



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

AND IN THE MATTER OF

An appeal against the refusal to issue permission to place fill and erect a permanent residential dwelling on part of Lot 33 in the Broken Front Concession of the Township of Osgoode in The Regional Municipality of Ottawa-Carleton.

B E T W E E N :

E. E. Barry

Appellant

- and -

THE RIDEAU VALLEY
CONSERVATION AUTHORITY

Respondent

The appellant, in person.
P.A. Webber, Q.C., for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to place fill and erect a permanent residential dwelling on part of Lot 33 in the Broken Front Concession of the Township of Osgoode in The Regional Municipality of Ottawa-Carleton. By Ontario Regulation 364/82 the power and duty to hear and determine such appeals were assigned to the Mining and Lands Commissioner. The appeal was heard in Ottawa on Tuesday, July 19, 1983.

The subject lands are a parcel of land measuring approximately eighty feet by two hundred and ten feet, fronting on the west shore of the Rideau River and having Regional Road No. 19 as the rear boundary. The appellant purchased the land approximately twenty-eight years ago and four years later erected a commercial building used for boat storage on the property. The building was erected on piers made of concrete and railway ties spaced at sixteen foot centres. The property was leased for a period of fifteen years to Ottawa Motor Sport. The evidence of the appellant was that during this period the river had been known to rise to a height that twenty feet of the building was above the spring freshet indicating that the

water rose approximately eighty feet from the shore line.

The building was demolished approximately two years ago as the appellant wished to use the site for a retirement home. He has prepared no plans and applied for permission to place fill to a level equal to the elevation of the regional flood which is 87.6 metres. The elevations of the subject lands vary from 85.49 metres at the river to 86.92 metres near the rear of the property. This indicates that in a regional flood the subject lands would be flooded with depths of water varying from 2.11 metres to .63 metres or approximately seven feet to two feet. The regional road acts as a dyke establishing the upper limit of the regional flood plain.

Calculated on the depths shown in the application the amount of fill requested would require the placing of 3,000 cubic yards of fill and if fill were placed to the elevation of the regional flood 16,000 cubic yards would be required.

The evidence of the respondent related to the loss of storage capacity from the placing of such a quantity of fill and the interference with the flow of a regional storm created by the placing of such an amount of fill into the flood plain. The Bench discussed with the witness the fact that other adjacent properties had been filled and the witness pointed out that the amount of fill placed on these properties was not sufficient to flood proof the properties and that an amount of fill for such purpose on the subject lands would in itself create a significant intrusion which would interfere with the flows of the regional flood. The witness pointed out that the loss of storage capacity by itself may be insignificant but if every landowner were permitted a similar quantity of fill there would be a cumulative significant loss of storage capacity.

The evidence of the respondent indicated that none of the principles of flood plain management permitting construction in the flood plain are applicable. It was pointed out that the site does not afford an application of the stage-storage doctrine. Reference was made to the risk of loss of life and damage to property by the construction of residential premises in the flood plain. It was also pointed out that a property approximately three or four parcels from the subject lands was involved in an application which was refused by

the respondent and on appeal to this tribunal the appeal was dismissed. The appellants in that case were Hector and Florence Reid.

Counsel for the respondent relied on the loss of storage capacity, the fact that the subject lands are entirely within the flood plain and the risks to life and property created by the construction of residential premises in the flood plain. The decision of the Reid case was relied on as a precedent. The position of the appellant was that he had acquired the land some twenty-eight years ago as a site for a residence and hopes that he could now use it for such purpose although he realized that over a period of twenty-eight years the legislation could give effect to new concepts and by that I understand him to mean that the legislation has recognized the scientific implications respecting flood control management.

The appellant has had an opportunity of reading the decision in the Reid case and this tribunal sees no reason to vary from the decision in that case. The only distinction between the two cases is the fact that a building was situate on the subject lands for a period of time. However, the existence of this building detracts from rather than enhances the appellant's case. In this case the appellant had a pre-existing use which he undoubtedly would have been permitted to continue after the regulation was brought into effect. However, the appellant, whether with or without knowledge of the regulation, has terminated that use of the property and has moved to a use that has more serious consequences in respect of loss of life and damage to property. This tribunal cannot view this distinction as being sufficiently material to warrant any variation from the decision taken in the Reid case.

IT IS ORDERED THAT the appeal in this matter be and is hereby dismissed.

AND IT IS FURTHER ORDERED that no costs shall be payable by either party to the appeal.

DATED this 19th day of September, 1983

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.