



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 garage on part of Lot 3 in Concession III in the Township of Bentinck in the County of Grey.

B E T W E E N :

DAVID ROBERT MILLER

Appellant

- and -

SAUGEEN VALLEY CONSERVATION  
AUTHORITY

Respondent

D.R. Leifso, for the appellant.  
G.R. Johnson, for the respondent.

The appellant appealed to the Minister of Natural Resources from the refusal of the respondent to issue permission to erect a garage on part of Lot 3 in Concession III in the Township of Bentinck containing less than one acre owned by the appellant. The power and duty of hearing such appeals were assigned to the Mining and Lands Commissioner by Ontario Regulation 364/82. The appeal was heard in Hanover on October 27, 1982.

The proposal is to construct a wood frame garage on a concrete base at the northerly side of an existing building recently acquired by the appellant. The building at one time was used as a service station and has subsequently been converted to a residence providing the equivalent of a three bedroom residence. The building is located on South Durham Road. The proposal was to leave a breezeway between the house and the garage as this might discourage future residential conversion of the garage or the area over the garage. The proposed garage

would measure 8.51 metres in a northerly direction and 6.42 metres in an easterly direction. Although no building permit has been obtained from the municipal authorities it is understood that if the respondent would issue permission a building permit could be obtained. The cost of the proposal was estimated at \$1,500.

The subject lands are situate at approximately the centre of the flood plain of the Saugeen River. At the location the lands are subject to the influence of two branches of that river, namely, the South Saugeen River and the Beatty Saugeen River. According to the flood plain mapping the elevation of the regional flood is 266.69 metres. The elevation of the subject lands is approximately 265.5 metres with a result that in a regional flood the subject lands would be covered with approximately three feet of water. In addition, the evidence of Jack MacPherson, the engineer of the respondent, established that the subject lands were in the flood plain of the twenty-five, fifty and one hundred year flood. Further, the existing building on the subject lands has been flooded at least at five year intervals during spring runoff, particularly in 1975 and 1977.

With reference to the policy of the respondent, MacPherson gave evidence that a flood control study is underway to determine the best method of exercising control of flooding in the particular part of the watershed. The alternatives appear to be the acquisition of the existing 200 buildings in the watershed or flood control measures which would reduce the size of the flood plain and hopefully remove some of the buildings that are now situate in the flood plain from that category. In the interval the policy of the respondent is not to permit the construction of any buildings or structures. The

only types of permission that have been granted are permissions for stream alterations or public open buildings with roofs such as picnic shelters. The witness indicated that the appellant had been made aware of the element of prematureness of his application.

The major concern of the appellant in having a garage is that he owns a convertible automobile and needs protection for the automobile particularly in the wintertime. The witness for the respondent indicated that permission would be granted for some temporary shelter having minimal cost but the appellant preferred to build a proper garage.

The appellant indicated that he was prepared to execute an indemnity agreement and waive future compensation in the event of flooding.

The submission on behalf of the appellant was that the rights of the appellant as the owner of the property should prevail over the regulation of the respondent, that the respondent was following an absolute policy without any exceptions with the objective of reducing the value of property in the flood plain in the event of its future acquisition by the public and that the cost of the proposal was small, which costs the appellant was prepared to waive through an indemnity agreement which it was submitted would bind future owners on registration.

On behalf of the respondent it was argued that the rights of the landowner were adequately modified by Regulation 178 of Revised Regulations of Ontario 1980 and that the proposal was in law prohibited. It was further submitted that the degree of flooding of three feet established the risk of loss of life and property damage which justify the policy of the respondent and the refusal to create an exception to that policy in this instance.

At the outset, it should be pointed out that the proposal of the appellant, even if there were a policy of the respondent to permit the construction of buildings in an area subject to three feet of flooding in a regional storm, is in conflict with one principle of flood control. The proposed location of the garage creates an increased constriction of the flood plain and on the application as framed the application is not the most appropriate with regard to matters of flood control.

No sound basis was advanced on behalf of the appellant to establish that the present policy of the respondent was improper. It appears reasonable to this tribunal that pending appropriate studies and with an absolute prohibition contained in the law that a period of study and policy framing should be permitted for the watershed. To impose upon that background an exception where permission is granted in respect of a location that is in the centre of the flood plain, would have serious precedential implications on the flood control planning for the area.

It is not the approach of this tribunal to override the policy of the conservation authority unless the decision, in the particular case, is contrary to some municipal, provincial or federal overriding consideration. There was no evidence of any such situation in the present case and the evidence indicated that the treatment by the respondent of the present application is in accordance with its policy, not only as it is said to be but as it is actually carried out and it cannot be said that the appellant has been denied a permission in circumstances under which other landowners have been granted permission. Accordingly, the appeal will be dismissed.

1. IT IS HEREBY 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 29th day of October, 1982.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.