

Please refer to: **John M. Alati**
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File No. 702642

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May 13, 2014

By E-Mail Only to etcc@toronto.ca

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Attention: *Ms. Rosemary MacKenzie, Secretariat Contact*

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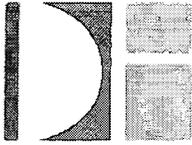
Dear Members of Community Council:

Re: 29 Judson Street, Etobicoke – ML Ready Mix

We are counsel to ML Ready Mix Concrete Inc. ("ML"). We are in receipt of a copy of a revised report dated April 24, 2014 which is to be considered by Etobicoke York Community Council at its meeting on May 13th. We have also been provided a variety of e-mails and correspondence addressed to Community Council from various other individuals in respect of this matter. We would ask that this letter be placed before Council for its consideration in conjunction with the Staff Report.

ML has been operating a concrete batching facility at its site on 29 Judson Street for close to 10 years, and has been in occupation of the property since 2001. ML pays thousands of dollars in annual property taxes to the City. ML employs approximately 50 people either as drivers or on site. In September of 2013 the MoE issued an Environmental Compliance Approval (ECA) which permits ML's operation of a concrete batching facility on this site. My client began the process to obtain the ECA a number of years prior to its issuance. The ECA includes some of the most stringent conditions ever required by the MoE in respect of this type of a facility.

Our client's use and occupation predated the recent 2012 zoning amendment. In our view this zoning change was another example of a City-initiated change to disrupt and unfairly target the legitimate operations and activities of our client. Our client's use is legal non-conforming and since 2007 ML has spent more than \$1-million to comply with environmental and other regulations.



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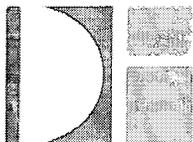
An acoustic audit was undertaken and recently provided to the MoE. That audit was required by the ECA issued by the Ministry. The audit revealed only two minor deficiencies in terms of noise related to two specific receptors in relation to one particular piece of equipment on the ML lands. Since the results of that audit, ML has undertaken additional noise mitigation work to address that concern and a secondary audit has been carried out by the independent third party consultant. The results of that audit will be provided to the MoE in due course. Based on the advice and direction received from ML's own noise consultant, they believe that the results of the secondary audit should demonstrate that ML is in compliance with the noise requirements established by NPC 300.

In November of 2013 Etobicoke York Community Council amended the traffic regulations on Judson Street between Royal York Road and Islington to appease local residents' complaints and to deliberately interfere with ML's operations. Our client presented a report from a reputable independent traffic consultant warning of the risks and safety problems associated with such prohibitions but the Community Council imposed these changes and prohibitions anyway.

On several occasions residents of Judson Street have been observed to park on the north side of Judson Street across from and close to our client's entry gate to deliberately interfere with or impede the traffic flow operations of ML vehicles trucks. We have previously written to the City requesting that it impose parking prohibitions on the north side of Judson between Harold Street and Royal York Road. The City has failed to do so and is contributing to any safety issues. There is no need for people to park on the north side of Judson between Harold and Royal York Road and it is our view that this prohibition would be appropriate.

On April 16, 2014 we wrote to Councillor Mark Grimes in response to correspondence Councillor Grimes submitted to the Committee of Adjustment commenting on and objecting to our client's application for minor variances. A copy of our April 16th letter is attached. The variance application was to enable our client to obtain building permits for all of the buildings on its property. Our client could probably operate without most of those structures that require variances, but rather than tear all or some of those structures down it sought to legalize same to deal with the City prosecution which is now pending before the Courts.

The position we set out on behalf of our client, in the letter of April 16th, continues to stand. If the City is of the view that our client's site is not an appropriate location for a concrete batching facility, then the City should expropriate our client



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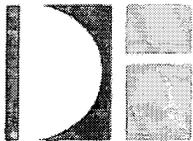
and pay it fair market value, disturbance damages and business interruption costs. ML operates a successful business which is a going concern and a viable economic engine and contributor for both South Etobicoke and the entire City.

The City has the ability to expropriate my client, but it has not done so, and instead has singled out my client for unfair and punitive treatment at this site, as well as others that ML owns and operates

If the City is seriously of the view that ML should relocate, my client is prepared to entertain entering into a Section 30 Agreement under the *Expropriations Act*. On more than one occasion, my client has presented to the local councillor and other City politicians, potential sites to which it was prepared to relocate its concrete facility, but in each instance the City has not supported these alternate locations. It is the position of our client that the City has done little to assist ML in relocating to another site or facility.

On April 22nd Metrolinx wrote to the Committee of Adjustment expressing a concern about an easement on our client's lands which had been an easement used by CN Rail many years ago. Our client takes the position that CN and Metrolinx abandoned this easement many years ago. Since the year 2000 and perhaps even prior to that time this easement has never been used nor has it been accessible. Our client has attempted on many occasions to engage Metrolinx in a meaningful discussion about this issue and has offered an alternate location for the easement across the ML driveway, should such an easement still be requested. To date, Metrolinx has refused to negotiate or discuss this issue with our client in a good faith manner. In fact, Metrolinx made a previous offer to purchase the ML lands and it is our client's submission that Metrolinx may now be using the historical fact of the easement as a means to obtain leverage to try and force our client to sell its lands to Metrolinx at a reduced price.

On April 24th our client's applications for minor variances were refused by the Committee of Adjustment. Those who objected to the variances acknowledged that the variances sought for front yard landscaping were not an issue and the variances sought for building setbacks to the rear and front property line for certain of the ML buildings, were not visible to them given the location of the more than 6.0 meter high acoustical barrier which is along the ML property line and which barrier wall is required pursuant to the ECA issued by the MoE. Those who objected were objecting to the use of the site by our client and it is our submission that they raised no legitimate planning reasons for their objections. The decision of

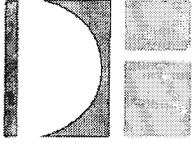


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the Committee of Adjustment refusing our client's applications for variances was appealed and an appeal is now pending before the Ontario Municipal Board.

Several of the complaints which we have seen make reference to toxic spills and air pollution and noise violations. There has never been any evidence to suggest that any materials which might have been released by our client are toxic to the air or the environment. Our client regularly washes the street and since the November 2013 traffic prohibitions which were targeted at ML were imposed, our client's cement and aggregate trucks are prohibited from travelling on Judson Street between Islington and Harold Street. Additionally, to date there have been no prosecutions for any noise or air quality violations initiated by any municipal or provincial regulatory authority. The City's report from the Medical officer of Health found no evidence of any air quality issues linked to the ML facility. The residents' allegations that ML is releasing any type of toxins are unsubstantiated and simply untrue.

Finally, Mr. Dan Irwin, who generates the majority of complaints against my client and its operation, has been complaining publicly that ML's operation has been a problem for him since at least 2007. When Mr. Irwin purchased his property directly across the street from 29 Judson Street, he knew that my client's lands were zoned for heavy industrial uses, including concrete batching. The fact that ML may not have been in operation at the time that Mr. Irwin purchased and the fact that the zoning which permitted such activities had been in place for many years is irrelevant. My client commenced its concrete batching operation on a site which was designated and zoned for such uses. Mr. Irwin failed to do his proper due diligence before purchasing his property. Mr. Irwin also further compounded his problems because despite Mr. Irwin's continuous and vociferous complaints since at least 2007, a title search revealed that Mr. Irwin took out an additional \$180,000 mortgage on his property in 2010. It is ML's view that Mr. Irwin is now attempting to persuade the City to use any means possible to force my client out of its location at 29 Judson Street without paying ML the compensation and damages that it would be due. It is our view that Mr. Irwin is trying to make ML suffer and he is attempting to recoup some of the money he has lost based on his own poor real estate decisions in investing in a poorly located property directly across the street from a site designated and zoned heavy industrial. The site now has legal non-conforming status permitting concrete batching given that the zoning was changed after ML's operations began. My client did not avail itself of any loopholes; it commenced an operation at a time when the use was fully permitted. As such, its use is lawful despite the assertions to the contrary by Mr. Irwin and others.



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We note that the Recommendation in the Staff Report is that Community Council receive the Staff report for information. We concur that Community Council should receive this report; however, if all City divisions are actively working to find solutions to a problem that the City's own zoning permissions have created then the City should entertain one or some combination of the two following options:

1. Redirect all City departments to make sincere and genuine efforts to assist my client to relocating to another site within a specific time frame (for example 6 months); and
2. If the City and its staff are unable to meaningfully assist my client within a reasonable period of time and if Community Council is intent on appeasing neighbourhood complaints, then the City should extend a fair and legitimate offer, which my client may consider, to enter into a Section 30 agreement with my client to expropriate it and pay my client market value as well as disturbance damages and business interruption costs.

Yours truly,

DAVIES HOWE PARTNERS LLP



John M. Alati

encl.: (April 16, 2014 letter to Councillor Grimes)

copy: ML Ready Mix



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April 16, 2014

By E-Mail Only to councillor grimes@toronto.ca

Toronto City Hall
100 Queen Street West, Suite C48
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M5H 2N2

Dear Councillor Grimes:

**Re: ML Ready Mix Concrete Inc.
29 Judson Street, Etobicoke**

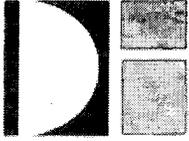
We are counsel to ML Ready Mix Concrete Inc. ("ML"). We are in receipt of your letter dated April 11, 2014, addressed to the Committee of Adjustment. It goes without saying that our client is extremely disappointed with both the tone and content of your letter.

As you are well aware, ML has been operating a concrete batching facility at its site on 29 Judson Street for over 7 years, and has been in occupation of the property since 2001. Our client's use and occupation predated the recent 2012 zoning amendment, which was another example of a City-initiated change to disrupt and unfairly target the legitimate operations and activities of my client.

Since 2007, ML has spent more than \$1-million to comply with environmental and all other regulations, including City traffic restrictions imposed last November, which compel ML trucks to access and exit from its site in only one direction, eastbound towards Royal York Road.

Despite the production of an independent traffic consultant's report alerting the City that the traffic restrictions which were proposed were unfair, arbitrary and would result in traffic congestion and potential safety concerns, Etobicoke-York Community Council, with your support, imposed the truck turn bans and prohibitions anyway, to simply appease a small group of vocal neighbours, led primarily by Mr. Dan Irwin, the neighbour directly across the street.

My client finds it disconcerting that you would pander to this group of disgruntled residents, some of whom have candidly stated that it is their life mission to see ML forced to shut down its business, irrespective of the fact that ML is in compliance with all municipal by-laws and environmental regulations.



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In doing so, you disregard the concerns and contribution of my client, a company located in your ward, that provides work to over 50 people, pays thousands of dollars in property taxes and has recently concluded construction of a noise buffer wall that cost hundreds of thousands of dollars to build and was built in express compliance with the terms of its Environmental Compliance Approval issued by the Ministry of the Environment.

If the City is now of the view that my client's site is not an appropriate location for a concrete batching facility, then the City should expropriate my client and pay it fair market value, disturbance damages and business interruption costs.

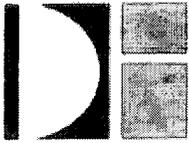
The City has the ability to expropriate my client, but has not done so, and instead has singled out my client for unfair and punitive treatment at this site, as well as others that it owns and operates.

If you are seriously of the view that ML should relocate, my client is prepared to entertain entering into a Section 30 Agreement under the *Expropriations Act*. Please confirm if you are prepared to recommend to the City that it submit such an offer and enter into those negotiations.

On more than one occasion, my client has presented you and other City politicians with potential sites to which it was prepared to relocate its concrete facility, but in each instance the City, including yourself, have not supported these alternate locations.

In fact, my client had even entered into a conditional agreement to purchase one of the sites on Martin Grove Road, that was in a heavy industrial zoned neighbourhood and in close proximity to another concrete batching facility. The Martin Grove site required a technical minor variance to facilitate my client's use of it for its intended purpose. but neither Councillor Doug Ford. Yourself, or any of the City planning staff were prepared to support the minor variance application that would have been required, thus negating this opportunity you had to assist ML in its efforts to relocate away from 29 Judson Street. Thus, you are, in part, one of the reasons they are still there.

The variances sought by my client have no relationship to the alleged community concerns you raise in your letter. The buildings on the site are legal non-conforming as the notice from the Committee states, and many of the variances relate to issues such as setbacks and landscape buffer widths. Your letter is yet another flagrant attempt to frustrate and interfere with my client's ability to conduct its business.

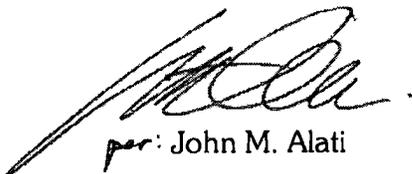


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Finally, Mr. Dan Irwin, who generates the majority of complaints against my client and its operation, has been complaining that ML's operation has been a problem for him since 2007. When Mr. Irwin purchased his property directly across the street from 29 Judson Street, he knew that my client's lands were zoned for heavy industrial uses, including concrete batching.

I look forward to hearing that you are prepared to recommend the City enter into expropriation negotiations so that my client can relocate.

Yours truly,
DAVIES HOWE PARTNERS LLP



per: John M. Alati

copy: Councillor Doug Ford
Client