

20 April 2022

Mayor and Members of Council
Municipality of Middlesex Centre
10227 Ilderton Road
Ilderton, ON N0M 2A0

Dear Mayor and Members of Council:

**Re: 20 April 2022 Council Meeting, Agenda Item 7.2
Applications for Official Plan and Zoning By-law Amendments
22447 Komoka Road (the “Subject Property”)**

We are counsel for Jim Graham, the owner of 22393 Komoka Road (the “Graham Property”), which is adjacent to the Subject Property to the east. We write to express our client’s serious concerns with the applications for Official Plan Amendment (OPA 46) and Zoning By-law Amendment (ZBA 20 2019) for the Subject Property, in particular as it relates to stormwater drainage impacts on the Graham Property from the proposed development.

The proposed development involves the use of the existing pond on the Subject Property to accommodate stormwater drainage, together with infiltration galleries/LIDs to achieve quantity control. The stormwater peer review prepared by IBI Group notes that no consideration of external lands were included in modelling and in determining the effects of water level changes within the existing pond. The peer review also notes that the Municipality has requested comments on how the current function of the existing pond varies from the design function for the drainage from the external lands.

It also appears that the proposed development will direct stormwater drainage overflows onto the Graham Property since IBI requested a plan showing the current outlet through the “dam” and suggested it be relocated to the south corner.

Our client does not consent to receiving stormwater drainage from the Subject Property, nor can he be required to do so. In its 11 February 2022 letter, the applicant’s engineering consultant, LDS Consultants Inc., refers to the “riparian rights” of Mr. Powell, presumably the alleged right to allow surface water to drain over the Graham Property. However, the law in Ontario is clear that unless water travels in a defined natural watercourse, the owner of lower land (the Graham Property) does not have any obligation to receive surface water drainage from a higher property (the Subject Property): *Di Gregorio v. Osborne*, 2004 CarswellOnt 2050 (ONSCJ).

Historically, the Graham Property has not received surface water drainage from the Subject Property. However, following the development of the plaza located 9919 Glendon Drive in 2012-2013, some



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minor seasonal surface stormwater drainage from the Subject Property drained onto the Graham Property. After the plaza and Bella Lago were developed, Mr. Graham requested and received Mr. Powell's consent to build a berm between the ponds located on the two properties to visually screen the plaza and Bella Lago from the Graham Property.

After the berm was constructed, the water levels began to rise in the pond on the Subject Property, as pointed out in the LDS letter. The rise in water levels illustrates that the proposed stormwater management solution of using infiltration and LIDs to reduce stormwater flows is not feasible, and that stormwater overflows will drain onto the Graham Property.

In addition, the LDS letter identifies the presence of environmentally harmful chlorides in the Subject Property's pond. The applicant has not proposed any reasonable strategy for managing the chlorides within its pond or preventing the escape of chlorides from the pond onto the Graham Property. It is also not clear whether the applicant has an approved Environmental Compliance Approval for the pond.

On behalf of Mr. Graham, we **strongly** urge Council not to approve OPA 46 and ZBA 20 2019. Approval of these instruments without a sound strategy for managing the stormwater generated by the proposed development within the boundaries the Subject Property will create adverse and unlawful impacts on the Graham Property, for which Mr. Graham will hold the applicant and the Municipality responsible.

Regards,

Wood Bull LLP

A handwritten signature in blue ink that reads "Kim Mullin". The signature is written in a cursive style and is positioned above the printed name.

Kim Mullin

KM/KP

c Client