



# 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 construct a dwelling unit on part of Lot 28 in Concession I in the Township of Rideau in The Regional Municipality of Ottawa-Carleton.

B E T W E E N :

TADEUSZ TRYNDĄ

Appellant

- and -

THE RIDEAU VALLEY CONSERVATION  
AUTHORITY

Respondent

R. D. MacKay, for the appellant.  
P. A. Webber, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to grant permission to construct a dwelling unit on part of Lot 28 in Concession I in the Township of Rideau in The Regional Municipality of Ottawa-Carleton. By Ontario Regulation 622/81 the power and duty of hearing the appeal were assigned to the Mining and Lands Commissioner. The appeal was heard in Ottawa on December 15, 1981.

The subject lands are a part of Lot 28 in Concession I of the Township of Rideau measuring, although no survey or title documents were provided, approximately 105 feet in width and 225 feet in depth. Access to the subject lands is obtained over a private right-of-way running in an easterly and thence southerly direction from Regional Road 13. The private right-of-way provides access for approximately ten residences and summer cottages along the river to the north of the subject lands and two such buildings to the south of the subject lands. Also to the south is a farm with farm buildings but these

buildings do not appear from the regional flood mapping to be situate below the elevation of the regional flood.

The subject lands were acquired by the appellant's father in 1963. His father did not develop the lot at the time the other buildings in the area were erected by reason of lack of funds. His father died in 1969 and his mother held the subject lands until approximately two years ago at which time they were turned over to the appellant. The subject lands are assessed at \$20,000 and are zoned as residential farming. The annual taxes are approximately \$326.

The subject lands, in so far as the placing of fill is concerned, came under the jurisdiction of the respondent through Ontario Regulation 52/80 on January 29, 1980. However, Ontario Regulation 875/76 prohibited the construction of buildings in an area susceptible to flooding during a regional storm and while the schedule respecting the placing of fill that presently exists was not contained in the 1976 regulation, the jurisdiction of the respondent respecting the construction of buildings undoubtedly was applicable from 1976.

The most recent flood mapping which was filed as Exhibit 3 establishes that the regional flood elevation on the subject lands is 87.5 meters G.S.C. This elevation encompasses in the flood plain all of the access road with the exception of a small portion thereof to the north of the subject lands and all of the buildings presently built along the access road. In addition a creek known as Cranberry Creek enters the Rideau River a slight distance to the north of the access road and at this location the Regional Road 13 is within the flood plain. Also the evidence indicates that at two locations south of the subject lands the regional road is subject to flooding.

The evidence of the respondent indicated that in addition to the flooding indicated by the mapping that actual floods had been experienced. A flood on March 29, 1976 had

been photographed which indicated that flood waters on that date extended across the subject lands and probably onto the access road to the west thereof.

Filed as Exhibit 6 was a letter from H.A. Ken Shipman, Canada and Ontario Land Surveyors, showing various elevations of the subject lands. This evidence showed that the elevation of the access road varied from 86.6 meters at the south limit of the subject lands to 86.92 meters at the north limit. The elevations at the site of the proposed residence were shown varying from 85.81 meters to 86.09 meters. Bruce Allan Reid, B.Eng., the Resources Development Co-ordinator for the respondent prepared a graphic illustration of these elevations which indicates that at the proposed site there would be during a regional flood 3.5 to 5.2 feet of water in the vicinity of the proposed building.

In an attempt to meet the exigencies of flooding the appellant proposed to construct the residence on reinforced piers, keeping the entire building above the regional flood elevation and for the purpose of preventing pollution will use an aerobic type of sewage disposal.

The respondent rejected the application on four grounds namely, that the proposed development was located entirely within the regional flood plain, there was evidence that the property had been known to flood, that there are serious access and egress problems under regional storm conditions and the precedential implications of granting permission in the particular case. On cross-examination the witness Reid admitted that the significant problem is the problem of access and egress during regional storm conditions.

It was submitted on behalf of the appellant that the matter should be considered not in the light of precedent but strictly on the merits of the particular case. His counsel

referred to the long holding of the land by the appellant and his parents, their non-use of the property during flood conditions in the past and the assumption that could be made that they would not so use the property in the future and the fact that the subject lands is the only vacant site on the access road. Accordingly, it was suggested that the application should be treated as a case of infilling the remaining gap in an existing line of houses and in view of the expenditures over the years the appellant should be granted permission based on sympathy and the uniqueness of the situation, keeping in mind the steps taken to prevent utilization of the storage capacity and the flood-proofing aspect of erecting the building on piers. It was emphasized by counsel that the use of the property was as a recreational area and that this use warranted treatment of the application as a special case.

It was submitted on behalf of the respondent that the application should be treated as an application for a residence. The application so stated and the evidence of the appellant indicated an intention to winterize the building for complete year-round use. Counsel pointed out that the significant consideration was the depth of water that would surround the proposed buildings and the danger that would occur to the residents of the building that would be surrounded by waters to the depth of over five feet. The inability to reach or to leave the building in the event of a regional storm was relied upon and it was submitted that such a site was not an appropriate place for the construction of a permanent residence.

At the outset it must be concluded that the application must be considered in the light of the wording of the application itself and the evidence of the appellant. Both the application and the evidence indicate that the intention is to create a year-round residence. The cost of construction and the installation of sanitary facilities are consistent with a substantial expenditure which would require extensive useage

to justify the investment. Accordingly, I can only view this application as one for a year-round residence.

While the point was not raised it is also dangerous to assume that one can determine in advance the time during which a regional storm will occur. While the experience has been that regional storms in this area are associated with spring thaws, it is not necessarily conclusive that a regional storm would occur at such time. In addition the date of spring thaws cannot be predicted in order that the occupants could arrange to be absent from the building at such times.

While the appellant's counsel did not elicit from the official of the respondent any policy in respect of the construction of residences in flood plains it is normal, in respect of the policy of the conservation authorities generally across the Province, where residences are to be constructed in flood plains to be concerned with three matters. One of these three matters is the preservation of the storage capacity of the flood plain. In this case the appellant has resorted to construction on piers which meets this situation. Secondly, the conservation authorities require flood proofing of such buildings and there does not appear to be any insurmountable problems in this regard in respect of the present application. Thirdly, it is required that the proposed building be accessible both for access and egress during regional storm conditions. This result is usually achieved by the placing of fill in a location that will provide an escape route to ground that is above the regional flood elevation. In this regard consideration is usually required in connection with the loss of storage capacity but as indicated above that is not an issue at the moment as there is no proposal to place fill. However, with regard to the access issue the private right-of-way would be inundated with the exception of one small portion that does not touch the subject lands. Even if access could be achieved



across the private right-of-way to Regional Road 13 a regional flood would cover this highway both northerly and southerly of the subject lands. There is nothing in the proposal of the appellant or that otherwise would appear to be feasible to prevent the proposed building being completely surrounded by flood waters during a regional storm. Further, such flood waters would be of very significant depth with the resultant danger to the occupants who might panic in the circumstances and who might attempt to leave the premises either on foot or with some other device. The inaccessibility of the proposed residence to doctors and other services during such occasions should be considered.

The appellant failed to draw to the attention of this tribunal any existing policy of the respondent under which the appellant could reasonably be expected to be granted permission. In addition this tribunal is not aware of any principle of a provincial or broader interest that would justify the granting of permission in the circumstances of this case and accordingly the appeal will be dismissed.

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

2. AND IT IS FURTHER ORDERED that no costs shall be payable by either of the parties to the matter.

DATED this 24th day of December, 1981.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.