



# The Mining and Lands Commissioner

## In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C. )  
Mining and Lands Commissioner ) Wednesday, the 27th day of  
July, 1988.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct a two-storey log house and install a septic system on part of the South Half of Lot 7 in Concession IV in the Township of Nottawasaga in the County of Simcoe.

B E T W E E N :

BRUCE TIDD and RICKEY TIDD

Appellants

- and -

NOTTAWASAGA VALLEY CONSERVATION  
AUTHORITY

Respondent

B. Greasley, 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 grant permission for the erection of a two-story log house on part of the south half of Lot 7 in Concession IV in the Township of Nottawasaga in the County of Simcoe more particularly known as Part 8, Plan 51R-11051. 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 Toronto on May 5, 1988.

Although the title document was not produced in evidence the appellant or one of the appellants is the owner of Part 8, Plan 51R-11051. Part 8 has a frontage of 106.23 feet on a private road that is situate within part of the township half lot. There are three permanent residences and three summer cottages on the half lot and on the half lot to the south that are built along the Mad River. Part 8 extends for approximately

1,000 feet to the west of the river and the Part 9 to the south which is owned by the father of the appellants has a similar, if not a greater, depth. A summer cottage with an attached kitchen is situate on the part of Part 8 lying easterly of the river.

The flood plain mapping of the part of the Mad River in question has not been completed and no schedules have been added to the regulation of the respondent in respect of the placing of fill on the subject lands. However flood plain mapping has been done in the Village of Creemore which lies a short distance to the north. The mapping is continuing in respect of the subject property but it will be the end of the year before such mapping is available. With reference to the flood plain elevation of the subject lands, S.N. Armstrong, the resources planner and formerly the enforcement officer of the respondent stated in evidence,

Through technical review and assessing the gradients of the flow downstream we presumed, actually across the subject property, the level of flooding would be approximately 3.5 feet under that regional storm condition. The elevations flatten out quite a bit and so the flood plain becomes a bit broader than it does as it leaves the studied limit area. There is quite a high elevation to the west of the subject properties and flows -- run-off flows coming from this higher part goes right down into this river area -- so indeed the flows would probably be approximately the same, if not a little bit greater at the study limit. So the level of flooding at Mr. Tidd's property would be approximately 829 feet based on the gradient of the flow moving downstream.

With reference to the policy of the respondent the witness indicated that the respondent has adopted a two-zone concept and in applying such a concept she described the policy as follows:

For many years technical review policy of the Authority has been that any development that would be subject to greater than three feet of flooding or velocities greater than three feet per second would be refused by the Executive.

With reference to the elevations of the subject lands, as indicated in the first quotation above, the staff and the executive committee of the respondent presumed them to be more than three feet lower than the regional flood. The witness

attended at the property the week prior to the hearing and gave evidence that although elevations at the northern side of the property and near the river were in the vicinity of 825 feet, the elevations at the building site, taken at two locations are 826.3 and 826.32 feet. Although the witness indicated that this provided for a flooding of in excess of three feet in a regional flood the tribunal is satisfied that the witness has not made a proper mathematical calculation and the tribunal is satisfied on the evidence available before it and not available until one week previous to that hearing that the application of the appellants fell within the policy of the respondent.

Although this tribunal and the Province of Ontario has no policy under which the construction of residential buildings in a flood way having approximately three feet of flooding is permitted, such appears to be the policy of the respondent. It is further apparent that the respondent failed to apply its policy in respect of the present application by reason of lack of knowledge of the elevation of the building site and accordingly the tribunal is of the opinion that the appeal should be allowed.

The evidence filed on behalf of the respondent indicated that in dealing with the floodproofing of exceptions the respondent does not concern itself with regard to access from or to buildings constructed in the flood plain. However this has never been the policy of this tribunal. The tribunal is concerned with the fact that there would be water of a depth in excess of two and one-half feet around the building in the event of a regional flood. The tribunal is satisfied that the private road at the front of the cottage is significantly higher than the proposed building site and that an appropriate driveway, with adequate culverts could be constructed to provide access to a location higher than the regional flood elevation. Unfortunately the witness for the respondent did not take an elevation of this roadway and the position of the tribunal is that the requirements of the respondent appear to be complied with and although the

respondent does not have such a requirement for access, this tribunal is of the opinion that such access should be provided.

There exists at present on the subject lands a cottage measuring twenty-eight feet by twenty feet and attached thereto there is a kitchen measuring approximately fourteen feet by fourteen feet. Charles Tidd who gave evidence on behalf of the appellants indicated that this building could be removed and that the existing cottage would be modified so that it would be used as a shed. In the interest of storage capacity and the reduction of risk to persons, the tribunal is of the opinion that it should be a condition of the permission that the kitchen be removed and that steps be taken to prevent the existing cottage being used for residential purposes.

1. THIS TRIBUNAL ORDERS that the appeal in this matter is allowed and subject to the following conditions permission is hereby granted to construct a two-storey log residence on the easterly part of Part 8, Plan 51R-11051 being part of the south half of Lot 7 in Concession IV in the Township of Nottawasaga in the County of Simcoe:

1. The foundation of the building shall be floodproofed according to wet floodproofing principles.
2. The main floor of the building shall be installed at an elevation of 830 feet above sea level or higher and no electrical or other services shall be installed below that elevation.
3. A driveway shall be constructed to the existing road with an elevation of at least 829 feet above sea level and containing culverts which will pass the flows of a regional flood.
4. Prior to the commencement of construction the appellants shall file with the respondent as security for the performance of these conditions a bond consisting of either a corporate performance bond or such provincial or other bonds with the necessary powers of attorney as are acceptable to the respondent in the amount of \$10,000.
5. Within three months after the occupation of the residence constructed pursuant to this permission, the appellants shall remove the frame kitchen measuring fourteen feet by fourteen feet from Part 8, Plan 51R-11051 and shall remove from the remainder of the existing cottage all facilities

for the use thereof as a summer residence or as a permanent residence.

6. This permission expires with the 30th day of June, 1989.
7. In the event it is established prior to the commencement of construction that the elevation of the regional flood at the proposed building site is higher than 829.3 feet, this permission is void.

2. THIS TRIBUNAL ORDERS that no costs shall be payable by any of the parties to this matter.

SIGNED this 27th day of July, 1988.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.