

CITATION: Value Assets Inc. v. Downtown Brampton Development Corporation, 2024 ONSC 6065
DIVISIONAL COURT FILE NO.: 052/24
DATE: 20241206

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Jarvis, Sachs, and Matheson, JJ.

BETWEEN:

| | | |
|--------------------------------|---|--|
| VALUE ASSETS INC., ARSA CORP. |) | |
| LTD., SHAHI RASSOI, 1000755644 |) | <i>Manjinder Singh</i> , for the Applicants |
| ONTARIO CORPORATION, |) | |
| SINGHANIA’S ENTERPRISES INC., |) | |
| SHAHI TADKA JUNCTION INC. and |) | |
| PUNJAB05 BRAR LEGACY INC. |) | |
| |) | |
| |) | |
| Applicants |) | |
| – and – |) | |
| |) | |
| DOWNTOWN BRAMPTON |) | <i>James S. G. Macdonald</i> and <i>Melissa Rupoli</i> , |
| DEVELOPMENT CORPORATION |) | for the Respondent, Downtown Brampton |
| and CITY OF BRAMPTON |) | Development Corporation |
| |) | |
| |) | |
| Respondents |) | <i>James Renihan</i> , for the Respondent, City of |
| |) | Brampton |
| |) | |
| |) | HEARD: October 30, 2024 (via |
| |) | videoconference) |

REASONS FOR JUDGMENT

Jarvis J.:

[1] The Applicant (“Value Assets”) is a company that owns property in the City of Brampton (“the City”). Mohamad Hanif is the president of Value Assets. The co-applicants are independently owned food service trucks located on and operating from the Value Asset property. The Respondent, Downtown Brampton Development Corporation (“BIA”), is a

municipal corporation created by the City of Brampton to promote downtown Brampton as a business and shopping area.¹

- [2] On February 24, 2023, the Board of the BIA (the “Board”) endorsed a proposal by Mr. Hanif for a Food District that would offer food truck services on the Value Asset property. The City approved a downtown rezoning map for the Food District and soon afterwards the applicants began offering outdoor food truck services there. A year later, on April 30, 2024, the BIA withdrew its support for the Food District and gave the applicants thirty days’ notice to remove the food trucks (the “Decision”).
- [3] The applicants seek judicial review of the Decision on the basis that it was procedurally unfair and unreasonable. For the reasons below, I would quash the Decision of the BIA to withdraw its consent to the applicants’ operation of the Food District and require that, if the BIA wishes to pursue steps that would change or revoke its approval, it must do so in a procedurally fair process in accordance with these reasons for decision.

Background

- [4] Value Assets operated a retail clothing store (“Dress People”) on property it owned in the City. It proposed to close the store and create a Food District which would use both the store and food trucks parked on its property to deliver a variety of food offerings. In a February 24, 2023, letter the Board endorsed the proposal.

The Food District proposal for McArter Lane fits very nicely into a number of initiatives that the City of Brampton and the Downtown Brampton BIA have been collaborating on specifically on Main Street North area. Furthermore, Food Halls and Districts have been developed in several downtowns to revitalize a downtown areas [*sic*].

- [5] To ensure the success of the Food District, the Board attached the following conditions to its support:

Ongoing cleaning to keep [the] area welcoming and inviting on a 24/7 basis.

Enhanced lighting in McArter Lane to ensure this business concept is well lit for consumers

Beautification enhancements-patio furniture and landscaping.

¹ In communications between the parties, BIA is referenced as DBBIA. For the purposes of this decision BIA will be used to refer to the Downtown Brampton Development Corporation.

Quarterly reports to assess pilot project with DBBIA and local businesses.

Private Washrooms for clientele in the existing Dress People building.

Prominent signage for parking in Nelson Parking Garage.

- [6] The Board’s endorsement also highlighted that if any of the conditions were not followed BIA’s support would be withdrawn.
- [7] The BIA is required to hold held regular Board meetings a minimum of 10 times annually. At its March 21, 2023, meeting, the Board confirmed BIA’s support for the Food District. Shortly afterward, the Food District began operating on April 1, 2023.
- [8] The Food District was unpopular with some local bricks and mortar businesses who offered competing food services. They were angry that the project had been approved.
- [9] The BIA continued its support for the Food District through the 2023 summer period into the Fall. But there were issues (among other things) involving complaints about competition from nearby businesses, the lack of diverse food offerings, congested traffic, noise and garbage.
- [10] On January 30, 2024, the Board held a regular meeting at which one of the agenda items included an update on the Food District and its compliance with the conditions which led to the BIA supporting it. Until then there had been no regular quarterly reports assessing the project. A Special Committee of the Board was formed and undertook an assessment. The committee reported to the Board at its next meeting on February 27, 2024, an outcome of which was that the results of the review would be shared with Mr. Hanif and that he would be given a reasonable amount of time to consider the findings and respond. On March 13, 2024. Mr. Hanif was informed that members of the BIA had conducted a review that yielded “crucial observations and recommendations...”:

Key criteria considered during the evaluation included:

- Ongoing cleaning efforts to maintain a welcoming and inviting food district.
- Enhanced lighting in McArter Lane to ensure the area is well-lit.
- Beautification enhancements, including patio furniture and greenscaping.
- Quarterly reports to evaluate the pilot project in collaboration with the DBBIA and local businesses.
- Provision of private washrooms for customers in the existing Dress People building.
- Installation of prominent signage for parking in the Nelson parking garage.

Based on these criteria, we have formulated the following recommendations:

1. Provide adequate shelter for customers utilizing the Food District.
2. Implement improved lighting for the area surrounding the Food trucks and McArter Lane.
3. Enforce compliance with the City of Brampton Noise By-law 93-84, ensuring that loud music from the Food District ceases after 11 pm.
4. Ensure that washroom signs are visually clear and well-labeled for customer convenience.
5. Foster a diverse selection of food trucks within the food district, representing the rich cultural landscape of the DBBIA.

These recommendations will be followed up with a comprehensive assessment scheduled for May 1st, 2024. This assessment will play a pivotal role in determining the continued support of the DBBIA for the Food District. Please note that the DBBIA retains the right to propose a motion at our next board meeting to discontinue support if necessary.

Should you have any questions or concerns regarding these recommendations, please do not hesitate to reach out. Your feedback is greatly appreciated as we work together to create a thriving and inclusive community hub in Downtown Brampton.

- [11] On March 31, 2024, Mr. Hanif responded, noting that he had not been consulted about the review before receiving the March 13, 2024, email. He provided a detailed update about the applicants' compliance with the March 2023 requirements and stated that he welcomed further discussions about the concerns expressed. Mr. Hanif noted that if any of his responses regarding the criteria in the endorsement letter were not to the BIA's satisfaction, "please notify and work with me to rectify it". The BIA did not respond.
- [12] On April 25, 2024, the Board circulated an Agenda to Board members for its regular meeting on April 30, 2024. Item #7 under "Governance" recorded "Correspondences - Letter received regarding Food District." The agenda did not refer to a motion being brought at the upcoming meeting. After the Agenda was circulated, the Board received emails from other BIA members who offered competing food services proximate to the Food District. Five members whose businesses competed with the applicants attended the meeting and spoke to the Board. Some were encouraged to attend including on the same day as the meeting. However, the applicants were not given notice of the motion and did not have the opportunity to attend the meeting, hear the submissions by the five businesses or respond to them.
- [13] The Minutes for the April 30, 2024, meeting record that after hearing from the business owners who had complained about the Food District, a motion was proposed, and passed,

that the BIA no longer support the Food District due to “complaints and evidence about cleanliness, environmental issues and direct competition” with local businesses. Reference was made to the March 13, 2024, report. No reference was made to Mr. Hanif’s March 31, 2024, response.

- [14] On May 3, 2024, Mr. Hanif was notified that the BIA had decided to immediately withdraw its support for the Food District and that Value Assets and its co-applicants had 30 days’ notice for the food trucks to vacate the Value Asset property. The Board Chair wrote:

Dear Mohamad Hanif,

I am writing to inform you that the Downtown Brampton BIA Board has immediately withdrawn its support of the Food District in McArter Lane. This decision is based on multiple complaints we have received from neighbouring brick-and-mortar businesses and residents, as well as a breach of provision(s) identified in the initial letter of support from the Downtown Brampton BIA dated February 24th, 2023.

We value your business and want you to know that our decision to withdraw support was not arbitrary. It was based on the findings of a report conducted by the Special Committee Reviewing the Food District in McArter Lane Pilot Program, which the DBBIA Board appointed to assess the Food District's effectiveness and impact. The report, received on March 13th, 2024, highlighted several issues, including a lack of diverse food operators and concerns related to cleanliness that led to this decision.

The report made the following recommendations for adoption by May 1st, 2024:

1. Provide adequate shelter for customers using the Food District.
2. Implement improved lighting for the area surrounding the Food trucks and McArter Lane.
3. Enforce compliance with the City of Brampton Notice By-law 93-84, ensuring that loud music from the Food District ceases after 11pm.
4. Ensure washroom signs are visually clear and well-labelled for customer convenience.
5. Foster a diverse selection of food trucks within the food district, representing the rich cultural landscape of the DBBIA.

These recommendations have yet to be adopted.

- [15] This was the first time the applicants had been told that there had been a “special committee” who prepared a report. The applicants did not receive that report until after this application was commenced.
- [16] The letter to Mr. Hanif also noted that, at the meeting, the BIA had received a “delegation” from downtown businesses that had raised concerns, and that the delegation was “an important part of our decision-making process”.
- [17] The reasons for the Board’s withdrawal of support were then listed:
1. The existing food trucks operating in the district are directly competing with brick-and-mortar food operators, which goes against the concerns raised by businesses during the Safety Town Hall meeting held at The Rose in February 2023. During the meeting, the issue of supporting a Piloted Food District was discussed, and the agents of the Food District reassured the businesses present that the Food Trucks operating in the District would not offer items that compete with their brick and-mortar offerings.
 2. The Food Truck District is in breach of the provision(s) outlined in the Downtown Brampton BIA's initial letter of support dated February 24th, 2023, which included ongoing cleaning efforts to maintain a welcoming and inviting food district, enhanced lighting in McArter Lane to ensure the area is well-lit, beautification enhancements including patio furniture and green scaping, quarterly reports to evaluate the pilot project in collaboration with the DBBIA and local businesses, and provision of private washrooms for customers in the existing Dress People building.
- [18] The applicants moved for judicial review to quash the April 30, 2024, Board Decision and therefore reinstate its approval to operate the Food District.

Issues

- [19] The applicants submit that the Decision was reached using a procedurally unfair process and that it is unreasonable. On procedural fairness, the applicants submit that they should have been given an opportunity to be heard when the motion was made to the Board to withdraw support for the Food District or to submit a further response about their compliance efforts before the decision was made to withdraw that support.

Standard of Review

- [20] The standard of review of reasonableness applies to the merits of the Board’s Decision: *Canada (Minister of Citizenship and Immigration v. Vavilov*, 2019 SCC 65.
- [21] With respect to procedural fairness, the question is whether or not a fair process was provided. Statutory decision makers are required to conduct their proceedings fairly. The

duty of fairness is flexible, variable and context dependent. The degree of procedural fairness is determined by reference to all the circumstances of a case including the five factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 816, 174 D.L.R. (4th) 193. The list is non-exhaustive. As observed by L’Heureux-Dube J in *Baker* (at para. 22):

The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.

- [22] As set out below, the issue of procedural fairness determines the application. It is therefore not necessary to address reasonableness.

Analysis of Procedural Fairness

- [23] All five *Baker* factors are engaged.

(a) *The nature of the decision and the process followed in making it.*

- [24] The closer the administrative process to the judicial process, the more likely that procedural protections closer to the trial model will be required by the duty of procedural fairness. In this case, the Board was supporting and monitoring a pilot project promoting food services in the downtown Brampton area. Its procedures did not resemble, nor did they purport to resemble, a trial model. However, the BIA implemented a process to obtain approvals, had a follow-on process to address terms and concerns as set out in its correspondence, and had a process for its meetings and decision-making.

(b) *The nature of the statutory scheme and the terms pursuant to which the body operates.*

- [25] The Council of the Corporation of the City of Brampton designated a downtown improvement area (the BIA) pursuant to sections 204 to 215 of the *Municipal Act*, 2001, S.O. c. 25., as amended. The Board was established and entrusted with the governance, operations and transactions impacting property owners and businesses in the downtown area. Apart from setting BIA’s objects and governance requirements (such as notices of meetings, etc.), the By-Law under which the Board operates does not contain specific procedural requirements like those found in the judicial process. There is no right of appeal. As observed in *DGN Forklift & Forklift Driving School v. Superintendent of Care*, 2024 ONSC 5602, “[t]he lack of appeal militates in favour of greater procedural protection” (at para. 6(b)).

(c) *The importance of the Decision to the individual(s) affected.*

[26] The proposal made to the BIA by Mr. Hanif involved the closing of the Value Assets' retail clothing shop on its property and converting it to comply with the BIA's requirements. Value Assets sold its inventory (which Mr. Hanif said took longer than expected since the business had been operating for over 40 years). The only revenue Value Assets was earning after it ceased its retail operation was from its food truck tenants. They too had invested in their tenancies. Mr. Hanif noted in his March 13, 2024, letter that those vendors had invested substantial amounts and that the total investment for the applicants was more than \$360,000. Value Assets was invested in building improvements to the Food District. On October 11, 2023, City staff supported a grant to facilitate improvements which included patio stones and landscaping. A Building Improvement Grant Agreement with the City was signed on April 4, 2024. The grant was payable upon proof that building improvement works had been completed and entitled Value Assets to a grant up to 50% of the approved estimated cost of the work. The importance of the Board's decision was high as it impacted the livelihood and financial commitments of the applicants.

(d) *The legitimate expectations of the persons affected.*

[27] The BIA's support of the Food District was contingent on compliance with the conditions set out in its endorsement of the original proposal and was reaffirmed several times before its March 13, 2024, notice to Mr. Hanif about the findings arising from the Special Committee report, which had been shared with the applicants before these proceedings were started. As of March 13, 2024, the Board made certain recommendations and advised that a comprehensive assessment would be undertaken on May 1, 2024. The applicants reasonably expected that not only would no decision be made before then but also that if a motion to withdraw support was contemplated then they would be entitled to be heard. While the Board's communication with Mr. Hanif said that it reserved the right to propose a motion at its next meeting to discontinue support, *if necessary*, the applicants were not told when the motion was pursued. The agenda circulated in advance of the April 30, 2024, Board meeting made no reference to any such motion, and it does not appear that the agenda was provided to the applicants. The applicants were given no opportunity to hear the submissions of what the Board called a "delegation" from other business owners or put forward evidence of their efforts to comply with the original Food District conditions and to have those efforts considered. There is also no record that Mr. Hanif's March 31, 2024, communication setting out the steps taken in compliance was put forward at that meeting.

[28] I conclude that the applicants reasonably expected that the BIA would respond to the March 31, 2024, communication if it had any concerns and that the applicants would have fair notice of, and an opportunity to participate in, any motion to withdraw support.

(e) *Choice of procedure*

[29] As set out in its Constitution the responsibility of the BIA is promoting the downtown Brampton business and shopping area and advocating on behalf of its members, including lobbying all levels of government. Board meetings require an agenda to be circulated in

advance of the meeting and, among other requirements, the agenda to be posted online. The meetings are open to the public, except for specific matters which may be heard *in camera*. Members are entitled to be heard and to vote. The procedure that the Board chose in this case, after its approval, was to communicate with the applicants, principally Mr. Hanif, and to monitor the Food District's operations. As set out in Mr. Hanif's March 31, 2024 communication, there was more support and communication with BIA in 2023 than in the period in 2024 leading up to March 13, 2024. With respect to notice of the Board meeting, in this case, those members who were concerned about the Food District and who had contacted the Board before its April 30, 2024, meeting about their concerns were invited to attend and to address the Board, which they did. There is no evidence that any outreach effort was made to any of the applicants. There was no indication in the agenda that a motion to withdraw support was contemplated or even that it was necessary to consider such a motion given that a comprehensive assessment would be undertaken on May 1, 2024. The consultative process ordinarily followed by the Board as reflected in Board Minutes and communications between the parties was not followed with respect to the Decision made on April 30, 2024.

Conclusion

- [30] Considering the *Baker* factors, the process that the Board applied in reaching its Decision to withdraw support for the Food District was unfair. Given the importance of the Decision to the applicants, the impact of the Decision on their livelihoods, the lack of appeal right, the legitimate expectation that their views and evidence would be considered by the Board and that no action would be undertaken until a comprehensive assessment was undertaken on May 1, 2024, the Board breached the applicant's procedural fairness rights by reaching its Decision on April 30, 2024 without promptly responding to Mr. Hanif's March 31, 2024 letter if there were concerns at that time, without giving the applicants notice that a motion to withdraw support was on the agenda, without providing the applicants with an opportunity to hear the submissions made by the "delegation" and without hearing from the applicants in response.
- [31] I would therefore grant this application and quash the Decision. If the BIA wishes to pursue steps that would change or revoke its approval, it must do so in a procedurally fair process in accordance with these reasons for decision.
- [32] As agreed by the parties, the respondent shall pay to the applicant its costs of this application, fixed in the amount of \$22,500.
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Jarvis J.

I agree:

Sachs J.

I agree:

Matheson J.

Date: December 6, 2024

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**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Sachs, Matheson, Jarvis JJ

BETWEEN:

VALUE ASSETS INC., ARSA CORP.
LTD., SHAHI RASSOI, 1000755644
ONTARIO CORPORATION,
SINGHANIA’S ENTERPRISES INC.,
SHAHI TADKA JUNCTION INC. and
PUNJAB05 BRAR LEGACY INC.

Applicants

– and –

DOWNTOWN BRAMPTON
DEVELOPMENT CORPORATION alias

BIA and CITY OF BRAMPTON

Respondents

REASONS FOR JUDGMENT

JARVIS J.

Date: December 6, 2024