



The Mining and Lands Commissioner In the matter of The CONSERVATION AUTHORITIES Act

G.H. Ferguson, Q.C.) Friday, the 22nd day of
Mining and Lands Commissioner) November, 1985.

AND IN THE MATTER OF

An appeal against the refusal to issue permission to place fill and construct a permanent two storey single family residence on part of Lot 14, in the Broken Front Concession, in the Township of Rideau (formerly N. Gower), in the Regional Municipality of Ottawa-Carleton.

B E T W E E N :

PETER C. PIVKO and
SUSAN PIVKO

Appellants

- and -

THE RIDEAU VALLEY
CONSERVATION AUTHORITY

Respondent

B.L. Boyd, for the appellants.
P.A. Webber, Q.C., for the respondent.

The appellants appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to place fill and construct a permanent two-storey single family residence on part of Lot 14 in the Broken Front Concession in the Township of Rideau, formerly North Gower, in the Regional Municipality of Ottawa-Carleton. 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 Ottawa on the 17th day of September, 1985.

In 1974 the appellants acquired a five acre parcel on the west side of the Ottawa River between Kars and Manotick. Shortly after acquisition the appellants placed fill and erected a residence on the northerly part of the parcel. Currently the appellants are in the process of applying for permission to sever the southerly part of the parcel and also applied to the respondent

for permission to place fill to raise the building site and access thereto and construct a two-storey residence thereon.

Following a hearing the executive committee of the respondent refused the application and provided the appellants with eight written reasons each of which are founded on acceptable principles of flood plain management. Subsequent to the hearing the appellants engaged the consulting firm of A.J. Graham Engineering Consultants Limited to prepare a revised proposal respecting grading and whether it was proper, the revised proposal was placed before the tribunal. The proposal purported to be based on the incremental balance principle.

The elevation of the regional storm floodline based on the one in one hundred year storm is 286 feet and with the exception of the strip along the westerly side of the subject lands measuring approximately 20 feet at the north end, 60 feet in the centre and 70 feet on the south end, the entire parcel is below the regional storm floodline. Photographic evidence showed that in a one in five year storm in excess of fifty per cent of the subject property was covered with the floodwaters of the Rideau River. Also on March 29, 1976 in a one in twenty-five year event the photographic evidence indicated that on the day following the peak of the flows a very high proportion of the subject lands were covered with floodwaters.

The proposal of the appellants was to regrade the areas adjacent to the proposed building site and place the removed fill on the actual site. In order to comply with the understood zoning by-laws the proposed building site was placed 45 feet to the east of the west boundary of the subject lands placing at least ninety per cent of the building in the flood plain. Exhibit 22 was a cross-section through the centre of the proposed fill area showing a profile of the fill and the proposed residence. It indicates that the maximum length of the fill is 146 feet. This distance is relative to a total flood plain width of some 750 or 800 feet. Boyd calculated the effect on velocities of an insertion of such an amount of fill into the flood plain and concluded that the existing velocities were in the vicinity of .6 or .7 feet per second and

that the greatest increase in velocity that might be expected in the event of a regional storm would be .2 feet. These velocities do not indicate a significant erosive influence. However the appellants did not produce evidence showing the effect of such encroachment by all of the landowners on the Rideau River and as this tribunal has indicated before the fact that an appellant comes as one of the first applicants for permission does not place the appellant in the position where he should be given an advantage over other landowners. The tribunal is concerned that the insertion of a peninsula of fill into a flood plain to the extent of 146 feet cannot be considered insignificant.

Boyd also prepared a series of computations and cross-sections showing the changes in the quantities of fill or earth on the subject lands. The cross-sections are shown on Exhibit 20 and the calculations in Exhibit 21. As is indicated in the calculations the calculations are restricted to calculations at specific elevations and in each case there is a net decrease in the amount of fill and earth at each elevation.

Counsel for the respondent submitted that the proposal was not a proper application of the incremental balance principle. He submitted that the compensating storage should be provided on the opposite side of the river. While this is normally the situation, the tribunal is satisfied that the proposal does not fall within this concept for two additional reasons. Firstly, the principle is based on a single cross-section and having regard to the cross-section most important, namely, the cross-section through the centre of the proposed building, there are no compensating factors for the loss of storage and channel interference on this cross-section. The replacement of earth for the purpose of creating a peninsula from the lands adjacent to the proposed peninsula, which constitutes a interference with the flood channel, does not fall within the principle.

Secondly, the incremental balance principle carries with it a qualification that there should be no change in the channel

characteristics. The tribunal cannot accept that the proposal meets this second aspect of the principle.

Having regard to a further aspect of the matter, there was no evidence that indicated that the appellants were being deprived of any policy that had been exercised in favour of other landowners or that they were being dealt with in a manner other than landowners in similar circumstances are dealt with by the respondent. The tribunal is satisfied that the reasons given by the respondent fall within flood plain management principles and without reciting them at length they are adopted by this tribunal.

For the foregoing reasons the appeal will be dismissed.

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

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

SIGNED this 22nd day of November, 1985.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.