

NCVA board opens floodplain for development

A recent decision by the Nottawasaga Valley Conservation Authority (NVCA) board to allow construction of a home in a floodplain goes against 60 years of careful conservation authority planning and has the potential to be used as justification for further floodplain development.

In this case, the homeowner stated a willingness to accept any risk. That is all very well but what about others who will assume that because construction has been allowed by a responsible agency, safety is assured? Visitors, heirs, purchasers, children? What about emergency responders who ? as we saw in Calgary ? are being asked to take on increasing risk from ever more extreme weather events? And, if this is used as a precedent by a developer who has floodplain property, what about the implications for unsuspecting homebuyers in the NVCA watershed?

First, a summary of what happened:

On Friday August 30, the NVCA board overruled a staff recommendation and authorized the construction of a new home on a property owned by Larry Smilsky at 1453 13th Line, New Tecumseth. Mr. Smilsky had applied for a permit to construct a house located in the flood plain and it had been denied by NVCA staff. Mr. Smilsky had exercised his right under the Conservation Authorities Act to request a hearing before the NVCA board.

NVCA staff presented very strong evidence why they could not support for the following reasons:

- ? The location is within the floodway?.the entire property is subject to flooding, with depth estimates of 2.4m
- ? The proposed development does not comply with NVCA's Planning and Regulation Guidelines (2009)
- ? The proposal is contrary to the Natural Hazard policies of the Provincial Policy Statement (2005)
- ? That the proposed development faces a high risk to life and high probability for property damage
- ? That there is no safe access and egress on the property or the municipal road, for emergency services
- ? The issuance of a permit sets a negative precedent
- ? That this development will have a negative effect on the control of flooding due to filling in the floodplain
- ? That there is no suitable building envelope on this property that is outside of the floodplain and provides safe access and egress.

Staff described the area of the property as a bathtub that will flood to a depth of up to 2.4 metres during a major rain event.

The appellants argued that they want to build a house for their son so he can continue in the family farm business, that there has been no significant flooding there in their lifetime and the house can be raised with fill above the flood level. They argued that irrigation ponds dug increased the flood plain capacity and that this case did not set a precedent because every site is different. They also noted that they were willing to accept any risk presented by building a house in the floodplain on this property. They noted that they have high farm vehicles which would allow them to exit the property in times of a flood.

The Smilskys made a credible presentation, however their argument was based on their opinion and experience over the last 60 years of ownership, not on any scientific evidence.

When it came time for the recorded vote (required in a hearing) the final tally was 11?10 against the motion not to give a permit to build the house, which meant that another motion to allow a permit had to be introduced.

The second motion, read: That the Smilsky application be approved subject to a detailed site plan and permit application being submitted to the satisfaction of the NVCA, passed 12?8. Both recorded votes will be posted on <http://aware-simcoe.ca> when confirmed.

It is this writer's opinion that this decision is a coup for the pro-development forces on the board who have been trying to undermine the jurisdiction of the NVCA ever since the last municipal election. It puts lives and property in danger in future flood events ? not just the lives of those making the choice before the board last week, but others unknown, and unknowing, who have the right to expect the board to act in their interest.

It also sets a precedent that will allow developers, not just farmers, to argue that they must be allowed to develop their lands in the flood plain, setting the stage for future emergency events such as recently witnessed in Calgary and Toronto and reminiscent of Hurricane Hazel.

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