



SPEIGEL NICHOLS FOX LLP

· BARRISTERS & SOLICITORS ·

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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)
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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.

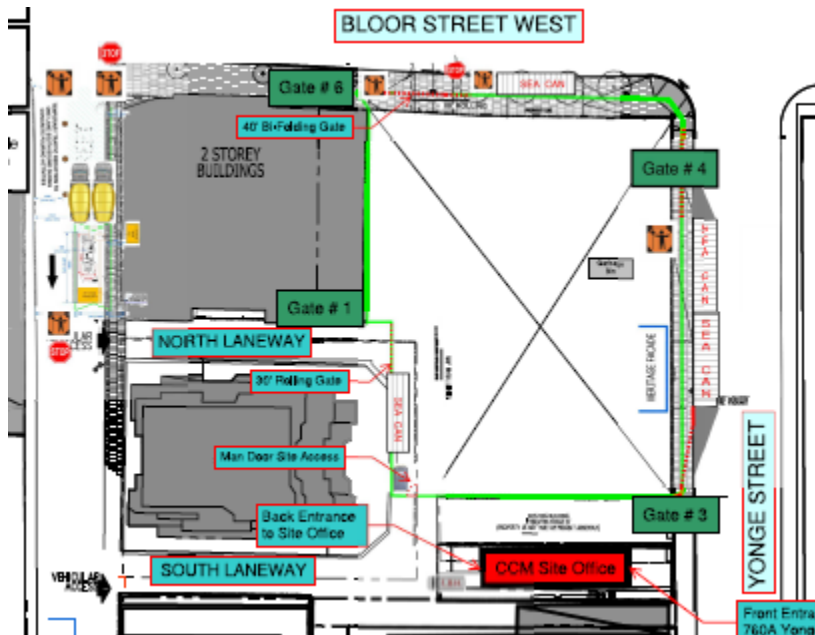
I. BACKGROUND

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: July 14, 2020 7:00 am	To: August 21, 2020 7:00 pm	Restriction During Period (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



SPEIGEL NICHOLS FOX LLP

· BARRISTERS & SOLICITORS ·

Direct Extension 280
allison@ontlaw.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.

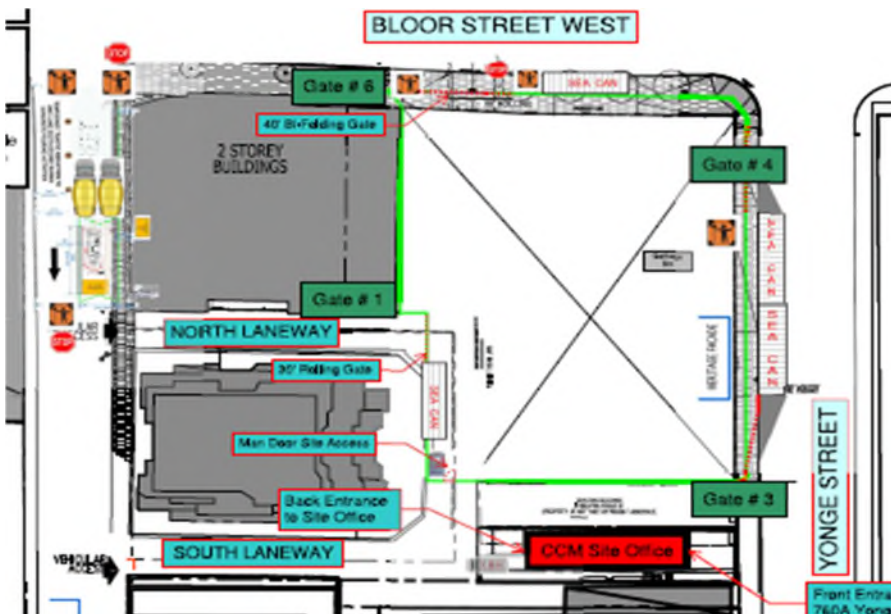
I. BACKGROUND

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?

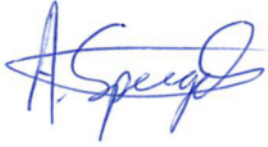
Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of 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

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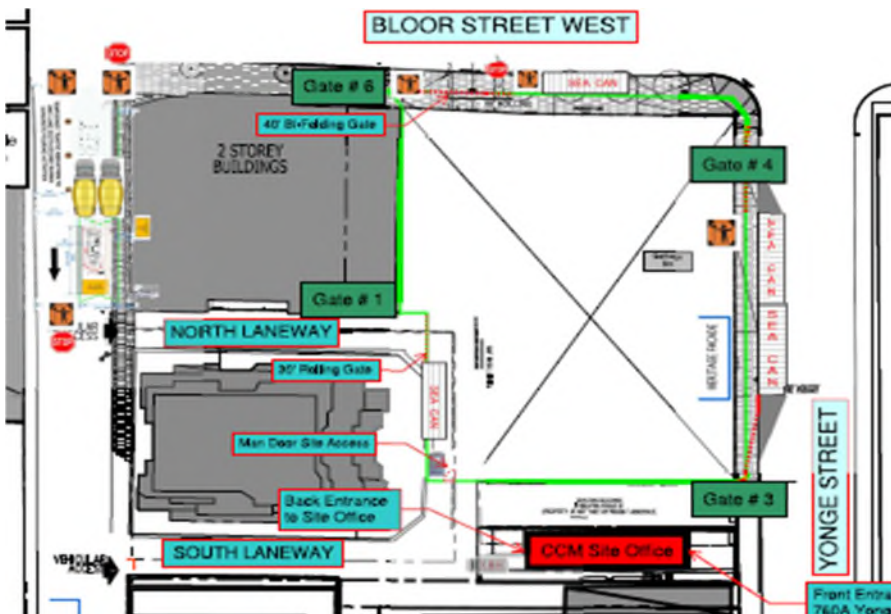
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Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

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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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- 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
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AS:cl

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