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May 29, 2023

Jeannie Myers
Secretary-Treasurer, Committee of Adjustment
City of Brampton
2 Wellington Street West,
Brampton, Ontario
L6Y 4R2

Dear Ms. Myers:

**Re: Planning Application No. B-2022-0025 A 2022372/373
9893 Torbram Road, Brampton**

I am the lawyer acting for Mr. Sradhananda Mishra in the Superior Court of Justice action against Shree Jagannath Temple Canada (“SJTC”) with Court File Number CV-21-006735659-0000 (the “Civil Action”), involving 9893 Torbram Road, Brampton (the “Property”). I hereby make the following submissions to the Hearing of the Committee of Adjustments (the “Committee”) scheduled for Tuesday, May 30, 2023, in response to letters from SJTC counsel Wade Morris dated March 24, 2023 and May 25, 2023.

In his March 24 letter, Mr. Morris concludes that in light of the Property ownership issues in the Civil Action, “...the committee is without jurisdiction to act, and cannot consider the application at this time”.

Mr. Anthony-George D’Andrea, counsel for the City of Brampton, responded to Mr. Morris via email dated March 27, 2023 that: “In the absence of a court order explicitly preventing the registered owner from having any dealings with the subject lands...City staff will continue to process and evaluate the above noted development applications in the normal course”. No such court order has been produced by SJTC. In fact, SJTC has not registered a Certificate of Pending Litigation on the property as threatened in Mr. Morris’ letter of March 24.

In his subsequent letter of May 30, 2023, Mr. Morris simply presents more arguments on the issues at play in the Civil Action. Mr. Mishra rejects the submissions of Mr. Morris. He relies upon the facts and arguments set out in the Statement of Defence and Counterclaim in the Civil Action. However, those issues are to be decided before the Superior Court of Justice, not before the Committee, which has no jurisdiction to decide them.

It is respectfully submitted that the narrow, relevant question to be answered by the Committee is whether the applicant, Sradhananda Mishra, has the status to make the application. Section 45 of the *Planning Act* reads:

45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

The *Planning Act* does not define “owner”. However, with respect to land ownership, the word “owner” would ordinarily be understood to mean “one who owns the fee in the land”. Who owns the “fee” in the subject Property? The answer according to the Ontario Land Registry Office is clear: Sradhananda Mishra is the owner of the “fee”. Attached hereto are four Parcel Registers (“PINs”) for the Property from the Land Registry Office. The PINs are registered pursuant to the *Land Titles Act*. In each of the PINs the owner of the “Fee Simple” is the applicant Mr. Mishra. Furthermore, in three of the PINs, Mr. Mishra is recognized as holding “Fee Simple Absolute”, while in the fourth he holds title as “LT Conversion Qualified”, with no qualifications for unregistered equitable interests.

Also attached is the registered Transfer of the Property by which Mr. Mishra took title. The Transfer shows the Transferee as Mr. Mishra. The Land Transfer Tax Statements attached to the Transfer, confirms that he is the Transferee and does not state that he is holding the land in trust for anyone.

The information from the Land Registry Office is sufficient on its own to answer the question whether the applicant, Mr. Mishra, has the status to make the application before the Committee. In the Divisional Court decision *Williams v. Ontario* 2012 ONSC 5780 at p. 2, the three Judge Panel held that:

Ontario operates two land registration systems. In the land titles system, a statement of title confirming ownership is provided for each registered property and the Ontario government guarantees that the owner is the party named on the register.


That land titles system recognizes and guarantees that Mr. Mishra is owner of the Property. He is the “owner” as referenced in s. 45 of the *Planning Act*. There is nothing preventing Mr. Mishra from dealing with the Property. The City staff and the Committee should continue to process and evaluate the application in the normal course. The issues raised in the Civil Action between Mr. Mishra and SJTC remain to be resolved at the Superior Court of Justice. Those issues are not within the jurisdiction of the Committee.

In his letter of May 25, Mr. Morris cites the case of *Kokoshi v. Datsun Property Management Ltd.* 2019 HRTO 1072 (“Kokoshi”) in support of his argument that the Committee should defer hearing the application pending resolution of the Civil Action. The Kokoshi case is irrelevant to the matter before the Committee. Kokoshi was a decision of the Ontario Human Rights Tribunal (the “Tribunal”). The Adjudicator deferred the human rights application until after completion of a civil

action relying expressly on Rule 14.1 of the Tribunal's *Rules of Procedure* which states that the Tribunal may defer consideration of an application on such terms as it may determine. This Rule is specific to the Tribunal. It has no applicability to the *Planning Act* or the Committee. There is no rule providing for such a deferral by the Committee.

The Committee is within its jurisdiction under the *Planning Act* to proceed with the application filed by Mr. Mishra. He is the "owner" of the Property. It is respectfully submitted that there are no grounds upon which the application should be dismissed or deferred.

Yours truly,

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Alan G. McConnell