

TE17.10.18

July 10, 2016

Barnet H. Kussner
T: 416-947-5079
bkussner@weirfoulds.com

VIA E-MAIL

File 17637.00001

The Mayor and Members of Toronto Council
City of Toronto
12th Floor, West Tower, City Hall
100 Queen St. W.
Toronto, ON M5H 2N2

Attn: Marilyn Toft, Secretariat Contact

Dear Mayor Tory and Members of Council:

Re: Final Report – 1-11 Bloor Street West, 768-784 Yonge Street and 760-762 Yonge Street – Zoning Amendment Application (the “Application”) City Council July 12, 2016 Meeting Agenda – Item TE17.10

We act as counsel for Toronto Standard Condominium Corporation No. 2208 (“**TSCC #2208**”), known as The Uptown Residences at 35 Balmuto Street (“**35 Balmuto**”), in connection with the above matter.

TSCC #2208 has participated in the working group meetings and has made numerous written and oral submissions throughout the planning process related to this Application. Most recently, TSCC #2208 made a detailed written submission to the Toronto and East York Community Council (“**TEYCC**”) for its meeting held on June 14, 2016. Attached is a copy of our submission letter to TEYCC dated June 10, 2016, as it does not appear to be part of Council’s agenda package.

By way of summary and without repeating all of our client’s concerns, they continue to involve fundamental issues including: (i) the massing, height and proximity of the proposed retail podium; (ii) the exclusive reliance on the 6 metre wide public laneway for all vehicular access to and from the subject site, and conflicts with all existing users of the laneway (including bicycles and pedestrians); (iii) parking; (iv) PATH connection; and (v) the lack of a detailed construction management plan and the high level of risk from deferral of too many basic zoning-related matters to the site plan stage.

From TSCC #2208’s standpoint, all of these matters remain outstanding. We are continuing to have direct discussions with the applicant in the hopes that we can resolve or narrow as many of these concerns as possible.

To facilitate that dialogue and ensure that the concerns of TSCC #2208 addressed in a focused and comprehensive manner from a planning and urban design standpoint, since the June 14th TEYCC meeting our client has retained the services of Ms. Anne McIlroy of the firm Brook McIlroy, to complement the existing retainer of Martin Rendl as our client's planning consultant. Mr. McIlroy and her firm will be well-known to members of Council as a local award-winning architecture, urban design, landscape architecture and planning firm which is frequently retained by the City itself to undertake comprehensive studies include the development of urban design guidelines and Avenues studies.

Ms. McIlroy has confirmed that her preliminary findings support the concerns of TSCC #2208.

Our client and other concerned parties are prepared to continue working constructively with the applicant and the City. It remains premature for City Council to make a decision on the Application in its current form before that process has run its course. We are hopeful that with Ms. McIlroy's advice and input, that progress can be achieved in resolving many of the concerns expressed by TSCC #2208 in its various written and oral submissions.

Development projects of this size and scale often benefit from a prudent pause to allow for direct discussions among affected parties in an attempt to achieve consensus and implement a local solution. This case is no exception, and building at a significant landmark location such as this demands extraordinary attention to detail.

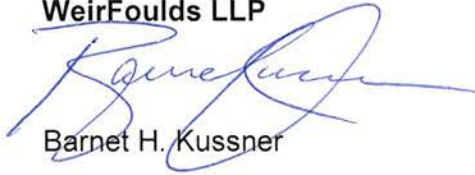
Moreover, given the Applicant's own pre-emptive appeal to the OMB and the fact that it will take several months before a Pre-Hearing Conference is held and a held and hearing dates can be set, there is no compelling reason for Council to make a decision now on whether to endorse the Application in its current form.

For these reasons, we respectfully request that Council defer consideration of this Application to allow for further discussions to take place and to afford an opportunity for Ms. McIlroy to meet with City Planning Staff to discuss our client's concerns and how they may be addressed from an urban design standpoint.

Thank you for your consideration of these submissions.

Yours truly,

WeirFoulds LLP



Barnet H. Kussner

BHK:PC:cl
Encl.

c: A. Brown, counsel for the Applicant
D. Simor, Advisor, Policy & Community Relations, Councillor Kristyn Wong-Tam
M. Rendl, Martin Rendl Associates
P. Russell
B. Singer
P. Chronis
TSCC #2208 Board

9406021.2

June 10, 2016

Barnet H. Kussner
T: 416-947-5079
bkussner@weirfoulds.com

VIA E-MAIL

File 17637.00001

The Chair and Members
Toronto and East York Community Council
City of Toronto
2nd Floor, West Tower, City Hall
100 Queen St. W.
Toronto, ON M5H 2N2

Dear Chair and Members:

**Re: Final Report – 1-11 Bloor Street West, 768-784 Yonge Street and 760-762 Yonge Street – Zoning Amendment Application
Toronto and East York Community Council June 14, 2016 Meeting Agenda –
Item TE17.10**

We act as counsel for Toronto Standard Condominium Corporation No. 2208 (“**TSCC #2208**”), known as The Uptown Residences at 35 Balmuto Street (“**35 Balmuto**”), in connection with the above matter.

When this matter last came before Community Council on May 10, 2016, in addition to our written submission dated May 6th we appeared before it to make an oral deputation on behalf of TSCC #2208 along with our client’s planning consultant, Martin Rendl, and Peter Russell, a planner with Urbacon. We expressed our client’s significant concerns with the rezoning application proposed by the applicant for the 1 Bloor West site - both in terms of the process that had been followed as well as the substance, in terms of the built form proposed, the unprecedented total reliance on the public laneway on Balmuto Street for all vehicular and servicing access, and the resulting adverse impacts it would have in both respects on the day-to-day living conditions for the residents of 35 Balmuto as well as the broader community, both of its own accord and from a precedent standpoint.

Since that time our client has taken part in the further meeting of the Working Group (#6) which took place on June 2nd. We have also reached out to the applicant directly and hope to meet with them shortly to explore the possibility of a negotiated resolution.

In the meantime, however, our client continues to have a number of fundamental concerns with the proposal in its current form. In the relatively short time since this matter was deferred by Community Council on May 10th, few of those concerns have been addressed in any meaningful

way - despite the fact that the key elements associated with this proposal, including the height, massing and proximity of the retail podium, the 6 metre wide laneway off of Balmuto, the proposed parking and loading arrangements, are all unprecedented for such a massive development as this.

The primary concerns on the part of TSCC #2208 may be summarized as follows:

1. **Retail Podium** – By all accounts, the height and massing of the podium would constitute it as a tall building under the City's own Guidelines – it is the equivalent of a 20-storey residential building – and yet it fails to satisfy several key requirements of those Guidelines (either existing or proposed). The current podium setbacks proposed from the west lot line are 1.5 m at grade and 4.0 m above 37 m height. This is clearly insufficient and unprecedented under the City's own Guidelines. Our client has repeatedly requested the applicant to provide plans or drawings which accurately depict the west elevation and its impacts on 35 Balmuto, but nothing meaningful has been provided to date. There should be a significant reduction in the height of the proposed retail podium (at least 3-4 retail storeys) and either (i) a minimum setback of 12.5 m from the podium to the centre of the lane (current Tall Buildings Guideline) or (ii) 25 m between buildings, whichever is greater.
2. **Parking** – The proposal provide parking at the rates currently proposed and expect to facilitate access for the resulting volume of vehicles entirely off of the 6 metre wide laneway on Balmuto is once again without precedent. The resulting laneway conflicts will be unmanageable and incapable of being mitigated through operational measures alone. These conflicts can and should be resolved in part by reducing the volume of traffic in and out of the site. This can be achieved through the elimination of all retail parking and a substantial component of the residential parking at 1 Bloor West (i.e. limited to retail tenants/employees, minimal residential ratio and residential visitors). This may also eliminate the need for stackers and valet parking. From the City's public interest standpoint, rather than encouraging people to drive their vehicles to and from a site which is well-served by two subway lines, such a reduction in parking would also serve its broader policy objectives of reducing auto dependency, promoting transit use and improving cyclist safety.
3. **PATH connection** – There must be an unequivocal commitment to connect 1 Bloor West to the PATH system for the same reasons identified in #2 above, as well as a requirement to post full securities with the City to ensure it is done at some future date, if it is not possible to construct it in the near term.

4. **Internalization of all truck movements at 1 Bloor West** – There must be an appropriate system in place for confining all truck movements within the loading area inside the 1 Bloor West garage (e.g. a turntable, like First Canadian Place) so as to take trucks off the laneway as soon as possible, minimize delays resulting from turning movements, eliminate “beeping” from trucks reversing, and similar adverse impacts. This would also internalize the waste removal operations, thereby minimizing noise impacts from that activity on 35 Balmuto. Garbage/recycling, deliveries and other services could then take place after business hours without making life difficult for residents of 35 Balmuto. This would further improve vehicular, pedestrian and cyclist safety in the laneway.
5. **Segregation of 1 Bloor West truck traffic from other vehicular, pedestrian and bicycle traffic** - both during construction and on a permanent basis. Can this not be achieved by directing truck traffic through the south lane only, with appropriate traffic management commitments?
6. **Construction management plan (CMP)** – Key elements of a CMP must be agreed upon as a requirement of zoning approval, rather than being left entirely to the site plan stage. Our client’s consultants have conservatively estimated that the amount of concrete required for the development as currently proposed would require approximately 80,000 cement trucks. Again, to rely on a 6 metre wide laneway to provide access for those trucks is simply unprecedented. There are numerous recent instances involving high-density developments where the City has insisted upon key elements of a CMP being in place as a condition of its sign-off at the rezoning stage, and if anything, the rationale for such a requirement is even more compelling in this instance. Among other required commitments: a 24 hour construction hotline; a commitment by 1 Bloor West to provide and pay for paid-duty police at all times during construction hours to facilitate access to and from 35 Balmuto parking and loading facilities; and traffic signalization within the laneway limiting egress from 1 Bloor West site to appropriate intervals, both during construction and on a permanent basis.
7. **Direct participation by TSCC #2208 in the site plan/CMP approval process** – given the extent to which a resolution of our client’s concerns depends on these aspects, it should have a seat at the table rather than depending entirely on the City and 1 Bloor West to ensure its interests are protected.

In addition to the foregoing, our client has other concerns which are beyond the scope of Council’s jurisdiction and which will therefore be the subject of direct discussions with the applicant alone.

As indicated in our May 6th letter to Community Council, perhaps the single biggest concern relating to this application is the extent to which it places exclusive reliance on a 6 metre wide public laneway to provide all vehicular access to and from the site. The proposed development of the Site will clearly mean significant new vehicular loading on a laneway system which was designed principally to accommodate the existing scale of development. Simply put, the laneway was not planned, designed or intended to accommodate the burdens associated with the additional scale of development now proposed. From the standpoint of 35 Balmuto - whose residents see and experience first-hand and on a daily basis the practical challenges associated with access to and from the parking and loading facilities on their site even under existing circumstances - no amount of operational tinkering can be sufficient to overcome the fundamental concerns of public safety and security and the intolerable delays for vehicular ingress and egress at 35 Balmuto that would result from the scale of development currently proposed for 1 Bloor West. It will also severely compromise our client's ability to accommodate the safe arrival of its residents and users of their property, including deliveries and the use of their loading bay.

Respectfully, it is most unfair and unreasonable to expect planned and approved existing developments such as 35 Balmuto to bear such burdens and rely to such an extent on unproven mitigation measures (such as valet parking) to alleviate those burdens.

While there may be other examples one can point to elsewhere in the City where laneways provide access to large high-density mixed-use development, we are unaware of any comparable situation involving a development anywhere close to the magnitude and scale of this development where the laneway serves as the sole means of vehicular access. We note that the applicant appears to place considerable reliance on Cowbell Lane - which runs parallel to and just east of Yonge Street, running south from Eglinton Avenue - as if it serves as a helpful precedent. Respectfully, however, that is clearly an "apples and oranges" comparison. Among the significant differences:

- unlike the Balmuto laneway which provides access to 1 Bloor West, Cowbell Lane has access to two different public streets, namely, Eglinton Avenue to the north and Soudan Avenue to the South;
- unlike the Balmuto laneway, Cowbell Lane is linear rather than u-shaped and thus does not require complex turning movements;
- unlike 1 Bloor West, all of the properties which have rear access to Cowbell Lane also have their own direct frontage and access to a public street, either Yonge Street to the west (in the case of the Minto Yonge-Eglinton development and other properties fronting onto Yonge) or Holly Street to the east; and

- the scale of retail development serviced by Cowbell Lane pales in comparison to what is proposed at 1 Bloor West, in addition to the existing commercial/retail uses already served by the Balmuto laneway.

If anything, these fundamental differences only serve to underscore the extent to which the residents of 35 Balmuto are effectively being used as the 'test case' for a proposed system of site access and circulation which, in the history of development approvals in this City, is untested, unproven, and from which the damage will be largely irreversible if the development is approved in its current form.

To that extent, and as noted in our previous correspondence, the proposed redevelopment of the Site appears to reflect a paradigm shift in City planning policy as it relates to site access and circulation for infill development in the downtown core. It may well be that such laudable policy objectives as intensification, transit-supportive development and City-building warrant a more flexible policy approach toward the use of laneways to service infill development. However, one would expect the consideration of a more flexible approach to be done through a comprehensive planning exercise leading to the development of proposed guidelines for public input and consultation, rather than on an ad hoc basis which is driven by one specific development application. Indeed, when one considers other comparable policy initiatives such as the City's Mid-Rise Building Guidelines for Avenues – which involved extensive public consultation, stakeholder input and refinement prior to their adoption by Council – with the greatest of respect, the undue haste with which Staff are prepared to support the exclusive use of a 6 metre wide public laneway for vehicular access to an 80-storey residential tower and 9-storey retail complex, in the absence of any guidelines and contrary to years of developed traffic planning and Official Plan policy, becomes all the more remarkable and inexplicable. It is clearly something one would never deliberately plan or design for if given the choice – surely no sensible urban planner or traffic engineer would ever recommend exclusive reliance on a 6-metre wide laneway system to provide all vehicular access for a mixed-use development project which is intended to accommodate thousands of residents, visitors and retail customers on a daily basis.

As Community Council is aware, despite the relatively brief deferral period the applicant has already filed a pre-emptive appeal to the Ontario Municipal Board rather than allowing this process to run its course before Community Council and City Council. It will be several months before a pre-hearing conference is scheduled by the OMB and many more months after that before a hearing takes place. On that basis, we respectfully submit there is no longer any compelling reason for Community Council to make an immediate recommendation to Council at this point in time, without taking the opportunity to consider our client's concerns and subjecting

them the to the fulsome study and review one would expect from City Staff in these circumstances.

For these reasons, we respectfully request Community Council to defer consideration of this application further. Our client and other concerned parties are prepared to continue working with the applicant and the City and it remains premature for Community Council to make a recommendation to Council before that process has run its course.

We understand that in addition to the Supplementary Report dated May 9, 2016, Staff will be preparing a further Supplementary Report for the June 14th Community Council meeting. However, we are told that Supplementary Report will not be available until the end of day Friday, June 10th at the earliest. With all due respect to Staff, that is a woefully insufficient notice period for concerned stakeholders such as our client and does a great disservice to the planning process. For this additional reason we submit that a further deferral would be appropriate. We also reserve the right to make further submissions following receipt of the Supplementary Report.

Thank you for your consideration of these submissions. Please note that Paul Chronis, Senior Planner in our office, will be in attendance at the meeting on June 14th to articulate these concerns further.

Yours truly,

WeirFoulds LLP



Barnet H. Kussner

BHK/ew

c: A. Brown, counsel for the Applicant
D. Simor, Advisor, Policy & Community Relations, Councillor Kristyn Wong-Tam
M. Rendl, Martin Rendl Associates
P. Russell
B. Singer
P. Chronis
TSCC #2208 Board

9317305.1