

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

**KEB HANA BANK as trustee of IGIS GLOBAL PRIVATE PLACEMENT REAL
ESTATE FUND NO. 301 and as trustee of IGIS GLOBAL PRIVATE PLACEMENT
REAL ESTATE FUND NO. 434**

Applicant

- and -

**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE
ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**SEVENTH REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.**

December 20, 2024

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1.0 INTRODUCTION

- 1.1 On October 18, 2023 (the “**Appointment Date**”), pursuant to an Order (Appointing Receiver) (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), Mizrahi Development Group (The One) Inc. (the “**Nominee**”) and Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**”, and, together with the Beneficial Owner and the Nominee, the “**Debtors**”¹), acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel, and retail tower (the “**Project**”) located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (“**One Bloor**”).
- 1.2 A copy of the Receivership Order is attached hereto as **Appendix “1”**.
- 1.3 In connection with these receivership proceedings (the “**Receivership Proceedings**”), the Receiver has previously filed with this Court six reports and three supplemental reports (collectively, the “**Prior Reports**”). Additional background regarding the Debtors and the Project, including an overview of the circumstances leading to the appointment of the Receiver, are set out in the Prior Reports and in the application record dated October 17, 2023 (the “**Application Record**”) of the Debtors’ senior secured lenders, KEB Hana Bank as trustee of each of IGIS Global Private Placement Real Estate Fund No. 301 and IGIS

¹ The Debtors are referred to collectively in this report, for convenience.

Global Private Placement Real Estate Fund No. 434 (together with KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530, the “**Senior Secured Lenders**”).

- 1.4 The Application Record, the Prior Reports and other Court-filed documents and notices in these Receivership Proceedings can be found on the Receiver’s case website at: www.alvarezandmarsal.com/theone (the “**Case Website**”).

2.0 PURPOSE OF THIS REPORT

- 2.1 This Seventh Report (the “**Seventh Report**”) has been prepared for two purposes:

- (i) to provide the Court with information and evidence regarding the relief sought in the motion brought by Mappro Realty Inc. (“**Mappro**”), a contingent unsecured litigation creditor, seeking, among other things, to lift the stay of proceedings granted by the Receivership Order so it can proceed with its litigation against the Debtors, including seeking an injunction preventing the Project from continuing to use the Staging Area and Concrete Pump (defined below) (the “**Mappro Motion**”), and to set out the factual basis for the Receiver’s opposition thereto; and,
- (ii) to provide evidentiary support for the Receiver’s cross-motion, seeking, among other things, directions with respect to how the Debtors should continue construction of the Project in light of Mappro’s prior allegation that the Receiver is personally liable for “willful misconduct” as a result of that construction.

3.0 TERMS OF REFERENCE AND DISCLAIMER

- 3.1 In preparing this Seventh Report, the Receiver has obtained and relied upon unaudited financial information, books and records, and other documents of the Debtors, and has held discussions with, and been provided with certain additional information from, among others, Knightsbridge Development Corporation (“**KDC**”) and SKYGRiD Construction Inc. (“**SKYGRiD**”) (collectively, the “**Information**”).
- 3.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.
- 3.3 This Seventh Report has been prepared to provide the Court with further information regarding the relief sought in the Mappro Motion returnable on a date to be fixed by the Court and the Receiver’s cross-motion. Accordingly, the reader is cautioned that this Seventh Report is not appropriate for any other purpose, and that the Receiver will not assume any responsibility or liability for any losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Seventh Report.
- 3.4 In this Seventh Report, the Receiver has referenced certain conclusions that it reached based on advice from counsel. Neither these references, nor any other statement in this Seventh Report, constitutes a waiver of privilege.

- 3.5 Unless otherwise stated, all monetary amounts contained in this Seventh Report are expressed in Canadian dollars.

4.0 THE PROJECT

(i) The Debtors

- 4.1 The Debtors are entities established for the purpose of developing a mixed-use development project located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario, marketed as “The One” (the “**Project**”).

- 4.2 Once completed, the Project will be among Canada’s tallest residential buildings. It is comprised of 85 floors, including 641,796 square feet of residential space and 188,952 square feet of commercial space. As initially envisioned, it was to include a luxury hotel, 416 residential condominium units, and high-end retail spaces.

(ii) The Receiver

- 4.3 On October 18, 2023, pursuant to the Receivership Order, the Receiver was appointed as receiver, without security, of all of the assets, undertakings and properties of the Debtors, acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the Project.
- 4.4 A core aspect of the Receiver’s mandate has been (and continues to be) ensuring that the Debtors continue to build the Project with a view to maximizing recoveries for the benefit of all stakeholders. Construction has continued without disruption since the Receiver was appointed.

(iii) The Staging Area

- 4.5 Construction of the Project requires an enormous volume of concrete; in the past six months alone, the Project has required over 7,000 cubic meters of concrete. This concrete must also be transported from ground level to where it is required on the Project, including the Project's upper floors. If contractors working on the Project cannot transport concrete efficiently where and when it is required, the construction of the Project cannot continue as contemplated and cannot be completed on schedule.
- 4.6 The Receiver understands, based on its consultation with KDC and SKYGRiD, that the only practical way to transport concrete to where it is required on the Project is to use a concrete pump located close to the Project (the "**Concrete Pump**").
- 4.7 The Concrete Pump is a semi-permanent installation that is currently installed on Balmuto Street, the closest secondary street to the Project. The only streets closer to the Project are Yonge Street and Bloor Street, which are both major arterial roadways, used by thousands of people every day.
- 4.8 The Concrete Pump was in place when the Receiver was appointed. The Receiver was not involved in the decision to place the Concrete Pump in the Staging Area. The Receiver understands, from its review of the documents described below and discussions with KDC, that because of logistical and traffic concerns, including the location of parking entrances and loading docks, Balmuto Street was identified as the best option for the installation of the Concrete Pump.

- 4.9 On July 14, 2020, the City of Toronto (the “**City**”) granted a temporary street occupation permit over a five metre wide and 17 metre long portion of Balmuto Street (the “**Staging Area**”). After receiving this permit, the Debtors erected the Concrete Pump in the Staging Area and trenched pipes underground from Balmuto Street to the Project, to transport the concrete. A photo of the Concrete Pump and a screenshot of its location on Google Maps are attached hereto as **Appendix “2”**.
- 4.10 Given that the permit issued on July 14, 2020, was temporary, the Debtors sought a longer-term permit. A multi-year permit was granted by City Council on November 25, 2020, until November 30, 2022. City Council’s decision to extend the permit is attached hereto as **Appendix “3”**.
- 4.11 The permit has been extended several times. On December 14, 2022, City Council extended the permit to March 31, 2023. In reaching this decision, City Council specifically referenced two letters from Mappro, which are attached hereto as **Appendix “4”**. City Council’s decision to extend the permit is attached hereto as **Appendix “5”**.
- 4.12 On March 29, 2023, City Council extended the permit to April 1, 2024, this time with several conditions designed to reduce noise from the Concrete Pump. Specifically, the Debtors were required to erect a temporary insulated wood enclosure by April 17, 2023, and a permanent noise enclosure by May 17, 2023 (the “**Noise Mitigation Enclosure**”). City Council’s decision to extend the permit is attached hereto as **Appendix “6”**. The Receiver understands that the Debtors took all noise-mitigation steps that they were directed to take.

- 4.13 In September 2023, City Council directed the Debtors to install artwork hoarding on the Noise Mitigation Enclosure. This hoarding was installed in early fall 2023. A photo of the Noise Mitigation Enclosure is attached as **Appendix “7”**.
- 4.14 In late fall 2023, City Council directed the Debtors to install curtains on the north side of the Noise Mitigation Enclosure to obscure the light source which was pointing to Bloor Street. These curtains were installed.
- 4.15 On March 20, 2024, City Council again extended the permit to July 31, 2024. In reaching this decision, City Council again specifically referenced two letters from Mappro, which are attached hereto as **Appendix “8”**. City Council’s decision to extend the permit is attached hereto as **Appendix “9”**.
- 4.16 On July 24, 2024, City Council extended the permit to February 1, 2026. In reaching this decision, City Council considered two letters from Mappro, which are attached hereto as **Appendix “10”**.² City Council’s decision to extend the permit is attached hereto as **Appendix “11”**.

5.0 THE MAPPRO MOTION

(i) Background

- 5.1 Mappro alleges that the Concrete Pump interfered (and continues to interfere) with its enjoyment of a property that it owns on the southeast corner of Balmuto Street and Bloor Street, known municipally as 19 Bloor Street West (the “**Mappro Property**”). Mappro

² These letters include Mappro’s previous letters, which are each included several times. Notwithstanding the duplication, the Receiver has included Mappro’s letters as submitted.

alleges that it has not been able to lease part of the Mappro Property because of the noise from the Concrete Pump.

5.2 The Staging Area on Balmuto Street is adjacent to the Mappro Property and does not encroach on the Mappro Property.

5.3 On September 7, 2022, Mappro commenced an action (the “**Mappro Action**”) against Mizrahi Developments Inc. (not a debtor in these Receivership Proceedings) and the City (the “**Defendants**”) seeking, among other relief:

- (i) an injunction to prohibit further use of the Staging Area (the “**Injunction**”); and,
- (ii) damages in the amount of \$3,000,000.

5.4 On May 13, 2023, Mappro’s Statement of Claim was amended to substitute the Nominee, in place of Mizrahi Developments Inc.

5.5 The Mappro Action was still at an early stage when the Receiver was appointed. Pleadings had been exchanged, but documentary discovery had not occurred.

5.6 The Mappro Action has been stayed since the Receiver’s appointment, although the Receiver consented to a limited lifting of the stay in October 2024 so that Mappro could amend its pleadings to add the Beneficial Owner and GP Inc. as Defendants, in advance of a potential limitation issue.

5.7 Mappro now seeks leave to continue the action against all Defendants, including the City and the Debtors.

(ii) Mappro's Motion for Leave to Commence an Action against the Receiver

5.8 On October 2, 2024, Mappro served a motion seeking (among other relief) to lift the stay of proceedings and commence a claim against the Receiver and SKYGRiD, the construction manager retained by the Receiver in March 2024. A copy of this Notice of Motion is attached as **Appendix "12"**.

5.9 The Receivership Order prohibits any claims against the Receiver, except for gross negligence or willful misconduct. Mappro asserted that the Debtors' use of the Staging Area and the Concrete Pump after the Receiver's appointment constituted "willful misconduct" within the meaning of the Receivership Order.

5.10 By e-mail dated October 28, 2024, Mappro advised that it would not "be seeking leave to add the Receiver or SKYGRiD as defendants in the action at this time." A copy of this email is attached as **Appendix "13"**.

5.11 Mappro still seeks to lift the stay so that it can proceed with the Mappro Action, including the Injunction. The Receiver opposes the Mappro Motion. The Receiver has engaged in without prejudice discussions with Mappro but could not reach a resolution.

(iii) No alternative to the Concrete Pump in the Staging Area

5.12 The Receiver has considered the issues raised by Mappro, but it has not identified any alternative to the continued use of the Concrete Pump in the Staging Area.

5.13 In the Receiver's view, it is necessary and appropriate for the Debtors to continue using the Concrete Pump and Staging Area in accordance with the permit provided by City

Council until construction of the Project is complete. If the Concrete Pump cannot be used, construction of the Project will be delayed, and it will eventually stop completely.

- 5.14 Mappro has suggested that the Concrete Pump could or should be moved to a different location. The Receiver has analyzed this issue, with assistance from KDC and StrategyCorp Inc. (a consulting firm that has advised the Receiver on municipal permit issues) and it does not agree.
- 5.15 The Debtors do not have the right to legally move the Staging Area to any other location or operate the Concrete Pump at any other location. The Receiver does not believe, based on advice from StrategyCorp Inc., that City Council would approve any move of the Staging Area due to the significant disruption associated with such a move.
- 5.16 Even if the Staging Area could eventually be moved, the Receiver was advised by KDC that the process for doing so is likely to take 11 to 15 months:

Required Steps	Anticipated Required Time
Coordination with work zone Coordinator for approval	2 months
Preliminary Application timeline including Councilor's Approval	3 months
Preparation of Drawings and Specifications	4-6 months
Application and Approval from Transportation and City Engineering	1-2 months
Construction and Road Repair	1-2 months

- 5.17 Moving the Concrete Pump would also be logistically difficult and expensive. The Concrete Pump uses underground pipes to transport concrete from the Staging Area to the Project. In order to remove these pipes, and connect the Concrete Pump in a new location, City Council would need to approve the closure of the entirety of Balmuto Street for 1 to 2 months in order to excavate the existing pipe, dig new trenches, and install new pipes.

5.18 The costs associated with moving the Concrete Pump would be astronomical and would threaten the continuance of the Project as contemplated. The Debtors would incur:

- (i) the construction costs associated with moving the Concrete Pump;
- (ii) the additional financing costs incurred because of the delayed construction; and,
- (iii) claims for additional costs from contractors whose work is delayed or disrupted.

5.19 These costs are difficult to calculate at this stage, but the Receiver expects them to significantly exceed the damages claimed by Mappro in the Mappro Action.

(iv) The alleged prejudice to Mappro

5.20 Mappro alleges that the noise from the Concrete Pump interferes with its ability to rent part of the Mappro Property to a new tenant.

5.21 The Receiver understands that Mappro has entered into a conditional agreement of purchase and sale with a third-party developer. The developer has applied for permission to build a 95-story mixed use condominium building on the Mappro Property. In the Receiver's view, this agreement is relevant to the current issue for two reasons.

5.22 First, although Mappro has refused to disclose the terms of its sale, a developer planning to build a significant new development will almost always pay significantly more for a property than it would be worth without that development. In this case, the Mappro Property is almost certainly worth more as part of a 95-story development (which will most certainly require a similar concrete pumping process, and potentially use of the current Staging Area and/or the Concrete Pump) than it would be as a two-story commercial

property. As a result, Mappro will likely mitigate most or all of its alleged damages if it completes the sale.

- 5.23 Second, the pending sale of the Mappro Property will result in a demolition of the space that Mappro is ostensibly trying to rent. Most attractive retail tenants require long-term leases, because the leases involve significant investments in the leased property. Mappro is unlikely to be able to enter into long term leases if it has agreed to sell the Mappro Property to a developer. As a result, the Receiver believes that the Mappro Property is unlikely to be leased even if the Concrete Pump is moved.

(v) Mappro's motion to lift the stay

- 5.24 Mappro seeks to lift the stay so that it can pursue the Mappro Action against the Debtors. The Receiver opposes this request.
- 5.25 Mappro seeks to advance an unsecured claim. It can only recover any alleged damages from the Debtors if recoveries exceed all secured claims. Based on the information currently available to the Receiver, this is unlikely to occur and, as a result, the Receiver has not conducted any process to date to call for unsecured claims against the Debtors. If the Receiver is forced to defend the Mappro Action, it will need to draw on the credit facilities available to it to fund defence costs (should the Senior Secured Lenders permit that). In effect, the Senior Secured Lenders would be forced to fund costs associated with an alleged unsecured claim. The Receiver does not believe that this is appropriate. In addition, lifting the stay to allow the Mappro Action to proceed will require the Receiver and its construction consultants to devote their attention and resources to dealing with the

Mappro Action, and distract from the core objective of advancing the Project to its successful completion for the benefit of all stakeholders.

6.0 CONCLUSION AND RECOMMENDATION

- 6.1 For the reasons set out in this Seventh Report, the Receiver is of the view that leave should not be granted to lift the stay granted in the Receivership Order to allow Mappro to pursue the Mappro Action, including the Injunction, having regard to the circumstances outlined herein. The Receiver has also determined that the Project requires the use of the Staging Area and Concrete Pump at their current location. Accordingly, the Receiver respectfully requests that the Court deny the relief sought in the Mappro Motion and grant the relief sought on the Cross-Motion.

All of which is respectfully submitted,

**Alvarez & Marsal Canada Inc., in its capacity as receiver and manager of
Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc.,
and Mizrahi Commercial (The One) GP Inc.**

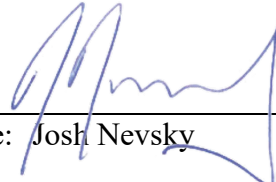
Per:



Name: Stephen Ferguson

Title: Senior Vice-President

Per:



Name: Josh Nevsky

Title: Senior Vice-President

APPENDIX “1”
RECEIVERSHIP ORDER DATED OCTOBER 18, 2023



Court File No. CV-23-00707839-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.

)

WEDNESDAY, THE 18TH

JUSTICE OSBORNE

)

DAY OF OCTOBER, 2023

**KEB HANA BANK as trustee of IGIS GLOBAL PRIVATE PLACEMENT REAL
ESTATE FUND NO. 301 and as trustee of IGIS GLOBAL PRIVATE PLACEMENT
REAL ESTATE FUND NO. 434**

Applicant

- and -

**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.**

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by KEB Hana Bank as trustee of (i) IGIS Global Private Placement Real Estate Fund No. 301 and (ii) IGIS Global Private Placement Real Estate Fund No. 434 (the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario and legally described on Schedule “A” hereto (the “**Project**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Joo Sung Yoon (the “**Yoon Affidavit**”) sworn October 17, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Receiver, counsel for Sam Mizrahi, Mizrahi Inc. and Sam M Inc. (collectively, the “**Mizrahi Group**”), and counsel for Coco International Inc. and 12823543 Canada Ltd., no one else appearing although duly served as appears from the affidavit of service of Sierra Farr, sworn October 17, 2023, and on reading the consent of A&M to act as the Receiver,

SERVICE AND REFERENCES

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, in this Order, references to the Debtors shall include references to all Debtors, or any of them, unless otherwise specified.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof (the “**Property**”). For the avoidance of doubt, the Property includes the lands legally described on Schedule “A” hereto and the buildings located thereon.

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that, subject to the terms of the Receivership Funding Credit Agreement (as defined herein), including, without limitation, the Cash Flow Projections (as defined in the Receivership Funding Credit Agreement), the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or in respect of the Property, including without limitation, the Debtors' bank accounts wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to (i) enter into any agreements, including any agreements for the purchase and sale of condominium units which shall be subject to Court approval, (ii) incur any obligations in the ordinary course of business, (iii) cease to carry on all or any part of the business, or (iv) cease to perform, terminate or disclaim any contracts of the Debtors, or in respect of the Property, subject to paragraph 5 of this Order;
- (d) make, directly or indirectly, payments owing by the Debtors, or any of them, or owing by Mizrahi Inc. solely in its capacity as developer or general contractor of the Project (in such capacity, the "**Developer**"), to suppliers, contractors, subcontractors and other creditors, in respect of amounts owing prior to or after the date of this Order, who the Receiver considers to be critical to the business of the Debtors or the Project;
- (e) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and any other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and, with the consent of the Applicant, to exercise all remedies of the Debtors in collecting such monies and accounts, including, without limitation, to enforce any security held by the Debtors;
- (h) to settle, extend or compromise any indebtedness owing to the Debtors, provided that the Receiver shall obtain the prior consent of the Applicant prior to settling, extending or compromising any indebtedness owing to the Debtors in excess of \$100,000;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings, provided that the Receiver shall obtain the prior consent of the Applicant prior to settling or compromising any proceeding where the amount claimed is in excess of \$100,000. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) in consultation with the Applicant, to market, whether directly or indirectly, any or all of the Property, including, without limitation, condominium units and leased premises in the Project, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;

- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000, and provided further that no condominium unit in the Project shall be sold pursuant to this clause (i); and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause, or in respect of any transaction in respect of condominium units in the Project;

and in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act*, or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and/or the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable, and to conduct any investigations associated with the Debtors' business or the Property as the Receiver deems appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions and any renewals thereof, and make any filings, in each case as may be required by any governmental authority for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) with the consent of the Applicant, to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the

generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (r) to exercise any shareholder, partnership, joint venture, contractual, statutory or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

5. **THIS COURT ORDERS** that the Receiver shall be at liberty to cease to perform, terminate or disclaim either the Commercial Development Management Agreement (the “**Construction Management Agreement**”) made as of the 25th day of July, 2014 between Mizrahi Commercial (The One) LP as owner and Mizrahi Inc. as manager in respect of the development and construction services provided to the Project, or the CCDC2 Stipulated Price Contract 2008 made on the 14th day of May, 2019, as amended on the 27th day of September, 2019 (such contract, as so amended, the “**GC Agreement**”) between Mizrahi Development Group (The One) Inc. as owner and Mizrahi Inc. as contractor, in respect of the general contractor services provided to the Project, subject to providing at least 15 days’ notice to counsel to the Mizrahi Group.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay the amount of \$783,305.03, in respect of the amounts owing to Mizrahi Inc. pursuant to the Construction Management Agreement and/or the GC Agreement for services performed on or prior to August 31, 2023, and the Receiver is further authorized to pay all fees owing under the Construction Management Agreement and the GC Agreement that are properly incurred on or after September 1, 2023, pursuant to the terms of such agreements; provided however that, for the avoidance of doubt, in making any payments pursuant to this paragraph 6, the Receiver is not affirming either the Construction Management Contract or the GC Agreement, and the Receiver

shall have no personal liability for any payments or other obligations under either the Construction Management Contract or the GC Agreement.

6A. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay the amount of \$88,218.16, in respect of the amounts owing to 12823543 Canada Ltd. for accounting services performed on or prior to August 31, 2023.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. **THIS COURT ORDERS** that (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, direct and indirect shareholders or other equity holders, limited partners, general partners and all other persons acting on their instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors and service providers directly or indirectly involved in the Project, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, agreements, orders, corporate and accounting records, insurance policies, permits, licenses and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors or the Property, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof (in each case within the timeframe specified by the Receiver in writing or such other timeframe as may be agreed to between the Receiver and such Person) and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may

not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud, or in or on other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers or other account credentials that may be required to gain access to the information.

10. **THIS COURT ORDERS** that all Persons, including, without limitation, the Debtors, Mizrahi Inc., Sam M Inc., 12823543 Canada Ltd., Sam Mizrahi, Jenny Coco, and all construction managers, general contractors, contractors and subcontractors to the Project shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, subcontracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors and/or the Property, solely in relation to the Project. In addition to the foregoing general cooperation and information sharing requirements, all constructions managers, general contractors, contractors, and subcontractors shall, as applicable, be required to do the following things: (a) in respect of any and all such contracts, subcontracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty days' notice of any renewal date, termination date, election date or similar date in respect

thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

11. **THIS COURT ORDERS** that, upon termination, disclaimer, expiry or cessation of any contract or agreement between the Debtors and/or or the Receiver and any other Person, such Person shall deliver to the Receiver any Records necessary or desirable for the operation of the Debtors' business or the Project.

12. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

13. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or the Receiver's counsel except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

14. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property, or the Developer for matters arising after the date of this Order, shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, or against the Developer for matters arising after the date of this Order, including, without limitation, licenses and permits required for the Project regardless of who is the legal holder of any such licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

16. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of the Debtors, the Developer, or in respect of the Project, or held by the Debtors or the Developer, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors, or the Developer or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Debtors, or the Developer and/or the Project, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, sub-contracts, trade suppliers, equipment vendors and rental companies, insurance, transportation services, utility, customers, clearing, warehouse and logistics services or other services to the Debtors, or the Developer and/or the Project are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may

be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver or the Developer, as determined by the Receiver, in accordance with normal payment practices of the Debtors or the Developer, as applicable, or, with respect to the Debtors or the Developer, such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

18. **THIS COURT ORDERS** that any Person who has provided any kind of letter of credit, guarantee, surety or bond (collectively, "**Financial Assurance**") to or for the benefit of the Debtors, including where such Financial Assurance has been provided to the Developer, on or before the date of this Order shall be required to continue honouring such Financial Assurance in accordance with its terms, notwithstanding any default of cross-default arising as a result of this Order, the financial circumstances of the Debtors or otherwise. For greater certainty, the guarantees of the Guarantors referred to in paragraph 65 of the Yoon Affidavit shall not be affected by this paragraph and such guarantees are not included in the definition of Financial Assurance.

RECEIVER TO HOLD FUNDS

19. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new bank accounts to be opened by the Receiver or on the instructions of the Receiver into a lawyer's trust account held in trust in accordance with purchase and sale agreements for condominium units in the Project (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

20. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the respective Debtor until such time as the Receiver, on the applicable Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

21. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property including, without limitation, condominium units and leased premises in the Project (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

22. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation,

enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

23. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Receivership Funding Credit Agreement; (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor, subcontractor or other service provider directly or indirectly involved in the Project, and all other persons acting on their instructions or behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER’S ACCOUNTS

24. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings,

and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and provided further that the Receiver's Charge shall be subordinate to the security interest of Aviva Insurance Company of Canada ("**Aviva**") in the Condo Deposits in the Condo Deposit Account (each as defined in the Yoon Affidavit).

25. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

26. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

27. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow, by way of the Receivership Funding Credit Agreement dated as of October 18, 2023 among the Receiver, IGIS Asset Management Co., Ltd. and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the "**Lender**") (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the "**Receivership Funding Credit Agreement**"), such monies from time to time as it may consider necessary or desirable, provided that draws made under the Receivership Funding Credit Agreement do not exceed \$315,000,000 (or such further amount as this Court may authorize), on the terms contained in the Receivership Funding Credit Agreement, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including as required in order to finance ongoing construction and development costs in connection with the Project and costs associated with the Receivership, including professional fees. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed pursuant to the Receivership

Funding Credit Agreement, together with interest, fees and charges thereon, as set forth in the Receivership Funding Credit Agreement, and all other amounts the Debtors are responsible for pursuant to the Receivership Funding Credit Agreement, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and provided further that the Receiver's Borrowings Charge shall be subordinate to the security interest of Aviva in the Condo Deposits in the Condo Deposit Account.

28. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) upon the occurrence of an event of default under the Receivership Funding Credit Agreement or the Receiver's Borrowings Charge, the Lender may immediately cease making advances to the Receiver, make demand, accelerate payment and give other notices; and
- (b) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of the Debtors or the Property.

29. **THIS COURT ORDERS** that the Receiver's Borrowings Charge shall not be enforced without leave of this Court.

30. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") as evidence for any amount borrowed by it pursuant to the Receivership Funding Credit Agreement and this Order.

31. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to the Receivership Funding Credit Agreement and this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

32. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.alvarezandmarsal.com/theone>.

33. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

34. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any or all of the Debtors.

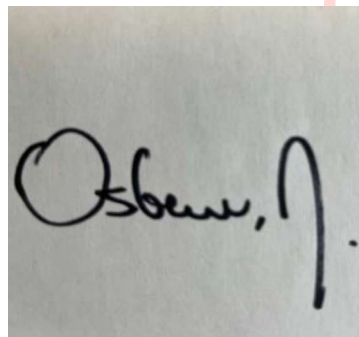
36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

38. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Receivership Funding Credit Agreement, the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

39. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



2023.10.
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SCHEDULE “A”

LEGAL DESCRIPTION OF THE PROJECT

PIN 21109-0244 (LT)

FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., in its capacity as the receiver and manager (the "**Receiver**") of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (the "**Project**"), including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 20 (the "**Order**") made in an action having Court file number -CL- _____, has received as such Receiver from KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable in accordance with the terms of the Receivership Funding Credit Agreement (as defined in the Order) with interest thereon calculated in accordance with the terms of the Receivership Funding Credit Agreement.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20_.

ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Receiver of the Property,
and not in its personal capacity

Per: _____

Name:

Title:

**KEB HANA BANK as trustee of IGIS GLOBAL
PRIVATE PLACEMENT REAL ESTATE FUND
NO. 301 and as trustee of IGIS GLOBAL PRIVATE
PLACEMENT REAL ESTATE FUND NO. 434**

Applicant

**MIZRAHI COMMERCIAL
(THE ONE) LP, et al.**

and

Court File No: CV-23-00707839-00CL

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT: TORONTO

ORDER

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Shawn Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

Mark Sheeley (LSO# 66473))

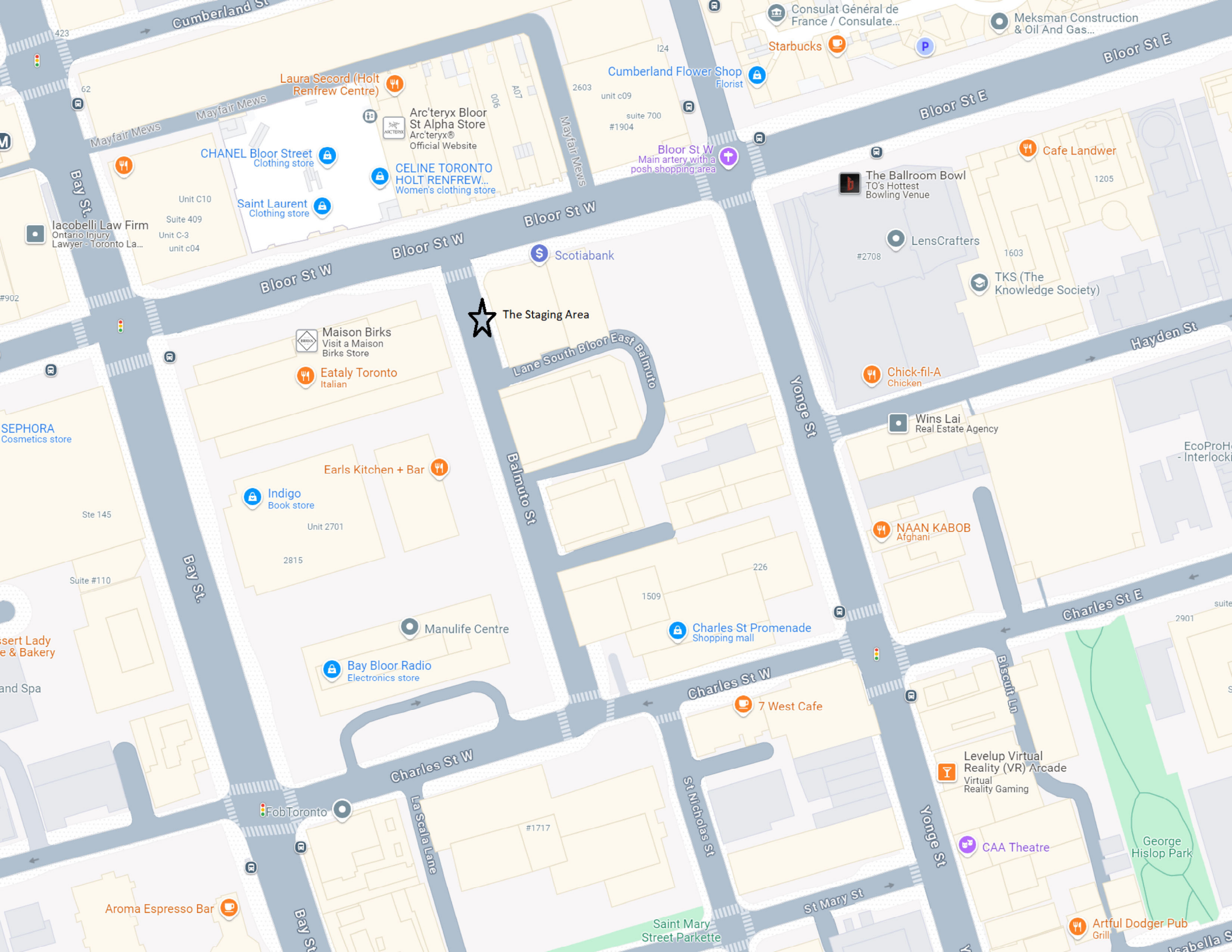
Tel: 416.862.6791


Email: msheeley@osler.com

Lawyers for the Applicant

APPENDIX “2”
PHOTO OF THE CONCRETE PUMP AND GOOGLE MAPS SCREENSHOT





 The Staging Area

Lane South Bloor East Balmain

Balmain St

Yonge St

Charles St E

Charles St W

Charles St W

Yonge St

St Mary St

St Nicholas St

La Scala Lane

Bay St

Bay St

Bay St

Bloor St E

Bloor St E

Hayden St

Mayfair Mews

Mayfair Mews

Cumberland Flower Shop Florist

Laura Secord (Holt Renfrew Centre)

Arc'teryx Bloor St Alpha Store
Arc'teryx® Official Website

CELINE TORONTO
HOLT RENFREW... Women's clothing store

CHANEL Bloor Street Clothing store

Saint Laurent Clothing store

Iacobelli Law Firm
Ontario Injury Lawyer - Toronto La...

Unit C10
Suite 409
Unit C-3
unit c04

Maison Birks
Visit a Maison Birks Store

Eataly Toronto Italian

Earls Kitchen + Bar

Indigo Book store

Unit 2701

2815

Manulife Centre

Bay Bloor Radio Electronics store

Charles St Promenade Shopping mall

7 West Cafe

NAAN KABOB Afghani

Wins Lai Real Estate Agency

Chick-fil-A Chicken

TKS (The Knowledge Society)

LensCrafters

The Ballroom Bowl
TO's Hottest Bowling Venue

Cafe Landwer

Starbucks

Consulat Général de France / Consulate...

Meksman Construction & Oil And Gas...

Levelup Virtual Reality (VR) Arcade
Virtual Reality Gaming

CAA Theatre

Artful Dodger Pub Grill

George Hislop Park

Saint Mary Street Parkette

Aroma Espresso Bar

SEPHORA Cosmetics store

Ste 145

Suite #110

Desert Lady e & Bakery

and Spa

suite

2901

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APPENDIX “3”

2020 Multi-Year Permit dated November 25, 2020 (TE20.29)



Item - 2020.TE20.29

Tracking Status

- City Council adopted this item on November 25, 2020 with amendments.
- This item was considered by the Toronto and East York Community Council on November 10, 2020 and adopted without amendment. It will be considered by City Council on November 25, 2020.
- See also By-laws 1051-2020, 1052-2020, 1060-2020

City Council consideration on November 25, 2020

TE20.29 - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

City Council Decision

City Council on November 25 and 26, 2020, adopted the following:

1. City Council authorize the closure of a 5 metre wide portion of the northbound curb lane and east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from November 30, 2020 to November 30, 2022.
2. City Council rescind the existing designated commercial loading zone on the west side of Balmuto Street, between a point 25.5 metres south of Bloor Street West and a point 11.5 metres further south.
3. City Council rescind the existing designated on-street accessible parking space on the west side of Balmuto Street, between a point 37 metres south of Bloor Street West and a point 20 metres further south.
4. City Council rescind the existing parking prohibition in effect from 6:30 p.m. of one day to 8:00 a.m. of the next following day, Monday to Friday, from 6:00 p.m. to 12:00 a.m. Saturday and at all times Sunday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
5. City Council rescind the existing stopping prohibition in effect from 3:30 p.m. to 6:30 p.m., Monday to Friday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
6. City Council rescind the existing standing prohibition in effect from, 8:00 a.m. to 3:30 p.m., Monday to Friday and from 8:00 a.m. to 6:00 p.m., Saturday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south of Bloor Street.
7. City Council prohibit stopping, at all times, on both sides of Balmuto Street, between Bloor Street West and a point 57 metres south.
8. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
9. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
10. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
11. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
12. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
13. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
14. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
15. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

16. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.

17. City Council direct that Balmuto Street be returned to its pre-construction traffic and parking regulations and lane configurations when the project is completed.

18. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of November 30, 2020 to November 30, 2022 for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report (October 19, 2020) from the Acting Director, Traffic Management, Transportation Services and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

19. City Council rescind the existing northbound right turn prohibition in effect from 7:00 a.m. to 7:00 p.m., Monday to Friday, except public holidays, at the intersection of Bloor Street West and Bay Street.

20. City Council direct the applicant to establish and host a Construction Liaison Committee made up of local residents and businesses (including local the Residents' Associations and Business Improvement Areas), to the satisfaction of the local Councillor; the Committee is to meet bi-weekly for the first three months after the permit is issued, and subsequently as regularly as is deemed necessary by the local Councillor in consultation with local residents; the Committee is to be held online through a video conferencing platform while physical distancing protocols are in place; and notes from the meetings are to be shared with the members and the Councillor's office.

21. City Council direct the applicant to ensure adequate winter maintenance of the all areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

22. City Council direct the applicant to visually improve the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

23. City Council direct the applicant to only place additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to remove them within fifteen minutes of discontinuing use of the pump; and to not place them in legal parking areas.

24. City Council direct the applicant to ensure that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

25. City Council authorize the General Manager, Transportation Services to negotiate, enter into and execute an indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services and in a form satisfactory to the City Solicitor.

26. City Council direct that Parts 1 to 24, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 25 above.

Background Information (Community Council)

(October 19, 2020) Report and Attachment from the Acting Director, Traffic Management, Transportation Services - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-157687.pdf>

Motions (City Council)

1 - Motion to Amend Item moved by Councillor Mike Layton (Carried)

That:

1. City Council rescind the existing northbound right turn prohibition in effect from 7:00 a.m. to 7:00 p.m., Monday to Friday, except public holidays, at the intersection of Bloor Street West and Bay Street.

2. City Council direct the applicant to establish and host a Construction Liaison Committee made up of local residents and businesses (including local the Residents' Associations and Business Improvement Areas), to the satisfaction of the local Councillor; the Committee is to meet bi-weekly for the first three months after the permit is issued, and subsequently as regularly as is deemed necessary by the local Councillor in consultation with local residents; the Committee is to be held online through a video conferencing platform while physical distancing protocols are in place; and notes from the meetings are to be shared with the members and the Councillor's office.

3. City Council direct the applicant to ensure adequate winter maintenance of the all areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

4. City Council direct the applicant to visually improve the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

5. City Council direct the applicant to only place additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to remove them within fifteen minutes of discontinuing use of the pump; and to not place them in legal parking areas.

6. City Council direct the applicant to ensure that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

Motion to Adopt Item as Amended (Carried)

Toronto and East York Community Council consideration on November 10, 2020

TE20.29 - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

Decision Type: ACTION

Status: Adopted

Ward: 11 - University - Rosedale

Community Council Recommendations

The Toronto and East York Community Council recommends that:

1. City Council authorize the closure of a 5 metre wide portion of the northbound curb lane and east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from November 30, 2020 to November 30, 2022.
2. City Council rescind the existing designated commercial loading zone on the west side of Balmuto Street, between a point 25.5 metres south of Bloor Street West and a point 11.5 metres further south.
3. City Council rescind the existing designated on-street accessible parking space on the west side of Balmuto Street, between a point 37 metres south of Bloor Street West and a point 20 metres further south.
4. City Council rescind the existing parking prohibition in effect from 6:30 p.m. of one day to 8:00 a.m. of the next following day, Monday to Friday, from 6:00 p.m. to 12:00 a.m. Saturday and at all times Sunday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
5. City Council rescind the existing stopping prohibition in effect from 3:30 p.m. to 6:30 p.m., Monday to Friday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
6. City Council rescind the existing standing prohibition in effect from, 8:00 a.m. to 3:30 p.m., Monday to Friday and from 8:00 a.m. to 6:00 p.m., Saturday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south of Bloor Street.
7. City Council prohibit stopping, at all times, on both sides of Balmuto Street, between Bloor Street West and a point 57 metres south.
8. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
9. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
10. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
11. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
12. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
13. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
14. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
15. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
16. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
17. City Council direct that Balmuto Street be returned to its pre-construction traffic and parking regulations and lane configurations when the project is completed.
18. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of November 30, 2020 to November 30, 2022 for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report from the Acting Director, Traffic Management, Transportation Services (dated October 19, 2020) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
19. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Recommendation 19 above.

Origin

(October 19, 2020) Report from the Acting Director, Traffic Management, Transportation Services

Summary

Since this report contains recommendations that do not comply with City policy or by-laws, City Council approval of this report is required.

Mizrahi Development Group (The One) Inc. (the "developer") is constructing a mixed-use development at 1 Bloor Street West (Mizrahi Project). The site is located on the southwest corner of Yonge Street and Bloor Street West. The development will consist of an eight-storey high retail podium and an 86-storey high residential tower.

Construction staging operations for the development are currently taking place within the road right-of-way on the south side of Bloor Street West and on the west side of Yonge Street. Phase 1 of construction involved excavation, piling and shoring operations and building to the ground level, which is now complete. The current construction staging areas on Bloor Street West and Yonge Street are unable to accommodate the requirements for the delivery of concrete to the site. Therefore, Transportation Services, in consultation with the area Councillor and the developer have reviewed numerous options for the supply of concrete to the site. After reviewing the benefits and impacts of each of the options, Transportation Services is proposing a construction staging area on the east side of Balmuto Street south of Bloor Street West.

Transportation Services is requesting authorization to temporarily close a portion of the northbound curb lane and east sidewalk on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south for 24 months (i.e. from November 30, 2020 to November 30, 2022), in order to facilitate the construction of the eight-storey high podium (Phase 2A) and 86 storey high residential tower (Phase 2B).

Transportation Services is also requesting the authority for the General Manager of Transportation Services to issue a Temporary Street Occupation permit for Balmuto Street to the developer, notwithstanding that not all the criteria within the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, for so doing would be met.

Background Information

(October 19, 2020) Report and Attachment from the Acting Director, Traffic Management, Transportation Services - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-157687.pdf>

Motions

Motion to Adopt Item moved by Councillor Mike Layton (Carried)

Source: Toronto City Clerk at www.toronto.ca/council

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APPENDIX “4”
LETTERS FROM MAPPRO REFERENCED BY CITY COUNCIL FOR TE1.11



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

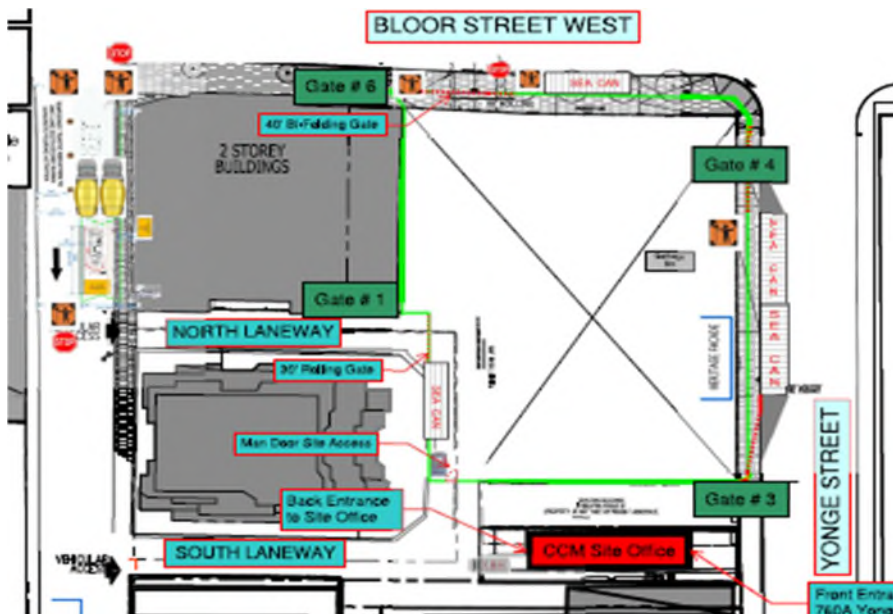
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

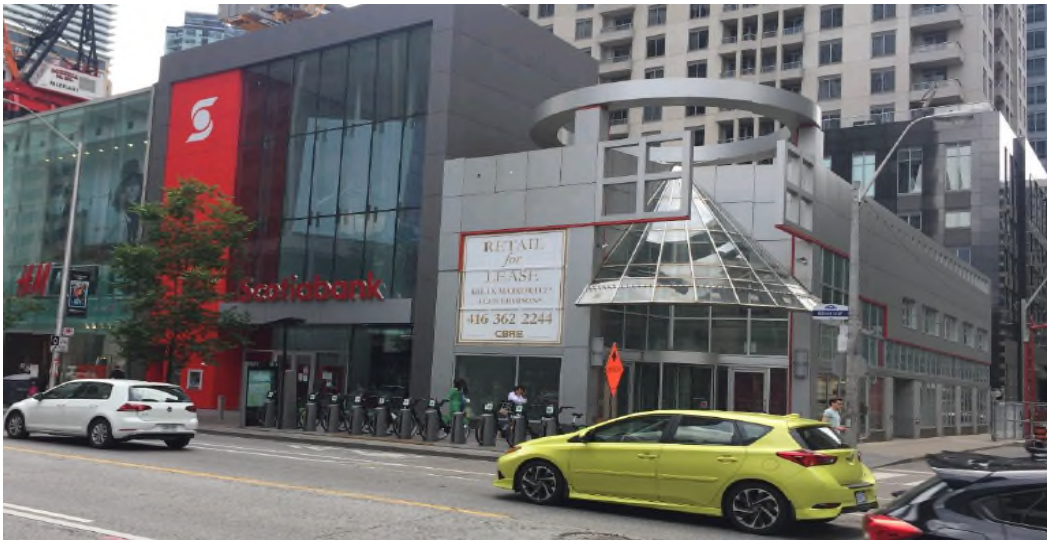
Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

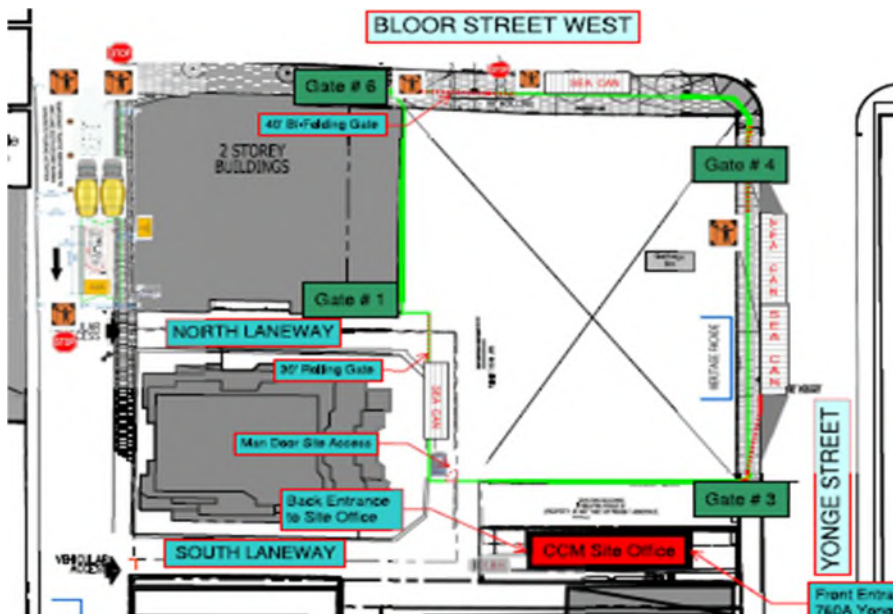
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro’s consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro’s consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

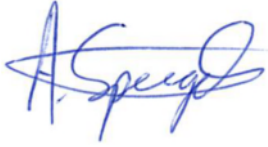
Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)
By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

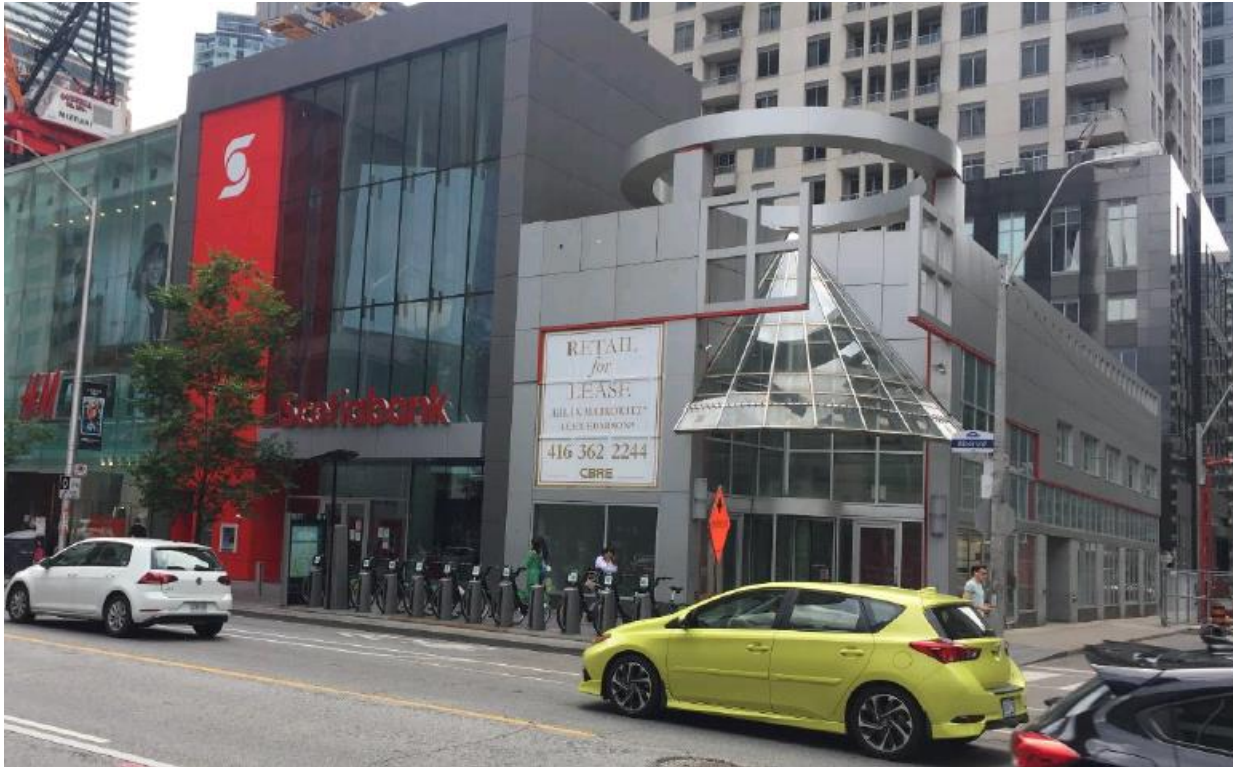
Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

***** This is an automatic reply. Please do not reply to this message.*****

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

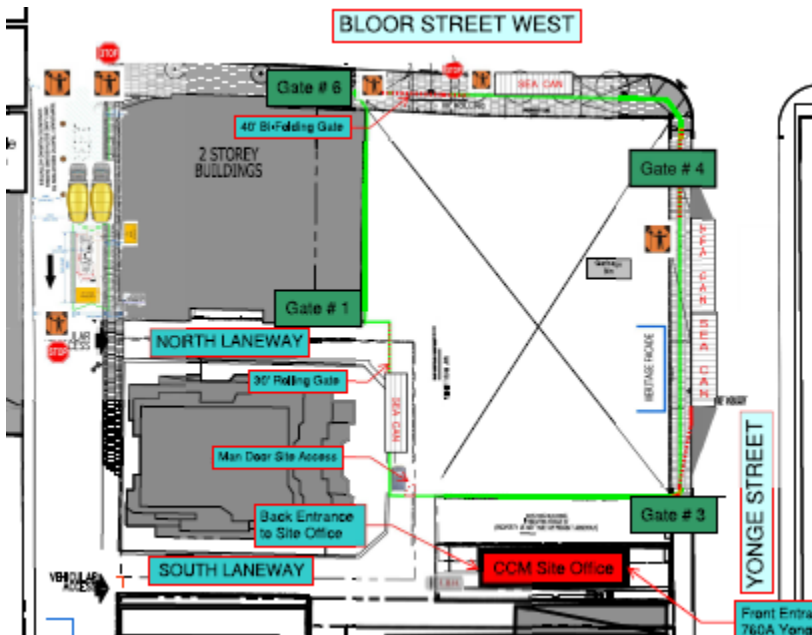
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

APPENDIX “5”
CONSTRUCTION STAGING AREA TIME EXTENSION
DATED DECEMBER 14, 2022 (TE1.11)



Tracking Status

- [City Council](#) adopted this item on December 14, 2022 without amendments and without debate.
- This item was considered by [Toronto and East York Community Council](#) on November 30, 2022 and was adopted with amendments. It will be considered by City Council on December 14, 2022.

City Council consideration on December 14, 2022

TE1.11	ACTION	Adopted on Consent		Ward: 11
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1 Bloor Street West (Yonge Street, Bloor Street and Balmuto Street) - Construction Staging Area Time Extension

City Council Decision

Caution: This is a preliminary decision. This decision should not be considered final until the meeting is complete and the City Clerk has confirmed the decisions for this meeting.

City Council on December 14, 2022, adopted the following:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic a

portion of the east sidewalk, both on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from December 14, 2022 to March 31, 2023, inclusive.

2. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from December 14, 2022 to March 31, 2023, inclusive.

3. City Council direct the applicant to continue ensuring the existing curb lanes and bicycle lanes, both east and westbound, on Bloor Street West in the area of the development site at 1 Bloor Street West, remain open and accessible at all times and that the sidewalk on the south side of Bloor Street West, between Yonge Street and a point 49 metres west, are temporarily closed to allow for a 1.7 metre-wide covered walkway within the temporary closed portion of the sidewalk area.

4. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.

5. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.

6. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.

7. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.

8. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
9. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.
10. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
12. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
13. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
14. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report (November 14, 2022) from the Director, Traffic Management, Transportation Services and, where the approval conflicts with

Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

15. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south, and a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Bloor Street West, between Yonge Street and a point 49 metres west.

16. City Council direct the General Manager, Transportation Services to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

17. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the Construction Management Plan.

18. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

19. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump, to removing them within fifteen minutes of discontinuing use of the pump, and to not placing them in legal parking areas.

20. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

21. City Council authorize the General Manager, Transportation Services to negotiate, enter into and execute an updated indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

22. City Council direct that Parts 1 to 20, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 21 above.

Background Information (Community Council)

(November 14, 2022) Report and Attachments 1-2 from the Director, Traffic Management, Transportation Services - Construction Staging Area Time Extension - 1 Bloor Street West (Yonge Street, Bloor Street and Balmuto Street)

(<https://www.toronto.ca/legdocs/mmis/2023/te/bgrd/backgroundfile-230009.pdf>)

Communications (Community Council)

(November 29, 2022) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (TE.New)

(<https://www.toronto.ca/legdocs/mmis/2023/te/comm/communicationfile-156619.pdf>)

Communications (City Council)

(December 9, 2022) Letter from Allison Speigel, Speigel Nichols Fox LLP On behalf of Mappro Realty Inc. (CC.Supp)

(<https://www.toronto.ca/legdocs/mmis/2023/cc/comm/communicationfile-156735.pdf>)

Toronto and East York Community Council consideration on November 30, 2022

Source: Toronto City Clerk at www.toronto.ca/council

APPENDIX “6”
CONSTRUCTION STAGING AREA TIME EXTENSION
DATED MARCH 29, 2023 (TE3.23)

City Council consideration on March 29, 2023

TE3.23 - 1 Bloor Street West (Yonge Street and Balmuto Street) - Construction Staging Area Time Extension

Decision Type: ACTION

Status: Adopted

Ward: 11 - University - Rosedale

City Council Decision

City Council on March 29, 30 and 31, 2023, adopted the following:

1. City Council authorize, for purposes of construction at 1 Bloor Street West, the temporary closure to vehicular traffic of a 5 metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive.
2. City Council authorize, for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive.
3. City Council authorize, for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from April 1, 2023 to June 30, 2025, inclusive.
4. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
5. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
6. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
8. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
9. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.
10. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

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12. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.

13. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.

14. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to April 1, 2024, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report (February 6, 2023) from the Director, Traffic Management, Transportation Services and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

15. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to June 30, 2025, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south.

16. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

17. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

18. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump, to removing them within fifteen minutes of discontinuing use of the pump and to not placing them in legal parking areas.

19. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.

20. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute an updated indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

21. City Council direct that Parts 1 to 19, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 20 above.

Background Information (Community Council)

(February 6, 2023) Report and Attachments 1-2 from the Director, Traffic Management, Transportation Services - Construction Staging Area Time Extension - 1 Bloor Street West (Yonge Street and Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2023/te/bgrd/backgroundfile-234381.pdf>

Communications (Community Council)

(February 22, 2023) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (TE.Supp)

<https://www.toronto.ca/legdocs/mmis/2023/te/comm/communicationfile-165960.pdf>

Communications (City Council)

Communications (City Council)

(March 23, 2023) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (CC.Supp)

<https://www.toronto.ca/legdocs/mmis/2023/cc/comm/communicationfile-166546.pdf>

Toronto and East York Community Council consideration on February 23, 2023

TE3.23 - 1 Bloor Street West (Yonge Street and Balmuto Street) - Construction Staging Area Time Extension

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

Community Council Recommendations

The Toronto and East York Community Council recommends that:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a 5 metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive.
2. City Council authorize for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive.
3. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from April 1, 2023 to June 30, 2025, inclusive.
4. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
5. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
6. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
8. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
9. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.
10. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.

11. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

12. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.

13. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.

14. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to April 1, 2024, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report (February 6, 2023) from the Director, Traffic Management, Transportation Services and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

15. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to June 30, 2025, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south.

16. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

17. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

18. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump, to removing them within fifteen minutes of discontinuing use of the pump and to not placing them in legal parking areas.

19. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.

20. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute an updated indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

21. City Council direct that Parts 1 to 19, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 20 above.

Origin

(February 6, 2023) Report from the Director, Traffic Management, Transportation Services

Summary

As the Toronto Transit Commission (TTC) operates a transit service on Yonge Street, City Council approval of this report is required. Further, since this report contains recommendations that do not comply with City policy or by-laws, City Council approval of this report is required.

MR235

comply with City policy on any lane, any closure approval and report is required.

Mizrahi Development Group (The One) Inc. (the "developer") is constructing a mixed-use development at 1 Bloor Street West (Mizrahi Project). The site is located on the southwest corner of Yonge Street and Bloor Street West. The development will consist of an eight-storey high retail podium and an 86-storey high residential tower.

A five-metre-wide portion of the northbound curb lane and east sidewalk on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south is currently closed to accommodate construction staging operations for the development. The west sidewalk and a three-metre-wide portion of the southbound curb lane on Yonge Street, between Bloor Street West and a point 66 metres south are also closed. The previous closure of the south sidewalk and a 1.2-metre-wide portion of the eastbound curb lane on Bloor Street West, between Yonge Street and a point 49 metres west, is no longer required. Pedestrians have access to the existing sidewalk on the south side of Bloor Street West, abutting the construction site, which is covered and protected. Existing vehicle and bicycle lanes are maintained for both directions on Bloor Street West.

Toronto and East York Community Council, at its meeting on November 25 and 26, 2020, approved the construction staging area on Balmuto Street from November 30, 2020 to November 30, 2022. In a separate meeting on March 10, 2021, Toronto and East York Community Council approved an extension of the construction staging areas on Yonge Street and Bloor Street West from September 1, 2020 to December 31, 2021. In a meeting on December 14 and 15, 2022, City Council approved an extension of the construction staging areas on Yonge Street, Bloor Street West and Balmuto Street, from December 14, 2022 to March 31, 2023. At the time, the developer indicated they would require the staging areas until June 30, 2025.

Transportation Services is requesting authorization to extend the duration of the construction staging areas on Balmuto Street and Yonge Street for an additional 27 months, from April 1, 2023 to June 30, 2025, to allow for the construction of the development to be completed. Transportation Services is also requesting authority for the intermittent closure of Balmuto Street during concrete pouring operations, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to June 30, 2025.

For the maintenance of the concrete pump on Balmuto Street, Transportation Services is also requesting the authority for the General Manager of Transportation Services to issue a Temporary Street Occupation permit for Balmuto Street to the developer, notwithstanding that not all the criteria within the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, for so doing would be met.

Background Information

(February 6, 2023) Report and Attachments 1-2 from the Director, Traffic Management, Transportation Services - Construction Staging Area Time Extension - 1 Bloor Street West (Yonge Street and Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2023/te/bgrd/backgroundfile-234381.pdf>

Communications

(February 22, 2023) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (TE.Supp)

<https://www.toronto.ca/legdocs/mmis/2023/te/comm/communicationfile-165960.pdf>

Speakers

Allison Speigel, Speigel Nichols Fox LLP
Mary Ellen Bench, Dentons

Motions

1 - Motion to Amend Item moved by Councillor Dianne Saxe (Carried)

That Recommendations 1 and 2 be amended by deleting the date "June 30, 2025" and inserting the date "April 1, 2024" so that they now read as follows:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to

MR236

vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive.

2. City Council authorize for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive.

2 - Motion to Adopt Item as Amended moved by Councillor Gord Perks (Carried)

Motion to Reconsider Item moved by Councillor Gord Perks (Carried)

That in accordance with the provisions of Chapter 27, Council Procedures, Toronto and East York Community Council reconsider Item TE3.23.

3 - Motion to Amend Item moved by Councillor Dianne Saxe (Carried)

That Recommendation 14 be amended by deleting the date "June 30, 2025" and inserting the date "April 1, 2024" so that it now read as follows:

14. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to April 1, 2024, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 6, 2023) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

Source: Toronto City Clerk at www.toronto.ca/council

4 - Motion to Adopt Item as Amended moved by Councillor Gord Perks (Carried)

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APPENDIX “7”
PHOTO OF NOISE MITIGATION ENCLOSURE



CBRE
For Lease
Retail

Arlin Markowitz
Alex Edmison
+1 416 362 2244



APPENDIX “8”
LETTERS FROM MAPPRO REFERENCED BY CITY COUNCIL FOR TE11.36



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

February 20, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding an item that may be added to the agenda concerning a possible request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension to continue occupying the portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”).

Despite Mappro’s repeated requests to be kept apprised as to any developments with respect to the existence or use of the Staging Area, neither Mizrahi, nor the City has done so.

On February 8, 2024, we emailed the City:

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

On February 15, the City responded as follows:

... While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

On February 16, we responded as follows:

I am not sure I understand what the following means: “They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.” Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

On February 17, the City responded as follows:

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk’s Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

We responded later that day by saying: “When are they adding it to the agenda? How can I make submissions opposing[it] if I don’t know what is being put forward?”

On February 18, the City said:

... I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi’s street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

On February 20 (i.e. the day before the meeting), the City advised that: “My client has confirmed to me that this is proceeding to this week’s TEYCC meeting. I will forward the updated agenda as soon as it is available.”

We responded later that day by saying:

*Given the lack of appropriate notice, I am not able to attend **tomorrow’s meeting**. Nor do I even know what position is being put forward. This is yet another example of the City’s unreasonable*

conduct. The City's repeated failure to take Mappro's interests into account is glaring. I have also received no update from Mizrahi as to what, if anything, is being requested.

The correspondence referred to above is attached as Schedule A.

In sum, Mappro was given one business days' notice that the City would be "reporting" to Community Council on February 21, 2024 with respect to the Staging Area. What this means and what is being reported (if anything) is anyone's guess. No relevant item has yet been added to the February 21 agenda.

Given the failure to provide appropriate notice, we will not be able to attend the February 21 Community Council meeting. Having no idea what is being reported or what extension (if any) is being sought, Mappro, has also been prevented from making meaningful submissions. To the extent that the City is recommending an extension of the permit (or Mizrahi is seeking one), Mappro opposes it. To that end, Mappro relies on its submissions dated February 22, 2023, December 9, 2022, November 29, 2022, September 15, 2020, and July 14, 2020, all of which are enclosed for your convenience as Schedule B.

The conduct of the City and Mizrahi has been and continues to be wholly unreasonable. Mappro's interests have been disregarded at every turn.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, February 20, 2024 9:23 AM
To: Nicholas Rolfe
Cc: Dunn, Mark; Claudia Lapa
Subject: RE: Mizrahi Permit

INTERNAL SOURCE

Given the lack of appropriate notice, I am not able to attend **tomorrow's meeting**. Nor do I even know what position is being put forward. This is yet another example of the City's unreasonable conduct. The City's repeated failure to take Mappro's interests into account is glaring.

I have also received no update from Mizrahi as to what, if anything, is being requested.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, February 20, 2024 9:09 AM
To: Allison Spiegel <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: Re: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

My client has confirmed to me that this is proceeding to this week's TEYCC meeting. I will forward the updated agenda as soon as it is available.

Thank you,
Nicholas Rolfe

Get [Outlook for iOS](#)

From: Nicholas Rolfe
Sent: Sunday, February 18, 2024 4:31:47 PM
To: 'Allison Speigel' <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: RE: Mizrahi Permit

Hello Allison,

Further to my below emails – I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi's street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Speigel <allison@ontlaw.com>
Sent: February 17, 2024 1:37 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

When are they adding it to the agenda? How can I make submissions opposing if I don't know what is being put forward?

Sent from my iPhone

On Feb 17, 2024, at 12:53 PM, Nicholas Rolfe <Nicholas.Rolfe@toronto.ca> wrote:

EXTERNAL SOURCE Exercise caution.

Hello Allison,

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk's Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: February 16, 2024 3:02 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

I will look into this. I was not aware of anything happening on Feb 21, it was being handled by Dentons. I will check in this then.

Sent from my iPhone

On Feb 16, 2024, at 2:49 PM, Allison Speigel <allison@ontlaw.com> wrote:

Given that I would need submissions in by noon on Tuesday if I am to speak to this on Feb 21, can you please get back to me asap.

Mark – can you please advise.

Regards,
Allison

Allison J. Speigel*
<image004.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3

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*practicing through Allison Speigel Professional Corporation

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From: Allison Speigel <allison@ontlaw.com>
Sent: Friday, February 16, 2024 1:43 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

INTERNAL SOURCE

I am not sure I understand what the following means: "They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter."

Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

Regards,
Allison

Allison J. Speigel*

<image003.png>

Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

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<https://ca.linkedin.com/in/allionspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Thursday, February 15, 2024 7:53 PM

To: Allison Speigel <allison@ontlaw.com>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

Thank you for your email. While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do

so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: February 8, 2024 8:48 AM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Mizrahi Permit

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

Regards,
Allison

Allison J. Spiegel*
<image003.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
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<https://ca.linkedin.com/in/allisonspeigel>

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Schedule "B"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. ("**Mappro**"), the owner of the property (the "**Mappro Property**") at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council ("**Community Council**") regarding Item #TE3.23 (the "**Item**") concerning the request by Mizrahi Development Group (The One) Inc. ("**Mizrahi**") for a permit extension (the "**New Multi-Year Permit**") to continue occupying the portion of Balmuto Street ("**Balmuto**") directly in front of the Mappro Property as a construction staging area (the "**Staging Area**") from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro's submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing,** to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
Eric Jensen (via email: eric.jensen@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)

By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council ("**Community Council**") for allowing Mappro Realty Inc ("**Mappro**") to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the "**Community Council Meeting**") on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the "**Property**") at 19 Bloor Street West. Isabelle Hayen ("**Hayen**") is an officer and owner of Mappro and is primarily responsible for Mappro's operations.

The Property is located on the southeast corner of Bloor Street ("**Bloor**") and Balmuto Street ("**Balmuto**"). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the "**Scotia Building**") and the other would be operated by Mappro (the "**Mappro Building**"). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

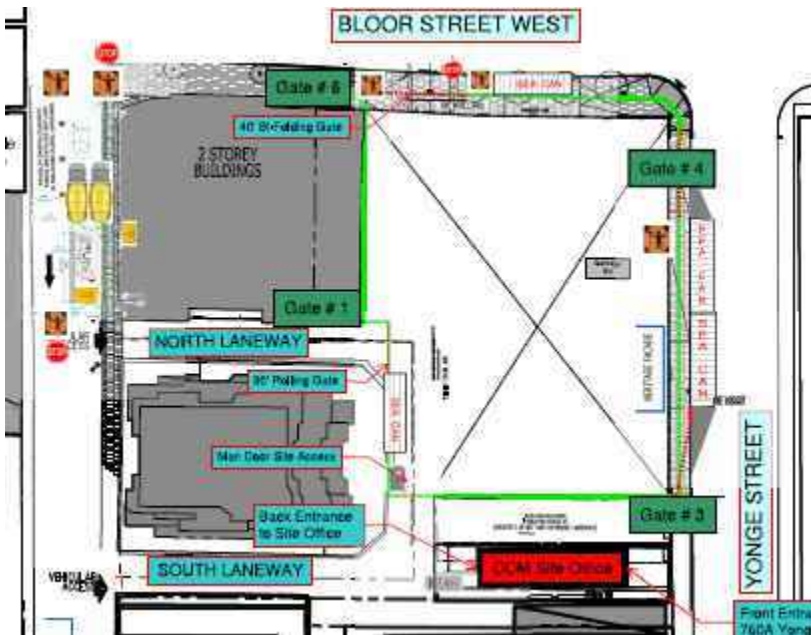
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

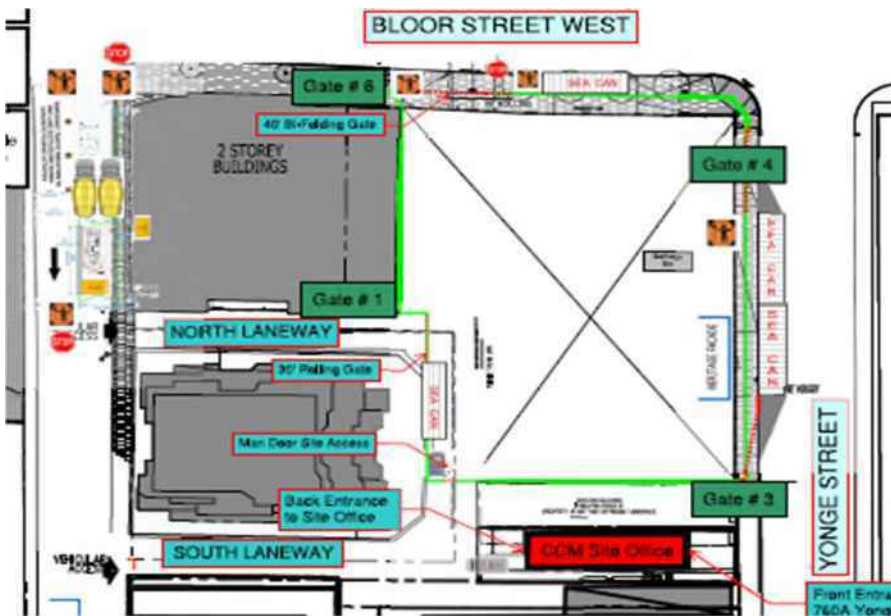
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

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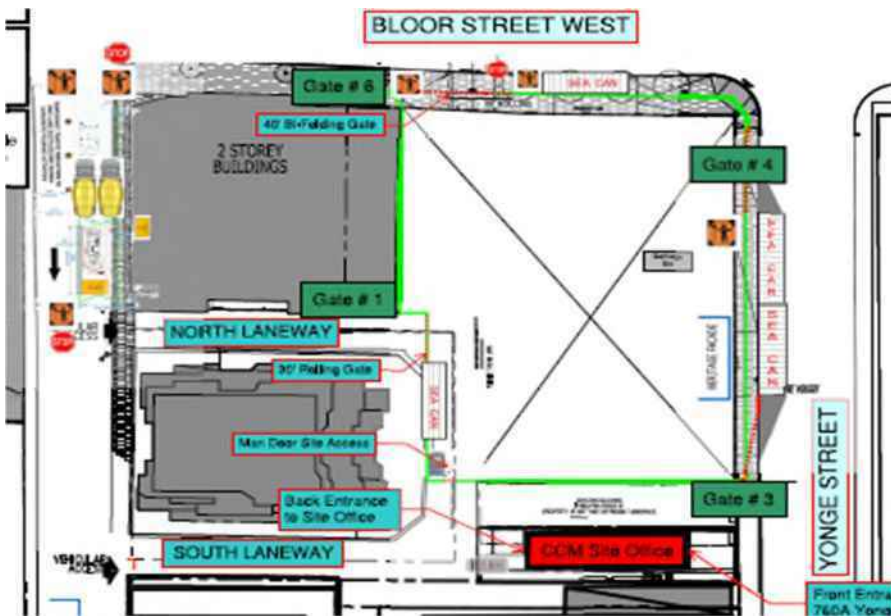
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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

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Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

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- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

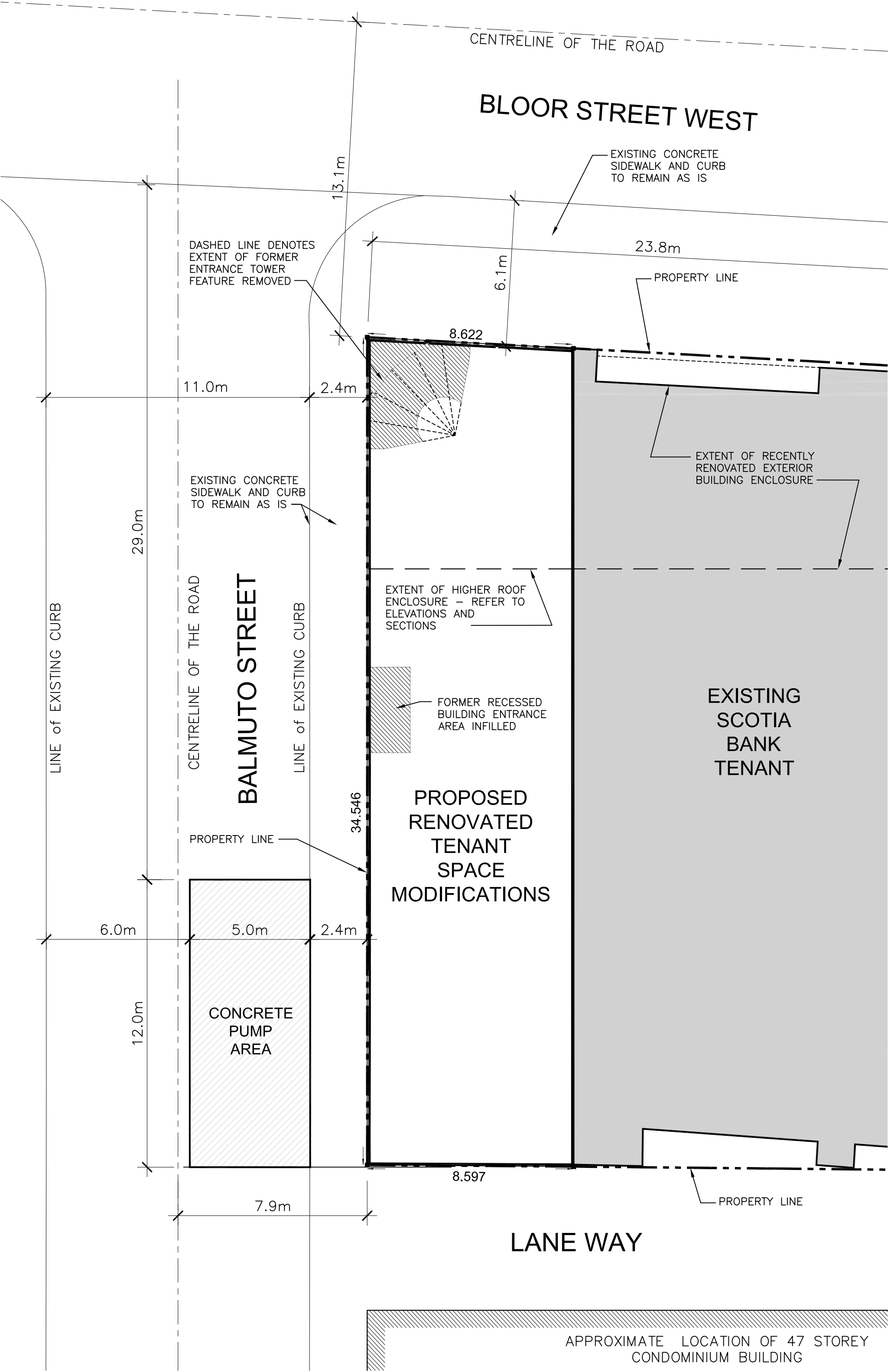
Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

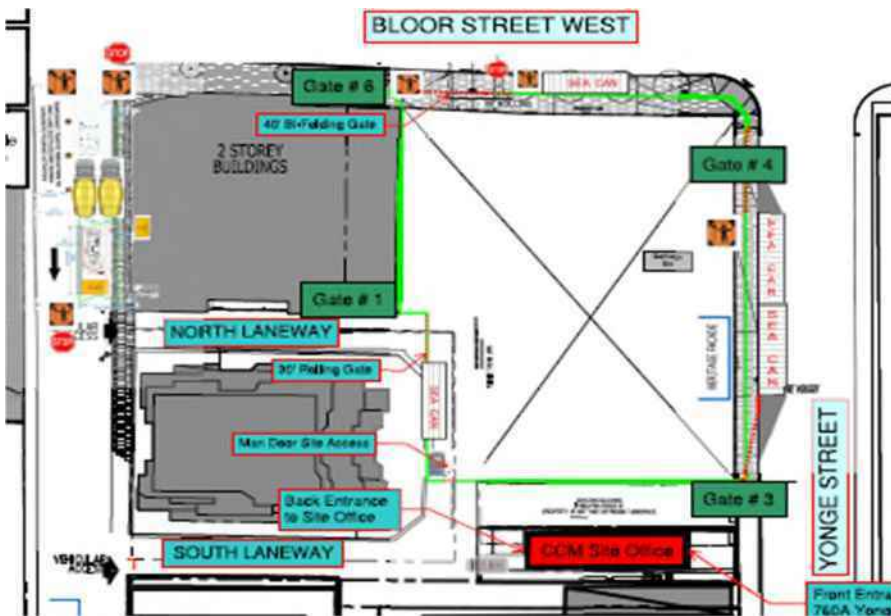
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The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



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Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

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Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

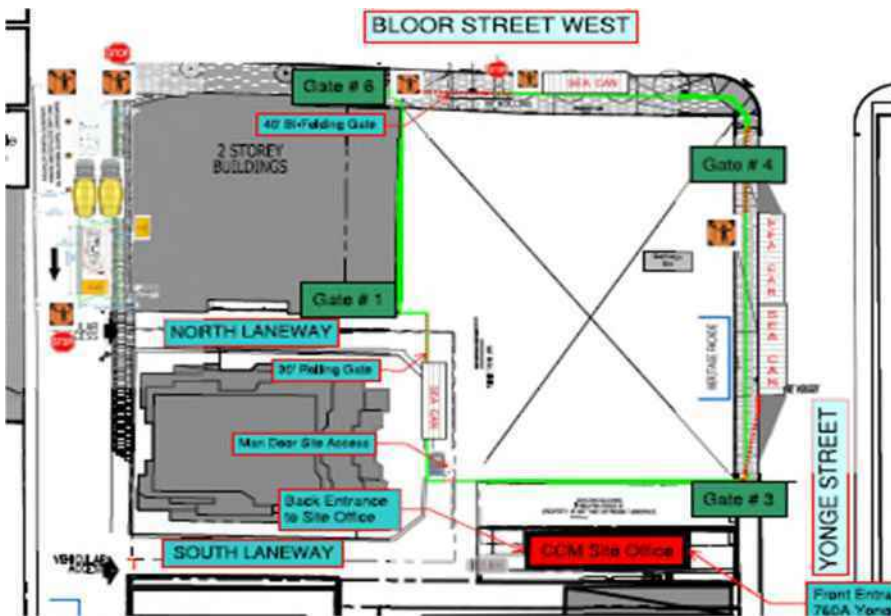
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In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "... *no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", with a stylized flourish.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

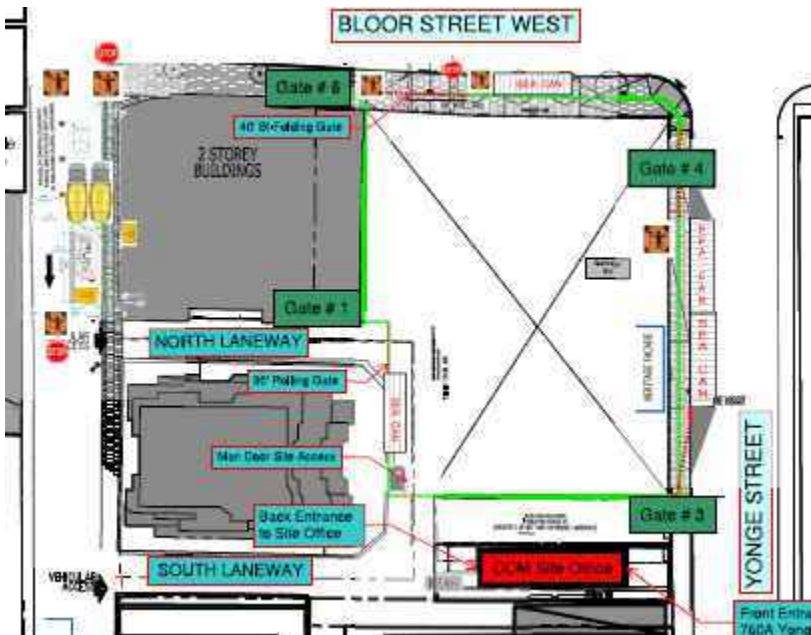
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)
By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

March 15, 2024

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #TE11.36 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto City Council (the “**City Council**”) regarding Item #TE11.36 (the “**Item**”) concerning the request to extend the permit allowing Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) (or a replacement contractor) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from April 2, 2024 to August 31, 2025.

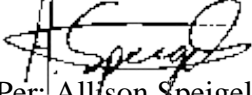
These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, and February 20, 2024 all of which are enclosed for your convenience as Schedule A.

As set out in Mappro’s February 20, 2024 submissions, Mappro was not provided with appropriate notice before the issue was considered at the February 21, 2024 meeting of the Toronto and East York Community Council. This was yet another example of the manner in which Mizrahi and the City have shown a complete disregard for Mappro’s interest.

For the same reasons as set out in its previous submissions, Mappro adamantly opposes the extension of the permit.

Finally, Mappro again requests that the City and Mizrahi be required to provide appropriate notice of any reports, meetings, or decisions relating to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in black ink, appearing to read 'A. Spiegel', is written over the printed name 'Allison Spiegel'.

Per: Allison Spiegel

On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Mark Dunn (mdunn@goodmans.ca)

Schedule "A"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

February 20, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding an item that may be added to the agenda concerning a possible request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension to continue occupying the portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”).

Despite Mappro’s repeated requests to be kept apprised as to any developments with respect to the existence or use of the Staging Area, neither Mizrahi, nor the City has done so.

On February 8, 2024, we emailed the City:

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

On February 15, the City responded as follows:

... While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

On February 16, we responded as follows:

I am not sure I understand what the following means: “They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.” Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

On February 17, the City responded as follows:

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk’s Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

We responded later that day by saying: “When are they adding it to the agenda? How can I make submissions opposing[it] if I don’t know what is being put forward?”

On February 18, the City said:

... I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi’s street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

On February 20 (i.e. the day before the meeting), the City advised that: “My client has confirmed to me that this is proceeding to this week’s TEYCC meeting. I will forward the updated agenda as soon as it is available.”

We responded later that day by saying:

*Given the lack of appropriate notice, I am not able to attend **tomorrow’s meeting**. Nor do I even know what position is being put forward. This is yet another example of the City’s unreasonable*

conduct. The City's repeated failure to take Mappro's interests into account is glaring. I have also received no update from Mizrahi as to what, if anything, is being requested.

The correspondence referred to above is attached as Schedule A.

In sum, Mappro was given one business days' notice that the City would be "reporting" to Community Council on February 21, 2024 with respect to the Staging Area. What this means and what is being reported (if anything) is anyone's guess. No relevant item has yet been added to the February 21 agenda.

Given the failure to provide appropriate notice, we will not be able to attend the February 21 Community Council meeting. Having no idea what is being reported or what extension (if any) is being sought, Mappro, has also been prevented from making meaningful submissions. To the extent that the City is recommending an extension of the permit (or Mizrahi is seeking one), Mappro opposes it. To that end, Mappro relies on its submissions dated February 22, 2023, December 9, 2022, November 29, 2022, September 15, 2020, and July 14, 2020, all of which are enclosed for your convenience as Schedule B.

The conduct of the City and Mizrahi has been and continues to be wholly unreasonable. Mappro's interests have been disregarded at every turn.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, February 20, 2024 9:23 AM
To: Nicholas Rolfe
Cc: Dunn, Mark; Claudia Lapa
Subject: RE: Mizrahi Permit

INTERNAL SOURCE

Given the lack of appropriate notice, I am not able to attend **tomorrow's meeting**. Nor do I even know what position is being put forward. This is yet another example of the City's unreasonable conduct. The City's repeated failure to take Mappro's interests into account is glaring.

I have also received no update from Mizrahi as to what, if anything, is being requested.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, February 20, 2024 9:09 AM
To: Allison Spiegel <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: Re: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

My client has confirmed to me that this is proceeding to this week's TEYCC meeting. I will forward the updated agenda as soon as it is available.

Thank you,
Nicholas Rolfe

Get [Outlook for iOS](#)

From: Nicholas Rolfe
Sent: Sunday, February 18, 2024 4:31:47 PM
To: 'Allison Speigel' <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: RE: Mizrahi Permit

Hello Allison,

Further to my below emails – I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi's street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Speigel <allison@ontlaw.com>
Sent: February 17, 2024 1:37 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

When are they adding it to the agenda? How can I make submissions opposing if I don't know what is being put forward?

Sent from my iPhone

On Feb 17, 2024, at 12:53 PM, Nicholas Rolfe <Nicholas.Rolfe@toronto.ca> wrote:

EXTERNAL SOURCE Exercise caution.

Hello Allison,

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk's Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: February 16, 2024 3:02 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

I will look into this. I was not aware of anything happening on Feb 21, it was being handled by Dentons. I will check in this then.

Sent from my iPhone

On Feb 16, 2024, at 2:49 PM, Allison Speigel <allison@ontlaw.com> wrote:

Given that I would need submissions in by noon on Tuesday if I am to speak to this on Feb 21, can you please get back to me asap.

Mark – can you please advise.

Regards,
Allison

Allison J. Speigel*
<image004.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3

BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Speigel Professional Corporation

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From: Allison Speigel <allison@ontlaw.com>
Sent: Friday, February 16, 2024 1:43 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

INTERNAL SOURCE

I am not sure I understand what the following means: "They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter."

Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

Regards,
Allison

Allison J. Spiegel*

<image003.png>

Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED

<https://ca.linkedin.com/in/allionspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Thursday, February 15, 2024 7:53 PM

To: Allison Speigel <allison@ontlaw.com>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

Thank you for your email. While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do

so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: February 8, 2024 8:48 AM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Mizrahi Permit

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

Regards,
Allison

Allison J. Spiegel*
<image003.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED
<https://ca.linkedin.com/in/allisonspeigel>

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***** Attention *****

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Schedule "B"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. ("**Mappro**"), the owner of the property (the "**Mappro Property**") at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council ("**Community Council**") regarding Item #TE3.23 (the "**Item**") concerning the request by Mizrahi Development Group (The One) Inc. ("**Mizrahi**") for a permit extension (the "**New Multi-Year Permit**") to continue occupying the portion of Balmuto Street ("**Balmuto**") directly in front of the Mappro Property as a construction staging area (the "**Staging Area**") from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro's submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
Eric Jensen (via email: eric.jensen@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)

By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council ("**Community Council**") for allowing Mappro Realty Inc ("**Mappro**") to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the "**Community Council Meeting**") on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the "**Property**") at 19 Bloor Street West. Isabelle Hayen ("**Hayen**") is an officer and owner of Mappro and is primarily responsible for Mappro's operations.

The Property is located on the southeast corner of Bloor Street ("**Bloor**") and Balmuto Street ("**Balmuto**"). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the "**Scotia Building**") and the other would be operated by Mappro (the "**Mappro Building**"). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

***** This is an automatic reply. Please do not reply to this message.*****

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

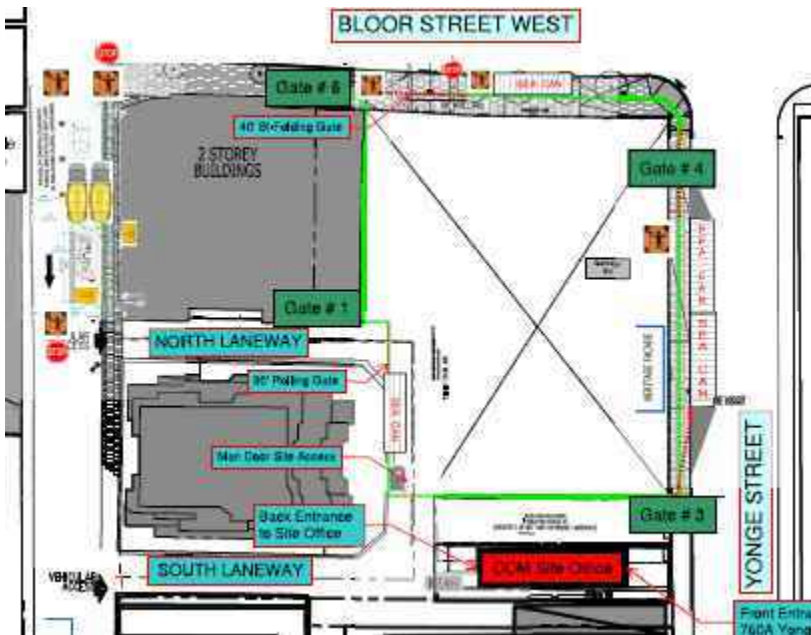
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

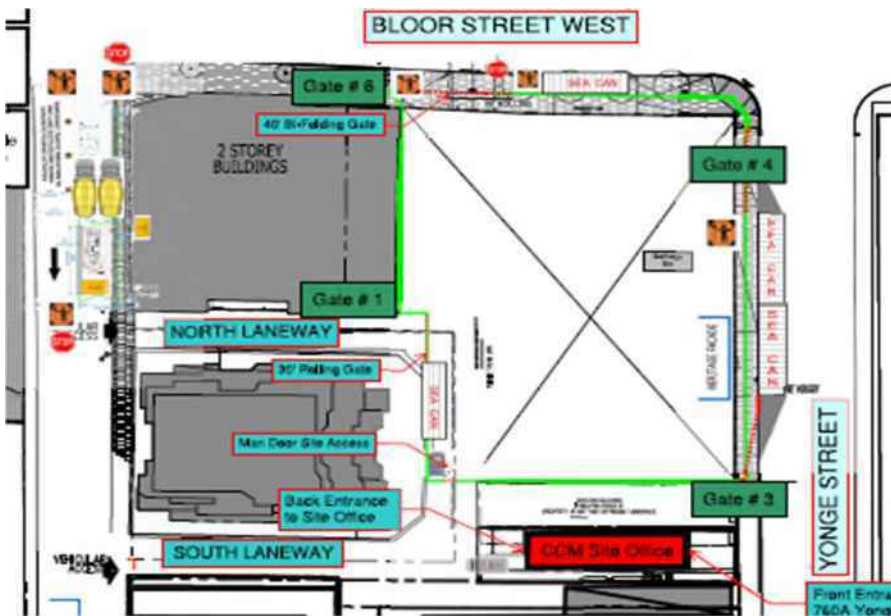
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

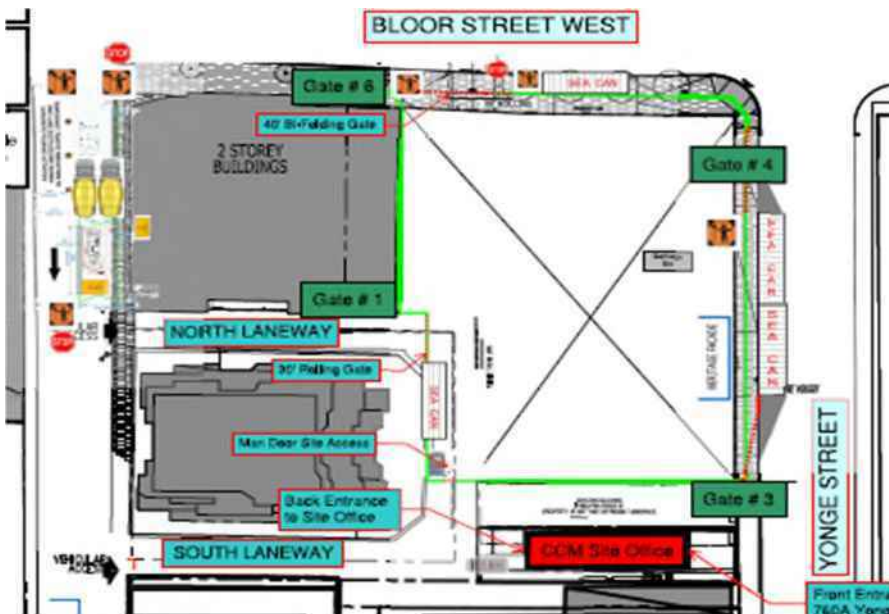
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The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



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Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

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20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

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V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
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- c) it is unsightly;
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- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
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Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

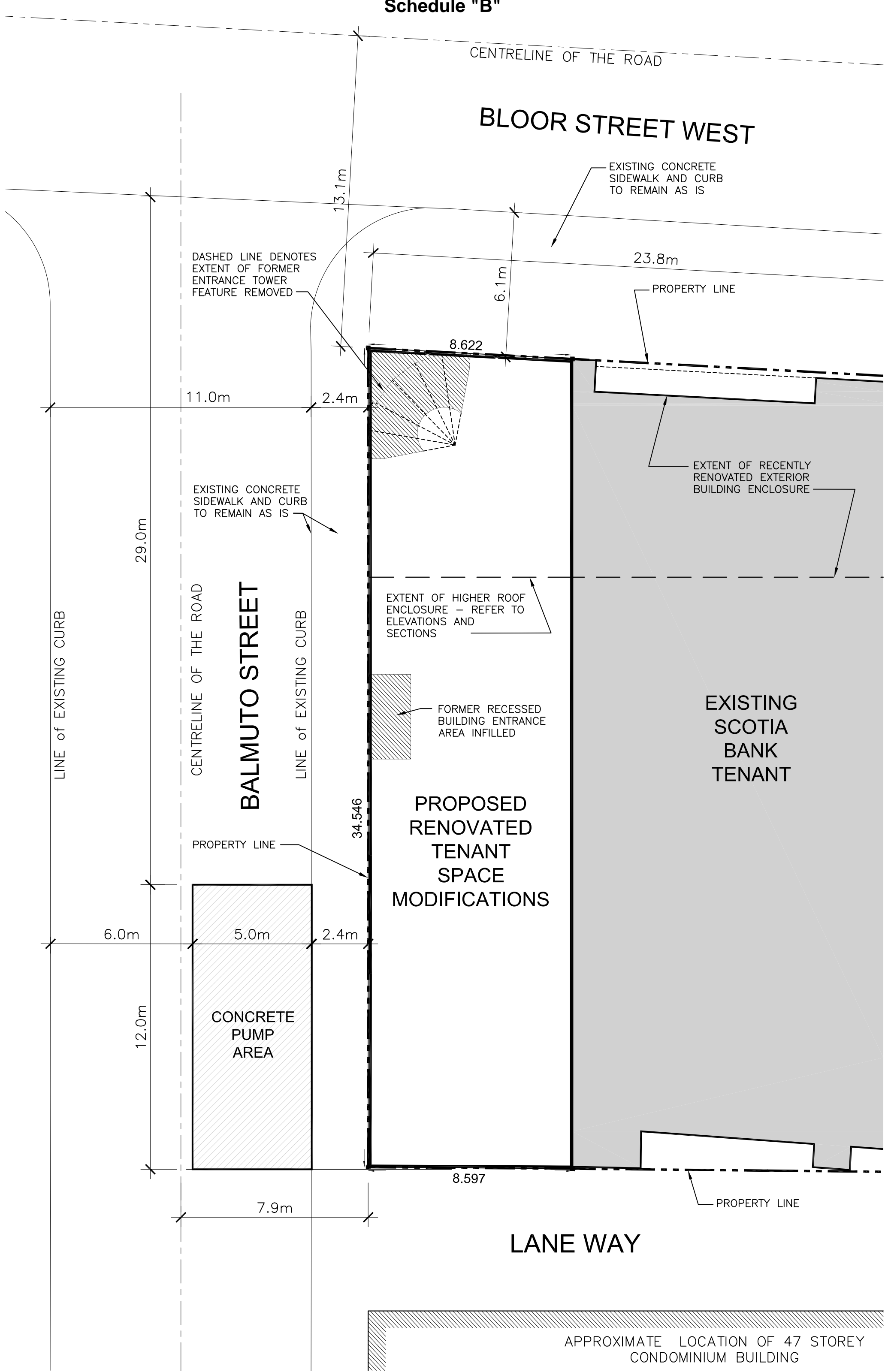
Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

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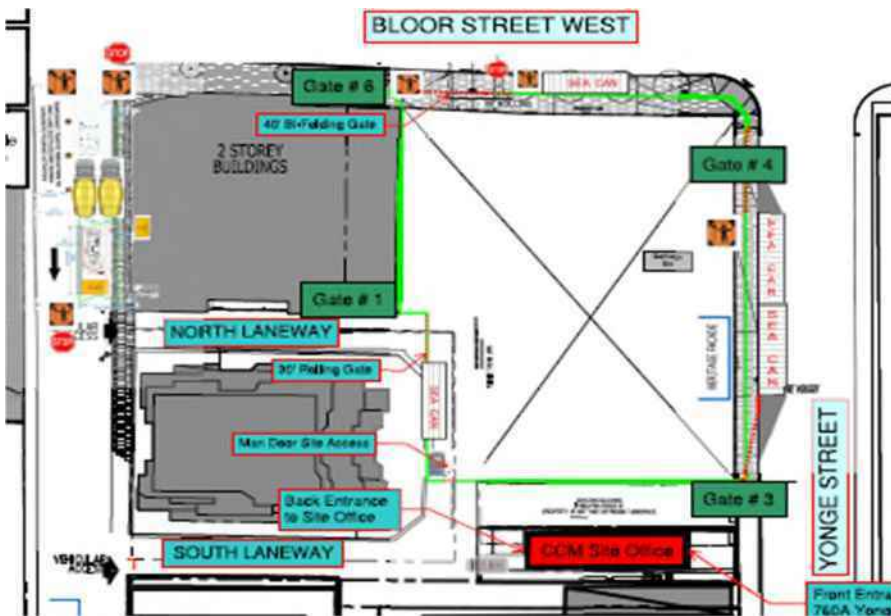
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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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Picture 4



Picture 5

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In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

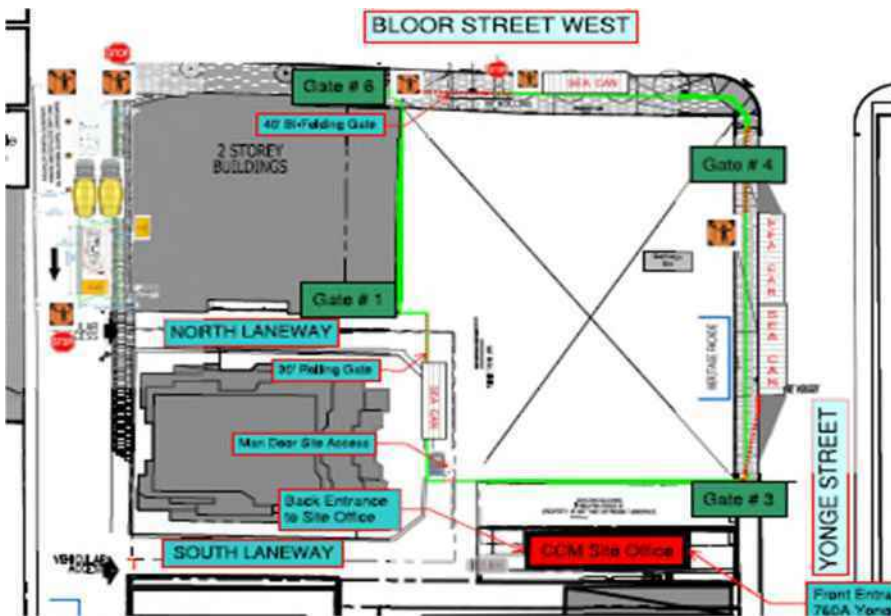
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "... *no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

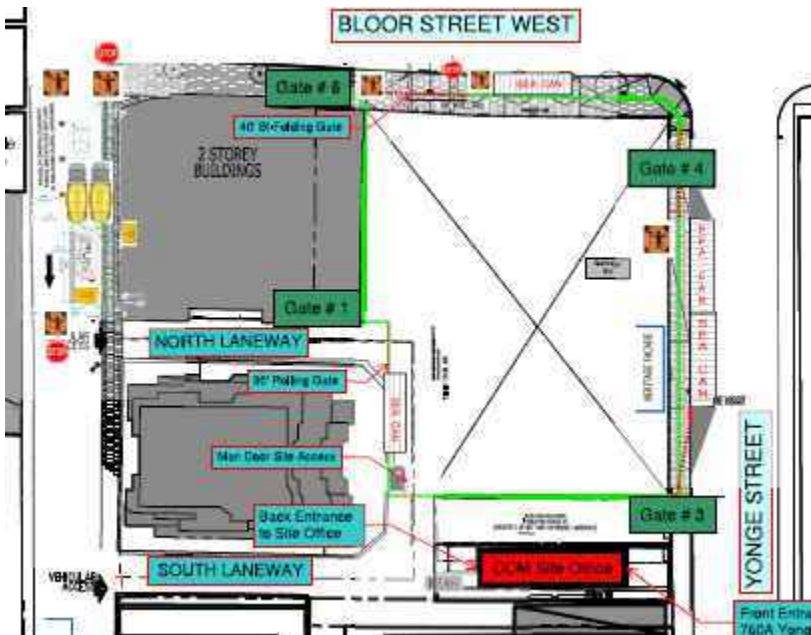
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)
By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

***** This is an automatic reply. Please do not reply to this message.*****

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps

APPENDIX “9”
CITY COUNCIL’S DECISION DATED MARCH 20, 2024 (TE11.36)



Item - 2024.TE11.36

Tracking Status

- City Council adopted this item on March 20, 2024 with amendments.
- This item was considered by Toronto and East York Community Council on February 21, 2024. It is being forwarded to City Council without recommendations. It will be considered by City Council on March 20, 2024.

City Council consideration on March 20, 2024

TE11.36 - Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

Caution: Motions are shown below. Any motions should not be considered final until the meeting is complete, and the City Clerk has confirmed the decisions for this meeting.

Community Council Recommendations

The Toronto and East York Community Council forwards the Item to City Council without recommendation.

Background Information (Community Council)

(February 20, 2024) Report from the Director, Traffic Management, Transportation Services on Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)
<https://www.toronto.ca/legdocs/mmis/2024/te/bgrd/backgroundfile-243252.pdf>
(February 21, 2024) Letter from Councillor Diane Saxe on Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)
<https://www.toronto.ca/legdocs/mmis/2024/te/bgrd/backgroundfile-243217.pdf>

Communications (Community Council)

(February 20, 2024) Letter from Allison Speigel, Speigel Nichols Fox, LLP on behalf of Mappro Realty Inc. (TE.New)
<https://www.toronto.ca/legdocs/mmis/2024/te/comm/communicationfile-177630.pdf>

Communications (City Council)

(March 15, 2024) Submission from Allison Speigel, on behalf of Mappro Realty Inc. (CC.Supp)
<https://www.toronto.ca/legdocs/mmis/2024/cc/comm/communicationfile-178017.pdf>

Motions (City Council)

1 - Motion to Amend Item moved by Councillor Dianne Saxe (**Carried**)
That City Council adopt the following recommendations in the report (February 20, 2024) from the Director, Traffic Management, Transportation Services, amended as follows:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 2, 2024 to July 31, 2024 ~~August 31, 2025~~, inclusive.

2. City Council authorize for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 2, 2024 to July 31, 2024 ~~August 31, 2025~~, inclusive.
3. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
4. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
5. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
6. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
8. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
9. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
10. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
12. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
13. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. for the period of April 2, 2024 to July 31, 2024 ~~August 31, 2025~~, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 20, 2024) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
14. City Council authorize the General Manager, Transportation Services, to transfer and/or assign a Temporary Street Occupation Permit to from Mizrahi Development Group (The One) Inc. to Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and/or to the Court-appointed Receiver which is overseeing its operations, for the period of April 1, 2023 to July 31, 2024 ~~June 30, 2025~~, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south.

15. City Council authorize the General Manager, Transportation Services, to transfer and/or assign the Temporary Street Occupancy Permit for Balmuto Street in the event that a new owner becomes a holder of the development at 1 Bloor Street during the requested construction staging area times extension request from April 2, 2024 to July 31, 2024 ~~August 31, 2025~~.

16. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

17. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway, but does shield the pumping station from public view from Bloor Street.

18. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to removing them within fifteen minutes of discontinuing use of the pump; and to not placing them in legal parking areas.

19. City Council direct the applicant to cooperate with and provide all necessary assistance to the City Engineers, staff and representatives carrying out operation, maintenance, and construction activities to municipal infrastructure within the vicinity of the construction staging area, and at no cost to the City to remove any staging to accommodate the necessary municipal infrastructure work.

20. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.

21. City Council authorize the General Manager, Transportation Services, to transfer and/or assign an existing indemnity agreement with Mizrahi Development Group (The One) Inc. and/or negotiate, enter into and execute an updated indemnity agreement with Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

22. City Council authorize the General Manager, Transportation Services, to require the applicant to provide financial security in a form and amount satisfactory to the General Manager, Transportation Services, as a condition of granting the above permits.

23. City Council direct that parts 1 to 20, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. and/or the Court-appointed Receiver which is overseeing its operations, and/or a transferee or assignee of the permits entering into the indemnity agreement in Part 21 above.

Motion to Adopt Item as Amended (Carried)

Toronto and East York Community Council consideration on February 21, 2024

Source: Toronto City Clerk at www.toronto.ca/council

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APPENDIX “10”
LETTERS FROM MAPPRO REFERENCED BY CITY COUNCIL FOR TE15.29



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

July 5, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

To City Clerk:

Re: Item # TE15.29 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) municipally known as 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**TEYCC**”) regarding item TE15.20 (the “**Item**”), which TEYCC will consider on July 10, 2024.

As you are aware, Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) is the owner of the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, on which a mixed-use development is being constructed. Alvarez & Marsal Canada Inc. (the “**Receiver**”) is now acting as the receiver and manager of all of Mizrahi’s assets, undertakings, and properties, including the Mizrahi Property.

The Item concerns the request made by the Receiver or Mizrahi to extend the permit allowing it to continue occupying and using a portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from August 1, 2024 to February 1, 2026.

A. Mappro Adamantly Opposes the Extension of the Permit

Mappro adamantly opposes the extension of the Permit to February 1, 2026. Mappro has opposed the erection, existence, and use of the Staging Area since Mappro first discovered that it had been erected. The reasons for Mappro’s opposition are detailed in its past submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, March 23, 2023, February 20, 2024, and March 15, 2024, all of which are enclosed for your convenience as Tabs 1-8 of Schedule A.

In addition to the reasons previously given, Mappro opposes any further extension of the Permit because the existence and on-going use of the Staging Area (which prevents Mappro from being able to lease the Property) has also caused the following issues (the “**New Issues**”):

1. The Mappro Property has repeatedly been vandalized.
2. Homeless people are loitering directly in front of the Mappro Property and there have been a number of instances of begging, drug use (leaving abandoned needles and related paraphernalia), and individuals who are urinating and defecating directly in front of the Mappro Property.
3. There have been break-ins to the Mappro Property, resulting in doors and glass of the Mappro Property being broken and individuals urinating inside the Mappro Property.

Mappro has incurred costs to address the New Issues, including being forced to upgrade its security. It remains eminently unfair that Mappro is being forced to incur damages to enable others to profit from a development project being built a block away.

Mappro also fails to understand why the Receiver requires an extension of the Permit to February 1, 2026. Given that the building construction has apparently already reached the 59th floor,¹ it makes no sense that the Receiver would require the concrete pump to remain in the Staging Area until February 1, 2026. Mappro also notes that the requested permit end date continues to be a moving target, making it impossible for Mappro to effectively plan for the future.

If the City is intent on granting some form of extension of the Permit against Mappro’s will, Mappro asks that, at a minimum:

1. The Permit be extended for no more than 1 year (i.e. to July 31, 2025);
2. The Permit set out that no further extensions will be permitted; and
3. The Receiver (or any future owner of the Mizrahi Property) be required to:
 - a. reimburse Mappro for all costs and damages that Mappro has and will incur and suffer due to the erection and use of the Staging Area;
 - b. put in place additional security measures surrounding the Mappro Property;
 - c. remove any graffiti and otherwise repair any damage to the outside of the Mappro Property while the Staging Area remains in place;
 - d. address any issues arising from homeless individuals congregating in front of the Mappro Property (i.e. clean any urine, defecation, etc., and otherwise address the issue) while the Staging Area remains in place; and
 - e. coordinate and collaborate with Mappro (or any future owner of the Mappro Property) regarding any construction work on the Mappro Property in a manner that ensures that the work can be performed (and done so efficiently).

Mappro makes these requests without prejudice to its rights in the ongoing litigation and, in particular, its rights to claim all damages arising from the erection and use of the Staging Area.

¹https://indd.adobe.com/view/2f80c022-652c-49c5-9398-d6ceb2cb8f08?utm_campaign=DealX%20Email%20000608000013mibKAAQ-2024-06-06T17%3A53%3A52.212Z-Teaser&utm_medium=email&utm_source=Eloqua&utm_term=3453865&elqTrackId=ff7e54c7c03941a28659c9c11e91e2ae&elq=e18271ba430c4a7b821bfd427ba6358&elqaid=35754&elqat=1&elqCampaignId=36607

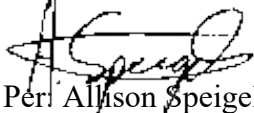
B. The City Continues to Act Unreasonably

In an email dated June 15, 2014, Toronto Transportation Services (“TTS”) sent an email to Mappro asking it to provide its views on the request to extend the permit. TTS asked for Mappro’s response by June 20, 2024 (i.e. four business days later). In light of the very short deadline, Mappro asked to extend the deadline until June 25, 2024. The City of Toronto’s lawyer advised Mappro that although it was free to provide its response at a later date, TTS “will likely be submitting a report for the upcoming Community Council meeting prior to that date.”² Mappro asked when TTS would be submitting its report and noted that “[p]roviding 4 business days to respond is neither reasonable, nor sufficient.”³ The City’s lawyer did not answer the question or otherwise respond to the email.

Despite not having a reasonable amount of time to adequately respond, Mappro provided its response to TTS’ request for comments on June 20, 2024 (i.e. the deadline that TTS imposed).⁴ It is noteworthy that TTS submitted its report to TEYCC with respect to the Item on June 21, 2024 (i.e. the next day). More strikingly, not only did TTS wholly ignore Mappro’s concerns when making its recommendations, it failed to acknowledge them altogether. According to TTS, it is not even worth mentioning that the continued occupation and use of the Staging Area is causing serious financial harm to Mappro. TTS does, however, continue to note that “[t]here [will be] no financial impact to the City.”

TTS’ request for Mappro’s submissions was nothing more than a display of empty theatrics. TTS and the City have made it all too clear that they are indifferent to the impact that the continued use of the Staging Area is having on Mappro.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

² See Tab 1 of Schedule A.

³ See Tab 1 of Schedule A.

⁴ See Tab 9 of Schedule A (an excerpt of the letter with only one of its attachments).

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

***** This is an automatic reply. Please do not reply to this message.*****

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

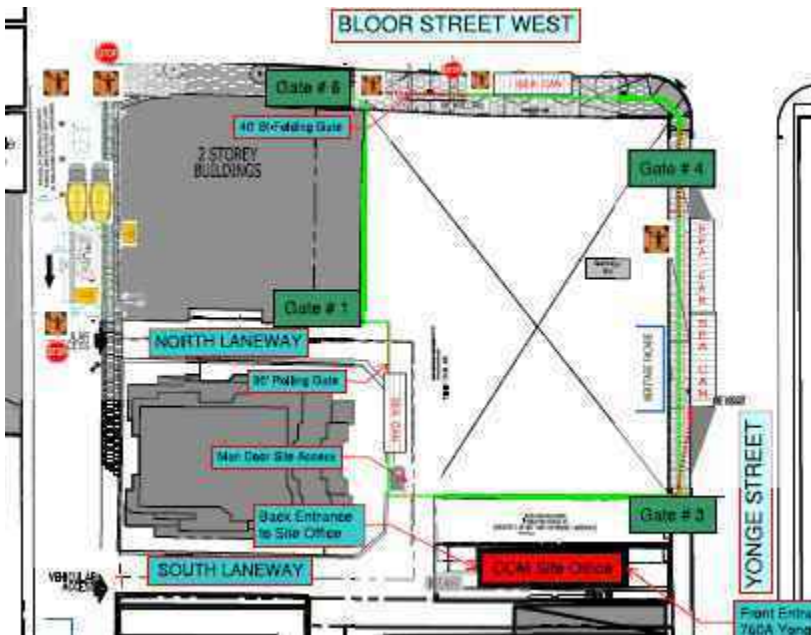
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H	CONTACT: Jay Cha Phone: (416) 274-2629
---	--

LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS	City Ward: 11
	District: Toronto and East York

PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour

TIME PERIOD:

From:	To:	Restriction During Period
July 14, 2020	7:00 am August 21, 2020	7:00 pm (Daily) Monday-Friday

Standard Conditions

The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

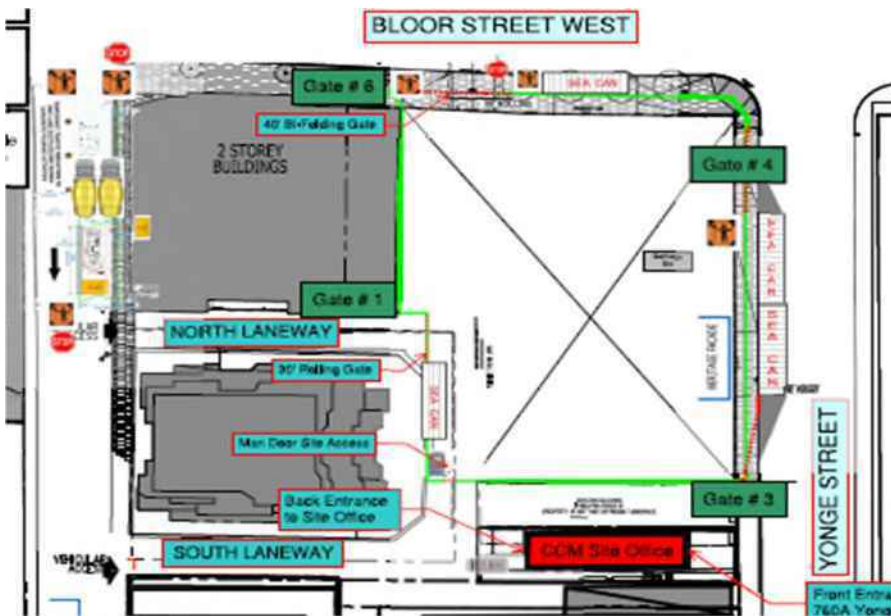
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro’s consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro’s consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", with a stylized flourish at the end.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdzicki

Dear Ms. Przewdzicki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

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We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

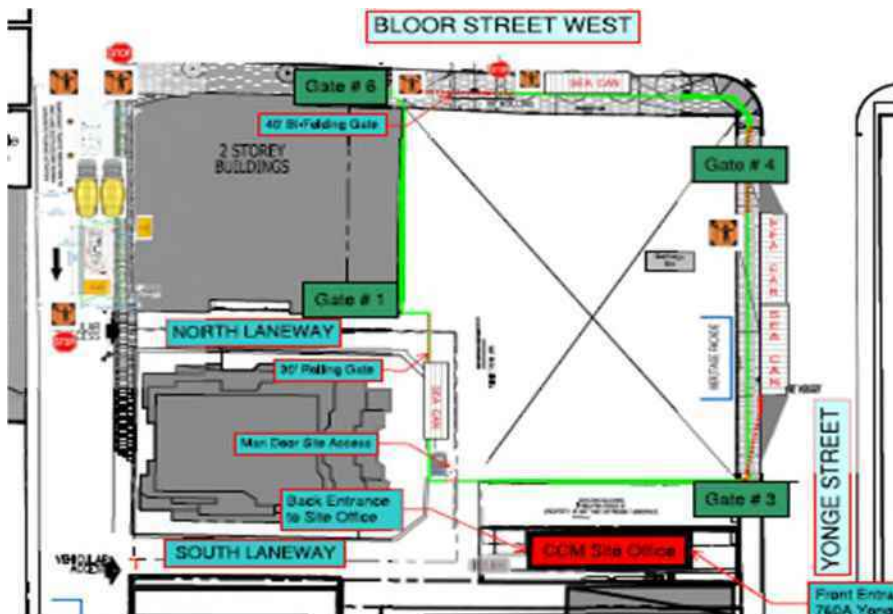
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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



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Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

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At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

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V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
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- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing,** to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Stating Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
Eric Jensen (via email: eric.jensen@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council ("**Community Council**") for allowing Mappro Realty Inc ("**Mappro**") to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the "**Community Council Meeting**") on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the "**Property**") at 19 Bloor Street West. Isabelle Hayen ("**Hayen**") is an officer and owner of Mappro and is primarily responsible for Mappro's operations.

The Property is located on the southeast corner of Bloor Street ("**Bloor**") and Balmuto Street ("**Balmuto**"). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the "**Scotia Building**") and the other would be operated by Mappro (the "**Mappro Building**"). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

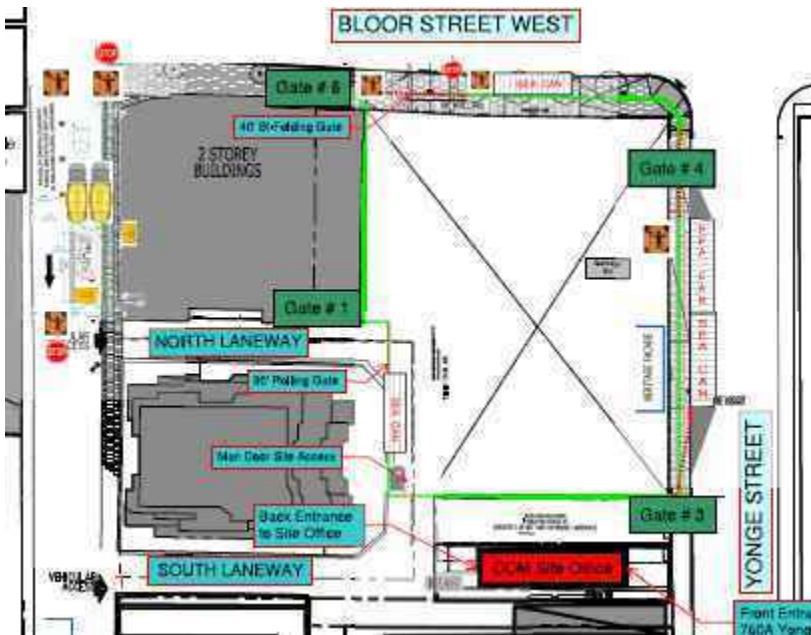
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

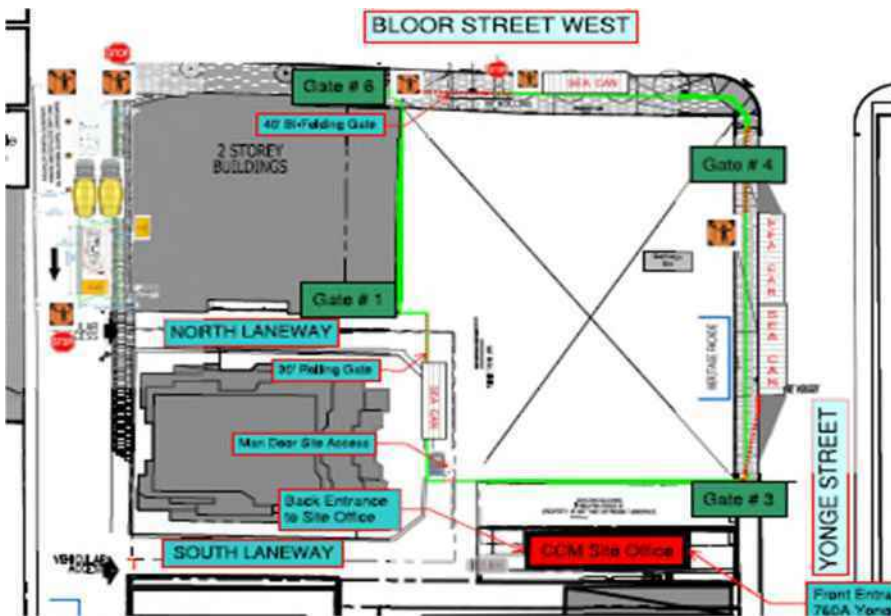
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro’s consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro’s consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdzicki

Dear Ms. Przewdzicki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

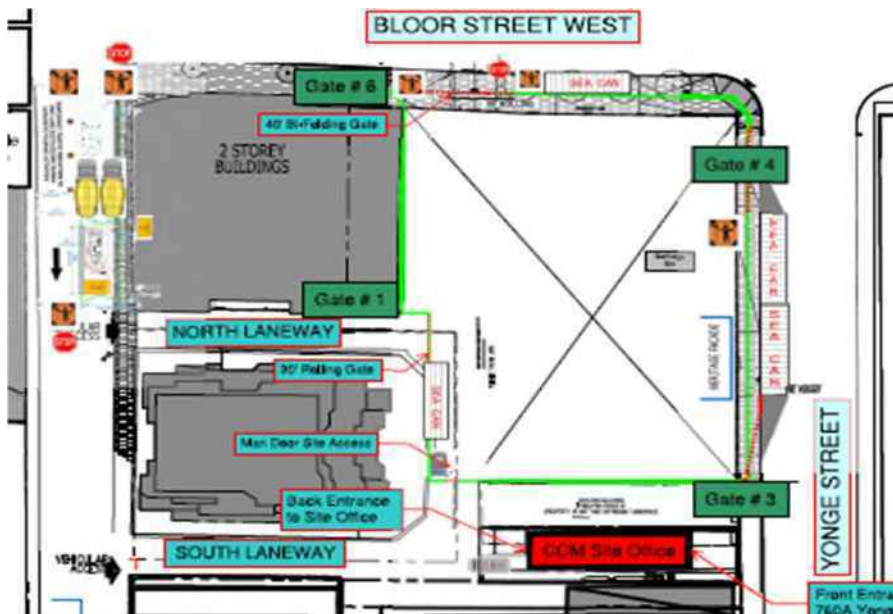
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

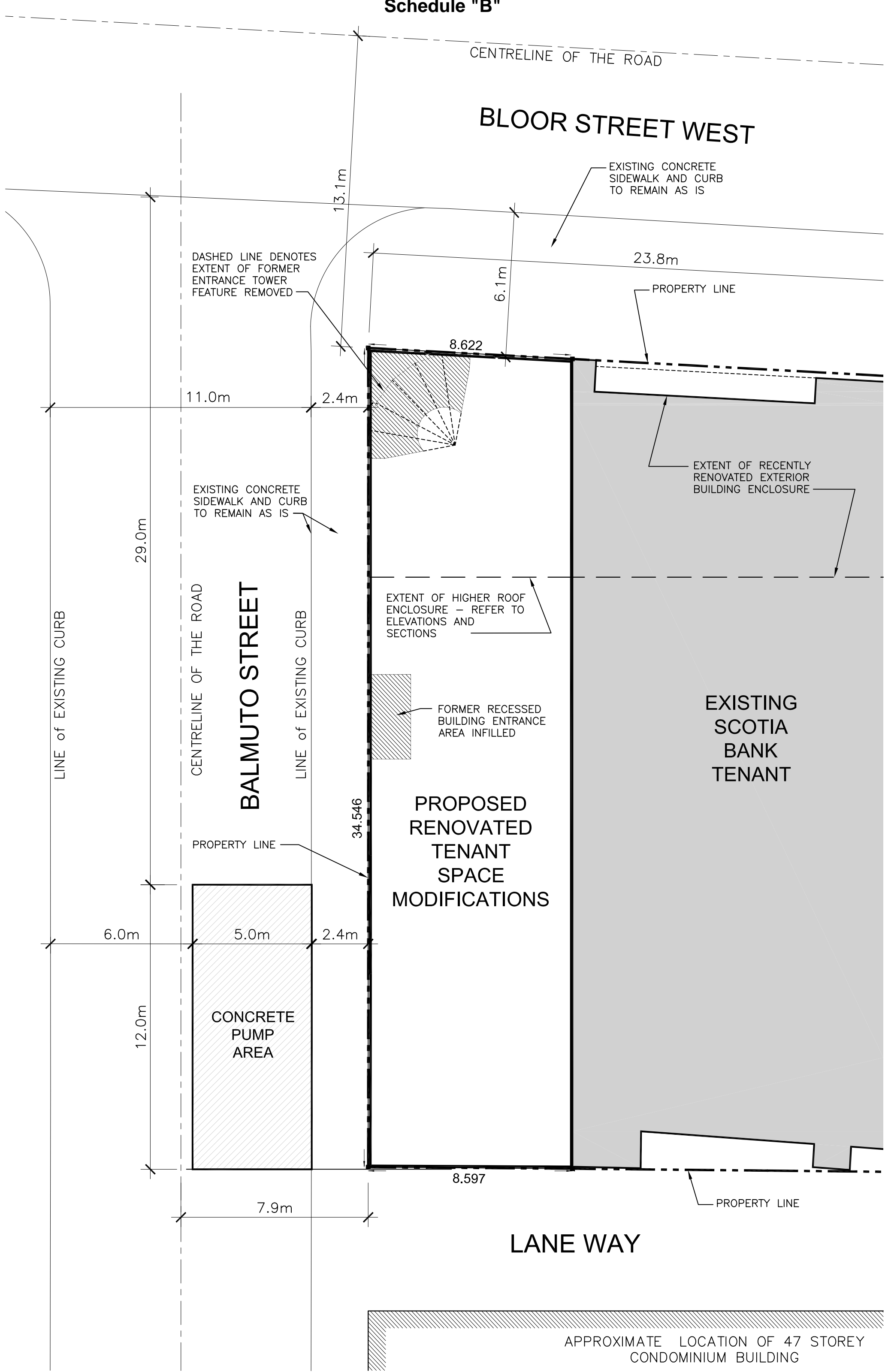
Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



March 23, 2023

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #2023.TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto City Council (the “**City Council**”) regarding Item #2023.TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, and February 22, 2023 all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City of Toronto (the “**City**”) has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;

- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this by-law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "... *no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

City Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, City Council should adopt the recommendation of the Toronto and East York Community Council that the existing permit only be extended until April 1, 2024, at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. City Council should send a clear message that developers cannot use City land to harm other landowners.

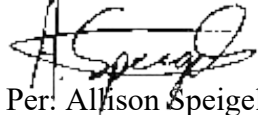
Any authorization that City Council grants that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.

- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel

On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Andrew Greene (via email: andrew.greene@toronto.ca)

Stuart McGhie (via email: stuart.mcghie@toronto.ca)

Eric Jensen (via email: eric.jensen@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Mary Ellen Bench (maryellen.bench@dentons.com)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council ("**Community Council**") for allowing Mappro Realty Inc ("**Mappro**") to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the "**Community Council Meeting**") on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the "**Property**") at 19 Bloor Street West. Isabelle Hayen ("**Hayen**") is an officer and owner of Mappro and is primarily responsible for Mappro's operations.

The Property is located on the southeast corner of Bloor Street ("**Bloor**") and Balmuto Street ("**Balmuto**"). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the "**Scotia Building**") and the other would be operated by Mappro (the "**Mappro Building**"). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

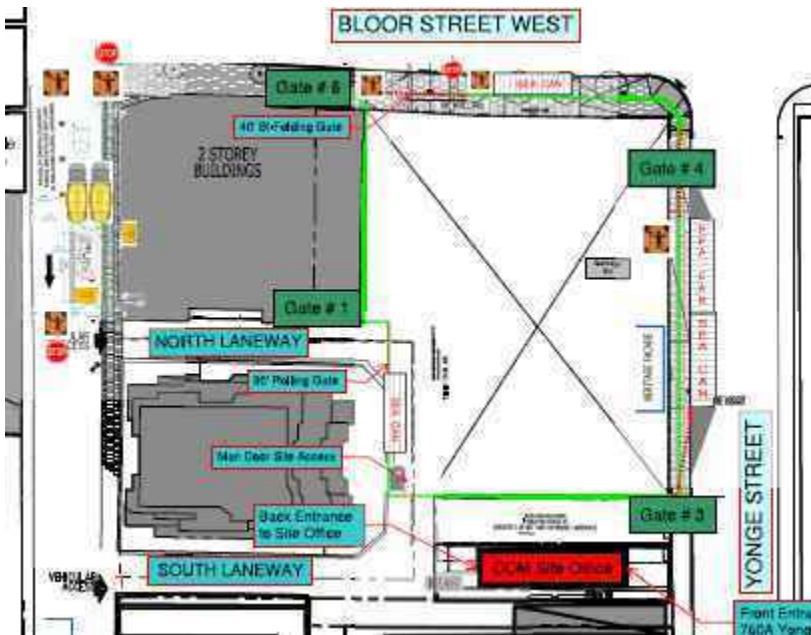
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H	CONTACT: Jay Cha Phone: (416) 274-2629
---	--

LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS	City Ward: 11
	District: Toronto and East York

PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour

TIME PERIOD:

From:	To:	Restriction During Period
July 14, 2020	7:00 am August 21, 2020	7:00 pm (Daily) Monday-Friday

Standard Conditions

The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

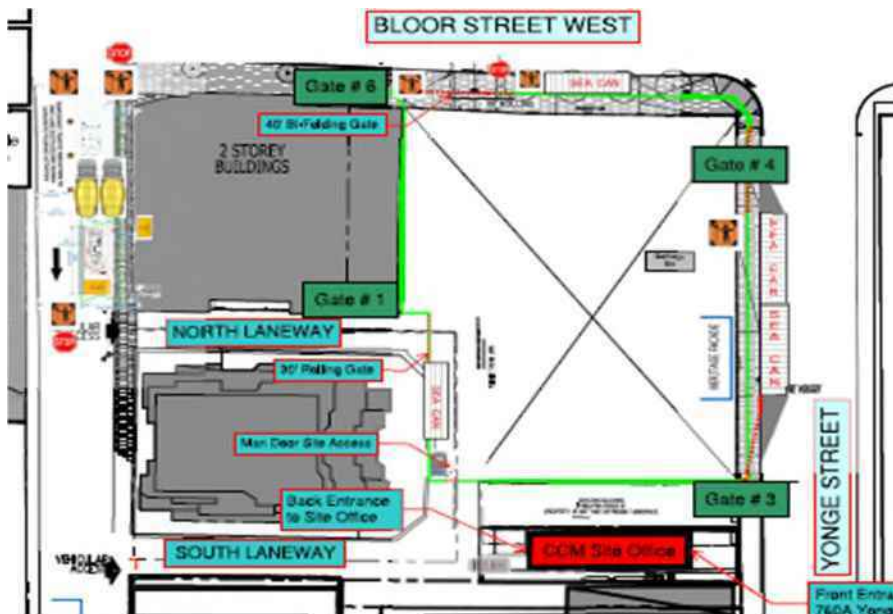
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro’s consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro’s consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read 'A. Spiegel', is written over a light blue circular stamp.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdzicki

Dear Ms. Przewdzicki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

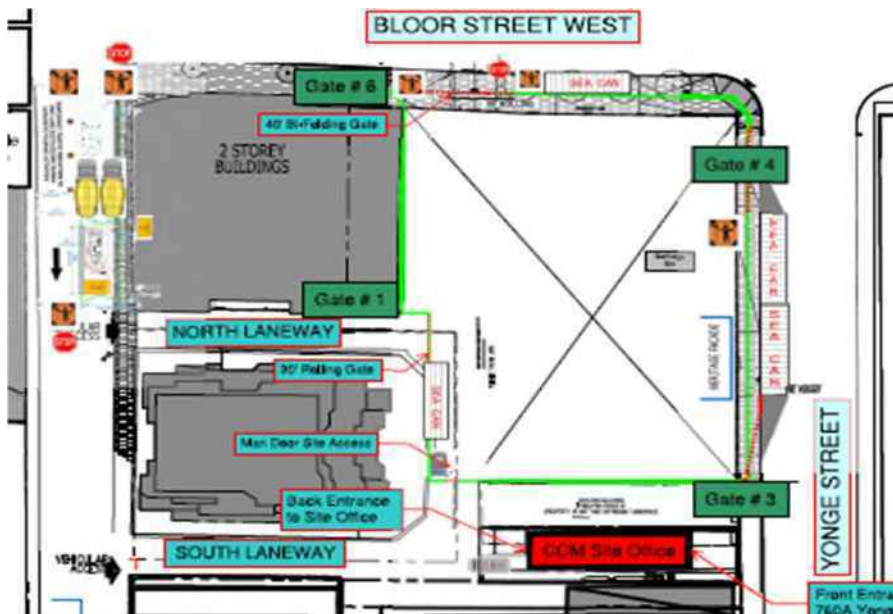
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

February 20, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding an item that may be added to the agenda concerning a possible request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension to continue occupying the portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”).

Despite Mappro’s repeated requests to be kept apprised as to any developments with respect to the existence or use of the Staging Area, neither Mizrahi, nor the City has done so.

On February 8, 2024, we emailed the City:

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

On February 15, the City responded as follows:

... While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

On February 16, we responded as follows:

I am not sure I understand what the following means: “They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.” Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

On February 17, the City responded as follows:

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk’s Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

We responded later that day by saying: “When are they adding it to the agenda? How can I make submissions opposing[it] if I don’t know what is being put forward?”

On February 18, the City said:

... I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi’s street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

On February 20 (i.e. the day before the meeting), the City advised that: “My client has confirmed to me that this is proceeding to this week’s TEYCC meeting. I will forward the updated agenda as soon as it is available.”

We responded later that day by saying:

*Given the lack of appropriate notice, I am not able to attend **tomorrow’s meeting**. Nor do I even know what position is being put forward. This is yet another example of the City’s unreasonable*

conduct. The City's repeated failure to take Mappro's interests into account is glaring. I have also received no update from Mizrahi as to what, if anything, is being requested.

The correspondence referred to above is attached as Schedule A.

In sum, Mappro was given one business days' notice that the City would be "reporting" to Community Council on February 21, 2024 with respect to the Staging Area. What this means and what is being reported (if anything) is anyone's guess. No relevant item has yet been added to the February 21 agenda.

Given the failure to provide appropriate notice, we will not be able to attend the February 21 Community Council meeting. Having no idea what is being reported or what extension (if any) is being sought, Mappro, has also been prevented from making meaningful submissions. To the extent that the City is recommending an extension of the permit (or Mizrahi is seeking one), Mappro opposes it. To that end, Mappro relies on its submissions dated February 22, 2023, December 9, 2022, November 29, 2022, September 15, 2020, and July 14, 2020, all of which are enclosed for your convenience as Schedule B.

The conduct of the City and Mizrahi has been and continues to be wholly unreasonable. Mappro's interests have been disregarded at every turn.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Speigel", is written over a horizontal line.

Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, February 20, 2024 9:23 AM
To: Nicholas Rolfe
Cc: Dunn, Mark; Claudia Lapa
Subject: RE: Mizrahi Permit

INTERNAL SOURCE

Given the lack of appropriate notice, I am not able to attend **tomorrow's meeting**. Nor do I even know what position is being put forward. This is yet another example of the City's unreasonable conduct. The City's repeated failure to take Mappro's interests into account is glaring.

I have also received no update from Mizrahi as to what, if anything, is being requested.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
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<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, February 20, 2024 9:09 AM
To: Allison Spiegel <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: Re: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

My client has confirmed to me that this is proceeding to this week's TEYCC meeting. I will forward the updated agenda as soon as it is available.

Thank you,
Nicholas Rolfe

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From: Nicholas Rolfe
Sent: Sunday, February 18, 2024 4:31:47 PM
To: 'Allison Speigel' <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: RE: Mizrahi Permit

Hello Allison,

Further to my below emails – I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi's street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Speigel <allison@ontlaw.com>
Sent: February 17, 2024 1:37 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

When are they adding it to the agenda? How can I make submissions opposing if I don't know what is being put forward?

Sent from my iPhone

On Feb 17, 2024, at 12:53 PM, Nicholas Rolfe <Nicholas.Rolfe@toronto.ca> wrote:

EXTERNAL SOURCE Exercise caution.

Hello Allison,

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk's Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: February 16, 2024 3:02 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

I will look into this. I was not aware of anything happening on Feb 21, it was being handled by Dentons. I will check in this then.

Sent from my iPhone

On Feb 16, 2024, at 2:49 PM, Allison Speigel <allison@ontlaw.com> wrote:

Given that I would need submissions in by noon on Tuesday if I am to speak to this on Feb 21, can you please get back to me asap.

Mark – can you please advise.

Regards,
Allison

Allison J. Speigel*
<image004.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Speigel Professional Corporation

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From: Allison Speigel <allison@ontlaw.com>
Sent: Friday, February 16, 2024 1:43 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

INTERNAL SOURCE

I am not sure I understand what the following means: "They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter."

Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

Regards,
Allison

Allison J. Speigel*

<image003.png>

Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

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<https://ca.linkedin.com/in/allionspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Thursday, February 15, 2024 7:53 PM

To: Allison Speigel <allison@ontlaw.com>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

Thank you for your email. While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do

so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: February 8, 2024 8:48 AM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Mizrahi Permit

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

Regards,
Allison

Allison J. Spiegel*
<image003.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED
<https://ca.linkedin.com/in/allisonspeigel>

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***** Attention *****

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Schedule "B"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing,** to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "... *no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
Eric Jensen (via email: eric.jensen@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council ("**Community Council**") for allowing Mappro Realty Inc ("**Mappro**") to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the "**Community Council Meeting**") on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the "**Property**") at 19 Bloor Street West. Isabelle Hayen ("**Hayen**") is an officer and owner of Mappro and is primarily responsible for Mappro's operations.

The Property is located on the southeast corner of Bloor Street ("**Bloor**") and Balmuto Street ("**Balmuto**"). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the "**Scotia Building**") and the other would be operated by Mappro (the "**Mappro Building**"). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

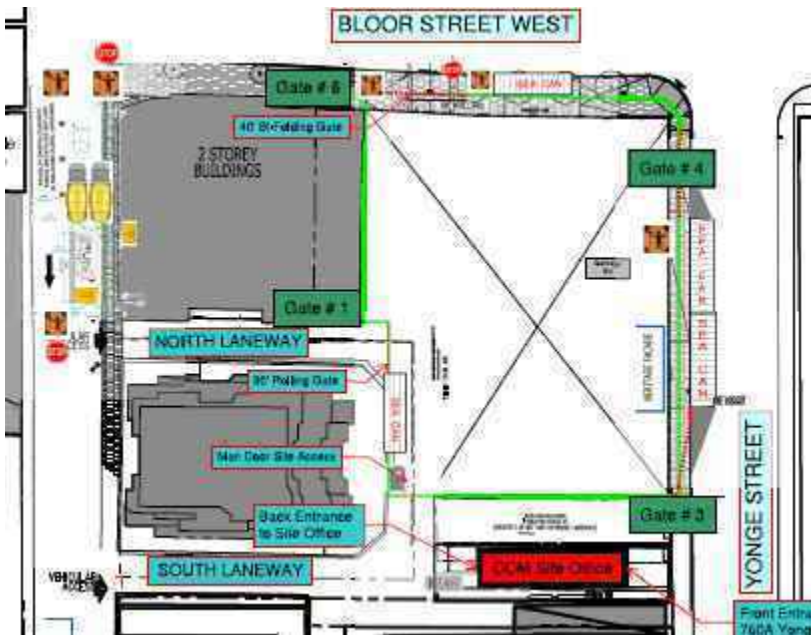
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

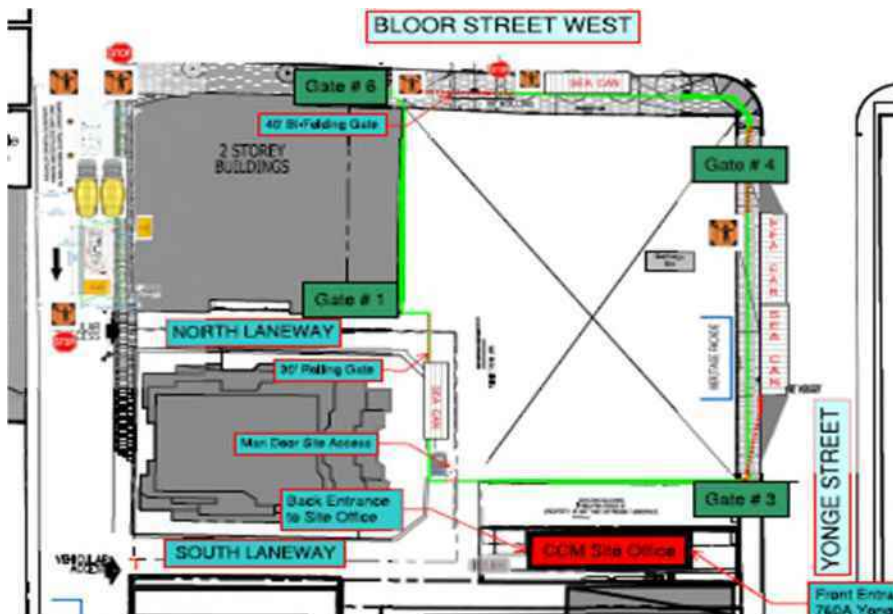
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro’s consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro’s consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", with a stylized flourish at the end.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

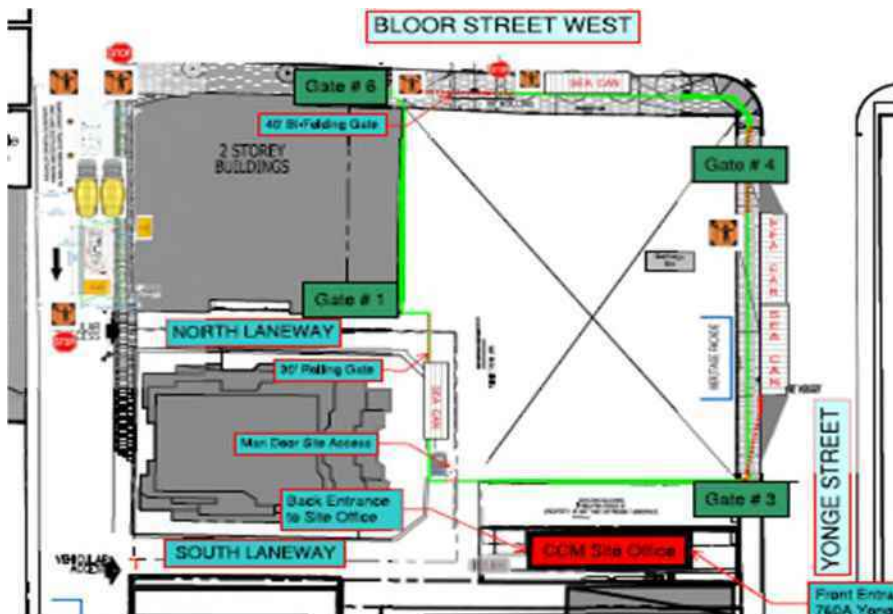
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Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

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III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
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In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

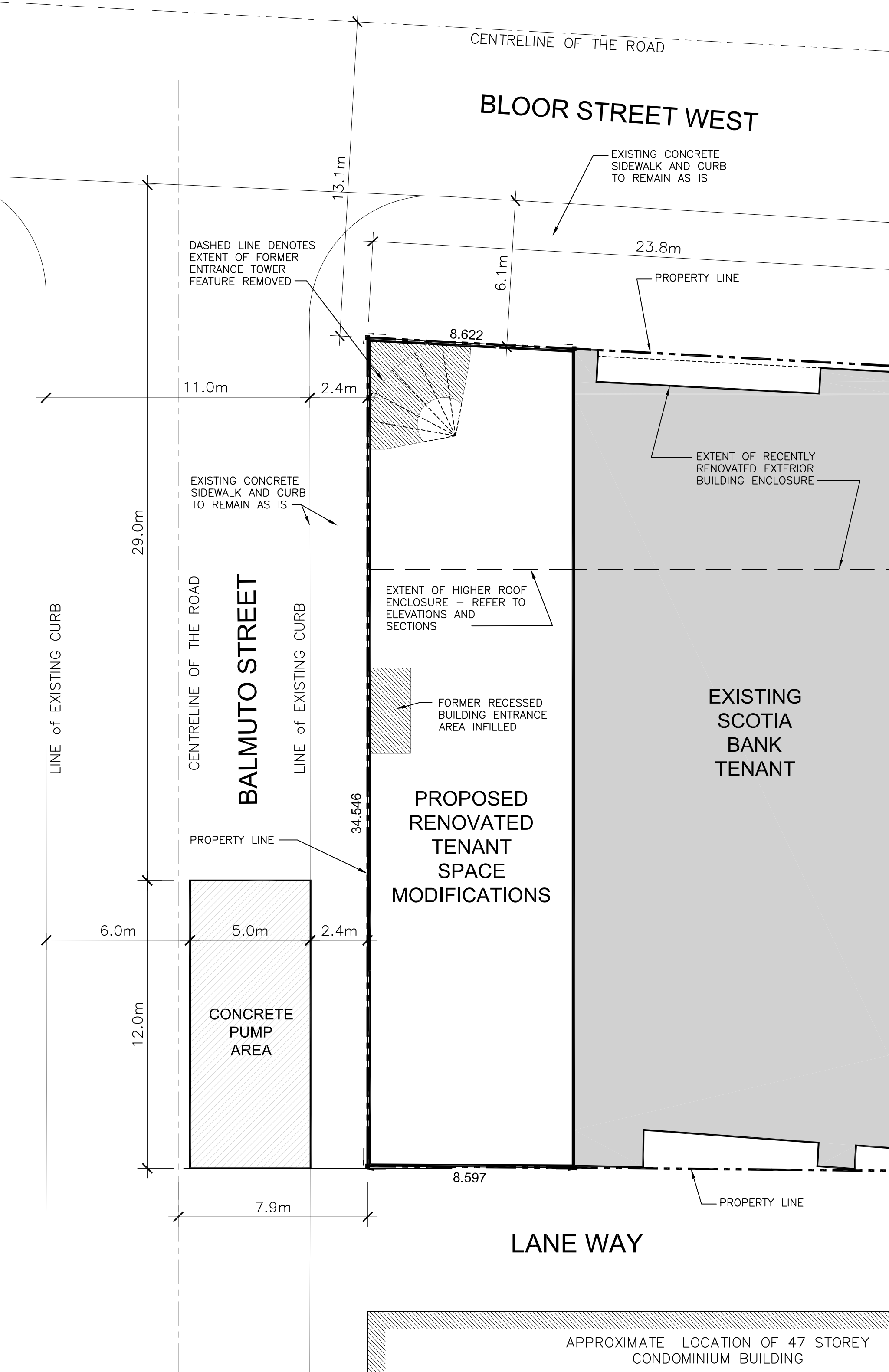
Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdzicki

Dear Ms. Przewdzicki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

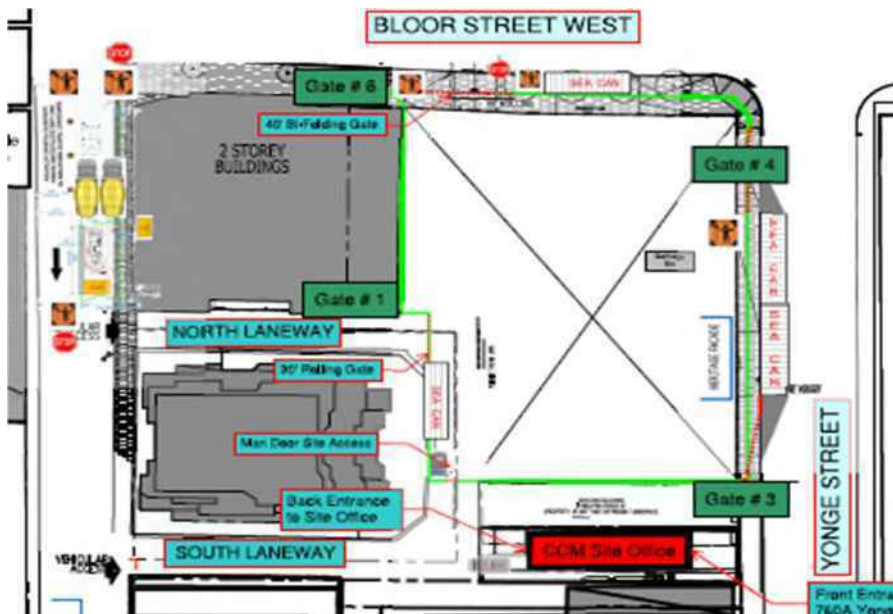
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

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Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

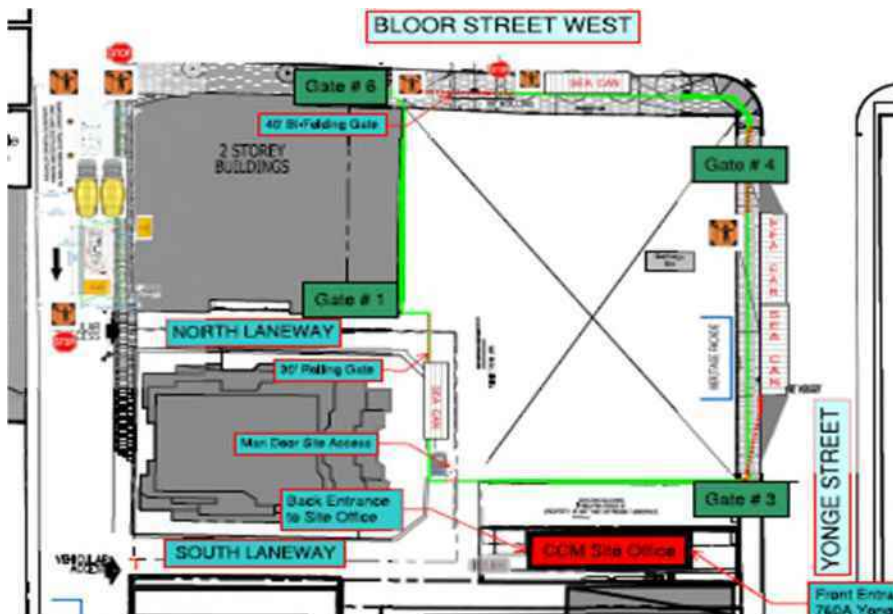
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", is positioned below the typed name.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

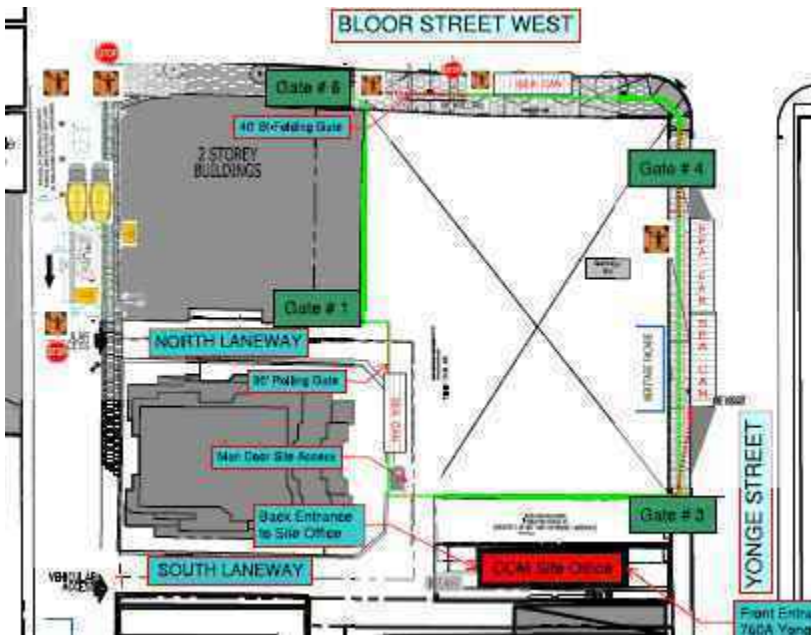
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)
By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

March 15, 2024

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #TE11.36 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto City Council (the “**City Council**”) regarding Item #TE11.36 (the “**Item**”) concerning the request to extend the permit allowing Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) (or a replacement contractor) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from April 2, 2024 to August 31, 2025.

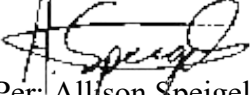
These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, and February 20, 2024 all of which are enclosed for your convenience as Schedule A.

As set out in Mappro’s February 20, 2024 submissions, Mappro was not provided with appropriate notice before the issue was considered at the February 21, 2024 meeting of the Toronto and East York Community Council. This was yet another example of the manner in which Mizrahi and the City have shown a complete disregard for Mappro’s interest.

For the same reasons as set out in its previous submissions, Mappro adamantly opposes the extension of the permit.

Finally, Mappro again requests that the City and Mizrahi be required to provide appropriate notice of any reports, meetings, or decisions relating to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in black ink, appearing to read 'A. Spiegel', is written over the printed name 'Allison Spiegel'.

Per: Allison Spiegel

On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)
Mark Dunn (mdunn@goodmans.ca)

Schedule "A"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

February 20, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding an item that may be added to the agenda concerning a possible request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension to continue occupying the portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”).

Despite Mappro’s repeated requests to be kept apprised as to any developments with respect to the existence or use of the Staging Area, neither Mizrahi, nor the City has done so.

On February 8, 2024, we emailed the City:

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

On February 15, the City responded as follows:

... While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

On February 16, we responded as follows:

I am not sure I understand what the following means: “They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.” Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

On February 17, the City responded as follows:

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk’s Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

We responded later that day by saying: “When are they adding it to the agenda? How can I make submissions opposing[it] if I don’t know what is being put forward?”

On February 18, the City said:

... I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi’s street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

On February 20 (i.e. the day before the meeting), the City advised that: “My client has confirmed to me that this is proceeding to this week’s TEYCC meeting. I will forward the updated agenda as soon as it is available.”

We responded later that day by saying:

*Given the lack of appropriate notice, I am not able to attend **tomorrow’s meeting**. Nor do I even know what position is being put forward. This is yet another example of the City’s unreasonable*

conduct. The City's repeated failure to take Mappro's interests into account is glaring. I have also received no update from Mizrahi as to what, if anything, is being requested.

The correspondence referred to above is attached as Schedule A.

In sum, Mappro was given one business days' notice that the City would be "reporting" to Community Council on February 21, 2024 with respect to the Staging Area. What this means and what is being reported (if anything) is anyone's guess. No relevant item has yet been added to the February 21 agenda.

Given the failure to provide appropriate notice, we will not be able to attend the February 21 Community Council meeting. Having no idea what is being reported or what extension (if any) is being sought, Mappro, has also been prevented from making meaningful submissions. To the extent that the City is recommending an extension of the permit (or Mizrahi is seeking one), Mappro opposes it. To that end, Mappro relies on its submissions dated February 22, 2023, December 9, 2022, November 29, 2022, September 15, 2020, and July 14, 2020, all of which are enclosed for your convenience as Schedule B.

The conduct of the City and Mizrahi has been and continues to be wholly unreasonable. Mappro's interests have been disregarded at every turn.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Speigel", is written over a horizontal line.

Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, February 20, 2024 9:23 AM
To: Nicholas Rolfe
Cc: Dunn, Mark; Claudia Lapa
Subject: RE: Mizrahi Permit

INTERNAL SOURCE

Given the lack of appropriate notice, I am not able to attend **tomorrow's meeting**. Nor do I even know what position is being put forward. This is yet another example of the City's unreasonable conduct. The City's repeated failure to take Mappro's interests into account is glaring.

I have also received no update from Mizrahi as to what, if anything, is being requested.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, February 20, 2024 9:09 AM
To: Allison Spiegel <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: Re: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

My client has confirmed to me that this is proceeding to this week's TEYCC meeting. I will forward the updated agenda as soon as it is available.

Thank you,
Nicholas Rolfe

Get [Outlook for iOS](#)

From: Nicholas Rolfe
Sent: Sunday, February 18, 2024 4:31:47 PM
To: 'Allison Speigel' <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: RE: Mizrahi Permit

Hello Allison,

Further to my below emails – I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi's street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Speigel <allison@ontlaw.com>
Sent: February 17, 2024 1:37 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

When are they adding it to the agenda? How can I make submissions opposing if I don't know what is being put forward?

Sent from my iPhone

On Feb 17, 2024, at 12:53 PM, Nicholas Rolfe <Nicholas.Rolfe@toronto.ca> wrote:

EXTERNAL SOURCE Exercise caution.

Hello Allison,

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk's Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: February 16, 2024 3:02 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

I will look into this. I was not aware of anything happening on Feb 21, it was being handled by Dentons. I will check in this then.

Sent from my iPhone

On Feb 16, 2024, at 2:49 PM, Allison Speigel <allison@ontlaw.com> wrote:

Given that I would need submissions in by noon on Tuesday if I am to speak to this on Feb 21, can you please get back to me asap.

Mark – can you please advise.

Regards,
Allison

Allison J. Speigel*
<image004.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
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<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Speigel Professional Corporation

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From: Allison Speigel <allison@ontlaw.com>
Sent: Friday, February 16, 2024 1:43 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

INTERNAL SOURCE

I am not sure I understand what the following means: "They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter."

Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

Regards,
Allison

Allison J. Speigel*

<image003.png>

Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

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<https://ca.linkedin.com/in/allionspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Thursday, February 15, 2024 7:53 PM

To: Allison Speigel <allison@ontlaw.com>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

EXTERNAL SOURCE Exercise caution.

Hello Allison,

Thank you for your email. While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do

so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: February 8, 2024 8:48 AM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Mizrahi Permit

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

Regards,
Allison

Allison J. Spiegel*
<image003.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
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<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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***** Attention *****

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Schedule "B"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing,** to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
 Andrew Greene (via email: andrew.greene@toronto.ca)
 Stuart McGhie (via email: stuart.mcghie@toronto.ca)
 Eric Jensen (via email: eric.jensen@toronto.ca)
 Rodney Gill (via email: rodney.gill@toronto.ca)
 Belinda Brenner (via email: belinda.brenner@toronto.ca)
 Gadi Katz (via email: gadi.katz@toronto.ca)
 Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP
• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

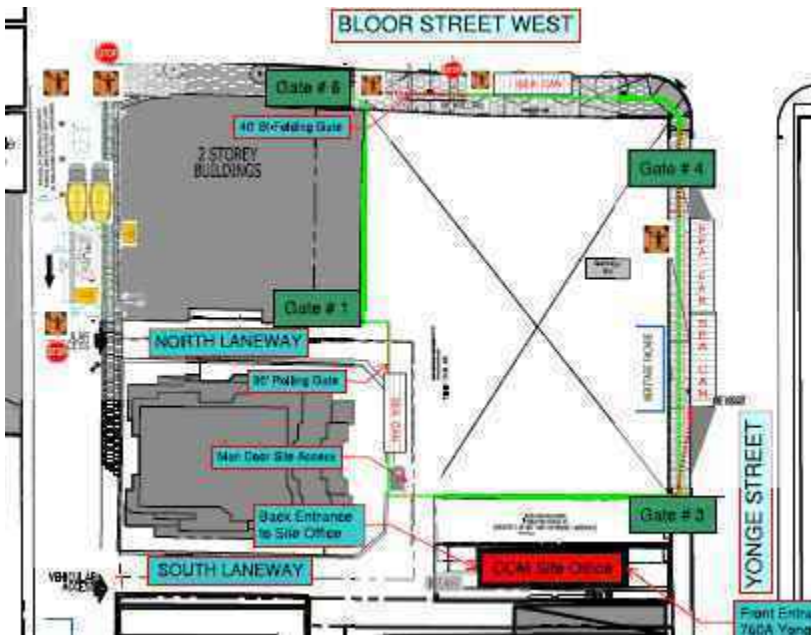
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

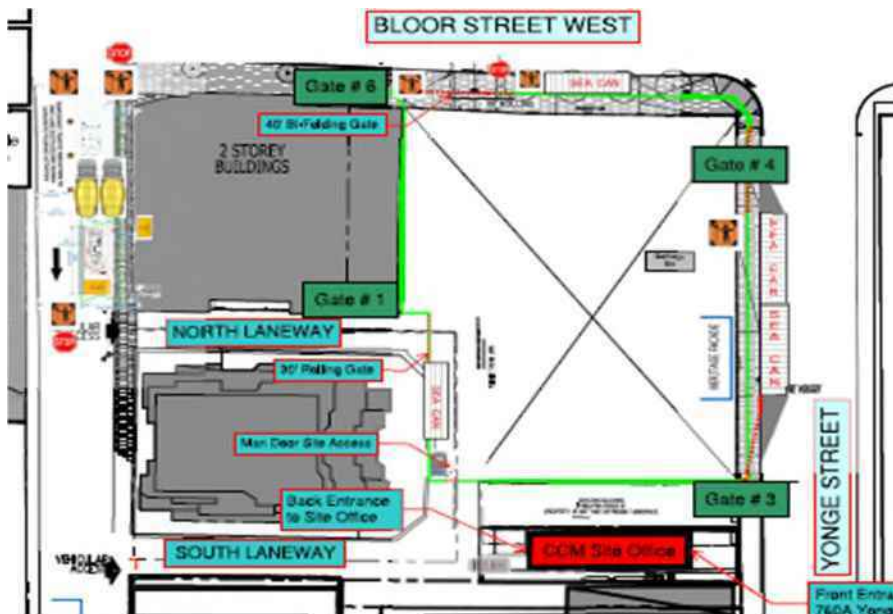
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", is positioned below the typed name.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdzicki

Dear Ms. Przewdzicki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

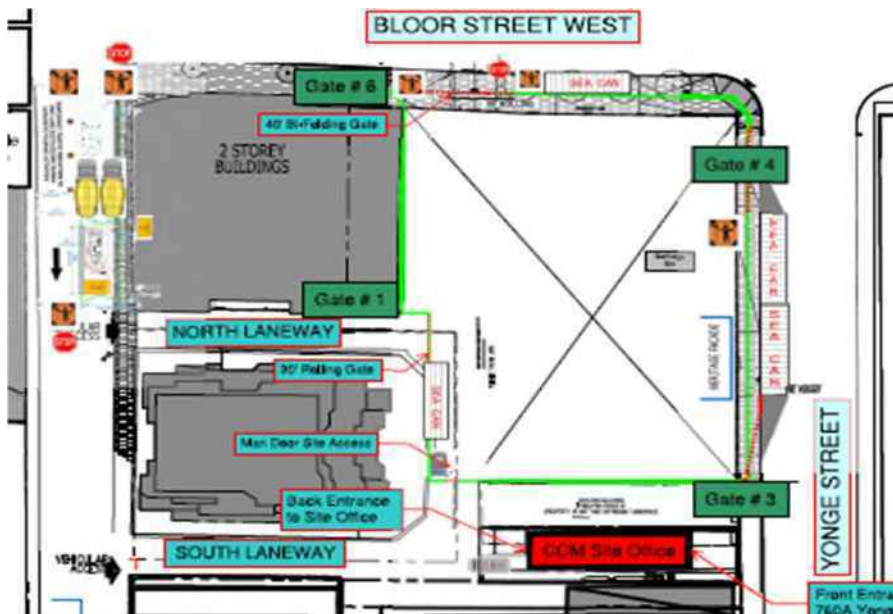
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The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



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Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



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Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

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¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

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20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

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V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
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- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

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There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

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After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

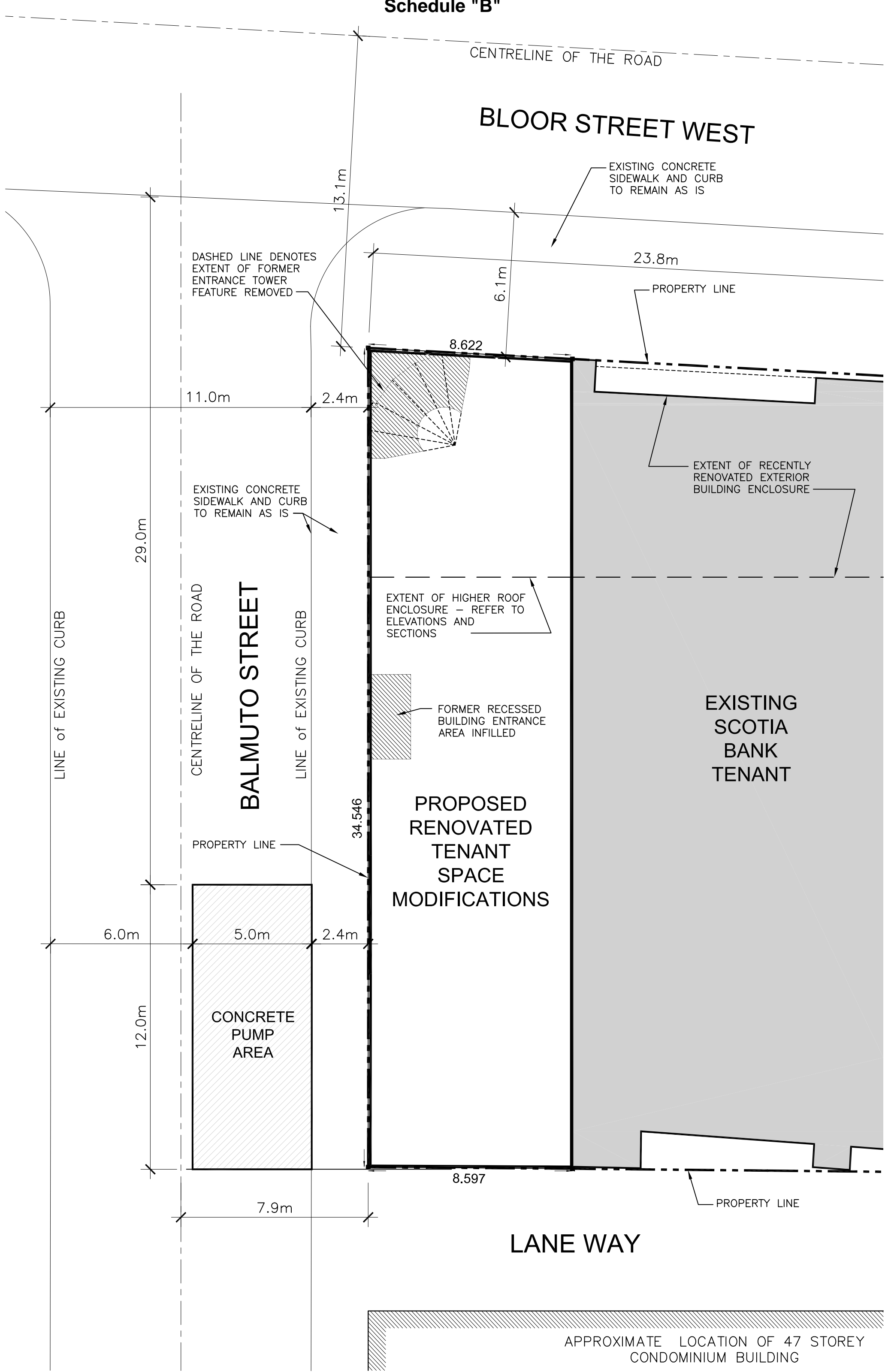
Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

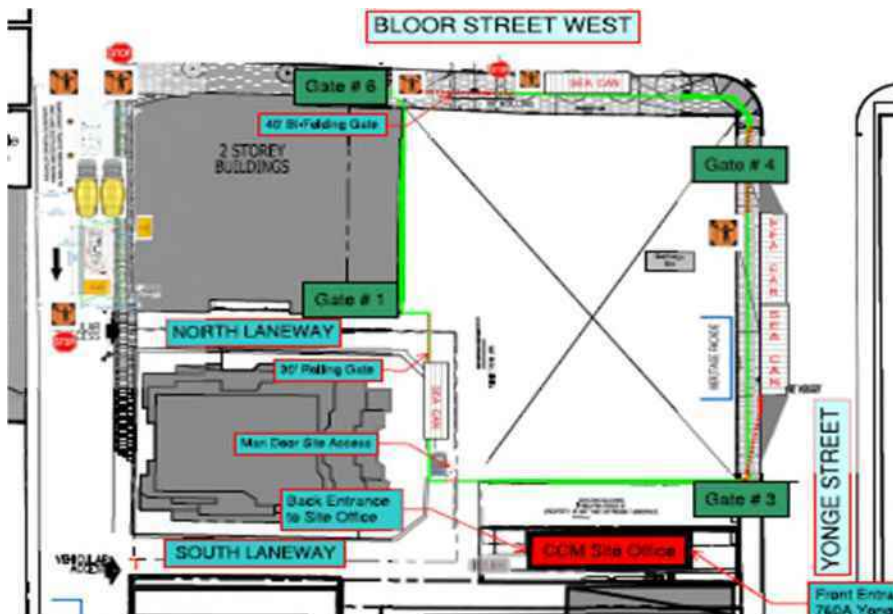
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The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
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Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

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There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

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Yours very truly,
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Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

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These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

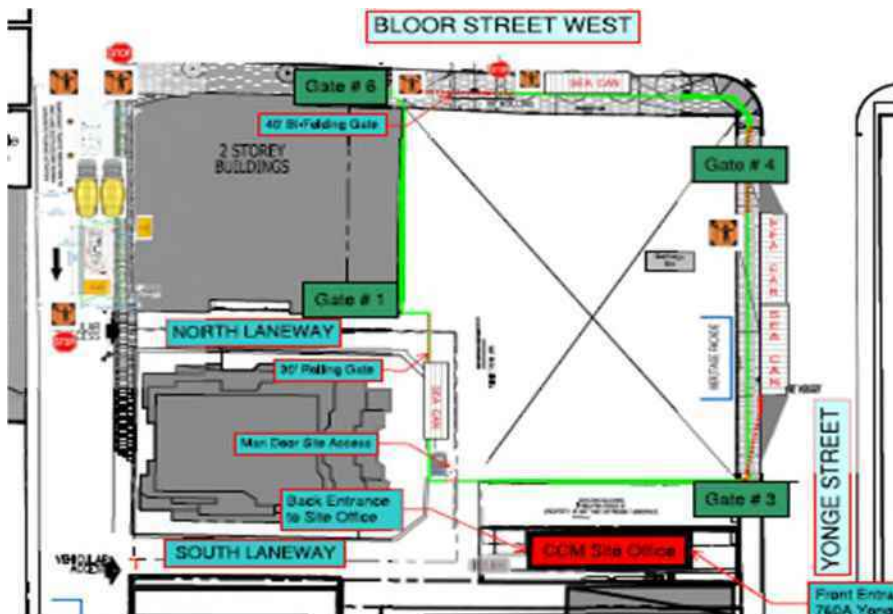
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To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", with a stylized flourish at the end.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

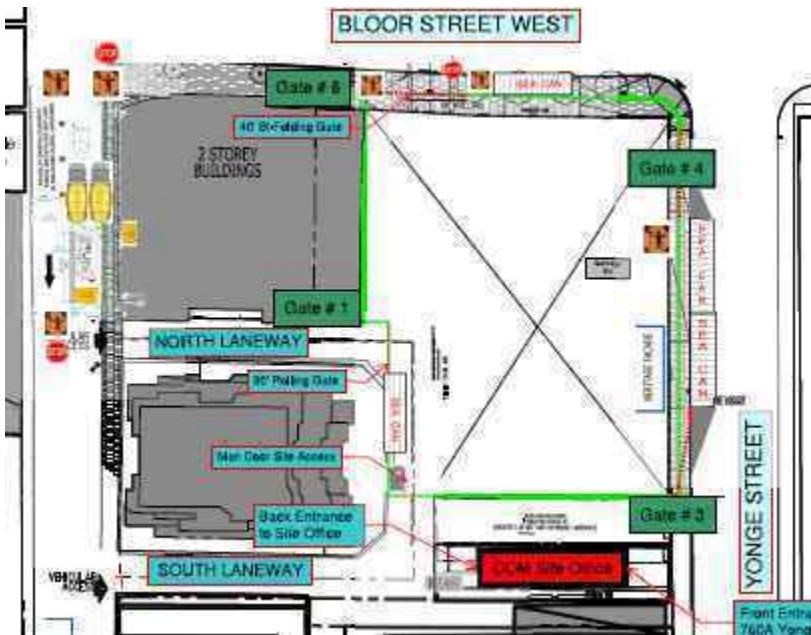
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone: (416) 392-1803
Fax: (416) 392-7465
24 Hours Dispatch: (416) 392-5556
48 Hour Fax Notification:
 Construction, Toronto Metro Hal 17 Floor
Permit No: 86576401
CA PM EqMaterials \$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc.
 33 Bloor St. East, Suite 304
 Toronto, Ontario M4W 3H

CONTACT: Jay Cha
 Phone: (416) 274-2629

LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS

City Ward: 11
District: Toronto and East York

PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour

TIME PERIOD:

From:	To:	Restriction During Period
July 14, 2020	7:00 am August 21, 2020	7:00 pm (Daily) Monday-Friday

Standard Conditions

The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)
By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

June 20, 2024

**** sent via email to: Nicholas.Rolfe@toronto.ca ****

Mr. Nicholas Rolfe
City of Toronto Legal Services
55 John St.
Stn. 1260, 26th Floor, Metro Hall
Toronto, Ontario
M5V 3C6

Dear Mr. Rolfe:

Re: 1 Bloor Street West (the “**Mizrahi Property**”) - Construction Staging Area (the “**Staging Area**”)

As you are aware, we act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We respond to the email (the “**City Email**”) dated June 14, 2014 that John Kowalenko, a senior project manager at Toronto Transportation Services (“**TTS**”), sent to Isabelle Hayen, a director of Mappro.¹ In the City Email, TTS advised that “the 1 Bloor West developer is requesting permission to continue occupying the Balmuto Street [S]taging [A]rea until **February 1, 2026**.” We assume that the reference to the “1 Bloor West developer” is a reference to Alvarez & Marsal Canada Inc. (the “**Receiver**”) as receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., including the Mizrahi Property.

In the City Email, TTS invited Mappro to provide its views on the request to extend the permit (the “**Permit**”) to use the Staging Area. TTS requested Mappro’s response by June 20, 2024 (i.e. four business days after it sent the City Email). We asked to extend the deadline by which Mappro could provide its response until June 25, 2024. You advised us that although Mappro was free to provide its response at a later date, the “City [of Toronto (the “**City**”)] staff will likely be submitting a report for the upcoming Community Council meeting prior to that date.”² We asked you when City staff would be submitting its report and noted that “[p]roviding 4 business days to respond is neither reasonable, nor sufficient.”³ You did not answer our question or otherwise respond to our email.

¹ See Tab 1 of Schedule A.

² See Tab 1 of Schedule A.

³ See Tab 1 of Schedule A.

Despite not having a reasonable amount of time to adequately respond, Mappro provides this response to TTS' request for comments.

As a preliminary matter, we note that the City Email incorrectly identifies the Mappro Property as being "adjacent" to the Mizrahi Property. The Mappro Property is not adjacent to the Mizrahi Property; rather, it is located a block away, which makes the placement of the Staging Area even more troubling.

Mappro adamantly opposes the extension of the Permit to February 1, 2026. Mappro has opposed the existence and use of the Staging Area since Mappro discovered that the Staging Area had been erected directly in front of the Mappro Property. The reasons for Mappro's opposition are detailed in its past submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, March 23, 2023, February 20, 2024, and March 15, 2024, all of which are enclosed for your convenience as Tabs 2-9 of Schedule A.

In addition to the reasons previously given, Mappro opposes any further extension of the Permit because the existence and on-going use of the Staging Area (which prevents Mappro from being able to lease the Property) has also caused the following issues (the "New Issues"):

1. The Mappro Property has repeatedly been vandalized.
2. Homeless people are loitering directly in front of the Mappro Property and there have been a number of instances of begging, drug use (leaving abandoned needles and related paraphernalia), and individuals who are urinating and defecating directly in front of the Mappro Property.
3. There have been break-ins to the Mappro Property, resulting in doors and glass of the Mappro Property being broken and individuals urinating inside the Mappro Property.

Mappro has incurred costs to address the New Issues, including being forced to upgrade its security. It remains eminently unfair that Mappro is being forced to incur damages to enable others to profit from a construction project being built a block away.

Mappro also fails to understand why the Receiver requires an extension of the Permit to February 1, 2026. Given that the building construction has apparently already reached the 59th floor,⁴ it makes no sense that the Receiver would require the concrete pump to remain in the Staging Area until February 1, 2026.

If the City is intent on granting some form of extension of the Permit against Mappro's will, Mappro asks that, at a minimum:

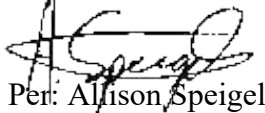
1. The Permit be extended for no more than 1 year (i.e. to July 31, 2025); and
2. The Receiver (or any future owner of the Mizrahi Property) be required to:
 - a. reimburse Mappro for all costs and damages that Mappro has and will incur and suffer due to the erection and use of the Staging Area;
 - b. put in place additional security measures surrounding the Mappro Property;

⁴https://indd.adobe.com/view/2f80c022-652c-49c5-9398-d6ceb2cb8f08?utm_campaign=DealX%20Email%2000608000013mibKAAQ-2024-06-06T17%3A53%3A52.212Z-Teaser&utm_medium=email&utm_source=Eloqua&utm_term=3453865&elqTrackId=ff7e54c7c03941a28659c9c11e91e2ae&elq=e18271ba430c4a7b821fbfd427ba6358&elqaid=35754&elqat=1&elqCampaignId=36607

- c. remove any graffiti and otherwise repair any damage to the outside of the Mappro Property while the Staging Area remains in place;
- d. address any issues arising from homeless individuals congregating in front of the Mappro Property (i.e. clean any urine, defecation, etc., and otherwise address the issue) while the Staging Area remains in place; and
- e. coordinate and collaborate with Mappro (or any future owner of the Mappro Property) regarding any construction work on the Mappro Property in a manner that ensures that the work can be performed (and done so efficiently).

Mappro makes these requests without prejudice to its rights in the ongoing litigation and, in particular, its rights to claim all damages arising from the erection and use of the Staging Area.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel

AS:cl

Encl.

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, June 18, 2024 1:12 PM
To: Nicholas Rolfe
Subject: RE: 1 Bloor Street West - Construction Staging Area

Follow Up Flag: Follow up
Flag Status: Flagged

INTERNAL SOURCE

When will they be submitting their report? I would have thought they would want to hear from Mappro before they submit the report?

Providing 4 business days to respond is neither reasonable, nor sufficient.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, June 18, 2024 1:09 PM
To: Allison Spiegel <allison@ontlaw.com>
Subject: RE: 1 Bloor Street West - Construction Staging Area

EXTERNAL SOURCE Exercise caution.

Allison,

You are welcome to do so. Please note that City staff will likely be submitting a report for the upcoming Community Council meeting prior to that date. As you know, Mappro has in the past and remains able to depute to Community Council and Council as well.

Ms. Hayen had written the following to City staff:

Dear Mr Kowalenko

Thank you very much for your e-mail.

May I kindly ask if it is possible for us to delay our submission to early next week, close of business Monday 24 June/Tuesday 25 June 2024.

I apologise, I am travelling and trying to coordinate diaries to provide a submission.

Kind regards

Isabelle Hayen

Given our correspondence and that Mappro wishes to provide its response through you, I will advise City staff that there is no need to respond to this email.

Yours truly,

Nicholas Rolfe

Solicitor, City of Toronto Legal Services

Metro Hall, 23rd Floor, Stn 1260

55 John Street, Toronto ON M5V 3C6

Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>

Sent: Tuesday, June 18, 2024 12:58 PM

To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Subject: [External Sender] RE: 1 Bloor Street West - Construction Staging Area

I will send the response to you to forward to City staff. I will do so on June 25. If that is a problem, please advise.

Regards,

Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

<http://ontlaw.com/bio/allison-speigel/>

<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Tuesday, June 18, 2024 12:23 PM

To: Allison Spiegel <allison@ontlaw.com>

Subject: RE: 1 Bloor Street West - Construction Staging Area

EXTERNAL SOURCE Exercise caution.

Allison,

I am unable to provide legal advice on lobbyist registration. If you wish to respond, please do so directly to me. I will forward your response (if you are the one who responds) to City staff.

Please confirm at your earliest convenience if Mappro will be responding, and if so through whom.

Yours truly,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: Tuesday, June 18, 2024 12:16 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Subject: [External Sender] FW: 1 Bloor Street West - Construction Staging Area

My client received the email below. If my client responds directly, does she need to be a registered lobbyist? Conversely, are you ok if I respond on her behalf and copy you?

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: John Kowalenko <John.Kowalenko@toronto.ca>
Sent: Friday, June 14, 2024 5:47 PM
To: Isabelle Hayen <isabelle.hayen@ahrgroup.be>
Subject: 1 Bloor Street West - Construction Staging Area

Dear Ms. Hayen,

City staff anticipate reporting to Community Council and Council regarding a further permit for the 1 Bloor West developer to continue to occupy its Balmuto Street staging area. We understand that you are a representative of Mappro, an adjacent property owner, and are familiar with this matter. The last Council treatment of this matter, including the associated staff report, is available at [this link](#).

We are writing to provide you with an opportunity to communicate Mappro's views to the City on whether the developer should receive permission to continue to occupy the Balmuto Street staging area, including conditions or ways in which to minimize any impacts of the staging area should such permission issue. Please feel free to contact the undersigned to that end.

City staff anticipate reporting to Community Council on this matter for its July 10, 2024 meeting. Mappro has in the past deputed on the staging area to Community Council and Council, and we understand that it is familiar with how to do so (although further information on deputations may be found [here](#)). Given the upcoming Council meeting, we would appreciate any response by Mappro to our email by June 20, 2024. For clarity, we are seeking to consult with Mappro at the City staff level, and deputation opportunities to Community Council and Council are also independently available to Mappro.

We understand that the 1 Bloor West developer is requesting permission to continue occupying the Balmuto Street staging area until February 1, 2026.

John Kowalenko
Senior Project Manager
Work Zone Coordination
416-392-5282
john.kowalenko@toronto.ca





SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

July 19, 2024

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #TE15.29 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) municipally known as 19 Bloor Street West. We make the following submissions to Toronto City Council (“**City Council**”) regarding item TE15.29 (the “**Item**”), which City Council will consider on July 24, 2024.

As you are aware, Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) is the owner of the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, on which a mixed-use development is being constructed. Alvarez & Marsal Canada Inc. (the “**Receiver**”) is now acting as the receiver and manager of all of Mizrahi’s assets, undertakings, and properties, including the Mizrahi Property.

The Item concerns the request made by the Receiver or Mizrahi to extend the permit allowing it to continue occupying and using a portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **August 1, 2024 to February 1, 2026**.

A. Mappro Adamantly Opposes the Extension of the Permit

Mappro adamantly opposes the extension of the Permit to February 1, 2026. Mappro has opposed the erection, existence, and use of the Staging Area since Mappro first discovered that it had been erected. The reasons for Mappro’s opposition are detailed in its past submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, March 23, 2023, February 20, 2024, and March 15, 2024, all of which are enclosed for your convenience as Tabs 1-8 of Schedule A.

In addition to the reasons previously given, Mappro opposes any further extension of the Permit because the existence and on-going use of the Staging Area (which prevents Mappro from being able to lease the Property) have also caused the following issues (the “**New Issues**”):

1. The Mappro Property has repeatedly been vandalized.
2. Homeless people are loitering directly in front of the Mappro Property and there have been a number of instances of begging, drug use (leaving abandoned needles and related paraphernalia), and individuals who are urinating and defecating directly in front of the Mappro Property.
3. There have been break-ins to the Mappro Property, resulting in doors and glass of the Mappro Property being broken and individuals urinating inside the Mappro Property.

Mappro has incurred costs to address the New Issues, including being forced to upgrade its security. It remains eminently unfair that Mappro is being forced to incur damages to enable others to profit from a development project being built a block away.

Mappro also fails to understand why the Receiver requires an extension of the Permit to February 1, 2026. Given that the building construction has apparently already reached the 59th floor in early June 2024,¹ it makes no sense that the Receiver would require the concrete pump to remain in the Staging Area until February 1, 2026. Mappro also notes that the requested permit end date continues to be a moving target, making it impossible for Mappro to effectively plan for the future.

If City Council is intent on granting some form of extension of the Permit against Mappro’s will, Mappro asks that, at a minimum:

1. The Permit be extended for no more than 1 year (i.e. to July 31, 2025);
2. The Permit set out that no further extensions will be permitted; and
3. The Receiver (or any future owner of the Mizrahi Property) be required to:
 - a. reimburse Mappro for all costs and damages that Mappro has and will incur and suffer due to the erection and use of the Staging Area;
 - b. put in place additional security measures surrounding the Mappro Property;
 - c. remove any graffiti and otherwise repair any damage to the outside of the Mappro Property while the Staging Area remains in place;
 - d. address any issues arising from homeless individuals congregating in front of the Mappro Property (i.e. clean any urine, defecation, etc., and otherwise address the issue) while the Staging Area remains in place; and
 - e. coordinate and collaborate with Mappro (or any future owner of the Mappro Property) regarding any construction work on the Mappro Property in a manner that ensures that the work can be performed (and done so efficiently).

¹https://indd.adobe.com/view/2f80c022-652c-49c5-9398-d6ceb2cb8f08?utm_campaign=DealX%20Email%2000608000013mibKAAQ-2024-06-06T17%3A53%3A52.212Z-Teaser&utm_medium=email&utm_source=Eloqua&utm_term=3453865&elqTrackId=ff7e54c7c03941a28659c9c11e91e2ae&elq=e18271ba430c4a7b821fbfd427ba6358&elqaid=35754&elqat=1&elqCampaignId=36607

Mappro makes these requests without prejudice to its rights in the ongoing litigation and, in particular, its rights to claim all damages arising from the erection and use of the Staging Area.

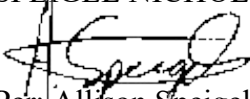
B. The City Continues to Act Unreasonably

In an email dated June 15, 2024, Toronto Transportation Services (“TTS”) sent an email to Mappro asking it to provide its views on the request to extend the permit. TTS asked for Mappro’s response by June 20, 2024 (i.e. four business days later). In light of the very short deadline, Mappro asked to extend the deadline until June 25, 2024. The City of Toronto’s lawyer advised Mappro that although it was free to provide its response at a later date, TTS “will likely be submitting a report for the upcoming Community Council meeting prior to that date.”² Mappro asked when TTS would be submitting its report and noted that “[p]roviding 4 business days to respond is neither reasonable, nor sufficient.”³ The City’s lawyer did not answer the question or otherwise respond to the email.

Despite not having a reasonable amount of time to adequately respond, Mappro provided its response to TTS’ request for comments on June 20, 2024 (i.e. the deadline that TTS imposed).⁴ It is noteworthy that TTS submitted its report to the Toronto and East York Community Council with respect to the permit extension request on June 21, 2024 (i.e. the next day). More strikingly, not only did TTS wholly ignore Mappro’s concerns when making its recommendations, it failed to acknowledge them altogether. According to TTS, it is not even worth mentioning that the continued occupation and use of the Staging Area is causing serious financial harm to Mappro. TTS does, however, continue to note that “[t]here [will be] no financial impact to the City.”

TTS’ request for Mappro’s submissions was nothing more than a display of empty theatrics. TTS and the City have made it all too clear that they are indifferent to the impact that the continued use of the Staging Area is having on Mappro.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)
Mark Dunn (mdunn@goodmans.ca)

² See Tab 1 of Schedule A.

³ See Tab 1 of Schedule A.

⁴ See Tab 9 of Schedule A (an excerpt of the letter with only one of its attachments).

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

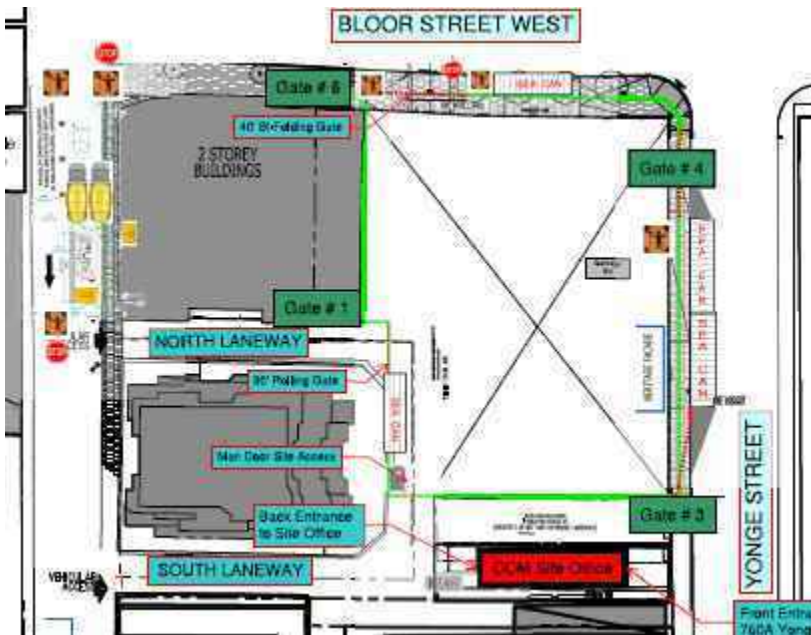
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

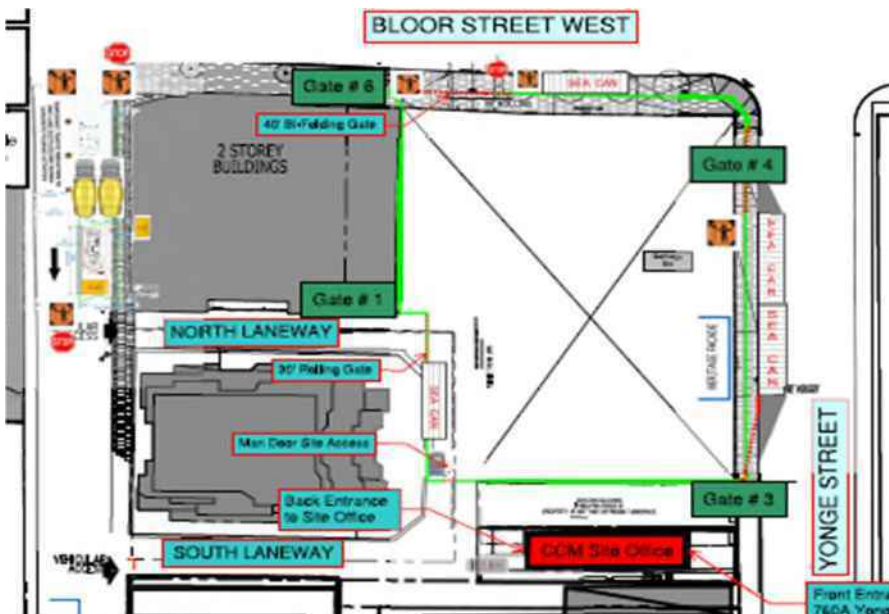
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

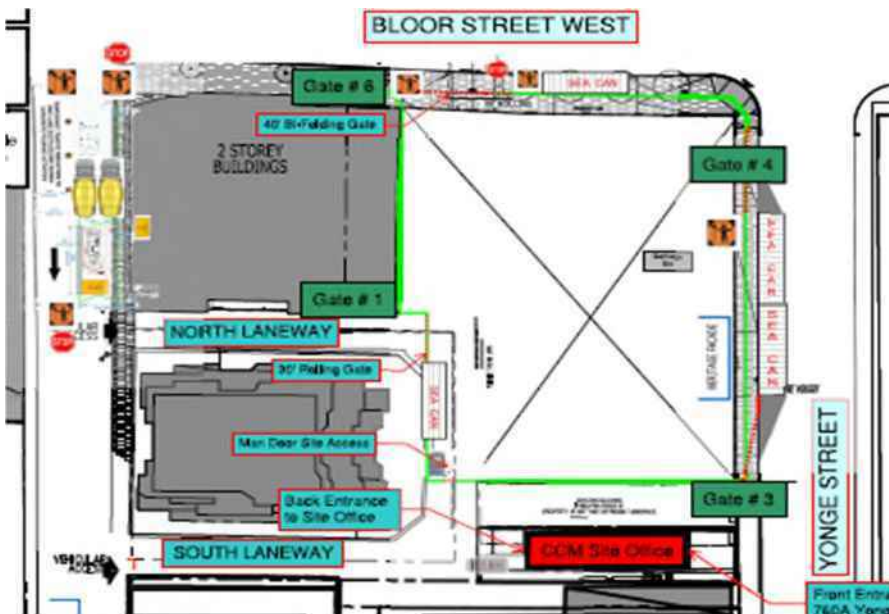
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
Eric Jensen (via email: eric.jensen@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

***** This is an automatic reply. Please do not reply to this message.*****

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

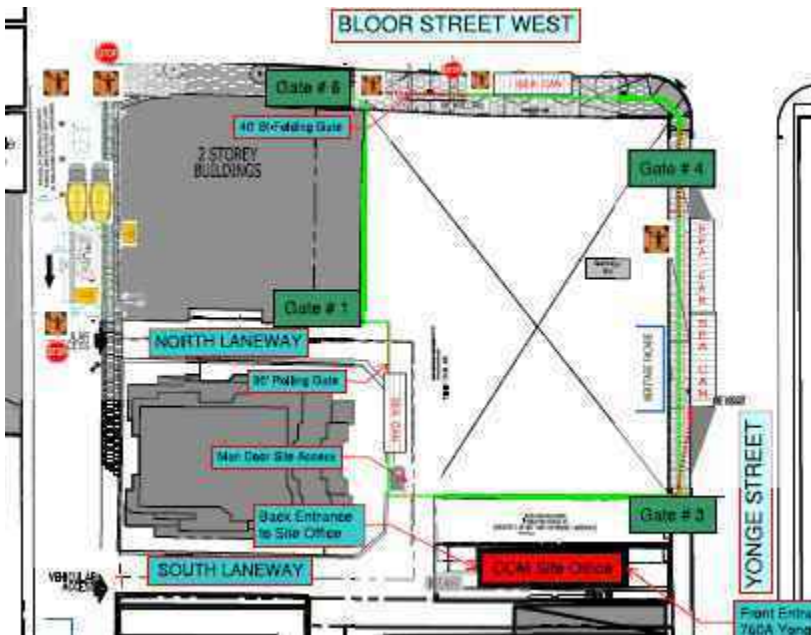
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H	CONTACT: Jay Cha Phone: (416) 274-2629
---	--

LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS	City Ward: 11
	District: Toronto and East York

PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday

Standard Conditions
The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.


NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer:



Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

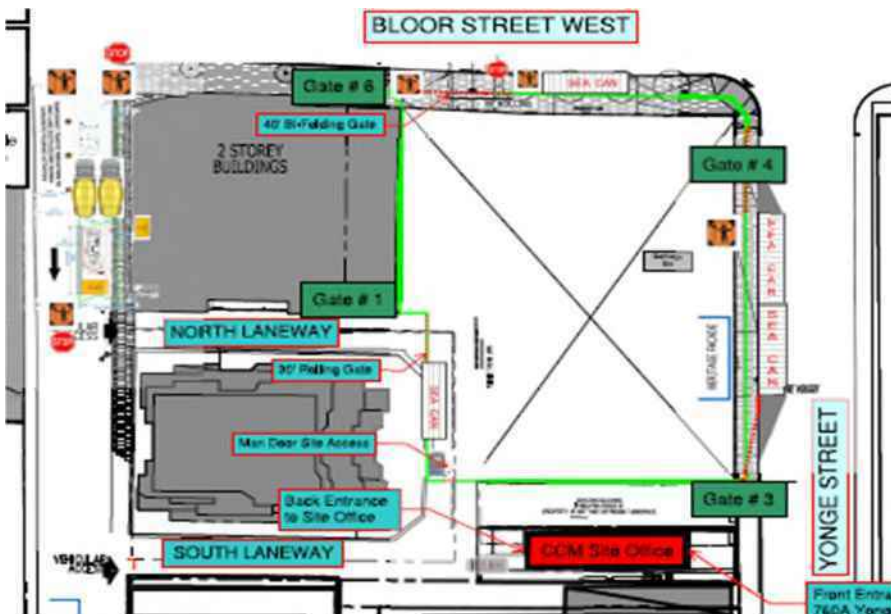
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

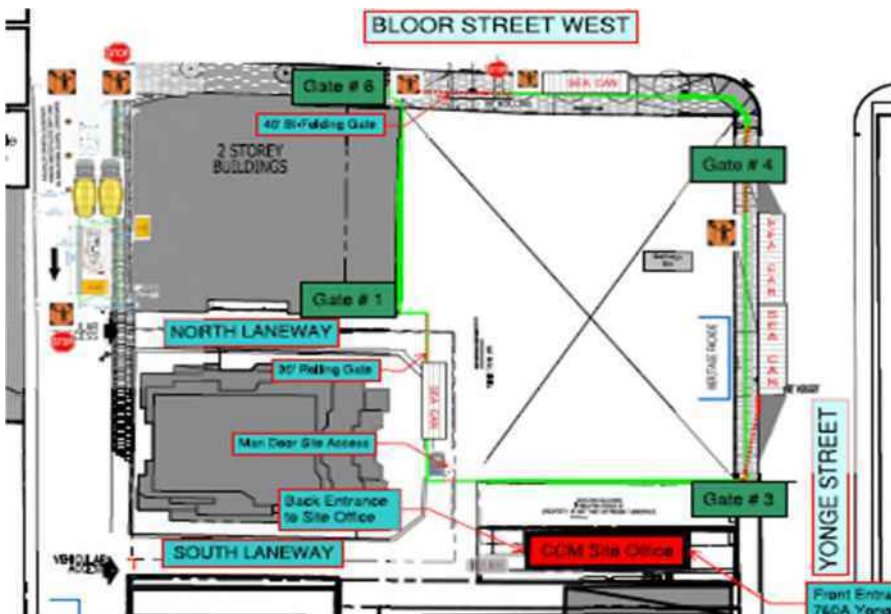
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



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At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

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20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

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V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
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- e) it restricts access to the Mappro Building and the emergency exits;
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Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

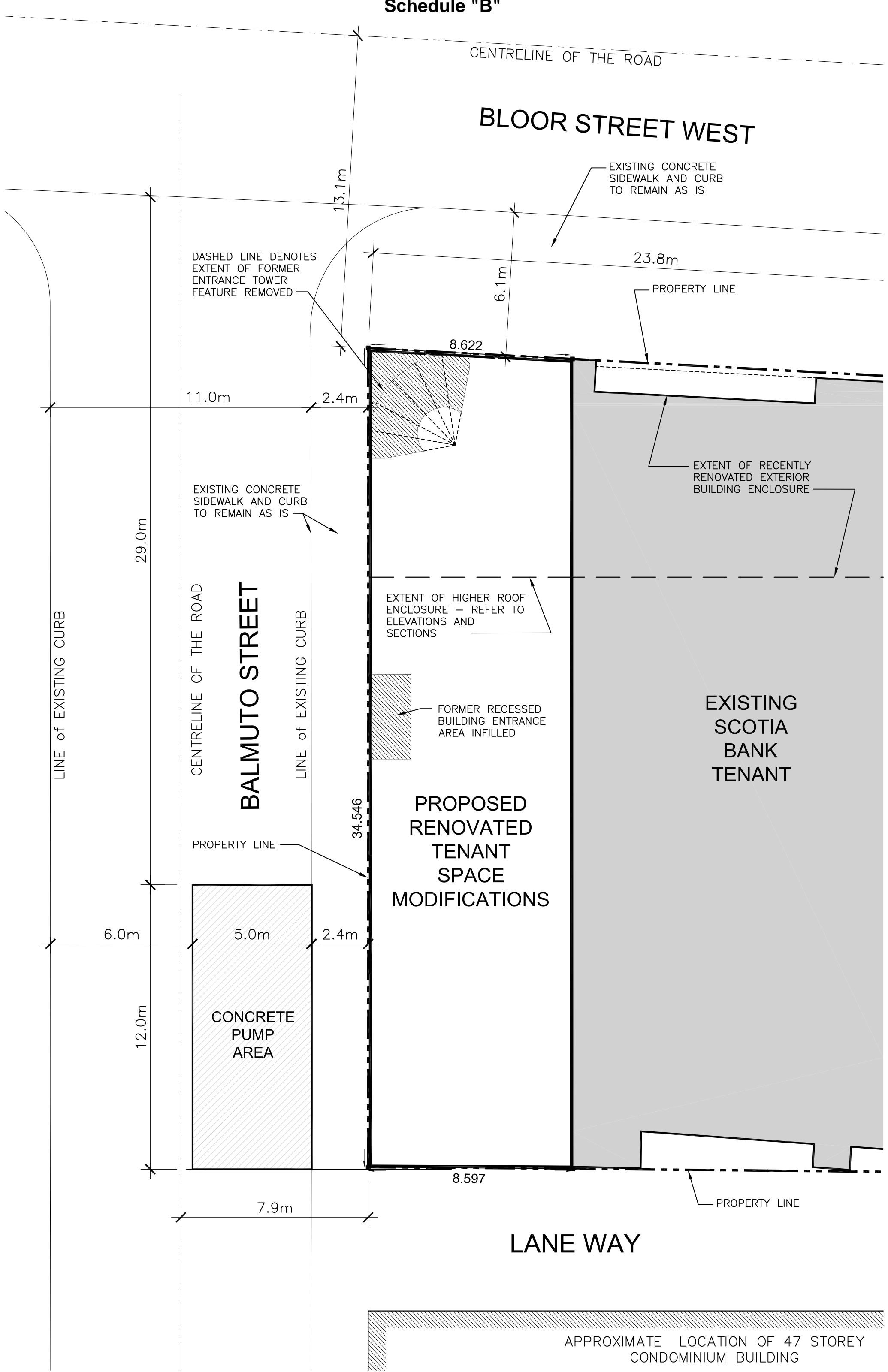
Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



March 23, 2023

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #2023.TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto City Council (the “**City Council**”) regarding Item #2023.TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, and February 22, 2023 all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City of Toronto (the “**City**”) has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;

- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this by-law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "... *no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

City Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, City Council should adopt the recommendation of the Toronto and East York Community Council that the existing permit only be extended until April 1, 2024, at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. City Council should send a clear message that developers cannot use City land to harm other landowners.

Any authorization that City Council grants that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.

- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel

On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
 Andrew Greene (via email: andrew.greene@toronto.ca)
 Stuart McGhie (via email: stuart.mcghie@toronto.ca)
 Eric Jensen (via email: eric.jensen@toronto.ca)
 Belinda Brenner (via email: belinda.brenner@toronto.ca)
 Gadi Katz (via email: gadi.katz@toronto.ca)
 Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)
 Mary Ellen Bench (maryellen.bench@dentons.com)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

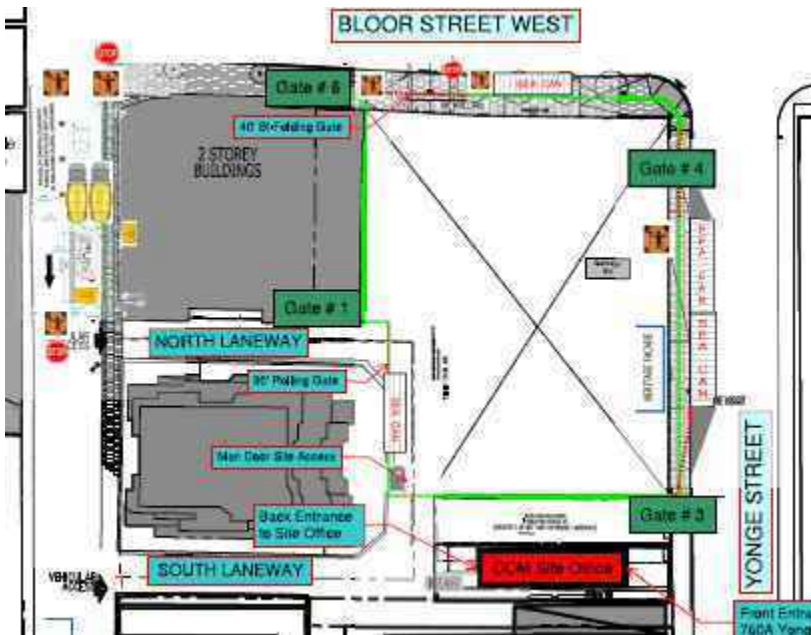
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

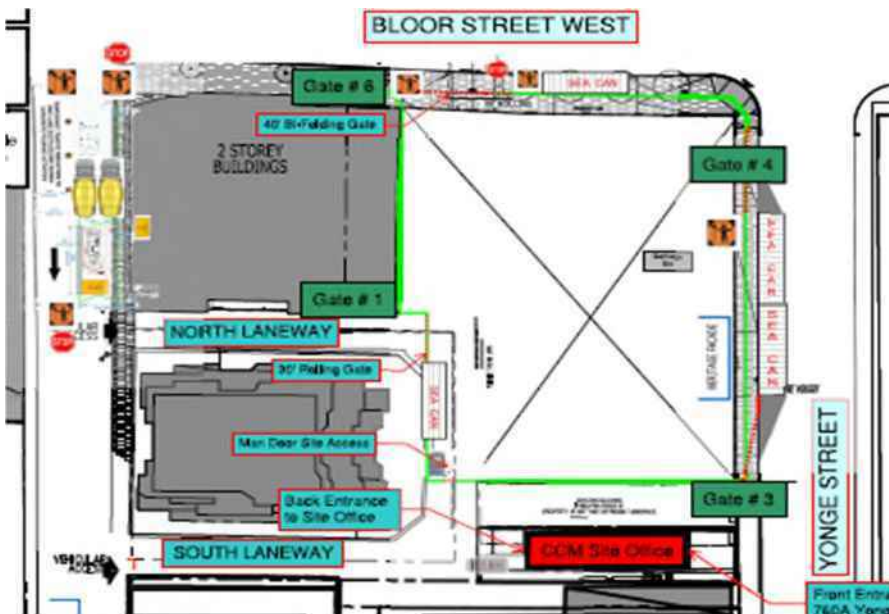
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

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We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

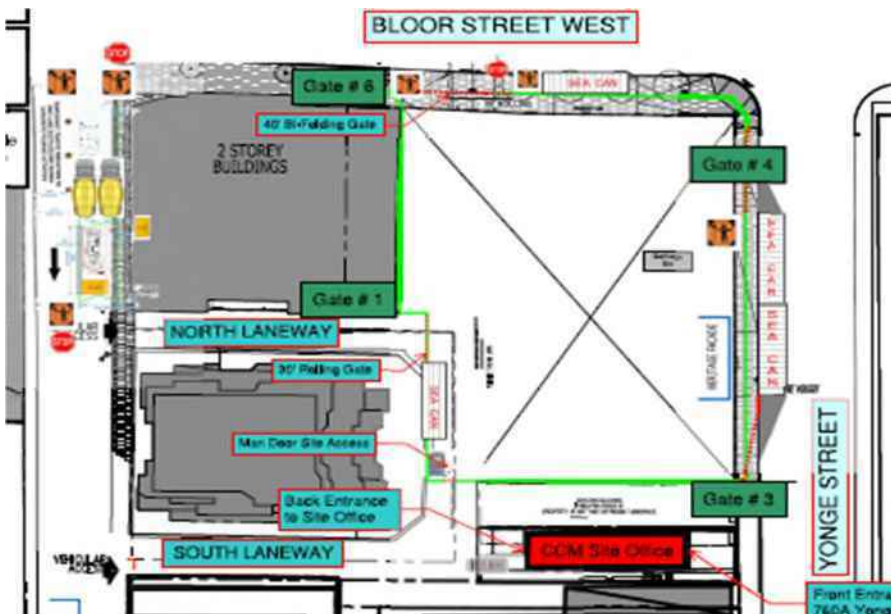
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The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



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Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

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¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

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Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

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V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
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Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

February 20, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding an item that may be added to the agenda concerning a possible request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension to continue occupying the portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”).

Despite Mappro’s repeated requests to be kept apprised as to any developments with respect to the existence or use of the Staging Area, neither Mizrahi, nor the City has done so.

On February 8, 2024, we emailed the City:

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

On February 15, the City responded as follows:

... While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

On February 16, we responded as follows:

I am not sure I understand what the following means: “They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.” Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

On February 17, the City responded as follows:

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk’s Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

We responded later that day by saying: “When are they adding it to the agenda? How can I make submissions opposing[it] if I don’t know what is being put forward?”

On February 18, the City said:

... I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi’s street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

On February 20 (i.e. the day before the meeting), the City advised that: “My client has confirmed to me that this is proceeding to this week’s TEYCC meeting. I will forward the updated agenda as soon as it is available.”

We responded later that day by saying:

*Given the lack of appropriate notice, I am not able to attend **tomorrow’s meeting**. Nor do I even know what position is being put forward. This is yet another example of the City’s unreasonable*

conduct. The City's repeated failure to take Mappro's interests into account is glaring. I have also received no update from Mizrahi as to what, if anything, is being requested.

The correspondence referred to above is attached as Schedule A.

In sum, Mappro was given one business days' notice that the City would be "reporting" to Community Council on February 21, 2024 with respect to the Staging Area. What this means and what is being reported (if anything) is anyone's guess. No relevant item has yet been added to the February 21 agenda.

Given the failure to provide appropriate notice, we will not be able to attend the February 21 Community Council meeting. Having no idea what is being reported or what extension (if any) is being sought, Mappro, has also been prevented from making meaningful submissions. To the extent that the City is recommending an extension of the permit (or Mizrahi is seeking one), Mappro opposes it. To that end, Mappro relies on its submissions dated February 22, 2023, December 9, 2022, November 29, 2022, September 15, 2020, and July 14, 2020, all of which are enclosed for your convenience as Schedule B.

The conduct of the City and Mizrahi has been and continues to be wholly unreasonable. Mappro's interests have been disregarded at every turn.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", is written over a horizontal line.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, February 20, 2024 9:23 AM
To: Nicholas Rolfe
Cc: Dunn, Mark; Claudia Lapa
Subject: RE: Mizrahi Permit

INTERNAL SOURCE

Given the lack of appropriate notice, I am not able to attend **tomorrow's meeting**. Nor do I even know what position is being put forward. This is yet another example of the City's unreasonable conduct. The City's repeated failure to take Mappro's interests into account is glaring.

I have also received no update from Mizrahi as to what, if anything, is being requested.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, February 20, 2024 9:09 AM
To: Allison Spiegel <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: Re: Mizrahi Permit

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

My client has confirmed to me that this is proceeding to this week's TEYCC meeting. I will forward the updated agenda as soon as it is available.

Thank you,
Nicholas Rolfe

Get [Outlook for iOS](#)

From: Nicholas Rolfe
Sent: Sunday, February 18, 2024 4:31:47 PM
To: 'Allison Speigel' <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: RE: Mizrahi Permit

Hello Allison,

Further to my below emails – I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi's street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Speigel <allison@ontlaw.com>
Sent: February 17, 2024 1:37 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

When are they adding it to the agenda? How can I make submissions opposing if I don't know what is being put forward?

Sent from my iPhone

On Feb 17, 2024, at 12:53 PM, Nicholas Rolfe <Nicholas.Rolfe@toronto.ca> wrote:

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk's Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: February 16, 2024 3:02 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

I will look into this. I was not aware of anything happening on Feb 21, it was being handled by Dentons. I will check in this then.

Sent from my iPhone

On Feb 16, 2024, at 2:49 PM, Allison Speigel <allison@ontlaw.com> wrote:

Given that I would need submissions in by noon on Tuesday if I am to speak to this on Feb 21, can you please get back to me asap.

Mark – can you please advise.

Regards,
Allison

Allison J. Speigel*
<image004.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3

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<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Speigel Professional Corporation

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From: Allison Speigel <allison@ontlaw.com>
Sent: Friday, February 16, 2024 1:43 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

INTERNAL SOURCE

I am not sure I understand what the following means: "They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter."

Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

Regards,
Allison

Allison J. Spiegel*

<image003.png>

Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED

<https://ca.linkedin.com/in/allionspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Thursday, February 15, 2024 7:53 PM

To: Allison Speigel <allison@ontlaw.com>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

Thank you for your email. While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do

so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: February 8, 2024 8:48 AM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Mizrahi Permit

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

Regards,
Allison

Allison J. Spiegel*
<image003.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
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<https://ca.linkedin.com/in/allisonspeigel>

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Schedule "B"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
Eric Jensen (via email: eric.jensen@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

***** This is an automatic reply. Please do not reply to this message.*****

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

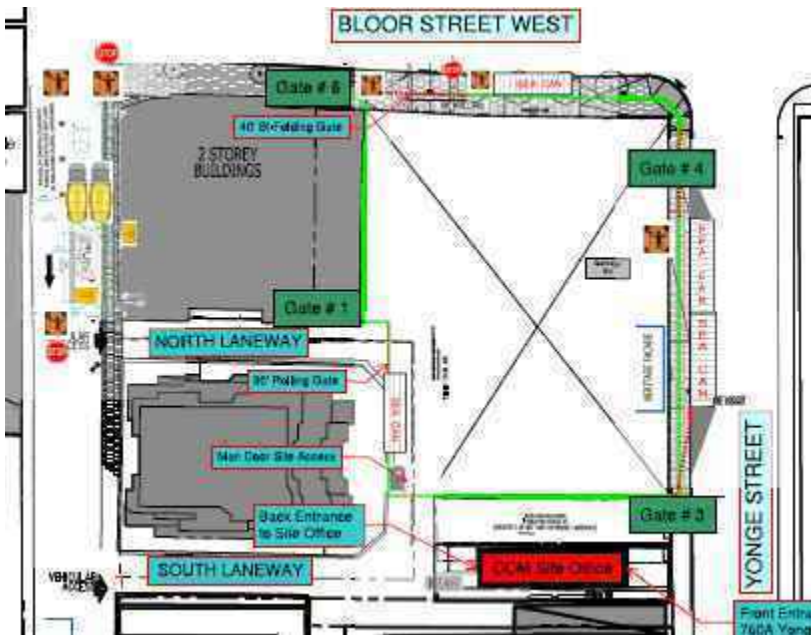
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

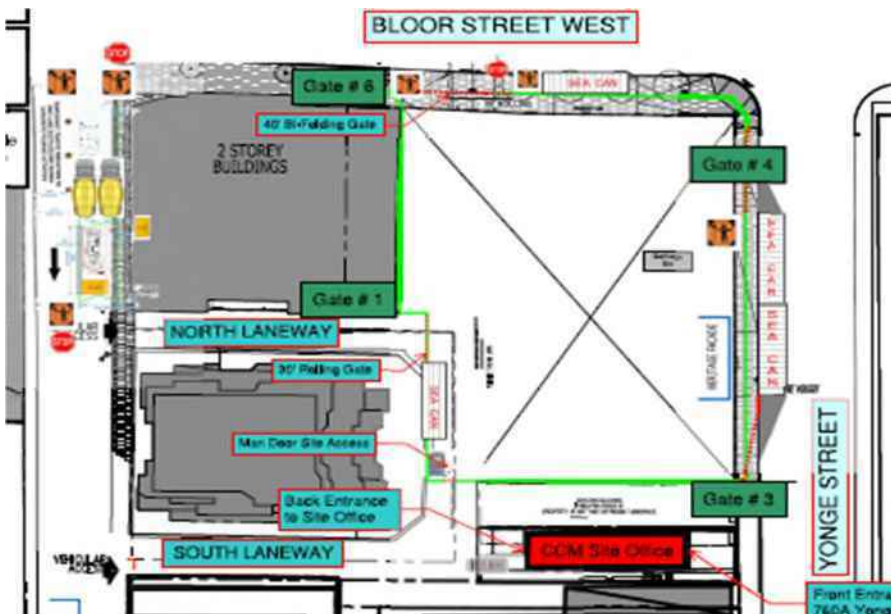
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

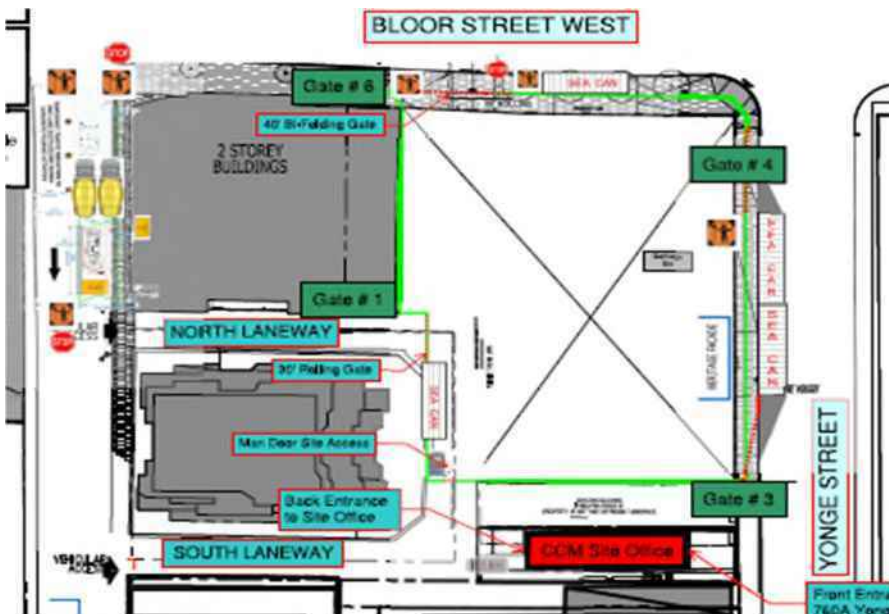
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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

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20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

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V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
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- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

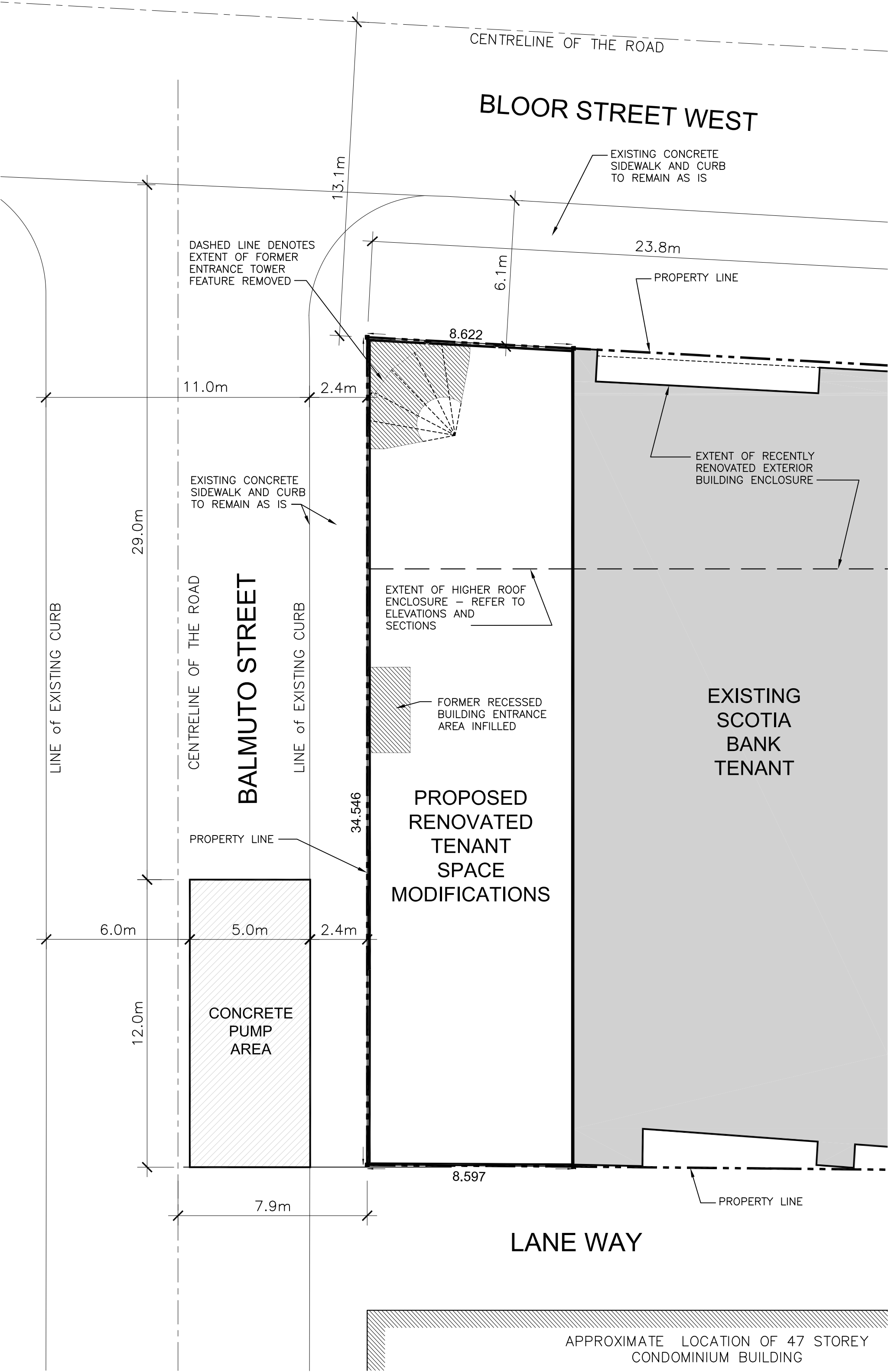
Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

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We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

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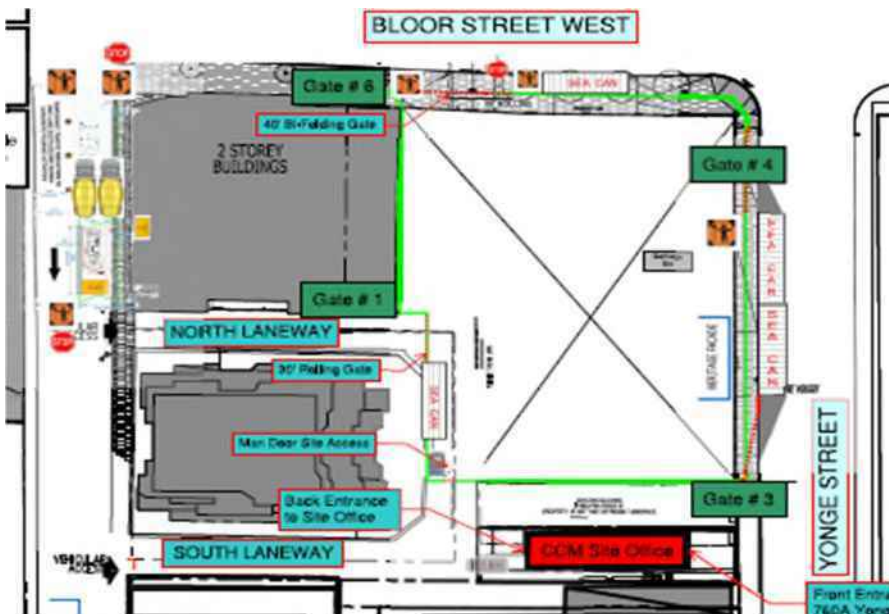
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The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



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Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



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Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

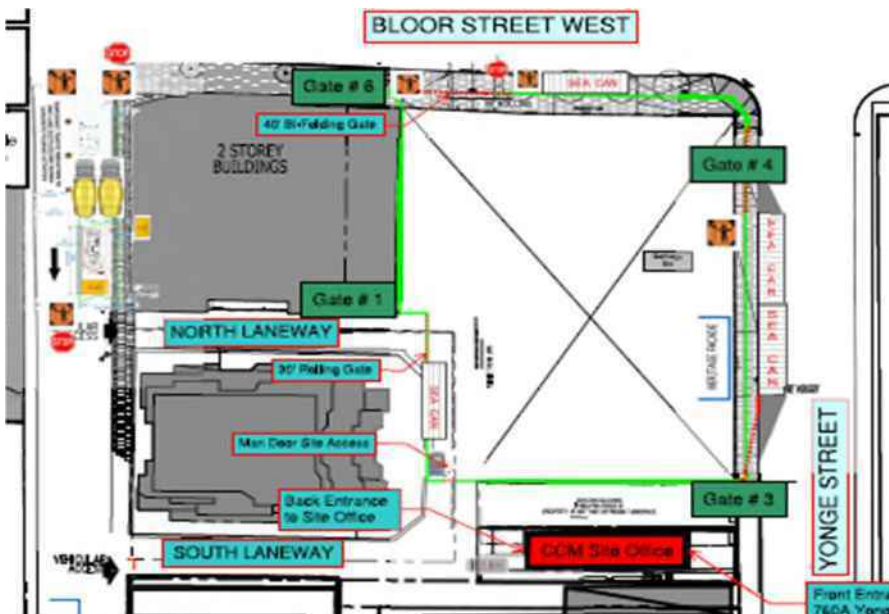
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The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



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To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
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This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

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It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

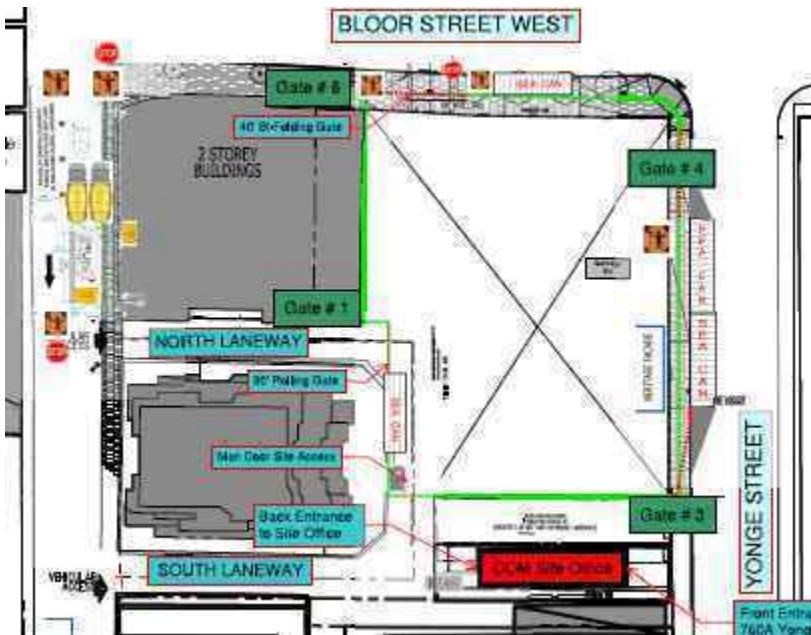
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)
By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps

March 15, 2024

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #TE11.36 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto City Council (the “**City Council**”) regarding Item #TE11.36 (the “**Item**”) concerning the request to extend the permit allowing Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) (or a replacement contractor) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from April 2, 2024 to August 31, 2025.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, and February 20, 2024 all of which are enclosed for your convenience as Schedule A.

As set out in Mappro’s February 20, 2024 submissions, Mappro was not provided with appropriate notice before the issue was considered at the February 21, 2024 meeting of the Toronto and East York Community Council. This was yet another example of the manner in which Mizrahi and the City have shown a complete disregard for Mappro’s interest.

For the same reasons as set out in its previous submissions, Mappro adamantly opposes the extension of the permit.

Finally, Mappro again requests that the City and Mizrahi be required to provide appropriate notice of any reports, meetings, or decisions relating to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in black ink, appearing to read 'A. Spiegel', is written over the printed name 'Allison Spiegel'.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)
Mark Dunn (mdunn@goodmans.ca)

Schedule "A"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

February 20, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding an item that may be added to the agenda concerning a possible request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension to continue occupying the portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”).

Despite Mappro’s repeated requests to be kept apprised as to any developments with respect to the existence or use of the Staging Area, neither Mizrahi, nor the City has done so.

On February 8, 2024, we emailed the City:

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

On February 15, the City responded as follows:

... While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

On February 16, we responded as follows:

I am not sure I understand what the following means: “They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.” Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

On February 17, the City responded as follows:

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk’s Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

We responded later that day by saying: “When are they adding it to the agenda? How can I make submissions opposing[it] if I don’t know what is being put forward?”

On February 18, the City said:

... I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi’s street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

On February 20 (i.e. the day before the meeting), the City advised that: “My client has confirmed to me that this is proceeding to this week’s TEYCC meeting. I will forward the updated agenda as soon as it is available.”

We responded later that day by saying:

*Given the lack of appropriate notice, I am not able to attend **tomorrow’s meeting**. Nor do I even know what position is being put forward. This is yet another example of the City’s unreasonable*

conduct. The City's repeated failure to take Mappro's interests into account is glaring. I have also received no update from Mizrahi as to what, if anything, is being requested.

The correspondence referred to above is attached as Schedule A.

In sum, Mappro was given one business days' notice that the City would be "reporting" to Community Council on February 21, 2024 with respect to the Staging Area. What this means and what is being reported (if anything) is anyone's guess. No relevant item has yet been added to the February 21 agenda.

Given the failure to provide appropriate notice, we will not be able to attend the February 21 Community Council meeting. Having no idea what is being reported or what extension (if any) is being sought, Mappro, has also been prevented from making meaningful submissions. To the extent that the City is recommending an extension of the permit (or Mizrahi is seeking one), Mappro opposes it. To that end, Mappro relies on its submissions dated February 22, 2023, December 9, 2022, November 29, 2022, September 15, 2020, and July 14, 2020, all of which are enclosed for your convenience as Schedule B.

The conduct of the City and Mizrahi has been and continues to be wholly unreasonable. Mappro's interests have been disregarded at every turn.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read "A. Spiegel", is written over a horizontal line.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, February 20, 2024 9:23 AM
To: Nicholas Rolfe
Cc: Dunn, Mark; Claudia Lapa
Subject: RE: Mizrahi Permit

INTERNAL SOURCE

Given the lack of appropriate notice, I am not able to attend **tomorrow's meeting**. Nor do I even know what position is being put forward. This is yet another example of the City's unreasonable conduct. The City's repeated failure to take Mappro's interests into account is glaring.

I have also received no update from Mizrahi as to what, if anything, is being requested.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, February 20, 2024 9:09 AM
To: Allison Spiegel <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: Re: Mizrahi Permit

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

My client has confirmed to me that this is proceeding to this week's TEYCC meeting. I will forward the updated agenda as soon as it is available.

Thank you,
Nicholas Rolfe

Get [Outlook for iOS](#)

From: Nicholas Rolfe
Sent: Sunday, February 18, 2024 4:31:47 PM
To: 'Allison Speigel' <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: RE: Mizrahi Permit

Hello Allison,

Further to my below emails – I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi's street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Speigel <allison@ontlaw.com>
Sent: February 17, 2024 1:37 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

When are they adding it to the agenda? How can I make submissions opposing if I don't know what is being put forward?

Sent from my iPhone

On Feb 17, 2024, at 12:53 PM, Nicholas Rolfe <Nicholas.Rolfe@toronto.ca> wrote:

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk's Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: February 16, 2024 3:02 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

I will look into this. I was not aware of anything happening on Feb 21, it was being handled by Dentons. I will check in this then.

Sent from my iPhone

On Feb 16, 2024, at 2:49 PM, Allison Speigel <allison@ontlaw.com> wrote:

Given that I would need submissions in by noon on Tuesday if I am to speak to this on Feb 21, can you please get back to me asap.

Mark – can you please advise.

Regards,
Allison

Allison J. Speigel*
<image004.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3

BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Speigel Professional Corporation

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From: Allison Speigel <allison@ontlaw.com>
Sent: Friday, February 16, 2024 1:43 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

INTERNAL SOURCE

I am not sure I understand what the following means: "They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter."

Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

Regards,
Allison

Allison J. Speigel*

<image003.png>

Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED

<https://ca.linkedin.com/in/allionspeigel>

*practicing through Allison Speigel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Thursday, February 15, 2024 7:53 PM

To: Allison Speigel <allison@ontlaw.com>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

Thank you for your email. While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do

so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: February 8, 2024 8:48 AM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Mizrahi Permit

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

Regards,
Allison

Allison J. Spiegel*
<image003.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
BLOCKEDontlaw[.]com/bio/allison-speigel/BLOCKED
<https://ca.linkedin.com/in/allisonspeigel>

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***** Attention *****

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Schedule "B"



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
Eric Jensen (via email: eric.jensen@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

***** This is an automatic reply. Please do not reply to this message.*****

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 Z2C 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

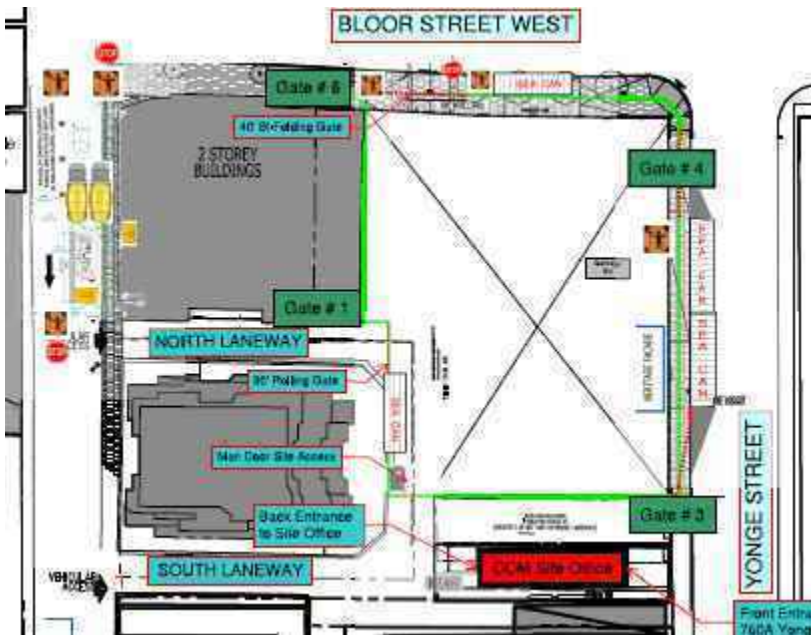
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

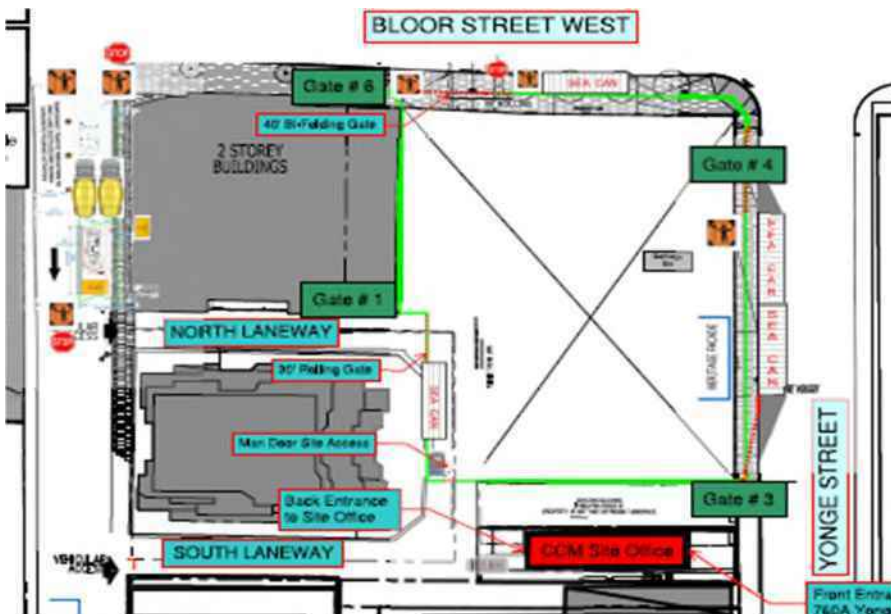
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

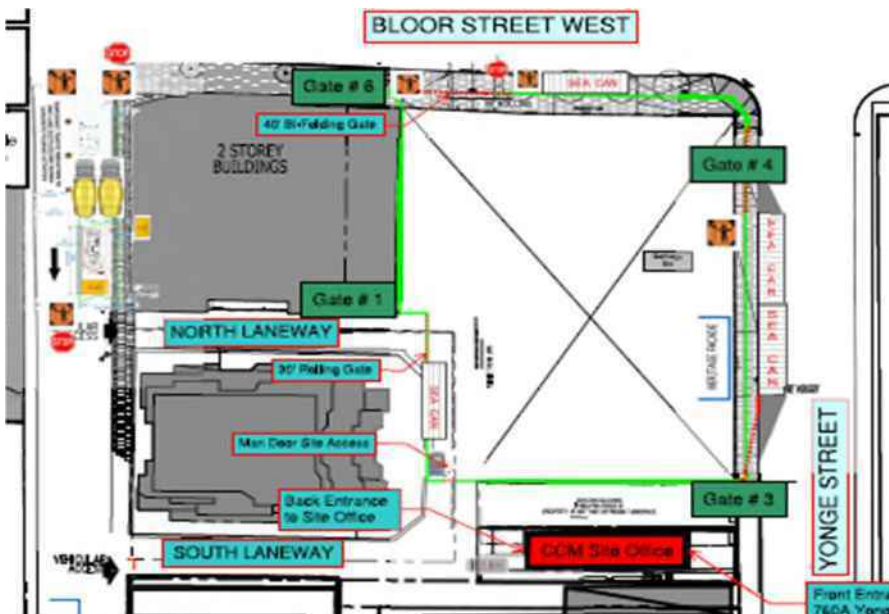
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Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



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Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

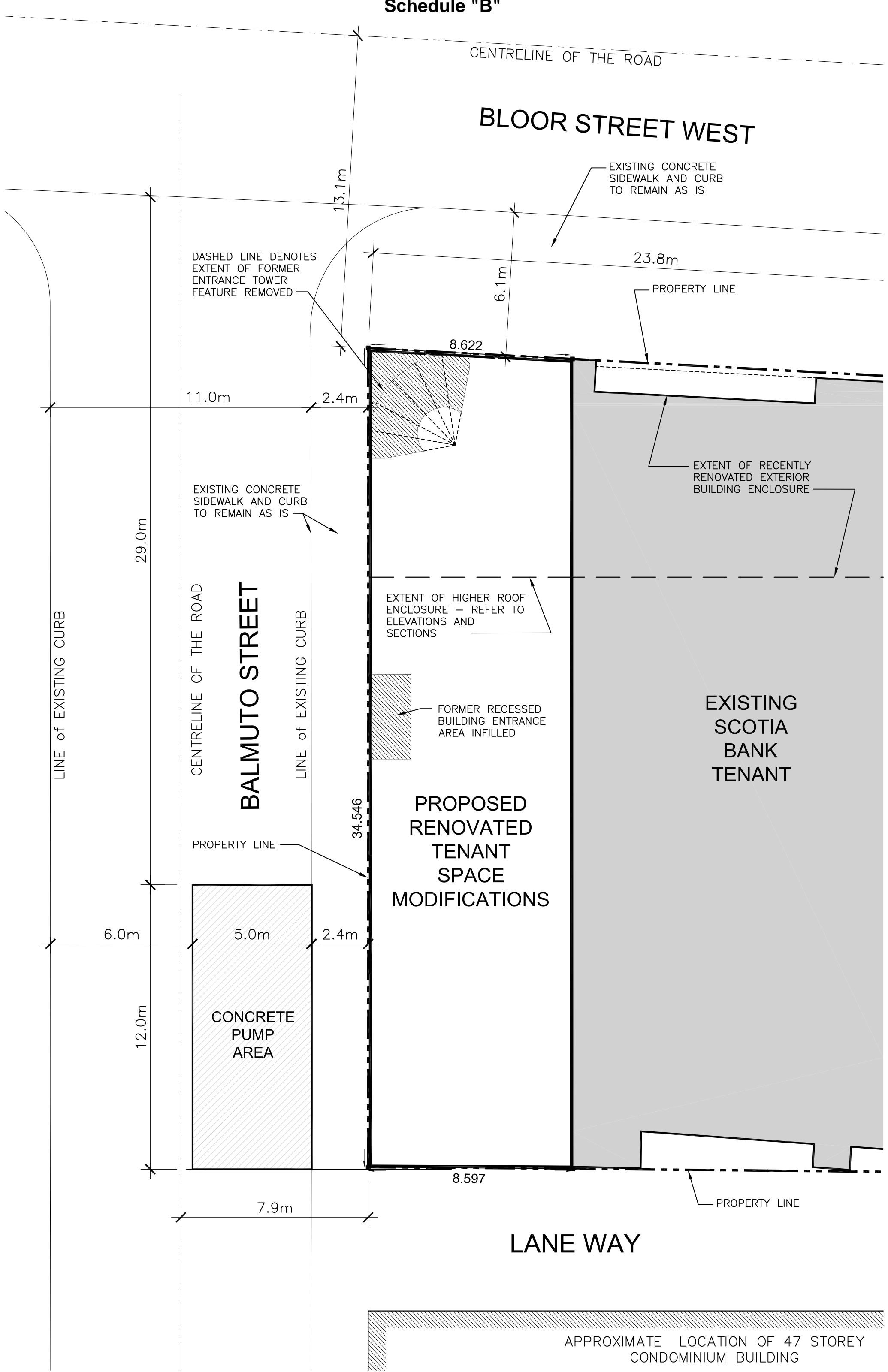
Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

Schedule "B"



December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

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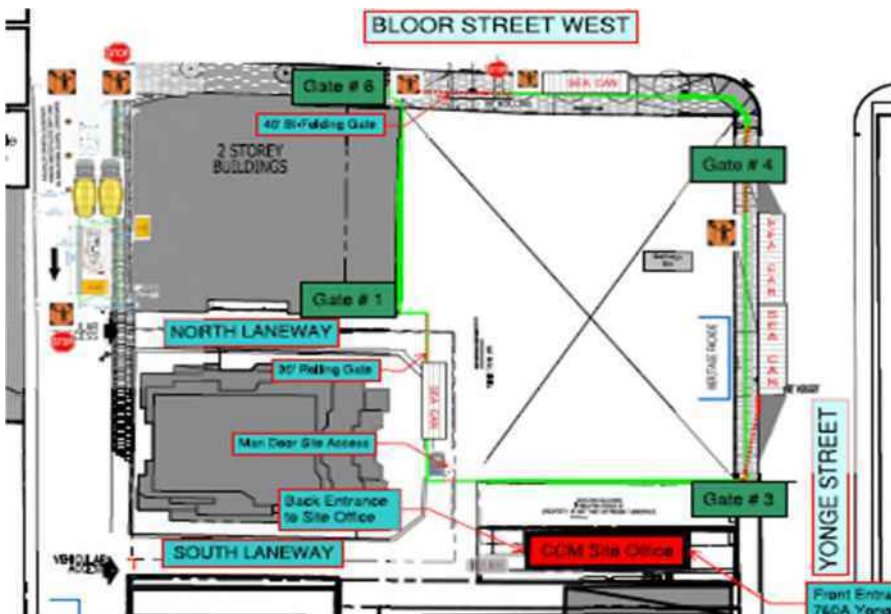
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The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

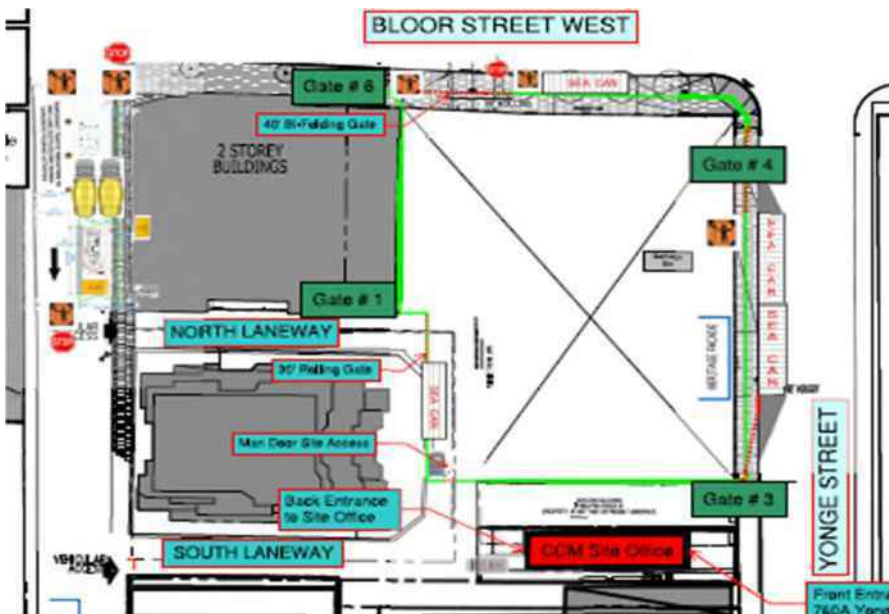
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

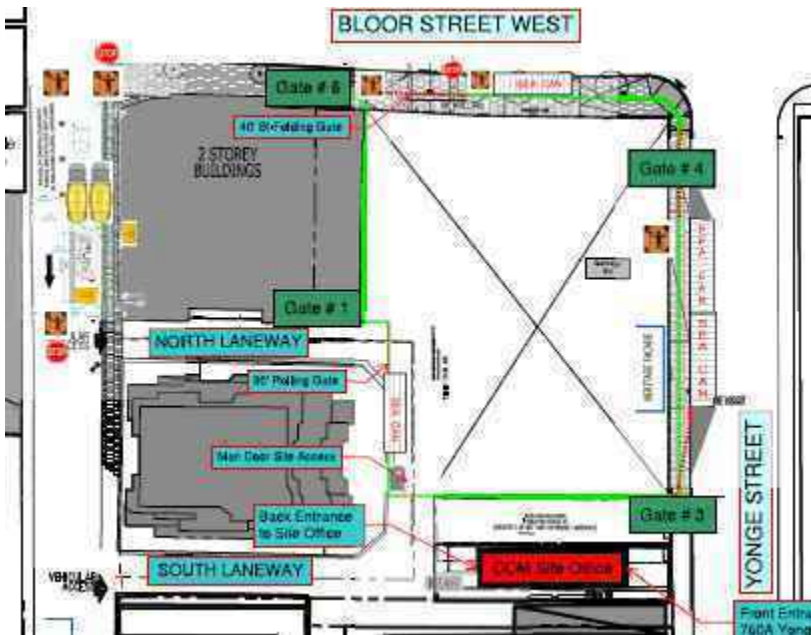
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT

EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H	CONTACT: Jay Cha Phone: (416) 274-2629
---	--

LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS	City Ward: 11
	District: Toronto and East York

PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday

Standard Conditions
The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2)
By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps

June 20, 2024

**** sent via email to: Nicholas.Rolfe@toronto.ca ****

Mr. Nicholas Rolfe
City of Toronto Legal Services
55 John St.
Stn. 1260, 26th Floor, Metro Hall
Toronto, Ontario
M5V 3C6

Dear Mr. Rolfe:

Re: 1 Bloor Street West (the “**Mizrahi Property**”) - Construction Staging Area (the “**Staging Area**”)

As you are aware, we act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We respond to the email (the “**City Email**”) dated June 14, 2014 that John Kowalenko, a senior project manager at Toronto Transportation Services (“**TTS**”), sent to Isabelle Hayen, a director of Mappro.¹ In the City Email, TTS advised that “the 1 Bloor West developer is requesting permission to continue occupying the Balmuto Street [S]taging [A]rea until **February 1, 2026**.” We assume that the reference to the “1 Bloor West developer” is a reference to Alvarez & Marsal Canada Inc. (the “**Receiver**”) as receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., including the Mizrahi Property.

In the City Email, TTS invited Mappro to provide its views on the request to extend the permit (the “**Permit**”) to use the Staging Area. TTS requested Mappro’s response by June 20, 2024 (i.e. four business days after it sent the City Email). We asked to extend the deadline by which Mappro could provide its response until June 25, 2024. You advised us that although Mappro was free to provide its response at a later date, the “City [of Toronto (the “**City**”)] staff will likely be submitting a report for the upcoming Community Council meeting prior to that date.”² We asked you when City staff would be submitting its report and noted that “[p]roviding 4 business days to respond is neither reasonable, nor sufficient.”³ You did not answer our question or otherwise respond to our email.

¹ See Tab 1 of Schedule A.

² See Tab 1 of Schedule A.

³ See Tab 1 of Schedule A.

Despite not having a reasonable amount of time to adequately respond, Mappro provides this response to TTS' request for comments.

As a preliminary matter, we note that the City Email incorrectly identifies the Mappro Property as being "adjacent" to the Mizrahi Property. The Mappro Property is not adjacent to the Mizrahi Property; rather, it is located a block away, which makes the placement of the Staging Area even more troubling.

Mappro adamantly opposes the extension of the Permit to February 1, 2026. Mappro has opposed the existence and use of the Staging Area since Mappro discovered that the Staging Area had been erected directly in front of the Mappro Property. The reasons for Mappro's opposition are detailed in its past submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, March 23, 2023, February 20, 2024, and March 15, 2024, all of which are enclosed for your convenience as Tabs 2-9 of Schedule A.

In addition to the reasons previously given, Mappro opposes any further extension of the Permit because the existence and on-going use of the Staging Area (which prevents Mappro from being able to lease the Property) has also caused the following issues (the "**New Issues**"):

1. The Mappro Property has repeatedly been vandalized.
2. Homeless people are loitering directly in front of the Mappro Property and there have been a number of instances of begging, drug use (leaving abandoned needles and related paraphernalia), and individuals who are urinating and defecating directly in front of the Mappro Property.
3. There have been break-ins to the Mappro Property, resulting in doors and glass of the Mappro Property being broken and individuals urinating inside the Mappro Property.

Mappro has incurred costs to address the New Issues, including being forced to upgrade its security. It remains eminently unfair that Mappro is being forced to incur damages to enable others to profit from a construction project being built a block away.

Mappro also fails to understand why the Receiver requires an extension of the Permit to February 1, 2026. Given that the building construction has apparently already reached the 59th floor,⁴ it makes no sense that the Receiver would require the concrete pump to remain in the Staging Area until February 1, 2026.

If the City is intent on granting some form of extension of the Permit against Mappro's will, Mappro asks that, at a minimum:

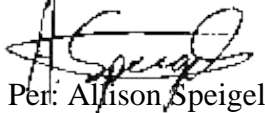
1. The Permit be extended for no more than 1 year (i.e. to July 31, 2025); and
2. The Receiver (or any future owner of the Mizrahi Property) be required to:
 - a. reimburse Mappro for all costs and damages that Mappro has and will incur and suffer due to the erection and use of the Staging Area;
 - b. put in place additional security measures surrounding the Mappro Property;

⁴https://indd.adobe.com/view/2f80c022-652c-49c5-9398-d6ceb2cb8f08?utm_campaign=DealX%20Email%20000608000013mibKAAQ-2024-06-06T17%3A53%3A52.212Z-Teaser&utm_medium=email&utm_source=Eloqua&utm_term=3453865&elqTrackId=ff7e54c7c03941a28659c9c11e91e2ae&elq=e18271ba430c4a7b821fbfd427ba6358&elqaid=35754&elqat=1&elqCampaignId=36607

- c. remove any graffiti and otherwise repair any damage to the outside of the Mappro Property while the Staging Area remains in place;
- d. address any issues arising from homeless individuals congregating in front of the Mappro Property (i.e. clean any urine, defecation, etc., and otherwise address the issue) while the Staging Area remains in place; and
- e. coordinate and collaborate with Mappro (or any future owner of the Mappro Property) regarding any construction work on the Mappro Property in a manner that ensures that the work can be performed (and done so efficiently).

Mappro makes these requests without prejudice to its rights in the ongoing litigation and, in particular, its rights to claim all damages arising from the erection and use of the Staging Area.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in black ink, appearing to read "A. Spiegel", is written over the typed name "Allison Spiegel".

Per: Allison Spiegel

AS:cl

Encl.

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, June 18, 2024 1:12 PM
To: Nicholas Rolfe
Subject: RE: 1 Bloor Street West - Construction Staging Area

Follow Up Flag: Follow up
Flag Status: Flagged

INTERNAL SOURCE

When will they be submitting their report? I would have thought they would want to hear from Mappro before they submit the report?

Providing 4 business days to respond is neither reasonable, nor sufficient.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, June 18, 2024 1:09 PM
To: Allison Spiegel <allison@ontlaw.com>
Subject: RE: 1 Bloor Street West - Construction Staging Area

EXTERNAL SOURCE - Exercise caution.

Allison,

You are welcome to do so. Please note that City staff will likely be submitting a report for the upcoming Community Council meeting prior to that date. As you know, Mappro has in the past and remains able to depute to Community Council and Council as well.

Ms. Hayen had written the following to City staff:

Dear Mr Kowalenko

Thank you very much for your e-mail.

May I kindly ask if it is possible for us to delay our submission to early next week, close of business Monday 24 June/Tuesday 25 June 2024.

I apologise, I am travelling and trying to coordinate diaries to provide a submission.

Kind regards

Isabelle Hayen

Given our correspondence and that Mappro wishes to provide its response through you, I will advise City staff that there is no need to respond to this email.

Yours truly,

Nicholas Rolfe

Solicitor, City of Toronto Legal Services

Metro Hall, 23rd Floor, Stn 1260

55 John Street, Toronto ON M5V 3C6

Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>

Sent: Tuesday, June 18, 2024 12:58 PM

To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Subject: [External Sender] RE: 1 Bloor Street West - Construction Staging Area

I will send the response to you to forward to City staff. I will do so on June 25. If that is a problem, please advise.

Regards,

Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

<http://ontlaw.com/bio/allison-speigel/>

<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Tuesday, June 18, 2024 12:23 PM

To: Allison Spiegel <allison@ontlaw.com>

Subject: RE: 1 Bloor Street West - Construction Staging Area

EXTERNAL SOURCE - Exercise caution.

Allison,

I am unable to provide legal advice on lobbyist registration. If you wish to respond, please do so directly to me. I will forward your response (if you are the one who responds) to City staff.

Please confirm at your earliest convenience if Mappro will be responding, and if so through whom.

Yours truly,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: Tuesday, June 18, 2024 12:16 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Subject: [External Sender] FW: 1 Bloor Street West - Construction Staging Area

My client received the email below. If my client responds directly, does she need to be a registered lobbyist? Conversely, are you ok if I respond on her behalf and copy you?

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
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*practicing through Allison Spiegel Professional Corporation

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From: John Kowalenko <John.Kowalenko@toronto.ca>
Sent: Friday, June 14, 2024 5:47 PM
To: Isabelle Hayen <isabelle.hayen@ahrgroup.be>
Subject: 1 Bloor Street West - Construction Staging Area

Dear Ms. Hayen,

City staff anticipate reporting to Community Council and Council regarding a further permit for the 1 Bloor West developer to continue to occupy its Balmuto Street staging area. We understand that you are a representative of Mappro, an adjacent property owner, and are familiar with this matter. The last Council treatment of this matter, including the associated staff report, is available at [this link](#).

We are writing to provide you with an opportunity to communicate Mappro's views to the City on whether the developer should receive permission to continue to occupy the Balmuto Street staging area, including conditions or ways in which to minimize any impacts of the staging area should such permission issue. Please feel free to contact the undersigned to that end.

City staff anticipate reporting to Community Council on this matter for its July 10, 2024 meeting. Mappro has in the past deputed on the staging area to Community Council and Council, and we understand that it is familiar with how to do so (although further information on deputations may be found [here](#)). Given the upcoming Council meeting, we would appreciate any response by Mappro to our email by June 20, 2024. For clarity, we are seeking to consult with Mappro at the City staff level, and deputation opportunities to Community Council and Council are also independently available to Mappro.

We understand that the 1 Bloor West developer is requesting permission to continue occupying the Balmuto Street staging area until February 1, 2026.

John Kowalenko
Senior Project Manager
Work Zone Coordination
416-392-5282
john.kowalenko@toronto.ca



APPENDIX “11”
CITY COUNCIL DECISION DATED JULY 24, 2024 (TE15.29)

Item - 2024.TE15.29

Tracking Status

- City Council adopted this item on July 24, 2024 with amendments.
- This item was considered by the Toronto and East York Community Council on July 10, 2024 and adopted without amendment. It will be considered by City Council on July 24, 2024.
- See also 2024.TE11.36

City Council consideration on July 24, 2024

TE15.29 - 1 Bloor Street West (Balmuto Street) - Construction Staging Area Time Extension

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

City Council Decision

City Council on July 24 and 25, 2024, adopted the following:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from August 1, 2024 to February 1, 2026, inclusive.
2. City Council authorize for purposes of concrete pouring at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from August 1, 2024 to February 1, 2026, inclusive.
3. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
4. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
5. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
6. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
8. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.

9. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site, and to maintain a safe environment for the public.
10. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer during large-scale concrete pours and large-scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians', cyclists' and motorists' safety is considered at all times.
12. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
13. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Alvarez and Marsal Canada Inc., Court – Appointed Receiver for Mizrahi Development Group (The One) Inc. for the period of August 1, 2024 to February 1, 2026, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Alvarez and Marsal Canada Inc., Court – Appointed Receiver for Mizrahi Development Group (The One) having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 20, 2024) and, where the approval conflicts with City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
14. City Council authorize the General Manager, Transportation Services, to transfer and/or assign the Temporary Street Occupancy Permit for Balmuto Street in the event that a new party acquires or becomes responsible for the Mizrahi Project during the requested construction staging area time extension request from August 1, 2024 to February 1, 2026.
15. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.
16. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.
17. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to removing them within fifteen minutes of discontinuing use of the pump; and to not placing them in legal parking areas.
18. City Council direct the applicant to cooperate with and provide all necessary assistance to City Engineers, staff and representatives carrying out operation, maintenance and construction activities to municipal infrastructure within the vicinity of the construction staging area, and at no cost to the City to remove any staging to accommodate the necessary municipal infrastructure work.
19. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.
20. City Council authorize the General Manager, Transportation Services to transfer and/or assign existing indemnity agreements with Mizrahi Development Group (The One) Inc. or its Court-appointed Receiver and/or negotiate, enter into and execute further indemnity agreement(s) to address the City's

interests with respect to any and all temporary street occupations and closures on Balmuto Street, on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

21. City Council authorize the General Manager, Transportation Services to require the applicant to provide financial security in a form and amount satisfactory to the General Manager, Transportation Services, as a condition of granting the above permits.

22. City Council direct that Parts 1 to 19 above, be subject to Mizrahi Development Group (The One) Inc. its Court-appointed Receiver, and/or a transferee or assignee of the permits entering into such indemnity agreements and/or providing security as may be required by the General Manager, Transportation Services pursuant to Parts 20 to 21 above.

Background Information (Community Council)

(June 21, 2024) Report and Attachments 1 and 2 from the Director, Traffic Management, Transportation Services on 1 Bloor Street West (Balmuto Street) - Construction Staging Area Time Extension
<https://www.toronto.ca/legdocs/mmis/2024/te/bgrd/backgroundfile-247018.pdf>

Communications (Community Council)

(July 5, 2024) Letter from Allison Speigel, Speigel Nichols Fox LLP on behalf of Mappro Realty Inc. (TE.Supp)
<https://www.toronto.ca/legdocs/mmis/2024/te/comm/communicationfile-181432.pdf>

Communications (City Council)

(July 19, 2024) Letter from Allison Speigel, on behalf of Mappro Realty Inc. (CC.Supp)
<https://www.toronto.ca/legdocs/mmis/2024/cc/comm/communicationfile-182341.pdf>

Motions (City Council)


1 - Motion to Amend Item moved by Councillor Dianne Saxe (Carried)
That City Council amend Toronto and East York Community Council recommendation 22, by deleting the number "22" and replacing with the number "21" so that it reads as follows:

22. City Council direct that Parts 1 to 19, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. its Court-appointed Receiver, and/or a transferee or assignee of the permits entering into such indemnity agreements and/or providing security as may be required by the General Manager, Transportation Services pursuant to Parts 20 to ~~22~~ 21 above.

Motion to Adopt Item as Amended (Carried)

Toronto and East York Community Council consideration on July 10, 2024

Source: Toronto City Clerk at www.toronto.ca/council

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APPENDIX “12”
NOTICE OF MOTION DATED OCTOBER 2, 2024

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.
and CITY OF TORONTO

Defendants

NOTICE OF MOTION

THE PLAINTIFF, Mappro Realty Inc. (“**Mappro**”), will make a motion to the court as soon as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location: 330 University Avenue, Toronto, Ontario

THE MOTION IS FOR:

1. An order:
 - a) abridging the time for service and validating the service of this notice of motion and the motion record so that it is properly returnable before the court on the date of the motion;

- i) granting leave to amend the amended statement of claim (the “**Existing Claim**”), in the form attached as Schedule A (the “**Proposed Amended Claim**”), in order to:
 - 1. add the following parties as defendants (the “**Proposed New Defendants**”): Mizrahi Commercial (The One) LP (“**Mizrahi LP**”), Mizrahi Commercial (The One) GP Inc. (“**Mizrahi GP**”), Mizrahi Inc. (“**Mizrahi Inc.**”), SKYGRiD Construction Inc. (“**Skygrid**”), and Alvarez & Marsal Canada Inc., and Alvarez & Marsal Canada Inc. in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc. (collectively or individually, the “**Receiver**”) as defendants; and
 - 2. account for events that occurred after the Existing Claim was issued;
- b) for its costs of this motion; and
- c) for any further relief that counsel may advise, and the Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- 2. The addition of the Proposed New Defendants is necessary to enable the court to adjudicate effectively and completely on the issues raised in this action.
- 3. The Proposed New Defendants connection to the action only became known to the plaintiffs after the Court appointed the Receiver on October 18, 2023.
- 4. The Existing Claim must also be amended to account for events that occurred after it was issued.
- 5. Pleadings are closed. The parties in the action, however, have yet to exchange affidavits of documents or conduct examinations for discovery.
- 6. The court should allow the proposed amendments to the Existing Claim because (a) neither the defendants, nor the Proposed New Defendants will suffer any resulting prejudice; or,

alternatively, (b) neither the defendants, nor the Proposed New Defendants will suffer any resulting prejudice that could not be compensated for by costs or an adjournment.

7. Rules 1.04, 1.05, 3.02, 5.03, 5.04(2), 26.01, 26.02 and 37 of the *Rules of Civil Procedure*.
8. Such further grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Claudia Lapa, to be sworn.

October 2, 2024

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Barristers & Solicitors
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Lawyers for Mizrahi Inc.

AND TO: SKYGRiD CONSTRUCTION INC.
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L4W 0A9

Schedule "A"

No. CV-22-00686696-0000

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC., and CITY OF TORONTO, MIZRAHI COMMERCIAL (THE ONE) LP,
MIZRAHI COMMERCIAL (THE ONE) GP INC., MIZRAHI INC., SKYGRiD
CONSTRUCTION INC., ALVAREZ & MARSAL CANADA INC., and ALVAREZ &
MARSAL CANADA INC. in its capacity as court-appointed receiver and manager of all of
the assets, undertakings and properties of Mizrahi Development Group (The One) Inc.,
Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc.

Defendants

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

TO: DENTONS CANADA LLP
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Lawyers for the defendant,
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~~Mizrahi Developments Inc.~~

AND TO: TORONTO CITY CLERK'S OFFICE
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Defendant

AND TO: MIZRAHI COMMERCIAL (THE ONE) GP INC.

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Defendant

AND TO: MIZRAHI INC.

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Defendant

AND TO: SKYGRiD CONSTRUCTION INC.

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Lawyers for the defendants, Alvarez & Marsal Canada Inc. and Alvarez & Marsal
Canada Inc. (in its capacity as court-appointed receiver and manager of all of the
assets, undertakings and properties of Mizrahi Development Group (The One) Inc.,
Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc.)

CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the Defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring Mizrahi (defined below) ~~the defendants~~ to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
 - c) pre-judgment interest in accordance with the Courts of Justice Act;
 - d) costs of this action; and
 - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.

A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. ~~Mizrahi Developments Inc.~~ The defendant, Mizrahi Development Group (The One) Inc. ("**Mizrahi Group**"), an Ontario corporation, is ~~a developer and the registered owner of~~ owns the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto as nominee for and on behalf of the defendant, Mizrahi Commercial (The One) LP ("**Mizrahi LP**").
5. The defendant, Mizrahi LP, an Ontario limited partnership, is the beneficial owner of the Mizrahi Property.
6. The defendant, Mizrahi Commercial (The One) GP Inc. ("**Mizrahi GP**"), an Ontario corporation, is the sole general partner of Mizrahi LP and the sole owner of Mizrahi Group.

7. The defendant, Mizrahi Inc. (“**Mizrahi Inc**”), an Ontario corporation, is believed to have acted as the developer and general contractor of the project being built on the Property (the “**Project**”) until early 2024. Mizrahi Inc is also believed to have described itself as the “owner” of the Project.
8. The defendant, SKYGRiD Construction Inc. (“**Skygrid**”), an Ontario corporation, became the construction manager and/or general contractor on the Project in early 2024.
9. On October 18, 2023, Alvarez & Marsal Canada Inc. (the “**Receiver**”) was appointed the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP (collectively, the “**Debtors**”)] ... acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof.”
10. Mizrahi Group, Mizrahi LP, Mizrahi GP, Mizrahi Inc, Skygrid, and the Receiver are collectively or individually referred to as “**Mizrahi**.”
11. The defendant, the ~~The~~ City of Toronto (the “**City**”), is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

B. The Properties and the Project

12. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street (“**Bloor**”). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the “**Mappro Building**”).
13. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
14. Mizrahi is in the process of constructing a mixed-use development (the “**One**”) on the Mizrahi Property. For what is believe to be a short period of time, Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the Project project (the “**Project**”). At all relevant times, Clarke is believed to have acted as Mizrahi's agent.
15. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

16. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area.
17. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
18. Mizrahi required a permit from the City to erect and use the Staging Area.
19. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
20. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
21. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:
 - a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
 - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
22. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
23. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.

24. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
25. Mappro's initial calls to the City concerning the Staging Area went unanswered.
26. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission.

D. The Multi-Year Permit

27. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
28. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
29. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
30. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."
31. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
 - a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
32. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.

33. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."
34. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

E. The Multi-Year Permit Was Repeatedly Extended

35. The Multi-Year Permit was in effect extended on numerous occasions after it expired on November 30, 2022.
36. On December 14, 2022, the Multi-Year Permit was extended from December 14, 2022 to March 31, 2023.
37. Mizrahi did not have permission from the City to use the Staging Area between November 30, 2022 and December 14, 2022.
38. On March 29, 2023, the Multi-Year Permit was extended from April 1, 2023 to April 1, 2024.
39. The Receiver was appointed on October 18, 2023. Since that date, the Receiver has had care and control of the Project and the Mizrahi Property and has been responsible for making all decisions concerning both, including the decisions to (a) continue using the Staging Area and (b) seek extensions of the permit allowing the use. Since the Receiver was appointed, the permit has been extended on two occasions:
 - a) on March 20, 2024, the Multi-Year Permit was extended from April 2, 2024 to July 31, 2024; and
 - b) on July 24, 2024, the Multi-Year Permit was extended from August 1, 2024 to February 1, 2026.
40. Mizrahi has used the Staging Area continuously since installing it. It has done so with the City's permission (except during short periods of time when Mizrahi did not have a permit allowing it to use the Staging Area).
41. Mappro has not been provided with copies of all of the various permit extensions.

42. Mappro has been given no guarantees that the Multi-Year Permit will not be further extended past February 1, 2026.

F. The Effects of the Installation and Use of the Staging Area

43. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
 - c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building; ~~and~~
 - g) it restricts access to the fire hydrant_s;
 - h) it caused homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individual urinating and defecating directly in front of the Mappro Property; and
 - i) it caused the Mappro Property to be vandalized and broken-into.
44. Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants.
45. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
46. Mappro has begun ~~is now in~~ the process of renovating the Mappro Building. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of Mappro's renovation. This too will negatively impact Mappro's ability to lease the Mappro Building.

G. Nuisance

47. The granting and extension of the various permits ~~Original Permit and Multi-Year Permit~~ and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
48. The non-trivial interference, which has been severe and lengthy, is unreasonable.
49. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
50. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
51. The defendants also failed to act reasonably throughout the process:
 - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.
 - e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the various permits and extensions thereof ~~Multi-Year Permit~~ knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something

it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.

- h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
- i) The defendants failed to provide Mappro with reasonable notice when seeking and granting extensions of the various permits.

52. Mappro has suffered, and continues to suffer, damages arising from the nuisance.

~~53. It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi Year Permit. Based on the City's conduct to date, it is likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022.~~

54. It is possible that the nuisance to Mappro will continue past February 1, 2026.

55. As against the Receiver, Mappro is only claiming damages arising from the nuisance that has been ongoing since the Receiver was appointed on October 18, 2023.

56. As against Skygrid, Mappro is only claiming damages arising from the nuisance that has been ongoing since Skygrid began working on the Project.

H. Negligence (as against all defendants other than the Receiver)

57. The defendants owe Mappro a duty of care.

58. The defendants acted negligently by, among other things:

- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
- b) granting the Original Permit contrary to the provisions of the Code;
- e) installing and operating the Staging Area in a manner that does not comply with any of the permits ~~either the Original Permit, the Multi Year Permit, or both;~~

- d) failing to ensure that Mizrahi complied with the terms of any of the permits ~~the Original Permit, the Multi-Year Permit, or both~~; and
 - e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
59. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
60. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

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MAPPRO REALTY INC.
Plaintiff

-and- ~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI No. CV-22-00686696-0000
~~DEVELOPMENT GROUP (THE ONE) INC., et al.~~
Defendants

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

AMENDED AMENDED STATEMENT OF CLAIM

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RCP-F 4C (September 1, 2020)

MAPPRO REALTY INC.

Plaintiff

-and- MIZRAHI DEVELOPMENT GROUP (THE ONE) No. CV-22-00686696-0000
INC., et al.
Defendants

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

NOTICE OF MOTION

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RCP-F 4C (September 1, 2020)

APPENDIX “13”
EMAIL FROM COUNSEL FOR MAPPRO DATED OCTOBER 28, 2024

From: Allison Spiegel <allison@ontlaw.com>
Sent: Monday, October 28, 2024 9:06 AM
To: Dunn, Mark
Cc: Jennifer Lake; Linde, Jennifer; Armstrong, Christopher; O'Neill, Brendan; Stothart, Sarah
Subject: Up-coming motion

Mappro will not be seeking leave to add the receiver or Skygrid as defendants in the action at this time.

Regards,
Allison

Allison J. Spiegel*



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**KEB HANA BANK as trustee of IGIS
GLOBAL PRIVATE PLACEMENT REAL
ESTATE FUND NO. 301 and as trustee of
IGIS GLOBAL PRIVATE PLACEMENT
REAL ESTATE FUND NO. 434**

**MIZRAHI COMMERCIAL
(THE ONE) LP, et al.**

Court File No. CV-23-00707839-00CL

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**SEVENTH REPORT OF THE
RECEIVER ALVAREZ & MARSAL
CANADA INC. DECEMBER 20, 2024**

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