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25 May 2023

Jeanie 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**

Please be reminded that I am the lawyer for Shree Jagannath Temple Canada (“**SJTC**”) in connection with a property situated at 9893 Torbram Road, Brampton (the “**Property**”).

We understand this application is scheduled to return to the committee of adjustment on May 30, 2023. We wish to provide the following submissions to supplement the submissions filed earlier, namely, my letter dated 24 March 2023 (with enclosures), and the letters of opposition filed on behalf of SJTC separately.

1. The applicant is not the beneficial owner of the land.

As you know from my letter of 24 March 2023, there is currently a lawsuit in the Superior Court of Justice bearing court file number CV-21-00673659-0000, in which SJTC is asserting it is the beneficial owner of the Property.

You will find enclosed in support of this position the following documents: a declaration of trust dated January 26, 2018 signed by the applicant, Mr. Mishra, and a Pledge Letter dated November 12, 2018, also signed by Mr. Mishra.

The declaration of trust reads, in part, that the trustee (i.e. Mr. Mishra), has no personal or beneficial interest in the lands and is holding the land as a bare trustee. The declaration identifies the owner as SJTC. The pledge letter affirms SJTC’s status as beneficial owner and purports to add additional terms under which Mr. Mishra would execute a deed in favour of SJTC. We would note that it appears that Mr. Mishra did not disclose his status as bare trustee in making this application to the committee of adjustment.

Our client has also advised us that there is a YouTube video in which Mr. Mishra states, at approximately 3 minutes from the start, that he had donated 2.5 acres of land worth \$2.2 million to the Temple. The link to the YouTube video is here and is in the Hindi language: <https://www.youtube.com/watch?v=b6p7QFeABU4>

As I have indicated in my previous letter, the person who is authorized to make application under the *Planning Act* is the owner. The owner must mean the beneficial owner and, at the very least, the consent of the beneficial owner (SJTC) must be obtained. SJTC objects to this application and disclaims it in its entirety.

We would therefore submit that given that Mr. Mishra is not the beneficial owner of the property, the application is of no force or effect, cannot be considered by the committee, and must be dismissed.

2. The committee of adjustment should defer to the jurisdiction of the Superior Court of Justice in respect of the ownership dispute and refuse to consider the application.

SJTC respectfully submits that the committee of adjustment lacks jurisdiction to consider the application while the ownership of the subject property remains in dispute in the Superior Court of Justice.

SJTC submits that the enclosures are dispositive of its status as the beneficial and true owner of the Property. Despite Mr. Mishra's denials, an orderly planning process requires that the forum with jurisdiction over the ownership issue be permitted to decide that issue without being usurped by other processes.

The issue of ownership is a predicate issue, which must be resolved, prior to the committee of adjustment considering this application. There is precedent in which tribunals have deferred matters because a proceeding in the Superior Court of Justice dealing with overlapping legal issues. See, for example, the case of *Kokoshi v. Datsun Property Management Ltd.*, 2019 HRTO 1072, in which the Human Rights Tribunal of Ontario considered that application before the Tribunal involved substantial overlap between the facts and issues raised in pending claims before the Superior Court of Justice. In that case, the Tribunal deferred consideration of the application pending the outcome of the proceedings before the Superior Court of Justice.

The *Planning Act* does not vest the committee of adjustment with the jurisdiction to determine the issue of ownership. The jurisdiction of the Superior Court of Justice to determine property rights is not ousted by the *Planning Act*. There is no language in the *Planning Act* that gives the committee of adjustment the authority to decide the issue of ownership explicitly or implicitly. It takes very clear legislative language to oust the jurisdiction of a superior court and there is a core jurisdiction that cannot be out-sourced to an administrative tribunal (see, for example, *1637063 Ontario Inc. v. 2404099 Ontario Ltd.*, 2019 ONSC 7511 at para. 68, per Perell J.).

The statement of claim for SJTC's lawsuit relies on s. 4 of the *Religious Organizations' Lands Act* and s. 10(1)(f) of the *Trustee Act* in connection with the relief being sought in that lawsuit. Both of these statutes vest jurisdiction in the Superior Court of Justice to determine the matters in issue under those acts.

There are good policy reasons why the committee should decline to consider the application. For example, imagine a situation where the committee were to overlook a dispute as to ownership, and then approves an application by a person who, it turns out in the eyes of the court, is not the actual owner of the property. The result would be the effective legal nullification of the committee's decision, needless expenditure of resources, and potential civil liability.

For all of the above reasons, the committee of adjustment should defer to the jurisdiction of the Superior Court of Justice in light of the ownership dispute, and refuse to consider this application until such time as the ownership issue is resolved.

**Yours truly,
Wade Morris
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Encl.:

- 1- Declaration of Trust dated January 26, 2018
- 2- Pledge Letter dated November 12, 2018

c. Client

c. Aimee Powell, Chief Planning Officer & President, Powell Planning & Associates (via email: aimee@powellplanning.ca)

c. Allan McConnell, Lawyer for Sradhananda Mishra and Jagannath Temple Toronto (via email: alan@mcconnelllaw.ca)