

R. Yurkow)
Deputy Mining and Lands Commissioner)

Tuesday, the 3rd day
of March, 1992.

IN THE MATTER OF THE CONSERVATION AUTHORITIES ACT

AND IN THE MATTER OF

An appeal to the Minister under section 28(5) of the Conservation
Authorities Act against the refusal to grant permission to tear down
an old frame boathouse and construct a single family dwelling at
431 Cameron Street, in the City of Peterborough.

B E T W E E N :

RICHARD HIRST

Appellant

- and -

OTONABEE REGION CONSERVATION AUTHORITY

Respondent

DECISION

Linda L. Willcox Whetung acting on behalf of the appellant, Richard Hirst.
G.W. Coros acting on behalf of the respondent, The Otonabee Region Conservation
Authority.

Hearing Based on Written Submissions

Both parties have agreed to have the appeal determined on the basis of
written submissions.

Background

The appellant, Richard Hirst (Hirst), owned land in the City of Peterborough with a frame boat house on it. In 1986 he applied to the Otonabee Region Conservation Authority (ORCA) for a permit to tear down the boat house and to build a house (residence). The permit was granted and the house built.

At the time of building the house, Hirst, apparently, had in mind to sever a portion off the land and to build a second house on the severed part. He claims that he was advised by the City planning staff to complete the first building before applying for the second.

Over the next few years he had discussions with, both, the staff from the City and from ORCA. He was in correspondence with ORCA in 1989 about the proposal to build the second house. The extent of his discussions with the City are not clear but, also, are not relevant to this case.

It was not until May 15, 1991 that Hirst sent in a formal application for a permit to construct a building on a severed part. (His application to ORCA in 1986 did not mention a proposal for a second building.)

The ORCA refused to grant the second permit based on flood plain mapping that had been revised in January, 1990. It, the ORCA, appears to have concluded that safe access could not be provided based on the new standards. Hirst appealed.

Appellant's Position

The basis of the appeal is that the land is on "an existing residential street in a well developed neighbourhood". It is argued that it is unfair to apply new, more stringent rules that were formulated while the proposal was being actively discussed even though these rules were formulated before the formal application was made.

Respondent's Position

ORCA argues that it is reasonable to impose more stringent access standards in an established neighbourhood. The extension of this argument is that

well developed areas should have the benefit of improved standards. It argues that the first permit was granted on the basis of the standards that pertained at that time: the second permit was refused on the basis of the standards that pertained at the time of the second application.

ORCA's Water Management Policies state that a structure may be permitted if there is a safe access. Since ORCA does not consider there is safe access in this case, it is argued, ORCA does not have the discretion to approve the permit.

Conclusions

I accept that it is reasonable to impose more stringent standards in established areas as the standards are developed. The object is to have greater safety as the need is perceived. Because some existing buildings are subject to risk is not a reason to allow more development that would be subject to risk.

The situation is quite comparable to one where a developed area has a zoning change: existing buildings or uses become legal non-conforming buildings or uses while similar new buildings or uses are prohibited.

On this argument, I see no reason to overturn the authority's decision.

The second point of the appeal is an equitable one: is it fair to change the rules while the game is being played?

The evidence is that Hirst had a telephone conversation with ORCA staff on July 14, 1989 about his second proposal. A letter from Hirst (July 15, 1989) says that he "recently" spoke to City staff about a severance of a building lot to construct another home.

In August, 1989, there were discussions between Hirst and ORCA staff. In January, 1990, ORCA amended its flood plain mapping. During the spring of 1990, discussions between Hirst and ORCA staff continued. On May 25, 1991, Hirst submitted his formal application.

Hirst was, unfortunately, caught in a change. However, I see nothing in the conduct of ORCA staff that was unfair to him or that was prejudicial to his interests.

Accordingly, the appeal is dismissed.

SIGNED this 3rd day of March, 1992.

Original signed by R. Yurkow

R. Yurkow
DEPUTY MINING AND LANDS COMMISSIONER