



The Mining and Lands Commissioner

In the matter of The CONSERVATION AUTHORITIES Act

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

AND IN THE MATTER OF

An appeal against the refusal to grant permission to place fill and construct a residence on Lot 58, Plan 718 in the Township of Rideau in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

HANS SNIPPE

Appellant

- and -

THE RIDEAU VALLEY CONSERVATION
AUTHORITY

Respondent

P.W. Augustine, for the appellant.
P.A. Webber, Q.C., for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission under Regulation 175 of the Revised Regulations of Ontario, 1980 for the placing of fill and the construction of a single family residence on Lot 58, Plan 718, in the Township of Rideau, in the Regional Municipality of Ottawa-Carleton. By Ontario Regulation 364/82 the power and duty of hearing and determining such appeals were assigned to the Mining and Lands Commissioner. The hearing was held in Ottawa on May 29, 1986.

The appeal was a second appeal in respect of the subject lands. In 1981 an appeal was heard in respect of a similar application involving 1,200 or 2,000 cubic yards of fill, depending upon the method of calculation of the amount of fill. The present application varies from the original application in that it was proposed to revise the amount of fill and erect retaining walls approximately five feet from the proposed residence to "floodproof" the proposed residence. The appellant

brought no expert evidence to the tribunal to establish the adequacy of his proposed floodproofing. He also proposed to reduce the setback from the front of the lot and has made an application since applying to the respondent for a reduced setback of 3.5 metres. In addition to this aspect being a variation of the application under appeal, it is not clear on the evidence that the appellant would be able to place a septic tank and tile bed, even using the new filter media bed method between the road and the proposed residence.

The tribunal will not repeat all of the evidence respecting the subject lands as it was outlined in the earlier decision. By way of summary it may be noted that the subject lands are one of the lots lying between Fairmile Drive and the Rideau River in the Fairmile Subdivision. The approach of the appellant was to compare some aspects of the subject lands with other lands in respect of which permission had been granted for the construction of residential premises. There was no attempt on behalf of the appellant to bring his application within any of the recognized exceptions to the general prohibition of the construction of new residential premises within the flood plains of regional storms. There was no attempt to bring the application within and there was no suggestion that the application could be made to comply with the incremental balance principle which requires the replacement of the lost flood storage at the same elevation within the same cross-section of the river.

The policy of the respondent in respect of the Fairmile Subdivision has been to prohibit new construction in the tier of lots bordering on the river but to allow, subject to floodproofing and provision of access in the regional storm, such new construction in the second tier.

The appellant compared his property with the Fischer property lying to the southwest of the subject lands. However, the evidence indicates that the elevation of the Fischer lands is higher than the elevation of the subject lands and is in the second tier of lots. From a practical point of view, it was pointed out that the Fischer property is in a bay-like area and

that the subject lands are in the main channel of a regional flood.

The thrust of the case on behalf of the appellant was that his property has access to the westerly leg of Fairmile Drive in the event of a regional storm and that if flooded, access should be available in such a flood. The appellant also referred to the Cook property which was in the second tier of lots and in respect of which permission has issued by the respondent. Some fill has been necessary to bring this property to an elevation which would permit access to the east leg of Fairmile Drive and the appellant's position was that the placing of fill on the subject lands was comparable to the permission granted in respect of the Cook property.

Reference was also made to the case of D'Aoust v. The Rideau Valley Conservation Authority dated November 22, 1985. Although the D'Aoust property was not in the Fairmile Subdivision it lay immediately to the north of the front tier of lots and could have been made accessible by the use of fill to the east leg of Fairmile Drive. The appellant attempted to distinguish this case on the grounds that this tribunal referred to the risks of constructing peninsulas into the flood plain and submitted that this aspect distinguishes that case from the present case.

The clear answer to the appellant's application is that it fails to comply with any recognized principle of flood plain management in respect of the construction of residential premises in a regional flood plain. The tribunal is not aware of and the appellant did not bring to the attention of the tribunal any recognized principle of flood plain management that would permit such construction. The tribunal is satisfied that the respondent has afforded to the appellant in dealing with his application the full benefit of any policy of the respondent in respect of flood plain management and that the subject application does not fall within such permitted uses either in the express or the implied policies of the respondent. The tribunal concurs with the

reasons adopted by the respondent in refusing the application and accordingly the appeal is dismissed.

1. THIS TRIBUNAL ORDERS that the appeal in this matter is dismissed.

2. THIS TRIBUNAL ORDERS that no costs shall be payable by either party to the appeal.

SIGNED this 17th day of June, 1986.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.