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18 October 2012

BY HAND DELIVERY

Chair and Members
Atlanta Urban Design Commission
City of Atlanta
55 Trinity Avenue, S.W., Suite 3350
Atlanta, Georgia 30303-0308



COPY

Re: Comments regarding RC-12-210 / de-designation of
771 Spring Street, N.W. a/k/a Crum & Forster Building (Z-12-021)

Dear Chairman Reed and Commission Members:

This firm represents the Atlanta Preservation Center, Inc., an education and advocacy agency for preservation in the City of Atlanta. APC has closely followed all activity related to the Crum & Forster Building over the past 4 years, including submissions of documents and testimony in opposition to demolition application CA4ER-12-068, which was unanimously denied by this Commission on 8 August 2012. Atlanta Preservation Center opposes Z-12-021 and would like to explain the basis of our opposition.

A timeline of events surrounding this property is needed to understand the current situation:

- 11 July 2008. Office of Planning denies Georgia Tech Foundation's ("Foundation") application for SAP (SAP-08-024). The SAP request was to demolish the Crum & Forster Building and replace it with surface parking. The SAP was denied because SPI-16 regulations prohibit surface parking as a principal permitted use. (See Code § 16-18P.022.1.b.) If the building was removed, parking would become the principal use, rather than a use that is accessory to the building, and hence would clearly violate the zoning.
- 12 March 2009. The Board of Zoning Adjustment ("BZA") denies Foundation's appeal of the SAP denial.
- 9 April 2009. Foundation sues the "BZA" and the "City of Atlanta" in Fulton Superior Court (2009-CV-167390).

- 25 August 2009. City Council unanimously approves and Mayor Franklin signs legislation 09-O-0806 designating Crum & Forster Building to LBS category.
- September 2009. Foundation sues over the LBS designation by amending their pending lawsuit.
- 6 December 2010. Foundation's claim for \$11 million in damages due to imposition of the LBS zoning is denied by City Council. (10-R-2048)
- Early 2012. Foundation and City Attorneys agree to allow Foundation to (i) attempt to secure Type IV CA from AUDC; and (ii) attempt to secure passage of legislation by City Council de-designating portions of Crum & Forster site. Evidently, the thinking was that if these events occurred, the litigation would become moot. The legislation referenced in (ii) is what is now before you.
- 8 August 2012. AUDC unanimously denies Type IV CA for demolition after 3 hearings and months of review.
- 17 August 2012. Foundation's legal counsel writes letter to Superior Court Judge asking for hearing, characterizing this Commission's CA decision as "political" ("...the matter was then caught up in the political process again") (attached as "A"). The Foundation included the Economic Review Panel's report in the letter to the court but failed to include any other evidence.
- 24 September 2012. The hearing on the BZA appeal in Superior Court is specially set for 9:30 a.m. Just before the case was called, and before any evidence was reviewed or argument heard by the Court, the Foundation's legal counsel and the City Attorney's Office presented a signed "settlement" in the form of a "consent order" to the Court. The Court signed the Consent Order (attached as "B"). It orders the BZA to order Planning "to grant SAP-08-024" within 10 days of the BZA hearing, which SAP would allow the demolition of the Crum & Forster Building and replacement with surface parking. The hearing before the BZA is scheduled for 1 November 2012 at 12:00 noon.
- 10 October 2012. The second piece of the early 2012 resolution proffer – de-designation legislation – comes before the AUDC for review and comment. It was deferred until 24 October 2012.

The two defendants in the referenced litigation are the “City of Atlanta” and the “Board of Zoning Adjustment.” So far as we can ascertain, neither the Atlanta City Council nor the BZA authorized settlement of this case. Nevertheless, the case was settled by the City Attorney’s Office prior to any hearing on the merits of the case in Superior Court. Since the Consent Order “requires” the SAP be issued, it is expected that the Crum & Forster Building will be demolished within a matter of weeks.

APA respectfully submits:

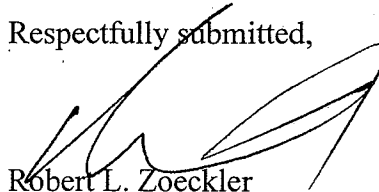
1. The City Attorney’s Office did not have authority to settle this case as neither the defendant BZA nor the City Council (the legislative branch of the defendant “City of Atlanta”) approved the settlement. Upon information and belief, APC does not believe that the BZA, the Council or this Commission even knew the matter had been settled until after it occurred.
2. The hard work of the AUDC in designating the property LBS, and later reviewing at great length and unanimously denying the Type IV demolition CA, has been entirely eviscerated by this settlement without the merits of its decision, or that of the BZA or City Council, ever having been judicially reviewed and reversed. Every decision of every City of Atlanta entity over the past four years has denied the Foundation’s position.
3. The BZA is a quasi-judicial independent Board created and appointed by City Council. Its decision in 2009 to deny the Foundation’s appeal was based upon a clear violation of the SPI-16 zoning and should not be allowed to be overturned except by judicial review. We submit that the Consent Order is ultra vires and void.
4. It would appear that this Commission’s legal counsel may now be in a position of conflict regarding further representation of this Commission. A similar conflict of interest may exist with respect to the City Attorney’s representation of the BZA at this time. This is because the City Attorney’s Office is advocating a position that is opposite to prior decisions of both Boards.

Clearly, this unfortunate and, we submit, invalid “settlement” procedure should not be exacerbated by approval of the de-designation legislation now pending. Accordingly, we urge this Commission to recommend that Z-12-021 be adversely by City Council. We respectfully further ask that this Commission consider making inquiry into the procedures followed by the City Attorney’s Office to settle this case prior to judicial hearing, and provide written comment

Chair and Members
Atlanta Urban Design Commission
18 October 2012
Page 4

to the Board of Zoning Adjustment on or before the BZA's 1 November 2012 hearing pursuant to your authority to do so set forth in Code § 6-4043(e)(2) and (6) (attached as "C").

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RLZ', written over a horizontal line.

Robert L. Zoeckler
Attorney for Atlanta Preservation Center, Inc.

RLZ/mbc

Enclosures:

cc: Doug Young, Executive Director, AUDC (for placement in official record)
Mary Huber, Esq. (APC co-counsel)

ROBBINS

LITIGATION AND REGULATORY LAW

RICHARD L. ROBBINS
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August 17, 2012

VIA PDF AND U.S. MAIL

The Honorable John J. Goger
Superior Court of Fulton County
185 Central Avenue, S.W.
Justice Center Tower
Atlanta, Georgia 30303

Re: Georgia Tech Foundation Real Estate Corporation v.
City of Atlanta, et al., Civil Action File No. 2009-CV-167390

Dear Judge Goger:

On behalf of the Plaintiff, I am disappointed to report that a condition necessary to cause the Settlement Agreement to be fully performed has not been satisfied and that as a result the litigation must go forward. All parties will agree the Settlement Agreement is null and void by its terms.

We had previously sent you a copy of the Settlement Agreement. One of the conditions was that Plaintiff, in the context of settlement, would apply for a Certificate of Appropriateness to permit partial demolition of the building. Plaintiff obviously did not agree that it needed such a Certificate but agreed to apply if it would resolve the litigation. Plaintiff duly applied for a Certificate, and the Economic Review Board, appointed under the Urban Design Commission (UDC) rules and composed of three real estate professionals, unanimously supported the Certificate. (See enclosed.) Unfortunately, the matter was then caught up in the political process again, and the UDC rejected the recommendation of its own Economic Review Board by a unanimous vote and denied the Certificate. As a result, the settlement cannot go forward.

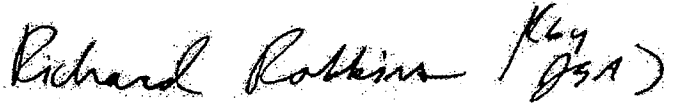
I believe the parties agree that the appropriate final hearing is on the pending appeal from the Board of Zoning Appeals, which is based on the record. While Plaintiff also challenged the City's landmark designation for the building made after the denial of the appeal, we would submit that the appeal would take

The Honorable John J. Goger
August 17, 2012
Page 2

care of the issue one way or the other. If our appeal is upheld, obviously, Plaintiff would be "grandfathered" under the prior zoning ordinance, and the historic designation would not apply.

Please let us know if you would like a conference to discuss this matter. Otherwise, we will be ready for a hearing, although, if the City is able to propose an alternative solution which we believe will be effective, we are willing to be cooperative.

Sincerely yours,

Handwritten signature of Richard L. Robbins in black ink. The signature is written in a cursive style and includes the initials "R64" and "GSA" in parentheses at the end.

Richard L. Robbins
Counsel for Georgia Tech
Foundation Real Estate Corporation

/sdm
Enclosure

cc: Lemuel H. Ward, Esq., Counsel for Defendants
Jeffrey S. Haymore, Esq. Co-Counsel for Defendants
Jason S. Alloy, Esq., Co-Counsel for Plaintiff
Robert S. Highsmith, Jr., Esq.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIA TECH FOUNDATION)
REAL ESTATE HOLDING)
CORPORATION)

Plaintiff/Petitioner,)

v.)

CITY OF ATLANTA, GEORGIA AND)
CITY OF ATLANTA BOARD OF)
ZONING ADJUSTMENT, by and through)
Its members, HENRY BRYANT, JOHNNY)
EDWARDS, NAOMI WARD,)
DAVID DORSEY, and TAD CHRISTIAN)

Defendants/Respondents.)

CIVIL ACTION FILE
NO. 2009-CV-167390

CONSENT ORDER

The parties, by their counsel having consented hereto, and after review of the record in this case, the Court hereby orders as follows:

1. In this lawsuit, Plaintiff Georgia Tech Foundation Real Estate Holding Corporation (“GTF”) appeals from the denial of a Special Administrative Permit by the City of Atlanta and the denial of Plaintiff’s appeal of that action by the City of Atlanta Board of Zoning Adjustment (BZA).

2. GTF is the owner of property located at 771 Spring Street, N.W., Atlanta, Georgia (the “Property”), which consists of an unused parking lot and a three-story building known as the Crum & Forster building. GTF purchased the

Property in December 2007 for \$11,000,000 to develop the Property in furtherance of Georgia Tech's Master Plan and specifically to expand Technology Square. At the time GTF purchased the property and sought a Special Administrative Permit, the Property was not subject to any historic designation.

3. In April 2008, GTF submitted a Special Administrative Permit Application (SAP-08-024) to demolish the Crum & Forster building (the "SAP" or the "permit"). In July 2008, the City Bureau of Planning denied the SAP. GTF subsequently filed suit.

4. On or about August 25, 2009, while this litigation was pending the City of Atlanta designated the Property and Crum & Forster building on the Property as a Landmark Building or Site pursuant to Section 16-20.006 of the Zoning Ordinance of the City of Atlanta.

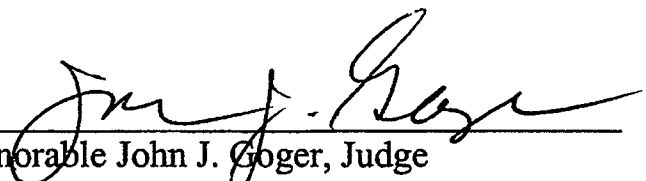
5. The parties have agreed that, in the context of settlement and in consideration of the terms of this Order, the denial of the SAP should be remanded to the BZA. At its next regularly scheduled hearing, the BZA shall order, with or without conditions, not inconsistent with this Order, the Director of the Office of Planning to grant SAP-08-024 within 10 days of its hearing.

6. In the event the SAP is not timely approved upon remand or the other conditions of this order are not satisfied, GTF shall have thirty days from the date

of such action to file any objection thereto, and the Court shall have a hearing on such objections.

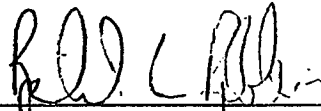
7. The case is otherwise dismissed without prejudice, provided that this Court shall retain jurisdiction of this matter for enforcement of the foregoing Order.

SO ORDERED this 24 day of September 2012.



Honorable John J. Goger, Judge
Superior Court of Fulton County

Respectfully submitted, this 17th day of September, 2012.



Richard L. Robbins
Georgia Bar No. 608030
Jason S. Alloy
Georgia Bar No. 013188
**Robbins Ross Alloy Belinfante Littlefield
LLC**
999 Peachtree St., Suite 1120
Atlanta, Georgia 30309
Counsel for Plaintiff



ERIC RICHARDSON GA BAR No. 233873
Attorney for Defendants/Respondents

ARTICLE D. - HISTORIC PRESERVATION PROGRAM  2011

Sec. 6-4041. - Purpose and declaration of public policy.

Sec. 6-4042. - Definitions.

Sec. 6-4043. - Atlanta Urban Design Commission.

Sec. 6-4044. - Executive director.

Sec. 6-4045. - Urban Conservation Districts.

Secs. 6-4046—6-5000. - Reserved.

Sec. 6-4041. - Purpose and declaration of public policy. 

(a)*Purpose:* The council finds that many buildings, sites and districts, as herein defined, having a special character or a special historic or aesthetic interest or value, or representing the finest architectural products of distinct periods in the history of the city have been destroyed or uprooted, notwithstanding the feasibility of preserving and continuing the use of such buildings, sites and districts, and without adequate consideration of the irreplaceable loss to the people of the city of the aesthetic, educational, economic and historic values represented by such buildings, sites and districts. In addition, distinct areas may be similarly uprooted or may have their distinctiveness destroyed, although the preservation thereof may be both feasible and desirable. It is the finding of the council that the standing of this city as the capital of government, culture, business and education and as a major tourist and convention center must be maintained and enhanced by preserving the historical and architectural heritage of the city and by preventing the destruction of such cultural assets. The council further finds that certain aspects of development, such as the spatial relationships of structures and open spaces to each other and the appearance of buildings and open spaces as they contribute to the attractiveness, function, and character of a district or of the city as a whole, require the timely exercise of judgment in the public interest by a public body qualified to evaluate the design of proposed new developments or redevelopments within the city.

(b)*Declaration of Public Policy:* It is hereby declared as a matter of public policy that the identification, protection, enhancement, perpetuation and use of buildings, sites and districts of special character or of a special historic or aesthetic interest or value is a public necessity and is required in the interest of health, prosperity, safety, education and general welfare of the people. It is further declared as a matter of public policy that the promotion of sound urban design principles in order to provide a built environment which is attractive and functional is a public necessity and is required in the interest of the health, prosperity, safety, education and general welfare of the people. Accordingly, the public policy objectives of this article are as follows:

- (1) To effect and accomplish the protection, enhancement and perpetuation of such buildings, sites and districts which represent or reflect special elements of the city's cultural, social, economic and architectural history;
- (2) To safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such buildings, sites and districts;
- (3) To stabilize and improve property values in such buildings, sites and districts;

- (4) To foster civic pride in the beauty and noble accomplishments of the past;
- (5) To protect and enhance the city's attractions to tourists and visitors and thereby support and stimulate business and industry;
- (6) To strengthen the economy of the city;
- (7) To promote the use of such buildings, sites and districts for the education, pleasure and general welfare of the people of the city;
- (8) To promote attention to sound design principles in areas of new development and redevelopment;
- (9) To raise the level of community understanding and expectation for quality in the built environment; and
- (10) To implement the Comprehensive Development Plan of the City of Atlanta.

(Code 1977, § 6-4041)

Sec. 6-4042. - Definitions.

The definitions contained in section 16-20.002 of the Code of Ordinances, as amended, shall apply to this article.

(Code 1977, § 6-4042)

Sec. 6-4043. - Atlanta Urban Design Commission.

(a) *Creation:* There is hereby created a commission to be known as the Atlanta Urban Design Commission, hereinafter called the commission.

(b) *Membership:*

- (1) The commission shall consist of 11 members who are residents of the City of Atlanta.
- (2) All vacancies on the commission, whether occurring due to expiration of an existing term, resignation, termination by operation of the rules of procedure of the commission, or any other valid reason, shall be filled by the designated appointing authority as enumerated in this section.
- (3) The executive director of the urban design commission shall notify the council or the mayor's office in writing that a position is vacant within 15 days of the vacancy. The city council shall appoint the: a) real estate professional, b) lawyer, c) neighborhood representative, d) land developer, e) architect I, f) historian. The Mayor shall appoint the: a) artist, b) landscape architect, and c) historic preservationist. The president of council shall appoint the: a) architect II, and b) urban planner.
- (4) The council shall make nominations in a rotating manner as described in (a) through (f) below. Once notified of a vacancy in a position for which the council is the designated appointing authority, a nomination shall be submitted in writing to the president of council by the two district representatives and the representative at-large. A total of six (6) members shall be appointed in the following manner:
 - a. Districts 1 and 2, and At-large Post 1;
 - b. Districts 3 and 4, and At-large Post 1;
 - c. Districts 5 and 6; and At-large Post 2;
 - d. Districts 7 and 8; and At-large Post 2;
 - e. Districts 9 and 10; and At-large Post 3;
 - f. Districts 11 and 12 and At-large Post 3.

(5) All nominations shall be confirmed by a majority of council members present and voting on these nominations. If the city council fails to make any required nomination in the above-stated manner within 30 days following the date of written notice of a vacancy, the alternate appointing body may make that nomination. For example, if the council or the council president fails to make a nomination within the 30-day period, the mayor may make a nomination. Alternatively, if the mayor fails to make a nomination within the 30-day period, the council or the council president may make a nomination.

(6) All members shall serve a term of three years. The member can continue to serve until a successor is appointed. No person shall serve as a member longer than two consecutive terms or more than a total of three terms. Commission members shall be paid \$50.00 for each commission meeting, which he or she attends. Attendance at meetings means that a member is present for a majority of the meeting, that is, more than half of the time the meeting was convened.

(c) *Qualifications:* The composition of the 11-member commission shall include two (2) registered architects, one (1) registered landscape architect, one (1) urban planner, one (1) neighborhood representative, one (1) real estate professional, one (1) land developer, one (1) lawyer, one (1) historian, one (1) artist, and one (1) historic preservation professional.

(d) *Officers:* The commission shall hold an organization meeting in January of each year to elect one (1) member to serve as chair of the commission and another member to serve as vice-chair of the commission.

(e) Powers and Duties: The commission is the city agency responsible for developing and administering the city's historic preservation and urban design activities and shall have the following powers and duties:

(1) The commission shall hold public hearings and make nominations to the city council for the designation of buildings, sites and districts for each category of protection which are established by chapter 20 of part 16 of the Code of Ordinances.

(2) The commission shall have the responsibility of administering the city historic preservation regulations and for approving or disapproving applications for certificates of appropriateness for all buildings, sites and districts which are designated for protection by the city council pursuant to this article or by chapter 20 part 16 of the Code of Ordinances.

(3) The commission shall review all works of art for which the city has contracted, or proposed to contract, or which are to be placed on the property of the city, or which are to become the property of the city by purchase or gift.

(4) The commission shall review the proposed location and design of any proposed park and any plan or proposal for the relocation or significant change, alteration or addition to any existing park.

(5) The commission shall review the proposed location and design of buildings, bridges, viaducts, elevated ways, streets, highways, gates, fences, railings, lamp standards, and other structures or fixtures to be erected or placed on land belonging to the city, or on any private or public property which extends over or upon any property or right-of-way owned or controlled by the city.

(6) The commission shall review and make written recommendation to the zoning review board and to the board of zoning adjustment on any proposed action pending before said boards regarding any building, site or district which has been designated for historic protection pursuant to this article or by chapter 20 of part 16 of the Code of Ordinances.

(7)The commission shall review the alteration, demolition, movement or construction of any structure, site or building which involves the use of capital expenditures by the City of Atlanta or capital expenditures by other public agencies or authorities which are required to submit plans for review by the city.

(8)The commission shall seek to increase public awareness of the value of historic preservation and urban design by developing and participating in public information programs. ←

(9)The commission shall have the power to adopt rules of procedure in accordance with the provisions of this part.

(10)The commission shall hold public hearing and make recommendations to the city council for the issuance of permits to move or disturb cemeteries or graveyards in accordance with the procedures set forth in chapter 38 of part 2 of the Atlanta Code as amended.

(f) *Rules of Procedure*: The commission shall adopt rules of procedure, and such rules and any amendments thereto shall be filed with the clerk of council; and copies of such rules shall be made available to the general public upon request during normal business hours.

(g) *Records*: The director shall cause to be made and maintain a tape recording of each meeting of the commission and minutes of all its proceedings, including the vote of each member upon each question, or if absent or failing to vote, indicating such fact. All records of the commission, including all evidence or other documentation submitted to the commission, shall be maintained by the director at the office of the commission.

(Code 1977, § 6-4043; Ord. No. 1998-88, § 1, 12-15-98; Ord. No. 1999-45, § 1, 5-11-99; Ord. No. 2006-58, § 2, 8-29-06)

Charter reference— Boards and commissions, § 3-401.

Code of ordinances reference—Boards, councils and commissions, § 2-1851 et seq.

Sec. 6-4044. - Executive director.

(a) *Creation*: There shall be by appointment of the mayor an executive director, hereafter "director," of the urban design commission.

(b) *Qualifications*: The director shall have expertise in historic preservation, architectural history, or a closely related field.

(c) *Powers and Duties*: The director shall have the following powers and duties:

- (1)To administer the city's historic preservation regulations;
- (2)To recommend to the commission nominations of buildings, sites and districts for each category of protection established by this article or by chapter 20 of part 16 of the Code of Ordinances;
- (3)To make written findings and recommendations to the commission on all proposed nominations and on all requests for certificates of appropriateness and for variances and special exceptions;
- (4)To research and recommend to the state historic preservation officer buildings, sites and districts for nomination to the National Register of Historic Places; such recommendations shall be guided by the criteria established in the National Historic Preservation Act of 1966, as amended;
- (5)To maintain the office, employ and supervise the staff, maintain records of the commission, and to delegate to members of said staff such duties as the director may deem appropriate;
- (6)To maintain and regularly update an inventory of historic properties;

- (7) To assist the bureau of planning in the preparation and update of the historic preservation and urban design components of the city's comprehensive development plan;
- (8) To institute and participate in programs designed to increase public awareness of the value of historic preservation and urban design;
- (9) To make application for state, federal or private funds on behalf of the commission, and upon approval by the mayor and city council, to use any funds so received in the performance of duties prescribed in this part;
- (10) To submit budget requests annually in a manner prescribed by the chief administrative officer, as established by ordinance or regulations of the city;
- (11) To prepare an annual report of the commission's activities and to submit such annual report to the commission and to the mayor and city council; and
- (12) To decide and issue type I certificates of appropriateness pursuant to section 16-20.008(a) of the Code of Ordinances.
- (13) To decide and issue type II certificates of appropriateness where provided for by the customized district regulations.
- (14) To develop a fee schedule for the services performed by the commission staff and for the hearing of applications by the commission and to present such schedule to the commission for review. The fees proposed by the director shall also be approved by the city council which shall have the final authority to set such fees.

(Code 1977, § 6-4044; Ord. No. 2000-25, § 1, 5-9-00; Ord. No. 2004-08, § 12, 2-10-04; Ord. No. 2008-45(08-O-1001), § 1, 6-24-08)

Sec. 6-4045. - Urban Conservation Districts.

All Urban Conservation Districts existing at the time of adoption of this chapter, and all regulations applicable thereto, shall continue in force and effect for a period of 24 months following the adoption of this chapter.

(Code 1977, § 6-4045)

Secs. 6-4046—6-5000. - Reserved.

FOOTNOTE(S):

⁽²⁰¹⁾ Code of Ordinances references—Community development, ch. 54; preferential assessments for landmark historic properties, § 146-38 [\(Back\)](#)

⁽²⁰¹⁾ Cross reference— Zoning provisions relating to landmarks, landmark districts, historic buildings and sites, historic districts, and conservation districts, § 16-20.001 et seq.; Cabbagetown landmark district, § 16-20A.001 et seq.; Druid Hills landmark district, § 16-20B.001 et seq.; Martin Luther King, Jr. landmark district, § 16-20C.001 et seq.; Washington Park landmark district, § 16-20D.001 et seq.; Oakland Cemetery landmark district, § 16-20E.001 et seq.; Baltimore Block landmark district, 16-20F.001 et seq.; West End historic district, § 16-20G.001 et seq.; Hotel Row landmark district, § 16-20H.001 et seq.; Adair Park historic district, § 16-20I.001 et seq.; Whittier Mill historic district, § 16-20J.001 et seq. [\(Back\)](#)

⁽²⁰¹⁾ Related law reference—Historic zones, § 7-1 [\(Back\)](#)