

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING &amp; ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>
<b>SUBJECT:</b>	<b>APPLICATION BY: BLUESTONE PROPERTIES INC. NOTICE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD MEETING ON AUGUST 26, 2014</b>

<b>RECOMMENDATION</b>
-----------------------

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken in response to the letter of appeal to the Ontario Municipal Board, dated June 13, 2014 and submitted on the basis of non-decision by Council within 120 days, by Alan Patton of Patton Cormier & Associates on behalf of Bluestone Properties Inc. relating to the Zoning By-law Amendment portion of application No. OZ-8003 concerning 450 Oxford Street West:

- (a) The Ontario Municipal Board **BE ADVISED** that Municipal Council **RECOMMENDS** that Zoning By-law Z.-1 **BE AMENDED** in accordance with the Official Plan as attached hereto as Appendix "A" to change the zoning of the subject property **FROM** a Restricted Office/Day Care (RO2/DC) Zone and an Open Space (OS4) Zone **TO** a Holding Office Special Provision (h-\_\_\_\*OF4( )) Zone;
- (b) The Ontario Municipal Board **BE ADVISED** that Municipal Council **RECOMMENDS** the request to amend Zoning By-law No. Z.-1 to change the zoning of the subject property **FROM** a Restricted Office/Day Care (RO2/DC) Zone and an Open Space (OS4) Zone, **TO** an Office Special Provision (OF4( )) Zone, **BE REFUSED** for the following reasons:
  - i) a holding provision is recommended in addition to the zone requested, as part of the regulatory tools to ensure it is clear that the proposed development is subject to possible future limitations on the developable area of the land posed by flood limits to be approved by the Upper Thames River Conservation Authority, and its consideration of a possible fill permit application.
- (c) The Ontario Municipal Board **BE ADVISED** that Council **RECOMMENDS** that the Site Plan Approval Authority **BE REQUESTED** to consider the following design, transportation and environmental issues through the site plan process:
  - i) Maintain the applicant's proposed design intent of locating the building towards the streets' intersection with parking in the rear, subject to any UTRCA fill restrictions, to promote active street frontages.
  - ii) Maintain the applicant's intent to choose higher quality building materials, such as masonry, to enhance the design of the building.
  - iii) Further enhance the building's entrance at the intersection of Oxford Street West and Proudfoot Lane to better demarcate the public entrance. This could be done by extending the circular form to grade and/or using a wrap-around canopy above entry doors. The cornice can also be strengthened in this location.
  - iv) Provide a plaza at the corner to help enhance both the private and public space.
  - v) Provide additional entry points along the street to help articulate the building's design, respond to the pedestrian realm and transit users' needs, and promote retail occupancy at-grade.
  - vi) Include street trees along both Oxford Street West and Proudfoot Lane to reinforce the façade design rhythm along the street. These trees should be located as part of the right-of-way boulevard.

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

- vii) Use landscape islands to break up the extent of asphalt parking lot and long drive aisles, increase sustainability and provide stormwater management opportunities. Also, consider the use of pervious materials such as pervious pavers to facilitate stormwater management.
  - viii) Locate bicycle parking opportunities near building entrances to encourage multi-modal transportation opportunities.
  - ix) Provide appropriate and safe vehicular access locations and turning movement restrictions.
  - x) Ensure the site design accommodates current and future bus bay requirements of the London Transit Commission.
  - xi) Implement the accepted Environmental Impact Statement (Dillon Consulting Ltd., July 27, 2012).
- (d) The Ontario Municipal Board **BE ADVISED** that Council **RESOLVED** that upon the completion of the Mud Creek Subwatershed Study Update and the provision of revised floodlines by the Upper Thames River Conservation Authority to the City, the Civic Administration **BE DIRECTED** to bring forward any required amendments to the Official Plan and the Z.-1 Zoning By-Law to implement the revised floodlines as approved by the Upper Thames River Conservation Authority, it being noted that an Open Space designation and an Open Space (OS4) zone variation could be applied to a portion of these lands.
- (e) That the City Solicitor may retain outside expert witnesses in support of Council's position as needed.

**PREVIOUS REPORTS PERTINENT TO THIS MATTER**

- October 12, 2004 (OZ-6650) – Public meeting at Planning Committee
- November 26, 2012 (OZ-8003) – Public meeting at Planning and Environment Committee
- June 20, 2013 – Status report in response to request from Alan Patton representing Bluestone Properties to bring the application forward.
- September 10, 2013 – Public meeting at Planning and Environment Committee

**PURPOSE AND EFFECT OF RECOMMENDED ACTION**

The recommendation will advise the Ontario Municipal Board that:

1. Council supports a Zoning By-law amendment to a Holding Office Special Provision (h-\_\_\_\_\*OF4( )) Zone to permit clinics, medical/dental offices, medical/dental laboratories, offices, financial institutions and personal service establishments with a maximum gross floor area of 5,000 square metres, with special provisions to establish minimum and maximum yard setbacks from Oxford Street West of between 1.0 and 3.0 metres and minimum and maximum yard setbacks from Proudfoot Lane of between 4.0 metres and 6.0 metres, and establish a holding provision that requires that no development occur on these lands until such time as the Upper Thames River Conservation Authority has provided to the City any revised floodlines arising from the completed Mud Creek Subwatershed Study Update, and has approved a fill permit, if required;
2. a recommendation for refusal is included simply to document that the recommended holding (h) provision was not requested by the applicant;

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

3. Council has identified various site plan matters to be addressed by the Site Plan Approval Authority at the site plan approval stage; and,
4. Council intended to consider any required amendments to the Official Plan and Zoning By-law once revised floodlines were provided by the Upper Thames River Conservation Authority, and noting that it might result in portions of the subject property reverting to the Open Space designation and the Open Space (OS4) Zone.

The recommended actions reflect the intent of the recommendations regarding the proposed zoning and site plan considerations contained in the staff report of September 10, 2013, and the relevant components of the September 17, 2013 Council resolution arising from that report.

The recommended action also authorizes the City Solicitor to retain outside expert witnesses in support of Council's position, if necessary.

The appeal to the Ontario Municipal Board is attached to this report as Appendix 1.

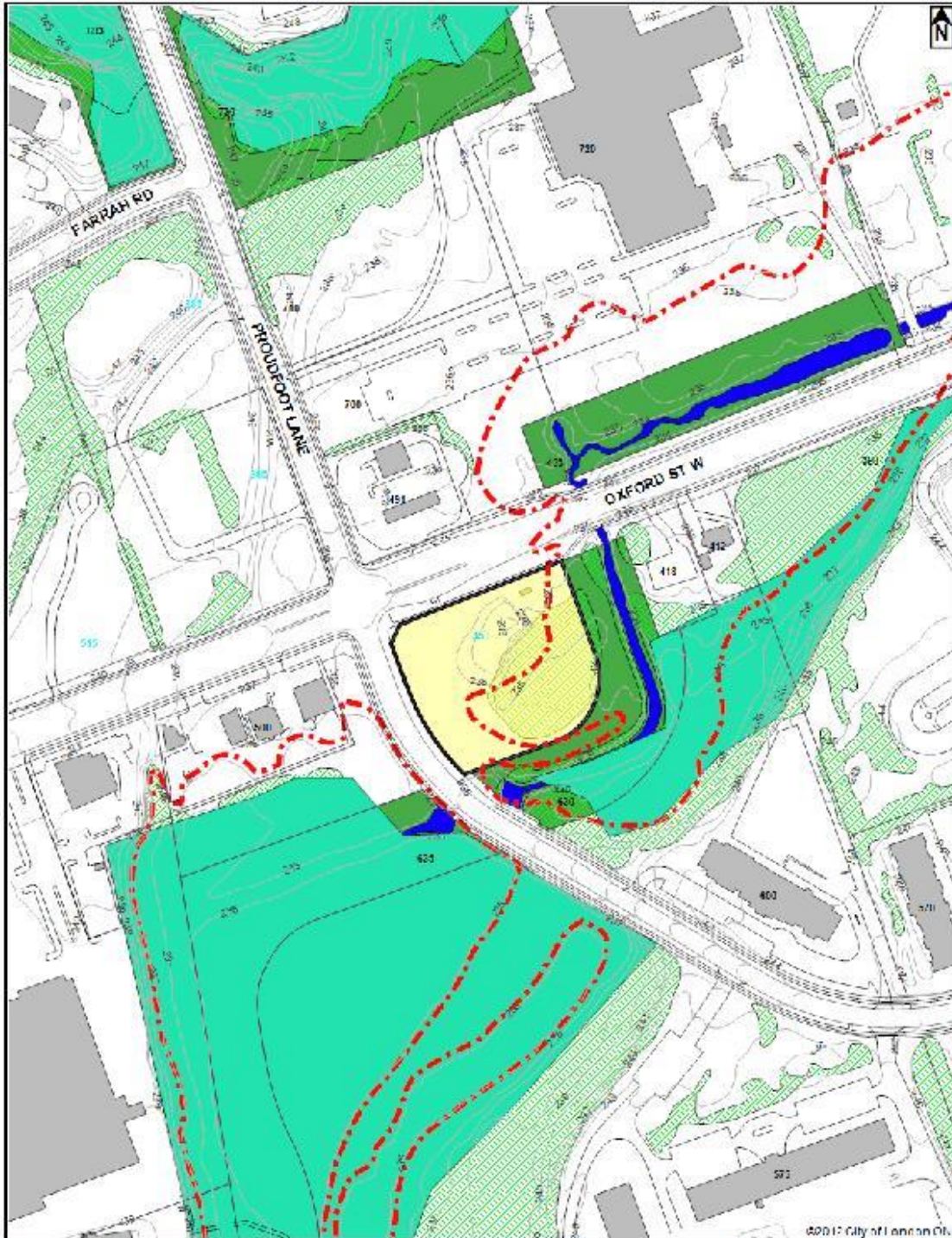
<b>BACKGROUND/HISTORY</b>
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The application for an Official Plan amendment and Zoning By-law Amendment was accepted as complete by Planning Services on December 16, 2011. The requested Official Plan amendment would change the designation of the property from Multi-family, High Density Residential and Open Space to Office Area, permitting an increase in the maximum intensity of development from 2,000 square metres to 5,000 square metres. The requested Zoning By-law amendment would change the zoning from a Restricted Office/Day Care (RO2/DC) Zone and Open Space (OS4) Zone to an Office Special Provision (OF( )) Zone. The site concept and renderings are attached as Appendix 2.

On March 14, 2012, following the standard application review period, Planning Services staff sent a letter to Bluestone's agent stating that "...one of the fundamental issues that remains with respect to the application is the determination of a refined floodline location based on work to be completed as part of the Mud Creek Subwatershed Study (SWS) Update and related Environmental Assessment, to be completed by the City." The letter further stated that "Delineation of the developable area is a key component for the Planning review, to determine zone line location, and an appropriate intensity of use for the site", and advised that on January 31, 2012, Delcan Corporation was appointed as the Consulting Engineers for the SWS Update. The application was not brought forward to the Planning and Environment Committee pending the receipt of information from the SWS process that was sufficient to inform the planning review.

On October 5, 2012, Alan Patton of Patton Cormier & Associates submitted a request for delegation status before Planning and Environment Committee asking that the application be brought forward to a public meeting at the earliest possible date.

On November 26, 2012, a public meeting was held at the Planning and Environment Committee. Staff recommended refusal of the application to amend the Official Plan from a Multi-family, High Density Residential designation and an Open Space designation to an Office Area designation, and to amend the Zoning By-law from a Restricted Office/Day Care (RO2/DC) Zone and an Open Space (OS4) Zone to an Office Special Provision (OF4()) Zone to permit an office building with a maximum gross floor area of 5,000 square metres, because it was not consistent with the Provincial Policy Statement or the Official Plan, was premature, and the existing zoning was appropriate for the site.



<p align="center"><b>LOCATION MAP</b></p> <p>Subject Site: 450 Oxford St W          Applicant: BLUESTONE PROPERTIES          File Number: OZ-8003          Planner: Barb Debbert          Created By: Barb Debbert          Date: 2012-01-18          Scale: 1:2500</p>	<p align="center"><b>LEGEND</b></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 20px; text-align: center;">■</td> <td>Subject Site</td> </tr> <tr> <td style="width: 20px; text-align: center;">■</td> <td>Parks</td> </tr> <tr> <td style="width: 20px; text-align: center;">▨</td> <td>Assessment Parcels</td> </tr> <tr> <td style="width: 20px; text-align: center;">■</td> <td>Buildings</td> </tr> <tr> <td style="width: 20px; text-align: center;">123</td> <td>Address Numbers</td> </tr> </table>	■	Subject Site	■	Parks	▨	Assessment Parcels	■	Buildings	123	Address Numbers
■	Subject Site										
■	Parks										
▨	Assessment Parcels										
■	Buildings										
123	Address Numbers										
<p>Corporation of the City of London          Prepared By: Planning and Development</p>											

Agenda Item #	Page #

**File No.: OZ-8003**  
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On December 12, 2012, Council referred the application back to staff for a report back in May, 2013, with the expectation that the Subwatershed Study Update would be complete and a flood line would be identified.

Following a further request from Mr. Patton, Planning Services staff provided an information report on June 20, 2014 to the Planning and Environment Committee indicating that the Subwatershed Study Update was not complete and advising that a Planning recommendation would be available approximately two months after Council approval of the Subwatershed Study's recommendations.

On June 25, 2013, Council directed staff to report back to a public meeting of the Planning and Environment Committee on September 10, 2013.

On September 10, 2013, staff recommended approval of the requested Official Plan amendment and Zoning By-law amendment, incorporating a holding provision that read *"to ensure that unapproved development does not occur in the flood plain, the h-\_\_\_ shall not be deleted until such time as the Upper Thames River Conservation Authority has provided to the City any revised floodlines arising from the completed Mud Creek Subwatershed Study Update, and has approved a fill permit, if required."* The staff recommendations also provided for future adjustments to the boundaries of the Office Area designation and the Office Zone to implement the outcome of the SWS Update and the identification of revised floodlines by the UTRCA, and matters to be considered at the site plan approval stage.

As reflected in the September 17, 2013 Council Resolution (attached as Appendix 3), Mr. Patton spoke at the September 10, 2013 public meeting and notwithstanding a Planning Staff recommendation to introduce a Zoning By-law Amendment that would support the requested amendment, asked *"...that Municipal Council only pass the Official Plan amendment to redesignate the property to an Office Area designation; noting that this will put some certainty in the planning process that the Municipal Council is seriously looking at an office area designation; advising that Bluestone also asks that discussions regarding the Zoning by-law amendments be adjourned to allow discussions to be held with both the Upper Thames River Conservation Authority and the City on a number of technical issues..."*. Although the public participation portion of the meeting related to the Official Plan amendment was completed, the expectation was that the public and other stakeholders would be able to provide comments at a future public participation meeting related to the pending Zoning By-law amendment.

Council adopted the Official Plan amendment and agreed to the referral requested by Mr. Patton. There were no appeals to the Official Plan amendment and the Office Area designation is now in force and effect.

In the interim, the Mud Creek Subwatershed Study Update was considered by the Civic Works Committee and on June 11, 2014, Council received the study, and resolved that the proposed Subwatershed mitigation strategies in the MCSS Update be considered as potential alternatives in a Municipal Class Environmental Assessment (EA) Study for applicable remediation and servicing works. The Council resolution with respect to the Subwatershed Study Update is attached as Appendix 4.

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

Notwithstanding that consideration of the Zoning By-law amendment application was referred back at the request of the applicant that Council consider the Official Plan amendment only, the applicant has now appealed the Zoning By-law amendment application as a result of no decision by Council within 120 days of receipt of a complete application. The jurisdiction for a decision and the forum for public participation now resides with the Ontario Municipal Board.

<b>PREPARED BY:</b>	<b>SUBMITTED BY:</b>
<b>BARB DEBBERT, SENIOR PLANNER CURRENT PLANNING</b>	<b>MICHAEL TOMAZINCIC, MCIP, RPP MANAGER, CURRENT PLANNING</b>
<b>RECOMMENDED BY:</b>	
<b>JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>	

August 15, 2014

BD/

Attach.

Y:\Shared\implemen\DEVELOPMENT APPS\2012 Applications 8003 to\8003OZ - 450 Oxford St W (BD)\OMB\450 Oxford Street West OMB appeal report.docx

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

### Appendix "A"

Bill No. (number to be inserted by Clerk's Office)  
2013

By-law No. Z.-1-14\_\_\_\_\_

A by-law to amend By-law No. Z.-1 to rezone an area of land located at 450 Oxford Street West.

WHEREAS Bluestone Properties Inc. has applied to rezone an area of land located at 450 Oxford Street West, as shown on the map attached to this by-law, as set out below;

AND WHEREAS this rezoning conforms to the Official Plan;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

- 1) Schedule "A" to By-law No. Z.-1 is amended by changing the zoning applicable to lands located at 450 Oxford Street West, as shown on the attached map comprising part of Key Map No. A106, from a Restricted Office/Day Care (RO2/DC) Zone and an Open Space (OS4) Zone to a Holding Office Special Provision (h-\_\_\_\*OF4( )) Zone.
- 2) Section Number 3.8(2) of By-law No. Z.-1 is amended by adding the following holding provision:
  - ) h-\_\_\_

*Purpose:* To ensure that unapproved development does not occur in the flood plain, the h-\_\_\_ shall not be deleted until such time as the Upper Thames River Conservation Authority has provided to the City any revised floodlines arising from the completed Mud Creek Subwatershed Study Update, and has approved a fill permit, if required.

*Permitted Interim Uses:* Existing Uses

- 3) Section Number 19.4 of the Office (OF) Zone is amended by adding the following Special Provision:
  - ) OF4( )      450 Oxford Street West
    - a) Regulations
      - i) Yard Depth from Oxford Street West (min)      1.0 metres (3.28 feet)
      - ii) Yard Depth from Oxford Street West (max)      3.0 metres (9.84 feet)
      - iii) Yard Depth from Proudfoot Lane (min)      4.0 metres (13.12 feet)
      - iv) Yard Depth from Proudfoot Lane (max)      6.0 metres (19.69 feet)

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

The inclusion in this By-law of imperial measure along with metric measure is for the purpose of convenience only and the metric measure governs in case of any discrepancy between the two measures.

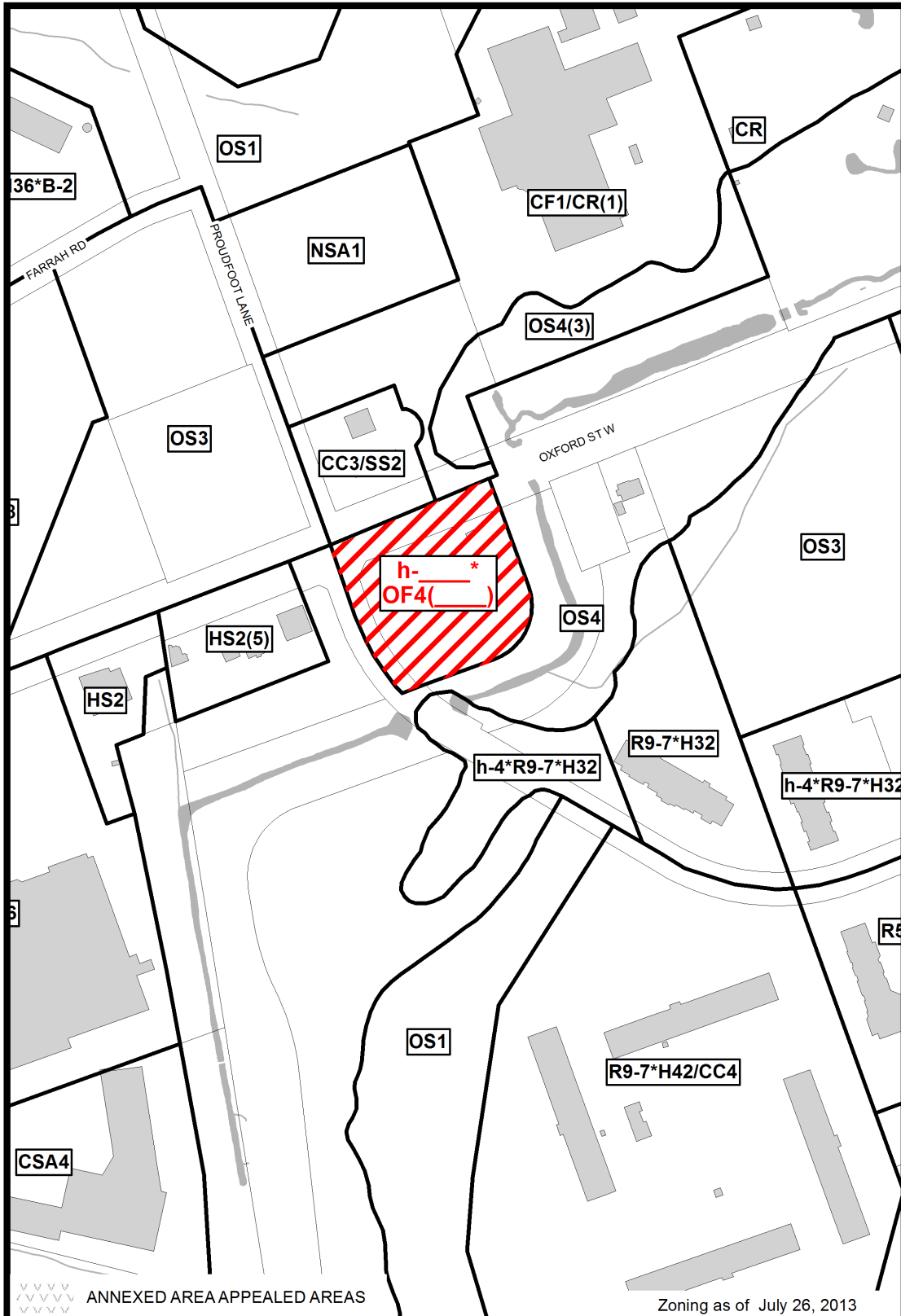
This By-law shall come into force and be deemed to come into force in accordance with Section 34 of the *Planning Act, R.S.O. 1990, c. P13*, either upon the date of the passage of this by-law or as otherwise provided by the said section.





Agenda Item #	Page #

File No.: OZ-8003  
Planner: B. Debbert

AMENDMENT TO SCHEDULE "A" (BY-LAW NO. Z.-1)




<p>File Number: OZ-8003  Planner: BD  Date Prepared: 2013/08/26  Technician: CK  By-Law No: Z.-1-</p>	<p>SUBJECT SITE </p> <p>1:3,000</p> <p>0 15 30 60 90 120 Meters</p> 
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Agenda Item #	Page #
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File No.: OZ-8003  
Planner: B. Debbert

Appendix 1 – Ontario Municipal Board Appeal

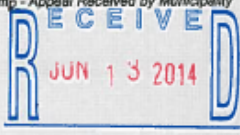


Environment and Land Tribunals Ontario  
**Ontario Municipal Board**  
655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5  
TEL: (416) 212-6349 or Toll Free: 1-866-448-2248  
FAX: (416) 326-5370  
www.elt.o.gov.on.ca

**APPELLANT FORM (A1)**  
**PLANNING ACT**

**SUBMIT COMPLETED FORM  
TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality



Receipt Number (OMB Office Use Only)

**Part 1: Appeal Type (Please check only one box)**

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
	<input type="checkbox"/> Appeal a decision	53(19)
Consent/Severance	<input type="checkbox"/> Appeal conditions imposed	53(27)
	<input type="checkbox"/> Appeal changed conditions	53(14)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	34(19)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(11)
	<input checked="" type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	17(24) or 17(36)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(40)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

**Part 2: Location Information**

**450 Oxford Street West**  
Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: **City of London**

**Part 3: Appellant Information**

A1 Revised April 2010

Page 2 of 5

Empty boxes for Agenda Item # and Page #

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

**Bluestone Properties Inc.**

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): \_\_\_\_\_

E-mail Address: \_\_\_\_\_  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: \_\_\_\_\_ Alternate Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street Address Apt/Suite/Unit# City/Town

Province Country (if not Canada) Postal Code

Signature of Appellant: \_\_\_\_\_ Date: \_\_\_\_\_

(Signature not required if the appeal is submitted by a law office.)

**Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.**

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

**Part 4: Representative Information (if applicable)**

I hereby authorize the named company and/or individual(s) to represent me:

First Name: **Alan** Last Name: **Patton**

Company Name: **Patton Cormier & Associates**

Professional Title: **Lawyers**

E-mail Address: **apatton@pattoncormier.ca**  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: **519-432-8282** Alternate Telephone #: \_\_\_\_\_

Fax #: **519-432-7285**

Mailing Address: Suite 1512-140 Fullarton Street, London, ON N6A 5P2

Signature of Appellant:  Date: **June 13, 2014**

*Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.*

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

**Part 5: Language and Accessibility**

Please choose preferred language:  English  French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

**Part 6: Appeal Specific Information**

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

**City of London File OZ-8003**

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). \*\*If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

**The Zoning By-law Amendment was accepted by the City, December 16, 2011. The Zoning By-law Amendment conforms to the City of London Official Plan Amendment No. 559. The Zoning By-law Amendment is consistent with the 2014 Provincial Policy Statement. The subject land is boundary serviced and located at the intersection of an arterial road (Oxford Street West) and a secondary collector (Proudfoot Lane).**

**THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.**

a) **DATE APPLICATION SUBMITTED TO MUNICIPALITY: DECEMBER 16, 2011**  
(If application submitted *before* January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:  
\*\*If more space is required, please continue in Part 9 or attach a separate page.

**Please see attached Page 4. (a)**

**Part 7: Related Matters (if known)**

Are there other appeals not yet filed with the Municipality? YES  NO

Are there other planning matters related to this appeal? YES  NO   
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)

**Part 8: Scheduling Information**

Agenda Item #

Page #

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**File No.: OZ-8003**  
**Planner: B. Debbert**

Page 4.(a)

Part 6. (b)

The subject property is municipally identified as 450 Oxford Street West located at the southeast corner of the intersection of Oxford Street West and Proudfoot Lane. The Official Plan designates the subject land Office Area which designation permits a range of Offices uses together with secondary uses, with a maximum gross floor area of 5,000 m. sq. The existing zoning is Restricted Office / Day Care (RO2/DC) which zoning permits offices and daycare facilities with a maximum gross floor area of 2,000 m. sq., as well as an area zoned Open Space. The requested zoning is Office (OF4) to permit a range of office uses as well as laboratories, financial institutions, personal service establishments with a maximum gross floor area of 5,000 m. sq. in conformity with the Official Plan. The requested zone also provides for both minimum and maximum yard setbacks from the two abutting Streets to provide for the location of the Office Building in proximity to the Streets and provide an appropriate location for parking.

Agenda Item #	Page #

**File No.: OZ-8003**  
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How many days do you estimate are needed for hearing this appeal?  half day  1 day  2 days  3 days  
 4 days  1 week  More than 1 week – please specify number of days: \_\_\_\_\_

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?  
**Five (5)**

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):  
**Land Use Planner, Traffic Engineer, Architect, Civil Engineer**

Do you believe this matter would benefit from mediation? YES  NO   
*(Mediation is generally scheduled only when all parties agree to participate)*

Do you believe this matter would benefit from a prehearing conference? YES  NO   
*(Prehearing conferences are generally not scheduled for variances or consents)*

If yes, why? \_\_\_\_\_

**Part 9: Other Applicable Information \*\* Attach a separate page if more space is required.**


**Part 10: Required Fee**

**Total Fee Submitted: \$ 125.00**

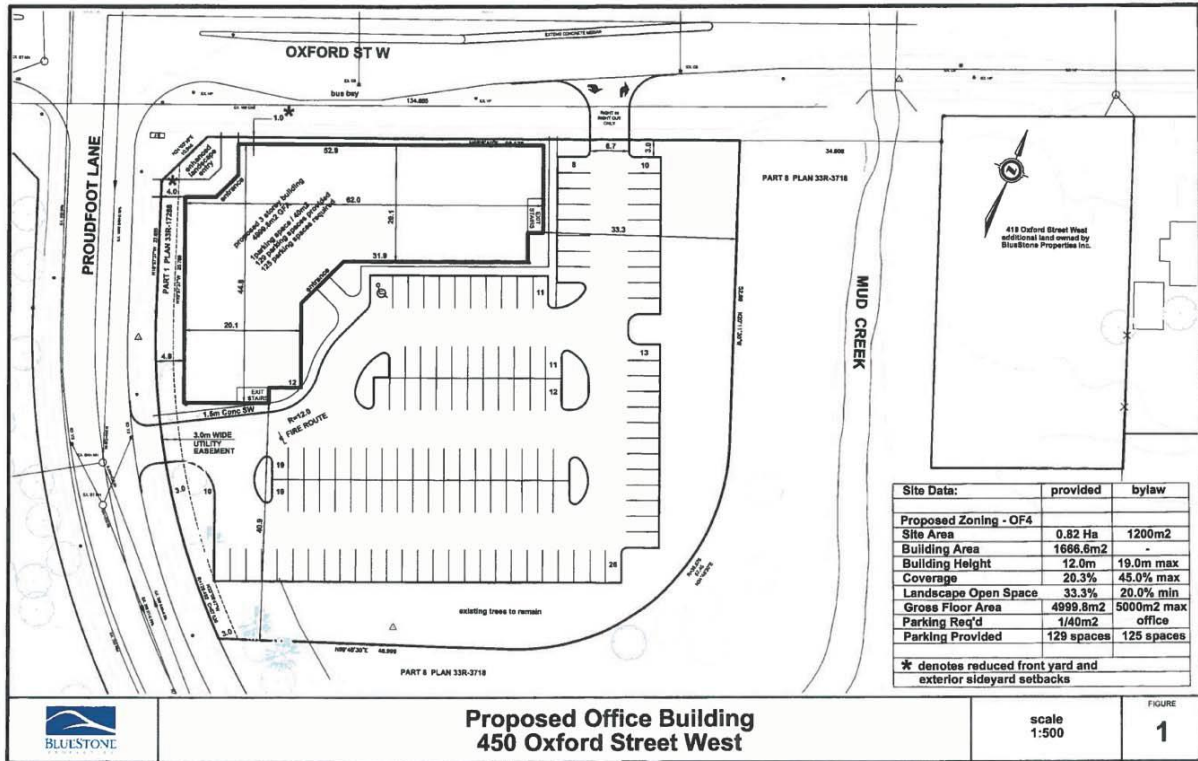
Payment Method:  Certified cheque  Money Order  Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.

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File No.: OZ-8003  
 Planner: B. Debbert

**Appendix 2 – Site Concept and Renderings**



Agenda Item #

Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**





Agenda Item #	Page #

File No.: OZ-8003  
Planner: B. Debbert

**Appendix 3 – September 17, 2013 Council Resolution**



September 18, 2013

Bluestone Properties Inc.  
c/o A. Patton  
Patton Cormier & Associates  
1512-140 Fullarton Street  
London, ON N6A 5P2

APPROVED TO \_\_\_\_\_

COMMUNITY REFERRALS

<input type="checkbox"/> FOR ACTION	<input type="checkbox"/> FILE
<input type="checkbox"/> FOR INFORMATION	<input type="checkbox"/> B.F.
<input type="checkbox"/> FOR REPORT	<input type="checkbox"/> OTHER

I hereby certify that the Municipal Council, at its session held on September 17, 2013 resolved:

12. That, the following actions be taken with respect to the application of Bluestone Properties Inc., relating to the property located at 450 Oxford Street West:

- a) the proposed by-law, as appended to the staff report dated September 20, 2013, BE INTRODUCED at the Municipal Council meeting to be held on September 17, 2013, to amend the Official Plan to change the designation of the subject lands FROM a Multi-family, High Density Residential designation and an Open Space designation TO an Office Area designation, to permit office and secondary uses with a maximum office gross floor area of 5,000 square metres; it being noted that a fill permit may be required from the Upper Thames River Conservation Authority for a portion of these lands;
- b) the proposed Zoning By-law amendment to change the zoning of the subject property FROM a Restricted Office/Day Care (RO2/DC) Zone, which permits office uses and day care facilities with a maximum office gross floor area of 2,000 square metres, and an Open Space (OS4) Zone, which permits conservation lands and works, golf courses, private parks, public parks, cultivation or use of land for agricultural/horticultural purposes and sports fields TO a Holding Office Special Provision (h-\_\_\_\_\*OF4( )) Zone, to permit clinics, medical/dental offices, medical/dental laboratories, offices, financial institutions and personal service establishments with a maximum gross floor area of 5,000 square metres, and special provisions to establish minimum and maximum yard setbacks from Oxford Street West of between 1.0 and 3.0 metres and minimum and maximum yard setbacks from Proudfoot Lane of between 4.0 metres and 6.0 metres; it being noted that the holding provision requires that no development occur on these lands until such time as the Upper Thames River Conservation Authority has provided to the City any revised floodlines arising from the completed Mud Creek Subwatershed Study Update, and has approved a fill permit, if required, BE REFERRED to the Civic Administration for further consideration and to report back at a future public meeting of the Planning and Environment Committee following the resolution of issues related to the location of the floodlines on these lands arising from the final Mud Creek Subwatershed Study update;
- c) the request for the Site Plan Approval Authority to consider design, transportation and environmental issues, through the site plan process BE REFERRED to the Civic Administration for further consideration and to report back at a future meeting of the Planning and Environment Committee in association with clause b), above;
- d) upon completion of the Mud Creek Subwatershed Study Update and the provision of revised flood lines by the Upper Thames River Conservation Authority to the City, the Civic Administration BE DIRECTED to provide any required amendments to the Official Plan and the Z-1 Zoning By-law to implement the revised flood lines as approved by the Upper Thames River Conservation Authority; it being noted that an Open Space designation and an Open Space (OS4) zone variation could be applied to a portion of these lands; and,
- e) no action BE TAKEN to pursue City acquisition of the portion of the subject lands currently designated as Open Space in the Official Plan;

Agenda Item #	Page #

**File No.: OZ-8003  
Planner: B. Debbert**

it being noted that the Planning and Environment Committee reviewed and received a communication, dated September 6, 2013, from J. Brick, Coordinator, Hydrology and Regulatory Services, Upper Thames River Conservation Authority, with respect to this matter;

it being pointed out that at the public participation meeting associated with this matter, the following individuals made oral submissions in connection therewith:

- Alan R. Patton, Patton Cormier & Associates, on behalf of the applicant – advising that on page 2 of the staff report, Mr. Bierbaum has been involved in a development proposal on this land since 2004; indicating that, at this point in this long and iterative process, Bluestone is asking that the Municipal Council only pass the Official Plan amendment to redesignate the property to an Office Area designation; noting that this will put some certainty in the planning process that the Municipal Council is seriously looking at an office area designation; advising that Bluestone also asks that discussions regarding the Zoning by-law amendments be adjourned to allow discussions to be held with both the Upper Thames River Conservation Authority (UTRCA) and the City on a number of technical issues, many of which the Committee has heard tonight during the Planning staff review; indicating that some of the matters that they would like to discuss include traffic, such as setbacks from the ultimate road allowance, parking and a justification report rather than relying on a minor variance in the future; indicating that they believe that it is important to hold some discussions with the UTRCA over their position on the floodway; indicating that, in his review of the material, the UTRCA seems to be somewhat at odds with the City on this matter; advising that there are discussions that can be held during the zoning review as well as discussions concerning the Mud Creek Subwatershed Study; noting that the site plan approval would not be dealt with and revisions would be worked on at the appropriate time to provide the Committee with a more detailed site plan that what is presently before the Committee; advising that the Committee asked about the height allowed in the OF4 Zone and advising that the OF4 Zone permits a maximum height of 19 metres which equates to about 60 feet; noting that this would allow for a four or five storey building; indicating that Mr. Bierbaum has advised that he is open to the suggestion of a higher building to reduce the footprint but still maintain the gross floor area; indicating that Bluestone would rather get the Municipal Council's position that an Office Area designation is appropriate and then continue the discussions over a zoning by-law that matches the floodway; indicating that there is a disconnect between what the Municipal Council will hear from the City's stormwater management staff and the UTRCA on the area that is capable for development; indicating that there is no point in passing a zoning by-law with a holding provision; advising that after 9+ years, it is time that Bluestone has the knowledge that an Office Area designation on this property is sound land use planning and should be advanced; reiterating that what his client would like is exactly what the staff recommended in the Official Plan amendment and working out the details through zoning, everything from height to access points, to areas that would be parking and site plan approval matters; advising that the UTRCA would still have authority, through their regulatory process, to define where the floodway is; advising that that is independent of the Office Designation; indicating that Bluestone is hoping to avoid a h-5 holding provision on this property; advising that if you look at the wording of the h-5 holding symbol, it cannot be lifted until the UTRCA has provided the City with its revised flood lines arising from the Mud Creek Subwatershed Study and has approved a fill permit; advising that the way the h-5 holding provision has been drafted, the City puts all authority over the UTRCA; indicating that Bluestone believes that they can accomplish, with fair discussion, between Planning staff, Engineering staff and the UTRCA, to allow the development to proceed when both sides are satisfied that a fill permit that can be issued and there is no need to come back to another meeting to remove the h-5 holding provision; advising that the scenario that Bluestone is presenting is that if you adjourn the staff recommendation on the h-5 holding provision, another by-law could come forward at a second meeting when everyone is satisfied; indicating that he expects that the site plan will go a long way in satisfying the UTRCA; indicating that, in the UTRCA's latest submissions, there are some obstacles to overcome; advising that Bluestone's concern is to just take it one step at a time and not raise expectations; noting that Bluestone has some work to be do as they were just advised that the set back from the building will now be 20 meters; noting that the building was designed with a setback of 18 metres; advising that the application has been in the hands of the Municipality for so long that Bluestone can go to the Ontario Municipal Board (OMB) directly and have it dealt with at the OMB; noting that Bluestone is not prepared to take this action; and expressing concern that the passing of the proposed zoning by-law may trigger an appeal to the OMB.
- Henk Ketelaars, 1058 Colborne Street – advising that he is a Member of the Transportation Advisory Committee; expressing concern with the comments in the staff report addressing traffic heading north and exiting onto Oxford Street from that subdivision; noting that staff indicate that it is never a problem; advising that for him, the problem is going east from Platts Lane; and recommending the installation of an advance green in that intersection.

Agenda Item #	Page #

**File No.: OZ-8003  
Planner: B. Debbert**

- Jeff Brick, Coordinator, Hydrology and Regulatory Services, Upper Thames River Conservation Authority (UTRCA) – answering the question with respect to the parking requirement on page 28 of the staff report; noting that parking is a part of development; advising that the Provincial Policy Statement prohibits development from being located in the flood way; advising that provisional development in the flood fringe is allowed, but new development in the flood way is prohibited; noting that parking is part of the development; keeping in mind that when you approve the development, you have to contemplate where the parking is going to be located; talking about prohibiting new development in the flood way ties in very nicely with the question that was asked about parking lots at Western University; noting that the parking lots at Western University are very problematic; however, they are existing parking lots; noting that if the UTRCA could go back and do it again, the UTRCA would do it differently and would not allow parking lots in the flood way that serve development located outside of the floodway; indicating that this reinforces why the policy has been worded as it is; indicating that the project that is being discussed is not an existing development, which is why he is making the comment about not putting development in the floodway; realizing that this has been a long process; noting that they have had communications, meetings and consultation with Mr. Bierbaum and City staff since the start of the project; further noting that everyone recognizes that this is a complicated application; thanking Mr. Bierbaum for his patience; advising that, with the information before the Committee tonight, there is a partially completed Mud Creek Subwatershed Study, which provides new information that the UTRCA is reacting to; indicating that the Study will be provided to the Civic Works Committee in a couple of weeks and that is one of their main concerns; expressing concern about relying on a recommendation from a Study that has not been fully completed or reviewed and may not have been vetted by other City departments; noting that it has not been vetted by the UTRCA; advising that, by selecting one recommendation out of the Study and choosing to rezone this property, it would certainly cause some expectations that are very problematic; indicating that the 1995 Mud Creek Subwatershed Study did not generate accurate flood lines; noting that the UTRCA found that out during the process; further noting that it is unfortunate that those flood lines were not perfect; reiterating that, with the new information provided, the determination was made that the flood lines were substandard; indicating that the UTRCA has consistently advised the City that the approval of planning applications is premature until the flood line information is updated; advising that the UTRCA has worked with this proponent and the proponent has patiently waited while the Subwatershed Study was completed; noting that a flood line analysis for this type of property is much more extensive than just looking at the property on its own because you have to look at the whole subwatershed; further noting that, in fairness to a single proponent, the magnitude of a project to look at all of the catchment area and all of the constraints in the catchment area, which are on many other property owners land, would make it extremely difficult for this property owner to update the mapping; expressing appreciation to Mr. Bierbaum for his patience in allowing the Subwatershed Study update to occur and allowing the flood line mapping update, that was a part of that process, to occur; advising that the draft subwatershed update confirms that the property is below the 100 year elevation for the existing condition which is bad news for the development from the perspective that that puts it in the flood way; advising that the UTRCA understands that there is a preferred alternative identified in the draft Subwatershed Study which indicates that this site is a good candidate for filling to raise it out of the flood plain; however, the UTRCA provided their communication after they had an opportunity to review the Planning report to emphasize that it would be premature to make a decision on the basis of a Study in draft form because it is only draft at this point in time; advising that the preferred alternative, as identified by the consultant, would have the effect of increasing flood risk on adjacent properties and public infrastructure; advising that, to approve the preferred alternative, in its current form, without addressing the flooding on neighbouring properties, is precisely why the UTRCA regulates development in flood plains; indicating that the UTRCA does not want flooding on other properties; advising that the preferred alternative is not consistent with Provincial policy to fill in the floodway on a property on its own, Conservation Authority policy and the City's Official Plan; reiterating that the preferred alternative cannot be supported by the UTRCA; emphasizing that the UTRCA is very pragmatic about these matters; recognizing that there are examples referenced in the report, the Pottersburg system and the Stanton drain system, where there have been projects which involved looking at the whole system, optimizing the flood plain, allowing the process to look at all the pro's and con's and coming up with a scheme which allows some filling in the floodway in exchange for protection of other areas; indicating that, as a Conservation Authority, we support those kinds of approaches on a watershed basis and there is possibly some potential for that kind of a scheme on this property; indicating that it is just too soon to say that it is going to work and to approve the Zoning and the Official Plan has the risk of creating expectations that may not be able to be realized; advising that the UTRCA is not a big fan of the holding provision, because we think that we really should hold off on the zoning amendment until we have the decision or the information in front of us to establish the principal of development; advising that the UTRCA still has some outstanding concerns regarding the woodlands significance that we would like to work through; advising that, on the issue of creating

Agenda Item #	Page #

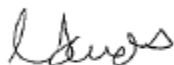
**File No.: OZ-8003  
Planner: B. Debbert**

expectations by separating the Zoning and the Official Plan, the applicant has said please do not approve the zoning; however, we would suggest that you keep the Zoning and the Official Plan together for the same reasons that the Committee would not approve the Zoning tonight; noting that the Committee might not want to approve the Official Plan; realizing that approving the Official Plan gives the applicant some certainty that the City is interested in an Office designation, which is a nice message; noting that, by separating the Official Plan and the Zoning, you get two processes running, which is a bit unusual; indicating that he would encourage Mr. Bierbaum to keep the Zoning and the Official Plan together because you can create expectations; noting that if the Official Plan designation is passed, with the Open Space that currently exists on the property and, if the property is redesignated to an Office designation, there is the potential to run into the problem that, if none of the site is developable, you have to undo that designation later; advising that a little bit more time to work out these issues is warranted; advising that when he is talking about working out the issues, we have to be clear that, looking at this catchment and looking at filling a single privately held property that is currently not developed and currently not a problem that we already have and that we want to address, is extraordinary and is not consistent with Policy; noting that, that does not mean that it cannot be done, but we would need to really consider what the needs in the subwatershed are, we would really need to look closely at the other alternatives in the Subwatershed Study and we would need to consider if the public infrastructure needs for that fill can be met; indicating that it is not unlike what we have talked about with the reach analysis for the hydro lands; noting that the reach analysis for the hydro lands is to address an existing problem and to allow an extraordinary exception to policy to allow filling on a property, but if we don't allow filling on that property and bury our heads in the sand the problem remains; indicating that the difference with this property is that it may be a candidate for filling and we can look at it through a process, but this problem does not exist yet; advising that, we are saying to the Committee, to please take the time to confirm whether or not there is a problem, how big the problem is and whether or not Mr. Bierbaum's property can be developed with some fill and looking at the impact on neighbouring properties and City infrastructure; indicating that other properties that are in the same boat in the watershed and need to be considered because if you create a precedent for one and you allow filling in the floodway believe me, the floodgates will be at the front desk of the UTRCA; confirming that the UTRCA has the regulatory authority; reiterating the UTRCA's concern is that the Subwatershed Study is in draft form and it is very premature to approve a planning application on the basis of one alternative from an incomplete Study that promotes filling; indicating that is not actually in the City mandate to make that decision, but we certainly work closely with the City and we know each other's policies; advising that it is within the UTRCA mandate to make that decision; reiterating that it is not consistent with the Provincial Policy, Conservation Authority Policy or the flood plain policies of the City; advising that the UTRCA role, with planning application review with the City, is that we provide you advice on the application when it comes to natural hazards under the Provincial policy and how it relates to our regulatory authority will manifest itself at the later stage; advising that we provide you with our advice at the front end of the decision making process so that the City can satisfy itself that it is fulfilling its obligation to be consistent with the Provincial Policy Statement; indicating that this is the Committee's decision as the Committee is the decision maker on this *Planning Act* application; reiterating that the advice that we give you, in a case like this, where we say that it is not consistent with the Provincial Policy Statement to approve an application that contemplates development in the floodway, you have to satisfy yourself whether or not you can realize Provincial policy that we have just said that we just advised you that we do not think that you can meet; indicating that we would also advise you, in a case like this, that we also would not be prepared to issue a permit for filling; indicating that, in the case of this specific site, the current configuration of it, on the basis of the Mud Creek project that we have before us, suggests that this is a candidate for filling which is a ray of hope for the developer; expressing the greatest respect for Delcan, this is not our first rodeo when it comes to filling; noting that we have done a program for conservation authority regulations for fill in the flood plain since the late 1970's; indicating that it is ok to pick out three properties and fill them but you have to have reasons why you can say to the other 15,000 or 12,000 or 8,000 properties in that catchment, why they are not candidates for filling; advising that we had better have that package together and it had better be tight; advising that our position is that there may be an opportunity for Mr. Bierbaum's property, or Bluestone's property, to be filled; indicating that we fully support the systems approach, but we need to walk this decision through a decision making process like an environmental assessment where all of the options are considered in the public interest; advising that this is what we are attempting to realize in the end; noting that we did that for Pottersburg Creek and for Stanton Drain; however, we have not done that here; indicating that, in the absence of that process, the property is not developable, but I think that it is not hopeless;

Agenda Item #	Page #

**File No.: OZ-8003**  
**Planner: B. Debbert**

advising that the relationship between the UTRCA and the City is a legislative relationship, even though the UTRCA has not exercised that relationship in the past; noting that it is a much more cooperative process; and advising that Mr. Bierbaum understands that this property is highly constrained which puts them in a difficult position. (2013-D14A) (12/19/PEC)



C. Saunders  
City Clerk  
/jb

- cc: H. Ketelaars, 1058 Colborne Street, London, ON N6A 4B2  
J. Brick, UTRCA, 1424 Clarke Road, London, ON N5V 5B9  
J. Johnstone, 1114-605 Proudfoot Lane, London, ON N6H 4S2  
S. O'Meara, 412 Oxford Street West, London, ON N6H 1T3  
L. Smithers, 359 Riverside Drive, London, ON N6H 1G3  
H. Katz, ESAM Construction Limited, c/o Fleetway Bowling, 720 Proudfoot Lane, London, ON N6H 5G5  
J.M. Fleming, Managing Director, Planning and City Planner  
J. Yanchula, Manager, Community Planning and Urban Design  
M. Tomazincic, Manager, Planning Review  
B. Krichker, Manager, Stormwater  
B. Debbert, Senior Planner  
J. Nethercott, Documentation Services Representative

Agenda Item #	Page #

**File No.: OZ-8003  
Planner: B. Debbert**

**Appendix 4 – June 10, 2014 Council Resolution**

