

RECEIVED  
CITY CLERK'S OFFICE  
SECRETARIAT 2ND FLOOR

TE28.6.1  
WeirFoulds LLP

November 15, 2013

2013 NOV 15 AM 11 05

Ian J. Lord  
T: 416-947-5067  
ilord@weirfoulds.com

VIA E-MAIL

File 15221.00001

Rosalind Dyers  
Administrator, Toronto & East York Community Council  
City of Toronto  
100 Queen Street West  
2nd Floor, West  
Toronto, Ontario M5H 2N2

Dear Ms. Dyers:

Re: **Notice of Public Meeting - November 19, 2013**  
**Zoning By-law Amendment Application No. 13 166022 STE 27 OZ**  
**595 Bay Street & 306 Yonge Street, Toronto**

We act for Metropolitan Toronto Condominium Corporation 723 ("**MTCC 723**"), owner of an essentially residential property immediately to the north of Atrium on Bay.

MTCC 723 objects to increases in density and height of the individual and combined building components on lands identified as the Atrium on Bay bounded by Bay Street, Edward Street, Yonge Street and Dundas Street West (the "**Applications**").

MTCC 723 is a residential condominium building which, in cooperation with the City of Toronto and predecessors in title to Atrium on Bay, developed a comprehensive development plan ("**Building Scheme**") for the interface of both properties. MTCC 723 and Atrium on Bay were planned, developed and built out as one development.

Since 1979, there has been no public approval or construction that has altered the Building Scheme in a manner that compromises or prejudices the essential and agreed exterior built form.

Density transfers approved by the City, parcelled and divided residential from commercial uses and were intended to endure until 2078.

By agreement dated November 7, 1979 (the "**Density Transfer Agreement**"), the then owners agreed to the existing development identified and intended to be enforced as a Building Scheme. This Building Scheme resulted in a comprehensive block development.

4100 - 66 Wellington Street West, PO Box 35, Toronto-Dominion Centre, Toronto, Ontario, Canada, M5K 1B7

T: 416-365-1110 F: 416-365-1876

www.weirfoulds.com

The approved density transfer negotiated with all parties reserved the higher built form for the residential tower, despite the approved zoning height under the available Zoning By-law applicable to the Atrium site.

In cooperation with the City of Toronto, a series of legal instruments were entered into, declared to be binding upon the lands and interests in the lands, and were registered on title with the intention that the relationship between the buildings continue until at least July 31, 2078.

The City of Toronto was instrumental in, cooperated and approved the Building Scheme through its participation in this Agreement. The Density Transfer Agreement and the building scheme provide quasi ownership rights both in property law and in planning law upon which MTCC 723 and its individual unit owners have relied in construction and purchase.

The current Application, insofar as it contemplates additional floors with an enclosed mechanical penthouse on top of the existing east and west office towers of Atrium on Bay (with an attendant increase in density) contravenes both the Building Scheme and the agreed planning instruments.

The consent of the owners of MTCC 723 has neither been sought nor obtained. The planning process has been engaged as a vehicle to support rights that are contrary to the approvals and the contract to the disadvantage of the beneficiaries of the Building Scheme. The Application is contrary to that which is agreed upon in the Density Transfer Agreement. The Planning Department should not eschew this history over its previous participation and City Council should not advance one ratepayer's interests over 475 residential unit owners.

The addition of height and the increase in density causes prejudice to MTCC 723. This prejudice includes compromise of the defining features of the unique and irreplaceable residential environment in downtown Toronto initiated and built to be protected by the Building Scheme. This environment includes separation distances, view planes, angular planes, amenity space and its attributes, and protection from noise, light and air deprivation, vibration and conflicting vehicular circulation. MTCC 723 has maintained a rooftop terrace, amenity court, pool and gardens for the benefit of all of its residents. These features will be adversely impacted, compromised and prejudiced as well.

MTCC 723 has requested the owners of Atrium on Bay maintain the Building Scheme as reflected in the Density Transfer Agreement. It requests the same continued support from City Council. The current applications are in contravention of that, essentially, tri-party agreement.

The Density Transfer Agreement has been registered on title, continuously acknowledged and remains current. The City is signatory to its own density transfer agreement, compartmentalizing the residential v. commercial uses between the Horizon on Bay and Atrium.

The Applications and the previous application to the Committee of Adjustment seek approval for the construction of multiple additions to the existing office buildings. The relief sought in respect of measures of density, angular plane and related built form elements and their development envisaged have the direct and foreseeable effect of causing continuing prejudice to MTCC 723 owners and occupants, as well as the corporation.

MTCC 723 appealed the Committee of Adjustment application and it was withdrawn on consent and unconditionally from the Ontario Municipal Board, by Atrium.

Policy supportive of intensification in built up areas does not extend to employing the planning process to attempt to rewrite current and continuing private and public commitments of long standing duration.

The proposal contravenes the Building Scheme commitment made both privately and publicly, including by the City of Toronto. It will result in a loss of residential unit value, loss of amenities, enhanced noise, less lighting and vibration detriment, shadow impact and compromise to units and amenity assets of MTCC 723.

The client's opposition to this project is further detailed in its Notice of Appeal dated June 19, 2012 in respect of a similar application made to the City of Toronto Committee of Adjustment, attached.

It is worth noting that paragraph 4 of the Density Transfer Agreement references the separate City Density Agreement. The Density Transfer Agreement provides that if there are any changes as requested, the owner shall execute such Agreement amending the City Density Agreement as is appropriate or necessary to effect the change. MTCC 723 has not agreed to the amending of either the Density Transfer Agreement or the City Density Agreement. Staff do not address the corporate history nor the City Density Agreement.

It is the respectful position of MTCC 723 that in this circumstance neither Atrium on Bay nor the City of Toronto has any right or authority to isolate and process an application, consider it complete or make any determination on the merits of any *Planning Act* Application (Official Plan Amendment; Zoning Amendment; Site Plan Approval Application), in the absence of MTCC 723.

Responses to substantive aspects of our correspondence with the City Solicitor dated June 19, 2012, remain outstanding, copy attached. These matters remain to be addressed in the Staff assessment to Council.

**Recommendation:**

That Council withdraw acknowledgement of receipt of a complete application and that it defer further site consideration until such time as the parties to the Density Transfer Agreement are in support.

Thank you for your consideration of this matter.

Yours truly,

**WeirFoulds LLP**

Ian J. Lord

IJL:PC:d

cc: Patrick Devine, Counsel – Atrium on Bay  
Mark Crawford, City of Toronto

5883516.1