

Eileen P. K. Costello  
Direct: 416.865.4740  
E-mail: [ecostello@airdberlis.com](mailto:ecostello@airdberlis.com)

May 9, 2014

**BY EMAIL**

Our File No.: 118275

Members of the Civic Works Committee  
300 Dufferin Avenue, Room 308  
P.O. Box 5035  
London, Ontario N6A 4L9

Attention: Councillor H.L. Usher, Chair

**Re: Mud Creek Subwatershed Study Update**

---

Aird and Berlis, LLP has been retained by Esam Construction Limited, the owners of the Kingsmill Lands in the City of London.

We write with respect to the status of the Mud Creek Subwatershed Study Update. It is our understanding that the Mud Creek Subwatershed Study Update is in draft form and that the City's Stormwater Management Unit intends to bring the study forward for consideration at the next scheduled Civic Works Committee meeting.

Our client is one of the majority Mud Creek East Subwatershed landholders and accordingly is a significant stakeholder in this matter which ought to be consulted prior to consideration of this study. No such consultation has occurred to date.

Despite our client's repeated requests to obtain a copy of the report for review and comment, a draft copy of the report has only recently been provided. Until that time, and again despite repeated requests for the documentation, our client and its consultants were only provided with the modelling data associated with the report which was of little probative value without the benefit of the supporting report.

Furthermore, we understand that the Upper Thames River Conservation Authority (the "Conservation Authority") has reviewed and commented on a version of the study dated December 2013. Based on its review, it is our understanding that the Conservation Authority has identified a number of matters of concern. It is the Conservation Authority's position that its input thus far has been proven to be of little value to this exercise. This finding is troubling given the Conservation Authority's jurisdiction in matters of this nature.

Based on the foregoing, if this report is brought forward for consideration at the May 12, 2014 Civic Work Committee meeting, our client requests the following:

- (i) that the Committee receive the Mud Creek Subwatershed Study Update but not any recommendations associated with that study;

- (ii) that the Committee direct staff to meet forthwith with the key stakeholders, including our client, other landowners in the immediate area and the Conservation Authority to receive input on the report, and
- (iii) that the matter return to this Committee with a report detailing the comments received at the above meeting for consideration no later than at its meeting scheduled in July 2014.

It should be noted that it is not our client's intention to delay final consideration of this report by this Committee and Council. In fact, it is in our client's interest that a decision with respect to this matter occur as expeditiously as possible as this report, and the EA process to which this report serves as an input, have delayed our client's draft plan of subdivision for over a decade. Indeed, the issues related to the stormwater management for the area are the only outstanding issues to be resolved so that our client can meet the conditions of final approval issued by the City in June, 2000. It cannot be overstated the degree to which the City's delay in completing the EA process and not in bringing forward the Subwatershed Update in an appropriate manner has prejudiced our client's development interests and resulted in escalating costs associated with the property.

However, it stands to reason that the key stakeholders to this report would have an opportunity to review and comment on the study before the Committee's consideration. This is particularly so in light of the Conservation Authority's comments. Our request for additional time is intended to facilitate a consultation process which, in our view, ought to have occurred as part of the process.

If you have any questions, please do not hesitate to contact the undersigned. Thank you in advance for considering our request.

Yours truly,

AIRD & BERLIS LLP



Eileen P. K. Costello

EPKC/SJL

17966243.1