



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

IN THE MATTER OF

An appeal against the refusal to issue permission to construct a residence on Lot 11 in Concession III in the Township of Zorra in the County of Oxford.

B E T W E E N :

JACK LANDON and BLANCHE LANDON

Appellants

- and -

UPPER THAMES RIVER CONSERVATION AUTHORITY

Respondent

Jack Landon, one of the appellants, in person.
R. J. Flinn, Q.C., for the respondent.

The appellants appealed to the Minister of Natural Resources from the decision of the respondent dated June 22, 1979 refusing permission to construct a residence on the subject lands. The power and duty of hearing the appeal were assigned to the Mining and Lands Commissioner by O.Reg. 628/79. The appeal was heard in London on October 30, 1979.

The appellants own a parcel of land on the north side of the North Town Line. The property is situate in the Township of Zorra and is on the outskirts of the Town of Ingersoll. The parcel has a frontage of 441 feet and two and one-half inches on the North Town Line and a depth of 293 feet. A house and a barn are situate, more or less, in the central part of this parcel. The subject lands of the application are the southerly 150 feet of the westerly 217 feet of the parcel. It was proposed to sever and convey the subject lands to William Terry Ponting, a nephew. The permission to sever was granted

by the Land Division Committee subject to a condition that the appellants enter into an agreement with the respondent fulfilling all its requirements to its satisfaction. Following a hearing before the executive committee and a view of the subject lands the application for permission under the regulation of the respondent was rejected.

A tributary of the south branch of the Thames River flows in a southerly direction at a location approximately 65 feet easterly of the west limit of the subject lands. It is proposed to erect a one-storey house and a garage on the easterly 152 feet of the subject lands. Because of the findings of the respondent, Mr. Ponting was prepared to erect a full basement on the ground level maintaining the openings and services above the regional floodline.

The regional floodline or the maximum observed line had not been established for the subject lands at the time of application. On receipt of the application the regional floodline was calculated by the engineer for the respondent, Richard Anderson, and he concluded that the entire subject lands would be under a depth of water varying from one foot to four feet during a regional storm. The calculations showed that the northeast corner of the proposed house would be under .95 feet of water and the westerly limit of the garage would be subject to 3.2 feet of flooding. The southwesterly corner of the subject lands in the vicinity of the intersection of the creek and the North Town Line would be under 4.72 feet at a location above the embankment.

The position of the appellants, although it was not put in scientific terminology, appears to be that building has been permitted on locations that were subject to greater flooding than the subject lands under past conditions and secondly, assuming the susceptibility of the subject lands to flooding during a theoretical regional storm, a house would be designed with floodproofing concepts which would prevent the house from being flooded during a regional storm.

It was not established to the satisfaction of this tribunal that the respondent has a policy of permitting in Ingersoll the erection of new residential buildings in the floodplain. In his reply submissions, Mr. Landon mentioned three properties and an adjournment was granted in order that Mr. Flynn might obtain information regarding

these three properties. The answer provided in respect of the first property was that the house in question was outside the regional floodplain although Mr. Landon appeared to doubt that this was the case. The second property that was mentioned appeared to be an instance of a house being erected without the knowledge or permission of the respondent in an area that is subject to flooding in a regional storm but that some subsequent action is being taken with the building. The respondent had no information on the third building indicating that its construction was without the knowledge or permission of the respondent. Accordingly, it cannot be concluded that the respondent has a policy of permitting residential buildings in a floodplain.

It has never been the policy of this tribunal to authorize the construction of residential buildings in floodplains where such construction would be contrary to the policies of the conservation authority having jurisdiction. Residential buildings and their occupants are most vulnerable to regional floods and in the present case in the event of a regional flood the building would be surrounded by water having depths of up to three feet in some places. Floods peak during the night and the difficulties of evacuation during the night create serious safety problems both for the rescuers and the persons to be evacuated.

The question then arises as to whether the floodproofing of the proposed residence warrants an exception to the policy of not permitting the construction of residential properties in floodplains. In addition to the matters of safety and evacuation there are problems of loss of storage capacity and, although not mentioned in the evidence, probable increased flooding hazards resulting from the constriction of the flow of a regional flood. These two aspects include, in addition to their individual concerns, issues of precedent. The former refers to the utilization of the available flood storage to the extent that the house and garage would occupy part of the floodplain. The latter deals with the diversion of water from its normal channel in the event of a regional flood with consequential changes in the areas that are subject to flooding or erosion as a result of a change in stream flow. The risks of permitting buildings in such circumstances are not limited

only to the landowner involved but have an effect on all lands adjacent to the floodplain. By increasing the depth of water additional lands are flooded and in storms lesser than regional storms lands in the floodplain are flooded that may not otherwise be flooded. In addition the buildings hold back the water causing greater flooding upstream of the buildings and increase the velocity of the waters that are permitted to pass the buildings. For these reasons the hazards of erecting residential buildings in floodplains are not limited to the landowner in question and such erections, particularly if all landowners were permitted to erect buildings in similar circumstances, have a recognized effect on the control of flooding.

The responsibility of the conservation authority is to permit exceptions only where the control of flooding is not affected. In the view of this tribunal the respondent was consistent in the application of its policies in refusing the application in question and there is no sound scientific reason to reverse the decision made by the respondent.

In his final remarks Mr. Landon raised matters of hardship indicating that he was unemployed, had a limited pension and was selling the land in his opinion, at a substantially reduced price in order that he might have future assistance from his nephew. In matters related to regional floods one cannot assess relative hardships. In the event such a flood occurred the benefit from the proposed action is insignificant when compared with the risk to property and life created by construction of residences in floodplains.

Reference was made in the hearing to the risk of flooding of a high school situate a short distance downstream in the event of a regional storm. Against such a background it is necessary that all existing storage capacity be preserved and that the floodplains be held available to retain as much floodwaters as possible.

The evidence indicated that the properties to the south of the appellants' lands are swamp and if permission were granted in this instance there could be requests for subdivisions in that area. Assuming, without knowing from the evidence, that such an area is subject to flooding in the event of a regional storm the granting of

permission in this instance would serve as a precedent for the granting of permission in downstream portions of the watershed of the tributary and here again the concerns that are broader than those of the landowner in question become apparent.

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

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

DATED this 2nd day of November, 1979.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.