



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 building on the east half of Lot 11, Concession II, W.H.S. in the Town of Halton Hills, in the Regional Municipality of Halton.

B E T W E E N :

MR. AND MRS. MURRAY COE

Appellants

- and -

CREDIT VALLEY CONSERVATION AUTHORITY

Respondent

D. H. Carruthers, Q.C. for respondent.

This appeal was heard at the Peel County Court House on April 23, 1975. Mr. Murray Coe appeared in person but was not represented by counsel.

The appellants acquired, approximately eighteen years ago, lots 16, 17, 18 and part of lot 19, according to Plan 64 being a subdivision of part of the east half of Lot 11 in Concession 11 of the Township of Esquesing, containing 4.122 acres and being situated on the westerly bank of the Credit River. A barn was erected on the property approximately fifteen years ago and there is also a chicken house on the property.

Mr. Coe gave evidence that he had attempted on many occasions to obtain a permit to build on these lands which were laid out as part of the community of Norval. His current application for permission under Ontario Regulation 211/73 was dated August 1, 1974, and requested permission "to put fill on above land to raise land so houses can be built and to obtain building permitts (sic)." The purpose of the work was "to get building permitts (sic) to building houses or house."

A hearing was held on September 12, 1974, by the Executive Committee of the respondent and the application was refused on the grounds that the entire property is approximately 8.5 feet below the calculated regional flood line and is subject to annual spring floods. The decision was appealed to the Minister of Natural Resources and, by Ontario Regulation 130/75 filed on February 24, 1975, the power and duty of hearing the appeal was assigned to the Mining and Lands Commissioner.

The contours of the appellants' land vary from 649.5 feet to 651.5 feet above sea level. The regional storm contour is 657.5 feet above sea level in this area. The result is that the appellants' property is from 6 feet to 8 feet below the regional storm contour.

Mr. Coe's approach to this matter was that permits had been issued for four other properties and he wished to know why his application was refused in the light of the granting of these four permits.

The first property was owned by Frank Vanofwegan. He erected a house in 1974 on property which was approximately 500 feet southerly of the appellants' property. William A. Hamilton,

the regulation enforcement officer of the respondent, gave evidence that the owner had applied for permission two years ago to erect a building on the flood plain. His application was refused. He came back to the respondent with the alternative that he might build close to his existing house where the contour is within two feet of the regional flood contour and the Committee granted permission on the understanding that the existing house would be removed.

The second property was a house erected by Zorge Construction in 1974 along the river bank in the community of Glen Williams. Mr. Hamilton's evidence was that this property was two feet below the regional storm contour and that a permit was granted subject to the condition that there would be no openings to the building below the regional storm contour. Augusto Ribeiro, a Professional Engineer with a Masters Degree in Hydrology, who is employed by the respondent as the Director of Conservation Services, gave evidence that he was aware of this application and that the application was awarded on the basis of the cut and fill principle which requires that all openings to any buildings to be erected be above the regional storm line and that the reduction of the natural storage volume of the reservoir be replaced by the removal of fill at a location adjacent to the reservoir but above the regional storm contour.

The third property was referred to by the witness as a property on the main road in Glen Williams. Mr. Hamilton identified this property as being one previously owned by a Mr. Metsalo which was at the same elevation as the regional storm contour and the permit was issued subject to the condition

that the floor level be raised to the level of the crown of the road.

The fourth property was situate in Cheltenham. Mr. Hamilton's evidence was that he did not have the plans at the hearing with respect of this property but from his recollection the building was erected at or near the regional storm contour.

Both witnesses for the respondent gave evidence that there was evidence of flooding of the appellants' property consisting of weeds and other debris caught in the branches of trees that are situate in a row parallel to and approximately 100 feet from the river bank. Mr. Coe suggested that this debris was vines that had interwoven on the lower branches of the trees. Mr. Ribeiro clearly stated his opinion that the debris was water borne debris carried by flood conditions and, in view of the established expertise of this witness who was not cross-examined on this subject, I have no alternative but to conclude that there is evidence that at some time in the past the appellants' property has been flooded to a depth of four or five feet.

As all of the appellants' property is substantially below the regional storm line, as there is evidence of actual flooding, and as the cut and fill principle cannot be applied to the appellants' property by reason of the inability to increase the natural storage volume of the flood plain, I have no alternative but to dismiss the appeal. There shall be no costs payable by either of the parties.

DATED at Toronto this 2nd day of May, 1975.

Original signed by G.H. Ferguson

MINING AND LANDS COMMISSIONER.