of such construction is a recognized principle of floodplain management, particularly where experience shows that in the event of severe floods the public purse is frequently called upon to assist the landowner in respect of the losses. However there are no programs whereby landowners who have unsuspectingly or otherwise acquired lands in the floodplain can recover the amounts paid to purchase vacant land.

As none of the reasons put forward on behalf of the appellants were either proved or fall within principles of floodplain management this 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 any of the parties to the matter.

SIGNED this 10th day of May, 1990.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.