



# The Mining and Lands Commissioner

## In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C. ) Monday, the 17th day of  
Mining and Lands Commissioner ) November, 1986.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to construct an addition onto an existing structure on part of Lots 20 and 21 in Concession XVI in the Township of Otonabee.

B E T W E E N:

MELVIN COOKE  
- and - Appellant

THE OTONABEE REGION  
CONSERVATION AUTHORITY Respondent

The appellant, in person.  
G.W. Coros, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to construct an addition to an existing structure on part of Lot 20 in Concession XVI in the Township of Otonabee. 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 Peterborough on the 29th day of October, 1986.

The subject lands consist of a rectangular parcel of land with a frontage of 120 feet on the Otonabee River and a depth of 185 feet. The Otonabee River flows in a generally southerly direction in the area of the subject lands but flows in a bow toward the west at the precise location. A channel to the east of the main part of the river flows at a location easterly of the subject lands and creates what is in effect an island. In addition to the subject lands, there are approximately twenty-five other summer cottages or full-time residences on this island. The area is known as Driscoll's Cottages.

The island has not been subdivided under the Planning Act and the title of the appellant consists of a seven year lease

obtained from the owner of the island in April, 1986 under which he pays approximately \$450 a year, being \$200 rent and taxes of approximately \$220. The appellant purchased a cottage measuring thirteen feet six inches by thirty-one feet with an eight by eight foot extension at the rear from the previous tenant. The main floor of the building consists of a living room and kitchen. The extension contains a washroom and other utilities such as the water pump and water heater. A bedroom is situate on the second floor with access by a stairway from the first floor. The only access from the bedroom is the stairway or a small window. The ceilings are low. The appellant suffers from a back injury incurred several years ago and is unable to work, depending on two pensions.

The cottage is erected on piers. A plywood skirting has been installed around the piers. The proposal was to erect a one-storey extension measuring twenty-four feet by ten feet on the southerly or downstream side of the existing building, sixteen feet of which would be used for a bedroom and the remaining eight feet of which would be used for a proper bathroom. There is a 2,000 gallon holding tank which the appellant stated would be suitable for the addition.

The appellant brought no technical evidence to support his application and based his case on the failure of the respondent to advise him of methods by which adequate floodproofing of the proposed building could be achieved.

The evidence of the respondent indicated that although its regulation, i.e. Regulation 174 of the Revised Regulations of Ontario, 1980, established the regional storm as the Timmins storm, on the Trent Canal system the respondent administers the regulation on the basis of a one in one hundred year storm. The reason is the measure of control that might arise through the various structures on the canal. The significance is that administratively the respondent is applying a lower standard than its regulation establishes. The evidence of the respondent was that in a one in one hundred year flood with a flow of

approximately 17,336 cubic feet per second there would be in excess of four feet of flood waters over not only the subject lands but over the access right-of-way and the bridge crossing the channel on the northeasterly end of the island and providing the sole access thereto. Beyond the bridge there would be a similar depth of water.

The evidence further indicated that with such flooding, the river would completely overflow the island and the easterly channel would become part of the flooded river and would have a depth in excess of eight feet. The bridge is a narrow, one lane bridge with unstable railings.

The evidence of the respondent indicated that the island has a history of flooding. Exhibit 7 was a listing of the flooding events recorded at the Auburn Generating Station in Peterborough and considered applicable to the subject lands. It was established that a flow of 8,500 cubic feet per second would flood the island and in summation the table showed that the subject lands had been subject to flooding in forty-one of the seventy-three years between 1913 and 1985 and that the average duration of each flooding event was sixteen days. The table also shows that the 1928 flows were equivalent to the one in one hundred year flood and further that flows of 10,800 cubic feet per second have a return period of five years and occurred on thirteen occasions during the period.

Additional evidence of the flooding hazard of the island was contained in photographs showing other cottages in the area flooded in 1974, 1984, 1985 and 1986. This flooding was sufficiently high to enter the buildings shown in the photographs. The table of actual flows showed that the discharge during these periods was in the neighbourhood of one-half of the flow of the regional storm.

The evidence further indicated that the area is subject to increased depths of flooding as a result of ice conditions.

The evidence drew attention to the difficulty of access to the area in the event of floods. Reference was made to at

least two instances of difficulties in evacuation of occupants in the spring floods.

The evidence also contained a copy of the policy statement of the respondent which dealt with additions to residential structures as follows:

Additions of any type that increase possible flood damage, danger to life and limb or affect the flow of flood waters will not be permitted.

The evidence of the officer of the respondent was that this policy was applied without exception. The appellant on questioning from the Bench was unable to provide the tribunal with any evidence of the issue of permission inconsistent with such policy and the tribunal can only conclude that the policy of the respondent is in accordance with accepted flood plain management principles as applied by the respondent and consequently the appellant is not being deprived of any policy, expressed or implied, of the respondent under which other landowners in similar circumstances have been granted permission. Reference was also made to the Provincial policy as found in the pamphlet entitled "Flood Plain Criteria" and issued in September, 1982 which emphasizes the prevention of loss of life and the minimizing of property damage and social disruption.

In argument reference was made to the objects of a conservation authority which are found in section 20 of the Conservation Authorities Act as follows:

20. The objects of an authority are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.

Reference was also made to clause 21(j) which includes in the powers of a conservation authority the power,

- (j) to control the flow of surface waters in order to prevent floods or pollution or to reduce the adverse effects thereof;

It was submitted that the action of the respondent in refusing the permission was in accordance with the goals of the

respondent which are set out in the policy statement as follows:

To implement a program of flood plain management in order to prevent or minimize the hazard from flooding that would occur as a result of the Timmins Regional Storm or 1:100 year storm, whichever is greater.

The tribunal is not aware of any principle of flood plain management and the appellant brought no evidence to the tribunal that recommends the consideration of residential construction in areas that are subject to four feet of flooding in a regional storm. Some authorities permit additions but it is usual to require adequate access in the event of a regional storm. In this area, access in a regional storm, according to the evidence, was limited to helicopter flight and such flight is restricted where there are ice conditions which would injure pontoons of helicopters. Further it is apparent that access is a problem with respect to the subject lands not only in the event of regional storms but has occurred on several occasions in the recent past.

For the foregoing reasons the tribunal is satisfied that the decision of the respondent was proper and is in accordance with accepted principles of flood plain management. There is no evidence that the appellant was denied the application of any policy. The appellant having been dealt with in the same manner as any other landowner in similar circumstances 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 of the parties to the appeal.

SIGNED this 17th day of November, 1986.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.