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

NOTICE OF DECISION

pursuant to a hearing under subsection 28(5) of the Conservation Authorities Act, R.S.O. 1980, Chapter 85.

W. Dennis Tieman) Friday, the 31st day
Mining and Lands Commissioner) of January, 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 construct an addition to an existing cottage on Lot 39, Concession III, in the Township of South Gower, in the United Counties of Leeds and Grenville.

B E T W E E N :

GERALD HAYES and ELLEN HAYES

Appellants

- and -

RIDEAU VALLEY CONSERVATION AUTHORITY

Respondent

Gerald Hayes, in person for the Appellants.
H. Brodmann, Esq., Counsel for the Respondent.

This appeal was filed on the Minister of Natural Resources by the appellants, Mr. & Mrs. G.A. Hayes in a letter of appeal dated December 10, 1990.

The power and duty to hear and finally decide such appeals to the Minister is assigned to the Mining and Lands Commissioner by Ontario Regulation 364/82.

It is an appeal from a decision taken by the Executive Committee of the Rideau Valley Conservation Authority pursuant to a local hearing before that Committee held on November 8, 1990.

The original application submitted by the appellants to the Rideau Valley Conservation Authority was to construct a single storey addition measuring twenty by twenty-four feet to an existing dwelling. The construction of a garage measuring twenty-two by twenty feet was also included. Upon consent of both parties, it was agreed that this hearing would not include the proposed garage.

Findings

Having reviewed the pre-hearing submissions and considered the evidence and testimony of both parties at the hearing of this appeal, I have concluded that there is only one relevant issue in this matter. That is the issue of safe ingress and egress from the building site as set out in the published policies of the Rideau Valley Conservation Authority as approved by the full Authority in November, 1989.

Section 1:3:3 of that policy reads as follows:

Additions

The construction of additions to existing structures in the flood plain (involving an increase in the gross floor area of the structure, whether on one or more storeys) will be governed

by the following policies:

- (a) If the surface of the existing access route to the structure (including private lanes, shared private right-of-ways and public roads or highways) is, at its lowest point, more than 30 centimetres below regulatory flood level, additions will not be permitted. In such situations, it is the Authority's opinion that the public safety hazards are such that further development should not be permitted until such time as measures have been taken to provide improved access.
- (b) If the surface of the existing access route to the structure is, at its lowest point, between 1 and 30 centimetres below regulatory flood level, permission will be granted, provided that the enlargement in gross floor area will be less than 50% of the existing gross floor area.
- (c) If the existing access route to the structure is entirely above regulatory flood level, permission will be granted without limitations as to the size of the addition.
- (d) All building additions which qualify for the granting of permission under paragraphs b) and c) above shall be flood-proofed to the satisfaction of the Authority.

During the cross-examination of an expert witness for the Respondent who is also a senior official in the Rideau Valley Conservation Authority, and in answer to a question about the present ingress and egress to the existing building, Mr. Reid made the following statement:

It's a right-of-way and if its existing condition was above the 100 year flood level over its length from the County Road to your property, then the policies that apply to additions would result in a different decision, I believe. In other words, with

the enlargement as proposed, which I remember . . . if I remember right was approximately 40 percent of the existing living space and with the access being available, the Authority would have been in a position to approve. The Executive Committee too would be in a position to approve the application and still be in compliance with its own policy.

Conclusion

Based on the evidence given in this appeal to the Minister, it is the conclusion of the Tribunal that the only basis for the Executive Committee of the Board of the Rideau Valley Conservation Authority to reject this application was the question of safe ingress and egress to the existing building. It is unfortunate that neither the staff of the Conservation Authority nor the Executive Committee appear to have fully addressed this all important matter before or during the local hearing which was held pursuant to subsections 28(3) and 28(4) of the Conservation Authorities Act.

This appeal is allowed on the condition that the appellants meet the published policy requirements of the Rideau Valley Conservation Authority for safe and dry ingress and egress to a residential building.

THIS TRIBUNAL ORDERS that no costs should be payable by either party to the matter.

DATED this 31st day of January, 1992.

Original signed by W. Dennis Tieman

W. Dennis Tieman
MINING AND LANDS COMMISSIONER.