

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

**Date of
Hearing:**

March 23, 2016

Panel:

Cezary Paluch, Chair; Aly N. Alibhai and (Hedy) Anna Walsh, Members

Re:

Target Park Inc., o/a Target Park

Iraglis (Hercules) Modopoulos, President

Sasa Petkovic, Officer.

[Applicant for Renewal of Public Garage (Parking Lot) Licence Nos. B77-3832847, B77-4178053, B77-4179091, B77-4291307, B77-4291309, B77-4305694, B77-4305695, B77-4305696, B77-4305860, B77-4306962, B77-4306964, B77-4307421, B77-4307800, B77-4308054, B77-4308058, B77-4308060, B77-4309122, B77-4311617

AND

Applicant for Public Garage (Parking Lot) Licences (Application Nos. B417424, B417428, B423073, B424335, B429039, B429189, B429190, B429192, B430561, B430562, B430564, B430565, B430567, B430568, B430569, B430570, B430587, B534075, B534518, B536638 and B536640)

Counsel for Municipal Licensing and Standards:

Mr. David Gourlay

Counsel for Applicant:

Mr. Christopher J. Tzekas

INTRODUCTION

1. Target Park Inc. ("Target Park") has requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine whether the corporation's Public Garage (Parking Lot) licences should be renewed, suspended, revoked or further conditions placed on it and if the Public Garage (Parking Lot) applications should be granted, revoked or have conditions placed on it.
2. The key issue is whether Target Park's failure to comply with the terms of their probationary licence, as well as their extensive history of by-law charges and convictions, including operating parking lots without zoning approval provide reasonable grounds for belief that its operation of parking lots in the city has not, or will not be carried on in accordance with law and with integrity and honesty and further that their operation of parking lots would pose a risk for the public's safety.
3. Target Park was previously before the Tribunal on April 11, 2013, and as part of a pre-hearing settlement, was placed on probation for two (2) years. During the probationary period, Target Park was required to report any new charges and convictions under the *Toronto Municipal Code* within three (3) business days (the

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“Tribunal Order”). Over the course of the two years, they failed to report several new charges and convictions within the prescribed time.

At the start of the hearing, counsel for the City of Toronto, Mr. Gourlay, made an opening statement because of the long nature of the report and the volume of evidence. He explained that Target Park has submitted a number of new applications which have been refused because of zoning restrictions, and in his view, the Tribunal does not have and cannot issue any parking lot licences in situations such as this when the Building Department of the City for Toronto has not granted zoning clearance. Mr. Tzekas did not make an opening statement. Therefore, the matter proceeded.

CITY'S EVIDENCE

All witnesses who gave evidence at the hearing were sworn or affirmed. The City called three (3) witnesses and Target Park called two (2) witnesses.

4. First, Ms. Clachelle Pasea-Olivier (“Ms. Pasea-Olivier”) former Support Assistant for Liaison Services, Municipal Licensing and Standards (“MLS”), City of Toronto, identified pages 437-439 of Report No. 6241 dated August 4, 2015 which pages were marked as Exhibit “A” for identification purposes.
5. Ms. Pasea-Olivier provided testimony that:
 - a. in 2009, she started working as the primary liaison person at MLS to assist larger corporations (once a corporation had more than 5 licences it was considered larger) with their applications and renewals;
 - b. she dealt with Target Park regarding their compliance with the Tribunal Order of April 11, 2013;
 - c. she reviewed the notes and memos that were written in the MLS electronic database system including the outstanding fines which the system generates a reminder and communicated this information and the reporting requirements so that Target Park was fully apprised of the situation and what they had to do;
 - d. she did not recall if Target Park reported any new charges in accordance with the Tribunal Order and stated that “*they may have reported convictions*”;
 - e. any company that wanted to verbally give notice of any new charges or convictions would have been told by her that this could not be done and that MLS needed something physical and that such notices must be in writing;
 - f. if any notice, including letter or email, of a charge or conviction was received by MLS, it would have been stamped with a date and put into the physical client file or folder held in the high density room; and

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- g. she was on maternity leave in April 2013 when the Tribunal Order was issued and the following months during which time, Shelley Macleod took over her position at MLS.
6. When questioned by Mr. Tzekas, Ms. Pasea-Olivier clarified that the two people at Target Park who she dealt with directly on MLS licensing matters were Cynthia Johnson and Silvia Tomas.
7. When asked by Mr. Tzekas whether she was aware that after the Tribunal hearing in April 2013, Target Park was able to get a number of licences for sites that they could not previously get, Ms. Pasea-Olivier stated that she could not recall.
8. Ms. Pasea-Olivier's testimony was essentially unchallenged.
9. The second witness for the City was Ms. Michelle Macleod, also known as Shelley Macleod ("Ms. Macleod"), former Support Assistant with MLS while Ms. Pasea-Olivier was on maternity leave in 2013. She testified that she also dealt with Target Park in 2013 and had access to the MLS licensing progress database that was used by MLS to record ongoing information about a particular licensee.
10. Ms. Macleod testified that she would not accept a verbal reporting of a particular charge or conviction from Target Park and told them that it had to be done in writing. When asked by Mr. Gourlay what she would have done if Target Park did report something, she said she would have put a memo in the system, a letter in the file, stamp it and bring to her supervisor's attention.
11. Mr. Gourlay referred Ms. Macleod to page 425 of the Report which was inputted into the database by her and read as follows: "*Target Park Inc. Two tickets were reported today by Sasa Petkovic. They were issued on Friday 05/07/2013 by Municipal Standards Officer Michael Rushton. Copy of tickets and letter are in the file. Date: 09/07/13.*"
12. On cross examination, Ms. Macleod elaborated that in her dealings with Target Park she corresponded with Sylvia [Tomas] and Sasa. Mr. Tzekas assisted the Tribunal by clarifying that the person called Sasa was the same person that is mentioned on page 425 of Report No. 6241, namely Sasa Petkovic of Target Park.
13. The third witness was MLS Supervisor, Terry Van Elswyk ("Mr. Van Elswyk"), who was responsible for creating the current Report No. 6241 dated August 4, 2015, together with the updated Report dated February 22, 2016, which was all marked as Exhibit 1, being pages 1-459 including all appendices (the "Report") which was entered into the record on the consent of both parties.
14. Mr. Van Elswyk identified the following portions of the Report:
 - a. Page 6 - cover page for prior Report No. 5723 dated February 16, 2013.
 - b. Page 20 – an undated chart which summarizes by-law charges and convictions against Target Park of which 15 are for operating a parking garage without a licence.

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- c. Page 21 – summons details inquiry/update which is a computer printout of source information that was used to create the chart at page 20.
 - d. Page 47 – extracted Minutes of Hearing of the Tribunal dated April 11, 2013.
 - e. Pages 49-50 - updated chart as of August 7, 2015, which summarizes by-law charges and convictions against Target Park.
 - f. Page 160 – undated chart as of September 1, 2015, listing Target Park’s site specific applications submitted to MLS that have yet to be issued a licence.
 - g. Page 161 – Examiner’s Notice from the City of Toronto Building Department to Target Park stating that certain requirements of the City’s zoning by-law had not been satisfied and that location 771 Queen Street E. could not operate as a commercial parking lot and therefore was prohibited.
 - h. Page 225 – chart updated June 23, 2015 listing by-law charges and convictions against 1687984 Inc., o/a Mr. Shine;
 - i. Page 273 – an undated chart as of June 23, 2015, listing additional charges and convictions against Target Park.
 - j. Page 294 – chart updated August 7, 2015 listing by-law charges and convictions against Target Park Enforcement Inc.
 - k. Page 314 – corporate profile for Target Park Enforcement Inc.
 - l. Page 317 – chart updated September 1, 2015 listing site locations found operating for Target Park without a licence. This was submitted as an agreed statement of fact. Mr. Tzekas had no dispute with the accuracy of this document.
 - m. Page 376 and 378 - email dated January 13, 2016 from by-law officer, Steven Noble, to MLS support assistant, Marisol Sanchez, regarding his attendance at 512-516 Church Street in Toronto.
 - n. Pages 377, 378, 379, 381 – photographs taken by Steve Noble of parking lots and payment display machines at 512-516 Church Street.
 - o. Page 384 – chart updated February 22, 2016 summarizing by-law charges and convictions against Target Park as it related to its sites in Ottawa.
 - p. Pages 400-459 – printouts of memos from MLS licensing database system.
15. Mr. Van Elswyk also provided testimony that:
- a. he is the Supervisor at MLS and his duties include the preparation of reports for the Tribunal;

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- b. at the present time, zoning must first be obtained from the City of Toronto's Building Department before a person can apply for a parking lot licence;
 - c. Target Park did not report by-law charges or convictions under the *Toronto Municipal Code* approximately 16 times;
 - d. they did report charges or conviction approximately 8 or 9 times;
 - e. a by-law officer was sent by MLS to certain locations to determine if the locations were operating prior to the licence being issued;
 - f. there were 21 outstanding applications of which 15 were found to be in operation by the by-law officer;
 - g. 1687984 Ontario Inc., operating as Mr. Shine ("Mr. Shine"), with Mr. Modopoulos and Mr. Petkovic as the listed corporate officers;
 - h. Mr. Shine was charged and convicted 9 times of operating a "Public Garage Owner No Licence" between August 2010 and September 2012. Mr. Shine's municipal licence expired in 2013;
 - i. Target Park Enforcement Inc. is another corporation with Hercules Modopoulos (President of Target Park) listed as the Director;
 - j. Target Park Enforcement Inc. was charged once for "Public Garage Operator No Licence" on March 21, 2015 and 5 (fives) times for "Issue Unapproved Ticket" between March 25, 2011 and March 21, 2015 and of these 5 there were 2 convictions so far.
16. Mr. Van Elswyk was cross-examined by Mr. Tzekas. He was asked to refer to pages 326 and 352 of the Report being email messages dated September 22, 2015 and October 9, 2015, from Cynthia Johnston of Target Park to MLS evidencing Target Park's compliance with their reporting requirements.

Mr. Van Elswyk, when asked if he expected Target Park to shut down its operation of parking lots that were operating without licences, stated, unequivocally, that this is what the by-law requires. On re-examination, with respect to the renewals, Mr. Van Elswyk stated that pursuant to the by-law if a particular licence is issued and subsequently MLS refuses it, it is deemed to continue pending the outcome of a Tribunal hearing.

APPLICANT'S EVIDENCE

17. Target Park called two witnesses to testify on its behalf.
18. The first, Chris McKay, Manager at Target Park, provided testimony that:
- a. he has been in the position as a Manager for 6 years and oversees the day to day operations of the company;

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- b. the president of Target Park, Mr. Hercules Modopoulos, is the primary person at the company responsible for expanding operations in Toronto;
 - c. revenues have grown significantly since April 2013 when Target Park had 12-13 million dollars in revenue and at present, the company has 24-25 million dollars in revenue;
 - d. Target Park is currently operating 150 parking lot sites across Canada but he did not know how many were located in the City of Toronto;
 - e. he did not know how many sites were being operated without a licence but he could get that information;
 - f. in April 2013, Target Park agreed with the probation order issued by the Tribunal;
 - g. he was present at the Tribunal hearing on April 11, 2013 when the Tribunal Order was made;
 - h. he expressed that Target Park was thankful for the 2 year probation to “*get our act together*” and hired Silvia Tomas as the in-house expert to bring the company in compliance with the licensing regime;
 - i. he expressed that Target Park was pleased that “*we [Target Park] were given 2 years to get ourselves on side*”;
 - j. his understanding was that the 2 year probation term was there to allow Target Park to get unlicensed sites in line and that the company had time to get those sites licensed;
 - k. he had a sense that Target Park was making significant progress in responding to the directive and was: “*seriously attacking the issue*”;
 - l. if the Tribunal made an order to terminate operations, it would affect 110 employees;
 - m. of those, there are approximately 60 full time employees in Toronto;
 - n. he would prefer to see an order to continue the probation order for the balance of the current term so: “*we can ramp up our resources needed to accelerate our clean up.*”; and
 - o. the commitment from the company was that “*those sites we don’t get licensed we vacate that’s our commitment.*”
19. In cross-examination, Mr. McKay admitted to 51 current charges of operating a parking garage without a licence against Target Park, Mr. Shine and/or Target Park Enforcement Group.
20. When Mr. McKay was asked by Mr. Gourlay whether he knew why Target Park was operating parking lots without licences, Mr. McKay responded that:

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"I do not know why."

21. When Mr. McKay was asked by the Tribunal how Target Park is able to operate parking lots in the city without licences, he responded that:

"I can't answer that. I know the law is you don't operate without a licence, the law is clear on that, why we are, I can't answer."

22. In cross examination, Mr. McKay acknowledged that:

- a. Target Park did not comply with the reporting requirements of the Tribunal Order;
- b. he did not know why the reporting did not take place as required by the Tribunal Order; and
- c. Target Park is operating sites not only without licences, but also in contravention of the current City Zoning by-law regulating the use of lands.

23. Target Park's second witness was Mike Kamarellis who provided testimony that:

- a. he is currently the General Manager of Special Projects at Target Park and oversees the day to day operations of the company;
- b. Target Park operates both commercial and residential parking lots;
- c. in 2013, 3 months prior to the first Tribunal hearing, Target Park hired an in-house expert, Silvia Tomas, to deal with the municipal applications and ongoing licensing issues;
- d. Ms. Tomas was only there 8 months and was replaced by Mathew Larose who subsequently left after only 3 months because of performance issues;
- e. he was supporting the experts, Cynthia Johnson and Sylvia Tomas, to facilitate the applications for the new sites;
- f. there were several personnel changes at the company which slowed down their progress. The company only had an 8 month window and this was not enough time to deal with all of the licensing issues;
- g. in 2013, Target Park had 6 licensed sites and 30 unlicensed sites;
- h. Target Park closed down many sites that were "un-licensable" including the site located at 1661 Queen Street;
- i. Target Park has appealed the City of Toronto Zoning By-Law that came into force in 2013;
- j. Target Park is operating some sites without licences ;

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- k. he would like one year to clear things up; and
 - l. the President of Target Park takes this matter seriously.
24. In cross-examination, when asked how many unlicensed locations Target Park is currently operating, Mr. Kamarellis responded that he did not know off the top of his head but if he had to guess, about 20.
25. When asked why Target Park has not closed those unlicensed sites, Mr. Kamarellis replied that the majority of those sites are “licensable” because they had been licensed and operated as parking garages before and fall under the appeal of the zoning by-law. He explained that if the appeal is not successful, they would close those sites. When asked if he had a court order to that effect today, Mr. Kamarellis admitted that he did not.
26. When referred to page 169 of Report No. 6241, an Examiner’s Notice dated August 27, 2015 from Toronto Building and notifying Target Park that certain requirements of the City’s Zoning Bylaw have not been satisfied for the site located at 10 Tuxedo Court in Scarborough, Mr. Kamarellis agreed that the effect of this document is to deny the zoning clearance for this parking lot location. He also confirmed that, despite this ruling, this site is still being operated without zoning clearance and without a municipal licence.

Mr. Kamarellis explained that sometimes notices of by-law infractions are left at the parking lot site and never make it back to head office and therefore Target Park was not aware of them.

SUBMISSIONS

City’s Submissions.

27. Mr. Gourlay submitted that despite the volume of evidence, most of the facts of this case are not in issue. That is, Target Park has been operating multiple parking lot locations as unlicensed parking lots going back to 2008 and continues to do so. Moreover, Target Park has also been operating parking lot sites without the required zoning by-law approval from the City of Toronto’s Building Department.
28. Mr. Gourlay submitted that it is beyond the jurisdiction of this Tribunal to consider the implications of the new Toronto Zoning Bylaw No. 569-2013 which came into effect in May 2013. In other words, he submitted that what the Tribunal should ask itself is simply if zoning approval has been granted. If it has not been granted, he submitted that the Tribunal or MLS cannot issue a business licence.
29. Mr. Gourlay requested that all of the applications by Target Park where zoning approval has not been granted be rejected. He submitted that Target Park should be stopped from operating locations without a licence and that the Tribunal should not grant licences where zoning was not approved, notwithstanding an appeal of the zoning by-law and that the renewals should be denied.

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30. Mr. Gourlay requested that Target Park's entire operations be suspended for a lengthy period of time, that the outstanding fines be paid, including those by Mr. Shine, and that a significant probation period with reporting requirements be put into place for all *Toronto Municipal Code* violations.

Target Park's Submissions

31. Mr. Tzekas stated that Target Park understands the issues and is not before the Tribunal requesting that it licence sites which have not been cleared by zoning. He submitted that Target Park has had an extremely difficult time with the fact that the rules of the game changed in 2013 with the coming into force of the City-wide Zoning By-law regulating the use of land. He added that Target Park has been able, in some cases, to get the by-law examiners to reconsider their rulings with respect to sites that were previously zoned to allow for the operation of parking lots. He added that there is no court order required for that.
32. With respect to the Tribunal Order, he conceded that there is no ambiguity regarding the terms of the probation order. He submitted that Target Park is not a company that ignores municipal zoning requirements and that it wants to comply. Further, he said, the company is willing to devote resources to get sites that can be licensed and "*it would like the door to remain open a crack.*" He asked for the extension of the current probation order to allow time for the company to bring Target Park in compliance with the law. Mr. Tzekas submitted that it is not necessary to suspend the sites that are already licensed. He assured the Tribunal that the outstanding fines would be paid forthwith and in full including those of Mr. Shine.

With respect to a question from the Tribunal about the President of Target Park not being present for the hearing today, Mr. Tzekas explained that he thought the facts of this case were clear and that his presence here today may have taken the hearing in a different direction and detracted from the key issues to be adjudicated.

DECISION

33. The Tribunal applied its mandate, set out in part in the *Toronto Municipal Code*, s. 545-3. B(3), subsection (c):

...The Toronto Licensing Tribunal...shall...having regard for the need to balance the protection of the public interest with the need for the licensee to make a living...

34. The Tribunal, in its deliberations, considered that revocation of Target's Park's licences would negatively impact the many employees of the company – based on the evidence heard today a total of 110 employees of which 60 are in the City of Toronto. Most of these individuals are not be responsible for any of the decisions made that have brought the company before the Tribunal today. Some may have no other means of supporting themselves and their families.
35. Furthermore, s. 545-4 C(1) of the *Toronto Municipal Code* sets out the reasons for denying a licence, [these reasons equally apply to the reason for the Tribunal

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suspending or placing conditions on a licence pursuant to s. 545-6 (C)(1)(2)] including the following:

- (a) The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, its trade, business or occupation in accordance with law and with integrity and honesty; or
- (b) There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
- (c) The applicant is a corporation and its conduct or conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its trade, business or occupation has not been, or will not be, carried on in accordance with law and with integrity and honesty; or
- (e) The conduct of the applicant or other circumstances affords reasonable grounds for belief that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public.

36. Target Park was first before the Tribunal on April 11, 2013. On consent of the parties, and with the assistance of counsel, Target Park agreed to the following terms and conditions:

- (1) Target Park Inc. must provide to Municipal Licensing and Standards proof of payment of all or any outstanding fines.
- (2) Immediately upon the licences being renewed and applications being granted, the licences will be placed on probation for a period of two (2) years to commence on April 11, 2013.
- (3) During the probationary period, if Target Park Inc. incurs any new charges or convictions under the *Toronto Municipal Code*, they must notify Municipal Licensing and Standards, in writing, within three (3) business days; and
- (4) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions, those matters and Report No. 5723, and any updating material, shall be brought back before the Tribunal for a full hearing.

37. Target Park clearly breached condition No. 3 placed on their Public Garage (Parking Lot) licences in that it failed to notify MLS in writing of new by-law charges and convictions under the *Toronto Municipal Code* within the specified amount of time. This happened on multiple occasions as confirmed by the chart on pages 49 and 50 of Report No. 6241 and testimony from Mr. Van Elswyk that Target Park:

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- 1) did not report charges seven (7) times;
 - 2) reported the charges late two (2) times; and
 - 3) did not report convictions five (5) times.
38. The explanation provided by Mr. McKay, and similarly by Mr. Kamarellis, that there was some ambiguity about the exact terms of the Tribunal Order or that they misunderstood the conditions, is demonstrably false and inconsistent with the evidence before the Tribunal for a number of reasons.
39. First, this is contrary to what Mr. Tzekas, counsel for Target Park, said during the hearing – that is, that there is no ambiguity about the terms of the Tribunal Order. Second, Target Park was represented at the hearing in April 2013 by a capable and experienced lawyer, Mr. Tzekas, and surely, as their counsel, he must have explained the exact terms of the order to Target Park and how to comply with the order.
40. Third, in 2013, Target Park hired an expert, Cynthia Johnson, to deal with compliance issues at the company – as an expert, she must have, at some point in discharging her duties, obtained and reviewed the Tribunal Order with the company and had ample opportunity to raise any concerns with MLS staff.
41. Fourth, Ms. Pasea-Olivier and Ms. MacLeod of MLS testified that they both worked as liaisons with Target Park and, in this capacity, informed Target Park regarding their reporting requirements under the order.
42. Lastly, even if Target Park was not clear about the terms of the order, they must have known for certain that they could not operate sites without licences during the probationary period, when a series of charges was laid against the company in 2013 for operating parking lots without a licence.
43. The Tribunal Order is clear and unambiguous. There is nothing in the order that allowed Target Park to continue to operate parking lots without licences, or for that matter, to make the company think that they had additional time to operate their unlicensed lots in an attempt to buy time and somehow bring them in compliance with zoning requirements. Certainly, a probationary period does not override compliance with the *Toronto Municipal Code* and the licence requirements in s. 545-2 must be followed.
44. Perhaps even more serious a matter than not reporting new charges and convictions and acting with integrity and honesty, Target Park operated parking lots without licences issued by the City of Toronto.
45. The City cited s. 545-2A(31) of the Municipal Code which states:
- 545-2 Licence Requirement
- A. There **shall** be taken out by the following persons a licence from the Municipal Licensing and Standards Division authorizing them respectively to carry on their several trades, businesses, and occupations in the City of

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Toronto...and no person shall, within the City of Toronto, carry on or engage in any of the said trades, businesses or occupations until he or she has produced such licence... [emphasis added]

(31) Every person who owns or operates a public garage.

46. This section in the *Toronto Municipal Code* is clear in that it requires every person who owns or operates a public garage to take out a licence from MLS and specifically prohibits any person from carrying on such activity without a licence. The use of the word "*shall*" makes this requirement mandatory. Therefore, Target Park cannot, at any time, operate a public garage without a municipal business licence irrespective of any probation order or disagreement with a zoning examiner's decision. The company's directors or officers cannot be of the view that they can wait even one day pending the result of any appeal of the zoning by-law. The Tribunal cannot be clearer than that. The sites that do not have a valid business licence must be closed and simply cannot operate.
47. The chart on page 317 of the Report No. 6241 sets out fifteen (15) locations in the city at which Target Park was operating parking lots without business licences with one site at 2401 Yonge Street being reported by the by-law officer as being "unable to gain entry". There may be more sites such as this as was alluded to by Mr. McKay in his testimony.
48. In addition, the charts on page 50, page 273 and page 384 of Report No. 6241 clearly indicate that Target Park has been charged with approximately 25 offences under the *Toronto Municipal Code*, of which, at least 22 are for violations of s. 545-2(31) – "Public Garage Operator – No Licence". Of these charges, there have been multiple convictions recorded and fines paid. As a result, Target Park has breached the Business Licensing Thresholds under Chapter 545, S. 545-C.1 Appendix K of the *Municipal Code* by accumulating seven (7) or more by-law demerit points.
49. This is very significant as it shows a clear, prolonged and consistent pattern of disregard for the law and refusal to close unlicensed sites. When this record of charges and convictions is coupled with charges and conviction also registered against the related companies - Mr. Shine and Target Park Enforcement Inc., the numbers of charges becomes staggering. In total, there appear to be about 51 charges of, and convictions with respect to operating without a licence.
50. Mr. McKay, a very senior official at the company, in his evidence, admitted that Target Park is operating public garages without business licences (and therefore in violation of the law). Unfortunately, he could not explain or provide any reasons for doing so. The Tribunal heard that the President of the company, Mr. Modopoulos, is the person responsible for making the decisions to operate these sites with proper licences. However, he did not testify. He did not attend the hearing. He did not attend the first hearing in April 2013. Therefore, the Tribunal is left in the dark as to the real reason why Target Park is continuously and intentionally disregarding the law and jeopardizing public safety.

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51. The related concern is that Target Park is also operating parking lot garages at locations in the city that of which even MLS is not aware. This is very disconcerting for the Tribunal. Operation of unlicensed parking lots removes it from the regulatory body, MLS, and removes it from ensuring that municipal rules and regulations regarding parking lots that are in place to protect the public are being followed. It is obviously against the law, against fair business practices and puts the public at danger in that the city simply cannot monitor the operations of its parking lots.
52. Mr. McKay, in his testimony, admitted that this information of the unlicensed operating sites can be provided. The Tribunal hopes that MLS can follow up with Target Park and obtain this information, investigate any such sites and if they are still in operation without a business licence, bring this matter back before the Tribunal forthwith. To be absolutely clear, a probationary term does not allow Target Park to operate unlicensed parking lots – they must be closed immediately.
53. With respect to the explanation by Target Park, that it has appealed the zoning by-law and/or it is trying to have the examiners reconsider some rulings based on prior use, it is the Tribunal's position that this is beyond its scope or mandate and simply not relevant for the purpose of adjudicating this matter. The Tribunal agrees with the City that the only issue that it can consider today is whether zoning approval has been granted. If Target Park is successful in their appeal to the Ontario Municipal Board (OMB) then they can certainly, at that point, re-apply to the MLS for licences regarding any particular locations.
54. Therefore, it is clear to the Tribunal that Target Park has not complied with the law in the past, and its conduct or conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its business has not been, or will not be, carried on in accordance with law and with integrity and honesty. In particular, the willingness of Target Park to continue to operate parking lots without zoning approval and open new locations further demonstrates the unwillingness of Target Park to comply with the *Toronto Municipal Code* and not act with integrity and honesty.
55. On March 24, 2014, a Notice of Licence Non-recommendation was sent to Target Park by MLS setting out the grounds for refusal of a licence (Page 137 of Report No. 6241) including confirmation to Target Park that an investigation of their file indicated that they are in breach of a condition of the Tribunal Order. Therefore, from at least March 24, 2014, until the present, March 23, 2016, a period of 2 years, Target Park had additional time to bring itself in compliance with the Tribunal Order and the law. They did not do so.
56. In fact, Target Park continued to operate unlicensed sites and expand its operations. Simply saying that they have appealed a zoning by-law that they disagree with and are waiting for the decision is not sufficient and, in all the circumstances, irrelevant. There is no "stay" of the licensing requirements pending the hearing and results of an appeal to the OMB. There is no other court order allowing Target Park to operate these sites pending results of any appeal to the OMB.

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57. In making its decision, the Tribunal took into account the following mitigating factors:
- a. Target Park hired an expert, Sylvia Tomas, and other individuals and made conscious efforts to bring itself in compliance after the completion of the first Tribunal hearing in April 2013;
 - b. Mr. Kamarellis provided assurances to the Tribunal that the President of Target Park takes this matter very seriously;
 - c. Mr. Tzekas in his final submissions assured the Tribunal that Target Park is not a company that ignores municipal zoning requirements and that it wants to comply with the law;
 - d. Mr. Tzekas assured the Tribunal that he would go through the conditions of any order fashioned by the Tribunal with Mr. Modopoulos, the President of Target Park;
 - e. that Target Park did in fact report some charges and convictions;
 - f. that Target Park have acknowledged through their solicitor that they have not complied with the prior Tribunal Order;
 - g. that Target Park streamlined today's hearing by agreeing to Report No. 6241 being entered into evidence and other agreed facts without any objections;
 - h. that Target Park, through their two witnesses, Mr. McKay and Mr. Kamarellis, both senior officials at Target Park, expressed remorse and gave the Tribunal clear assurances that going forward they would comply with any Tribunal Order and the law.
58. Although it is clear to the Tribunal that Target Park has not complied with the law in the past, as noted above, they did acknowledge their wrongdoing, appeared remorseful and undertook to comply with the law in the future. The Tribunal wishes to strike a balance – on the one hand – protecting the public and ensuring that Target Park conducts its business with honesty and integrity – and on the other hand – allowing Target Park to operate their business and attempt to gain approval from the City of Toronto's Building Department regarding any new sites that they wish to operate as parking lots. The Tribunal therefore believes that suspension, with certain conditions and a significant probationary period is the appropriate way to strike this balance.
59. Section 545-6 (C)(1)(2) of the *Toronto Municipal Code* gives the Tribunal the authority to suspend and/or impose conditions on a licence as it considers appropriate and as authorized by-law for any of the reasons set out in s. 545-4C. The placement of conditions on a licence is intended to have a corrective effect on the conduct of the licensee.
60. Having weighed all of the evidence put before the Tribunal and having carefully considered the submissions of counsel for the City of Toronto and Target Park, the Tribunal made the following order:

March 23, 2016

Target Park's request for new applications or renewals in respect of Public Garage (Parking Lot) Licences in respect of which zoning has not been granted is denied.

All applications or renewals where zoning has been approved are subject to the following terms and conditions:

- (1) Target Park's licences shall be immediately suspended for a period of three (3) weeks, to commence on March 23, 2016;
- (2) Target Park shall take steps to ensure that the public is made aware that all sites are closed and specifically that all displays be locked and covered;
- (3) signage be posted that the parking lots are closed; and
- (4) At the end of the suspension period, all licences will be placed on probation for a term of three (3) years, with the following conditions:
 - (i) the licensee must provide to MLS proof of payment of any outstanding by-law fines for Target Park and any corporate entity associated with this matter;
 - (ii) during the probationary period, if Target Park incurs any new charges or convictions under the *Toronto Municipal Code*, they must notify Municipal Licensing and Standards, in writing, within three (3) business days, which can be done in one of the following ways:
 - in person at 850 Coxwell Ave. Toronto, Ontario, M4C 5R1
 - via regular mail to: 850 Coxwell Ave., Toronto, Ontario, M4C 5R1;
 - via email to mlsconditionreporting@toronto.ca;
 - via fax at 416 392-3102
 - (iii) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions, those matters and Report No. 6241, and any updating material, shall be brought back before the Tribunal for a full hearing.
- (5) Any parking lots that are not licensed by the City of Toronto and are currently being operated by Target Park, whether known to MLS or not, are to be immediately closed and shut down by Target Park.

March 23, 2016

Originally Signed

Cezary Paluch, Chair

Panel Members, Aly N. Alibhai and (Hedy) Anna Walsh concurring

Reference: Minute No. 38/16

Date Signed: May 26, 2016