

IN THE MATTER OF the Development Appeal Board of the City of Yellowknife constituted under the *Community Planning and Development Act*, S.N.W.T. 2011, c. 22

AND IN THE MATTER OF an Appeal from the Issuance of Development Permit PL-2020-0335, issued under City of Yellowknife Zoning By-Law No. 4404

BETWEEN:

Colin Baile, Judy Murdock, Marilyn Malakoe, Jenny Tucker, Liz Baile, Maribel Nelson, Gabrielle Decorby, Eva Paul, Darcy Milkowski, Garth Malakoe, Justin Nelson, Daron Letts, Jillian Letts, and Dave Hatto

Appellants

-and-

AVENS – A Community for Seniors, The City of Yellowknife

Respondents

**WRITTEN LEGAL BRIEF OF AVENS
DEVELOPMENT APPEAL BOARD HEARING MAY 29, 2021**

Lawson Lundell LLP
P.O. Box 818
200, 4915 48th Street
Yellowknife, NT X1A 2N6
(867) 669-5500
Attn: Toby Kruger

I. INTRODUCTION

1. Should a development that City Council unanimously approved be defeated by a narrow and technical reading of a bylaw taken out of context? Should the interests of a privileged few, who have attempted for years to stop a development near their backyards, be put ahead of the community as a whole, at a time when the territory is facing a housing crisis? Those are the issues at the heart of this appeal, and the answer to those issues is unequivocally no.

2. City Council and the Development Officer were in full compliance with Zoning Bylaw 4404 in issuing Development Permit No. PL-2020-0335 (the “**Development Permit**”). The developer AVENS – A Community for Seniors (“**AVENS**”, or the “**Developer**”), a non-profit organization dedicated to housing our territory’s senior population (over 40% of AVENS residents are Indigenous), is entitled to proceed with construction of a 102-unit seniors supportive living development. The fourteen individuals¹ that commenced this appeal have all been fully heard by City Council on behalf of their representative Mr. Baile, on several occasions. Their concerns have been accommodated where possible through project amendments, and ultimately City Council balanced competing community concerns and found the project is justified by the greater good. The Development Appeal Board (“**DAB**”) should dismiss the appeal on an expedited basis and allow the development to proceed without further delay, to avoid losing the 2021 construction season.

II. FACTS

3. AVENS accepts the facts and presentation by the City. AVENS’ representative, Thomas Milan, will provide the project background in separate submissions. Put simply, this is a project about housing the more vulnerable among our territory’s seniors. The project has gone through extensive community consultation. There is a demonstrated need for this project at the City and territorial level, and a significant amount of GNWT funding could be lost forever if the project is further delayed.

¹ Colin Baile, Judy Murdock, Marilyn Malakoe, Jenny Tucker, Liz Baile, Maribel Nelson, Gabrielle Decorby, Eva Paul, Darcy Miklowski, Garth Malakoe, Justin Nelson, Daron Letts, Jillian Letts, and Dave Hatto are all signatories to the appeal.

4. The Appellants have been heard on a number of occasions with all of the same complaints they now bring to this Board, including their chief complaint that the Zoning Bylaw somehow requires Council to determine every minutiae of the Development Permit. Mr. Baile on behalf of the Appellants was given an opportunity to make submissions to Council on this very issue (among others) before it approved the Conditionally Permitted Use. But City Council, interpreting its own Bylaw, rejected that interpretation. The City and the Developer have heard the Appellants' other concerns and the development has been modified as a result. But, the Appellants cannot dictate the Development, and cannot continue to force AVENS to expend significant resources in dragging out this approval process. Recognizing this, and taking into account all community concerns, including the Appellants', City Council unambiguously and unanimously approved the project.

III. ARGUMENT

5. This appeal is all about process, not substance. AVENS adopts and relies on the City's submissions explaining the integrity of its process, and offers three short submissions of its own:

- (a) First, the Supreme Court of Canada has repeated again and again that municipal bylaws should be read broadly and purposively. Courts, and development appeal boards, should avoid sidestepping the legitimate role of City Council as community representatives and decision makers. The Appellants' argument urges the Board to do the opposite: to adopt a narrow and technical reading that seeks to put the interests of a privileged few ahead of the community as a whole;
- (b) Second, even if this Board does find that there were flaws in the City's procedure, which is denied, pursuant to this Board's power under s. 69(1) of the *Community Planning and Development Act*,² to "confirm, reverse or vary" the Development Permit, the Board could vary the Development Permit by striking out the Conditionally Permitted Use in condition 2 of the Notice of Decision³ and allow

² SNWT 2011, c 22.

³ Notice of Decision issued April 16, 2021, attached as Appendix A to these submissions.

the balance of the development—which is wholly within the development officer’s jurisdiction to approve—to proceed; and

- (c) Third, we have not found any case precedents to support the Appellants’ argument. To the contrary, cases out of Ontario and Nova Scotia support AVENS’ argument. This Board can take comfort that it stands on solid legal ground in rejecting the appeal outright.

A. The Zoning Bylaw must be read broadly and purposively

6. Section 4 of the [Cities, Towns and Villages Act](#)⁴ states:

“The general legislative powers of a municipal corporation to make bylaws are to be interpreted as **giving broad authority to council to govern the municipality in whatever way council considers appropriate**, within the jurisdiction given to a municipal corporation under this or any other enactment, and to address issues not contemplated at the time this Act is enacted.”

[Emphasis added.]

7. The broad statutory authority given to council to govern the municipality as it sees appropriate is discussed at length by the Supreme Court of Canada in [Shell Canada Products Ltd. v. Vancouver \(City\)](#)⁵:

Recent commentary suggests an emerging consensus that **courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils**. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the "benevolent construction" which this Court referred to in *Greenbaum*, and confer the powers by reasonable implication. **Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives.**

Such an approach serves a number of purposes which the narrow interventionist approach does not. First, it adheres to the fundamental axiom that **courts must accord proper respect to the democratic responsibilities of elected municipal officials and the rights of those who elect them**. This is important to the continued healthy functioning of democracy at the municipal level. If municipalities are to be able to respond to the needs

⁴ SNWT 2003, c 22, Sch B.

⁵ 1994 CanLII 115 (SCC).

and wishes of their citizens, they must be given broad jurisdiction to make local decisions reflecting local values.

Second, a generous approach to municipal powers will aid the efficient functioning of municipal bodies and avoid the costs and uncertainty attendant on excessive litigation. Excessive judicial interference in municipal decision-making can have the unintended and unfortunate result of large amounts of public funds being expended by municipal councils in the attempt to defend the validity of their exercise of statutory powers. The object of judicial review of municipal powers should be to accord municipalities the autonomy to undertake their activities without judicial interference unless clearly warranted.

Thirdly, a generous approach to municipal powers is arguably more in keeping with the true nature of modern municipalities. As McDonald asserts (*supra*, at p. 100), the municipal corporation "has come a long way from its origins in a rural age of simple government demands". She and other commentators (see Makuch and Arrowsmith) advocate that municipal councils should be free to define for themselves, as much as possible, the scope of their statutory authority. **Excessive judicial interference in the decisions of elected municipal councils may, as this case illustrates, have the effect of confining modern municipalities in the straitjackets of tradition.** This rationale for a restrained approach to judicial intervention in the decisions of municipal bodies is eloquently set out by McDonald (at pp. 100-101):

Once elected . . . the council is entrusted with responsibility for governing, not just in the interest of those who elected them, but in the interest of the community generally, that is, in the public interest. This is a fairly vague and controversial concept, however. It is a generalized judgment of what is best for individuals, as a part of a community. **From the perspective of particular individuals and interest groups, the public interest may be conceived differently and, as amongst them, views of the public interest will inevitably conflict. A council making its decision on the public interest will identify and weigh a wide variety of competing considerations: the demands of various interested parties, the advice of its experts, data from its own research resources. And it will undoubtedly be influenced by the preferences expressed by the electorate. The decision is ultimately a matter of choice and what a council decides is necessarily its own collective perception of the public interest.**

The voters of a community give their elected council members the final judgment in this controversy. Whether the councillors are right or wrong in their judgment depends on the vantage point of the person making this assessment, but in any event, this is the decision they were elected to make. There may, in fact, be no right or wrong in the matter. Persons displeased with a council's decision have "a remedy at the polls". [Footnote omitted.]

It is not the court's function to make these decisions -- either directly or indirectly. Primary responsibility for deciding the welfare of the community belongs to the municipal corporation. If the courts take upon themselves the judgment of the rightness or wrongness of council's decisions in these matters, they, as a body having no connection with local inhabitants, usurp the choice which the inhabitants conferred, by democratic process, on the council. If the courts are to interfere in this process, they must have a positive justification for doing so and that justification must relate to their own peculiar nature and function. [Emphasis in original.]

[Emphasis added.]

8. The Supreme Court of Canada has endorsed this reasoning [time and time again](#).⁶ And this reasoning applies equally to the Board—the Board cannot lightly interfere with the clear and unambiguous decision by Council to allow the Conditionally Permitted Use.

9. The Appellants' argument amounts to nothing more than using a technicality to advance their own interests. However, technicalities do not prevail when interpreting the Zoning Bylaw and Council decisions that advance the interests of the electorate as a whole. This is not land titles legislation, which necessarily requires a strict interpretation. Rather, the Supreme Court of Canada has told us that City Council and the Board are required to read the Zoning Bylaw broadly and purposively.

10. Council's intention could not be clearer. Its intention was to unequivocally and unanimously approve the Conditionally Permitted Use, and that is what it did. No one has been misled by Council's decision. Its decision is consistent with the Zoning Bylaw, which requires Council to make decisions on Conditionally Permitted Uses, and nothing more. The narrow and technical reading taken by the Appellants is not only contrary to the proper rules of interpretation; it produces a result that is unreasonable and absurd, insofar as it strips City Council of its clear policy choice that represents the interests of the community as a whole.

B. This Board could “vary” the Development Permit to cure it of any alleged defects

11. Pursuant to section 69 of the *Community Planning and Development Act*:

⁶ *United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19, [2004] 1 SCR 485.

69. (1) The appeal board may confirm, reverse or vary a decision appealed, and may impose conditions that it considers appropriate in the circumstances.

12. To be clear, AVENS does not acknowledge that there is a defect in the Development Permit. But to the extent there is, this Board could vary the Development Permit to make it comply with the Zoning Bylaw. If the Appellants say that the Development Officer could not have issued a Development Permit that contains a Conditionally Permitted Use, then notwithstanding that *City Council did in fact approve that Conditionally Permitted Use*, this Board could quash the Conditionally Permitted Use in section 2 of the Notice of Decision and allow the rest of the Development Permit to proceed. This is because every single other condition of the Development Permit complies with the Zoning Bylaw and is solely within the Development Permit officer's authority to issue. The result would be that the Developer could proceed with the development as allowed under the Zoning Bylaw (which allows R3 development as a permitted use), but would not be able to actually use the building for the Conditionally Permitted Use until Council makes a further decision on the entirety of the Development Permit.

13. The practice of varying a Development Permit to make it comply with the Zoning Bylaw will be familiar to the Board from the recent [*Bartram Court*](#) and [*West Bay Condos*](#) cases. In both cases the Board varied the development permit in question but allowed the balance of the development to proceed. Importantly, both *Bartram* and *West Bay* involved the same approval process as this case: City Council made a decision on a Conditionally Permitted Use or variance, and the Development Officer issued the development permit following that decision. The effect of the Appellants' argument, therefore, is not only that City Council was wrong in expressing the wishes of the electorate in this case, but also that this Board was wrong in allowing the *Bartram* and *West Bay* developments to proceed, too. Surely this Board cannot accept an argument that says its past approval process is wrong, as it would throw the validity of those other approvals into doubt.

C. The Development Officer approved the Development Permit with Council's authority

14. The Appellants have not pointed to one case that supports the outcome they seek. To the contrary, an argument that is in substance the same as the Appellants' in this case was rejected by the Ontario Superior Court in [*Walsh v. Hamilton \(City\)*](#).⁷

15. In *Walsh*, one neighbour opposed the approval of a building permit for a garage in his neighbour's backyard, saying it would block the light. The building permit was issued by "Building Inspector Jeffrey", whereas the applicable Bylaw said that the permit had to be approved by the "Chief Building Official" (in that case, "CBO Spolnik"). Like the Appellants in this case, the applicant in *Walsh* argued that an inspector was not empowered to issue the building permit and the permit is consequently void and of no legal force or effect. The Court firmly rejected that argument, holding:

[22] As indicated above, the first issue to address is whether CBO Spolnik properly delegated authority to issue the building permit to Inspector Jeffrey. While the applicant contends that this was improper, it is clear that administrative, non-discretionary decision may be delegated. The issuance of a permit in accordance with policy guidelines and standards was held to be an administrative decision in *Northeast Bottle Depot, supra* at para. 58. The delegation of an administrative action is one of the exceptions to the maxim against subdelegation, *delegatus non potest delegare*. Section 8(2)(a) of the BCA is a similar situation – provided that there is no contravention of applicable law, the permit "shall" be issued. **There is no discretion to refuse to issue the permit; rather, the issuance is simply an administrative action.** Another exception to the maxim is where the decision maker was not expected to make the decisions personally: *Walmar Investments, supra* at para 10; *Northeast Bottle Depot, supra* at para 48. It is clear that the CBO was not intended to make all of the building permit decisions personally, as evidence was led that the City receives thousands of these applications a year.

[23] The facts of this case satisfy both exceptions to the maxim against subdelegation, in that the decision was administrative and the decision maker was not expected to make the decisions personally. Therefore, Mr. Jeffrey had the authority to issue the permit on behalf of the CBO and the decision may be attributed to CBO Spolnik upon review or appeal.

16. In this case, everything but the Conditionally Permitted Use specified in condition 2 of the Development Permit Notice of Decision is fully within the Development Officer's sole authority to approve under section 3.4(1) of the Zoning Bylaw as a Permitted Use, including the

⁷ 2008 CanLII 32325 (ON SC).

height, density, traffic study, lighting and shading impacts, and parking. As such, under section 3.4(1) of the Zoning Bylaw, which states that the Development Officer “shall approve” a Permitted Use, the act of issuing the Development Permit after Council approved the Conditionally Permitted Use was purely administrative. Under those circumstances, even if Council had to approve the entire application, as the Appellants assert, it was fully open to Council to approve the Conditional Permitted Use and to delegate the administrative task of issuing the Development Permit to the Development Officer. At no point was the Development Officer exercising Council’s discretionary power. And at no point was anyone misled—in substance, Council wholly complied with the Bylaw.

17. Further, as noted in [*Peterson v. Kentville \(Town\)*](#), where the empowering statute of the municipality at issue was substantially similar to section 4 of the Northwest Territories *Cities Towns and Villages Act*, the Court noted that “the statute does not expect councils to be micromanagers of large or busy municipalities”.⁸ It would be inconceivable to expect, as the Appellants do, that City Council make every single decision about a development permit application personally, with all nine Council members signing off on front yard setback, landscaping, parking spots, and water connections. That would lead to absurd results, and a City Council that is paralyzed by administrative tasks while its Development division sits idly by.

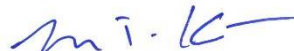
IV. CONCLUSION

18. AVENS asks this Board to see this appeal for what it is—an attempt to delay and defund this important community project on the basis of a technicality, because the Appellants do not want this development in their backyards. There is no basis for this Board to interfere with City Council’s legitimately exercised authority under the Zoning Bylaw.

⁸ *Peterson v. Kentville (Town)*, 2008 NSSC 254 at para 67.

19. AVENS asks that this appeal be dismissed on an expedited basis so as to avoid losing the 2021 construction season. AVENS also requests that DAB award the costs of this appeal to AVENS.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of May, 2021



Toby Kruger, Lawson Lundell LLP
Counsel for AVENS – A Community for Seniors

PUBLIC NOTICE

CITY OF YELLOWKNIFE – ZONING BY-LAW NO. 4404

NOTICE OF DECISION

Development Permit Application No. PL-2020-0335, dated the 02 day of March, 2021, for a development taking place at the following location: 5710 50 AVE.

Lot 43 & 44 Block 62 Plan # 4252

Intended Development: Special Care Facility

Has been APPROVED subject to following conditions:

1. The minimum front yard setback has been decreased from 6.0 m to 3.59 m (40.17% variance);
2. Council Motion #0025-21 approved a Conditionally Permitted Use for the establishment of a Special Care Facility located at Lots 43 and 44, Block 62, Plan 4252;
3. Landscaping shall be completed by September 30, 2023 and maintained for the life of the development, as indicated in the stamped approved plans and Development Agreement;
4. Plants used for landscaping shall be of capable healthy growth in Yellowknife, grown from northern stock, with the certification that the plants are grown North of 54 degrees latitude;
5. On-site and Off-site Improvements shall be completed as indicated in the stamped approved plans and Development Agreement;
6. A surveyor's Real Property Report shall be submitted to the City prior to occupancy. The Real Property Report must indicate i) all permanent features on the site and ii) finished grades at all corners of the lot and buildings and periodic grades every 20 m;
7. The property owner is responsible for freeze protection of water lines during construction;
8. Lighting specifications in terms of the intensity of light are to be the minimum required for safety and security, and so that no direct rays of light are projected to adjacent properties;
9. The owner shall delineate all parking spaces on the property;
10. The owner shall delineate and identify with visual indicators a minimum of three (3) accessible parking spaces on the property.
11. A Water Connect Permit will be required for the water and sewer services to the building. Permit application must include Plan and Profile drawings for the servicing that are signed and stamped by an Engineer registered with NAPEG. For information on the permit contact construction@yellowknife.ca;
12. The Development shall comply with all stamped approved plans and with the executed development agreement.

DATE of Issue of this Notice of Decision: April 16, 2021

EFFECTIVE DATE: May 1, 2021



Development Officer

NOTICE:

Any persons claiming to be adversely affected by the development may, in accordance with the *Community Planning and Development Act*, appeal to the Development Appeal Board, c/o City Clerk's Office, tel. 920-5646, City of Yellowknife, P.O. Box 580, Yellowknife, NT X1A 2N4. Please note that your notice of appeal must be in writing, comply with the *Community Planning and Development Act*, include your contact information and include the payment of the \$25 appeal fee (the appeal fee will be reimbursed if the decision of the Development Officer is reversed). The appeal must be received on or before 4:30 p.m. on the _____ day of _____, A.D., 20____.

AFTER THE EFFECTIVE DATE OF THIS PERMIT, THE OWNER OF THE SUBJECT PROPERTY IS AUTHORIZED TO REMOVE THIS NOTICE. ALL OTHER PERSONS FOUND REMOVING THIS NOTICE WILL BE PROSECUTED.

DEVELOPMENT AGREEMENT

THIS AGREEMENT made in duplicate and effective this 15 day of April, 2021.

BETWEEN:

**THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE**

(the "City")

And

AVENS – A COMMUNITY FOR SENIORS
Suite 1-5710 50th Avenue
Yellowknife, NT
X1A 1G1

(the "Developer")

WHEREAS the Developer is, or is entitled to be, the registered owner of:

Lot 43 & 44
Block 62
Plan 4252
Yellowknife

in the Northwest Territories ("the Lands");

AND WHEREAS the Developer proposes to undertake a development in accordance with the terms of Development Permit #PL-2020-0335 ("the Development Permit");

AND WHEREAS Section 20 of the *Community Planning and Development Act*, S.N.W.T. 2011, c.22, authorizes the City to enter into agreements with the owners of land to ensure that the conditions of any development permit issued for that land are complied with;

AND WHEREAS it is a condition of the approval of the Development Permit that the Developer enter into this Agreement with the City;

NOW THEREFORE in consideration of the premises, mutual covenants and conditions contained in this Agreement, the City and the Developer agree as follows:

1 SITE IMPROVEMENTS

- (a) The Developer covenants to complete soft and hard landscaping on-site improvements in accordance with the terms and conditions of the Development Permit at the Developer's expense (the "Site Improvements").
- (b) The Developer covenants to complete the Site Improvements on or before September 30, 2023, in a careful, diligent, professional, and skillful manner, in conformance with the Development Permit, proper and accepted practices, and the requirements of all applicable laws and regulations.
- (c) The Developer covenants to a two (2)-year performance warranty for any maintenance and repairs to the Site Improvements, commencing on the date the Site Improvements are complete to the satisfaction of the Development Officer, in conformance with the Development Permit and requirements of all applicable laws and regulations.
- (d) The Site Improvements, as outlined on the stamped approved plans of the Development Permit, include but are not limited to the following:
 - i) Soft landscaping
 1. topsoil installation;
 2. tree and shrub planting; and
 3. groundcover laying.
 - ii) Hard Landscaping
 1. paving of parking areas & vehicle circulation areas;
 2. installation of sidewalks and curbing;
 3. installation of bicycle racks to hold thirteen (13) bicycles;
 4. provision of four (4) accessible parking spaces;
 5. parking space delineation; and
 6. waste bin and recycling screening.

2 TRAFFIC IMPROVEMENTS TO MITIGATE TRAFFIC IMPACTS

- (a) The Developer covenants to complete Traffic Improvements, as recommended in the *Avens Pavilion Revised Transportation Impact Assessment—Updated Final*, prepared by Stantec Consulting Ltd. (the "Study"), in order to mitigate traffic impacts from the proposed development.
- (b) The developer covenants to complete the Traffic Improvements in a careful, diligent, professional and skillful manner, in conformance with the Study, the Development Permit, proper and accepted engineering practices, and the requirements of all applicable laws, regulations and City Standards.

- (c) The Developer covenants to a two (2)-year performance warranty for any maintenance and repairs to the Traffic Improvements, commencing on the date the Traffic Improvements are completed to the satisfaction of the Director of Public Works and Engineering (or designate).
- (d) The Traffic Improvements to mitigate traffic impacts include but are not limited to the following:
 - i) A new road shall be constructed from Gitzel Street to the northwest corner of the Lands to serve as access to the site in alignment with the existing laneway prior to the development opening to the public.
 - ii) The Developer shall prepare and submit a design of the road including subgrade, base course and surface course with a finished road width of 13.0 m, completed by a Registered Design Professional, registered in the Northwest Territories, for approval by the Director of Public Works and Engineering (or designate). A geotechnical review shall be conducted to determine the final location of the road. All designs and the geotechnical review shall be submitted prior to the submission of building permits.
 - iii) The Developer shall prepare and submit a drainage and grading plan for the Matonabee Alleyway that integrates with the new roadway and the existing intersection at Franklin Avenue prior to the submission of building permits.
 - iv) The Developer shall be responsible for construction of the new road including all site excavation and mucking, preparation and installation of the subgrade, and installation of the base and surface courses prior to the development opening to the public.
 - v) The City shall be responsible for the installation of all hardsurfacing on the new road and implementation of the alleyway grading plan.
 - vi) The Developer shall remove overgrowth in the Matonabee Laneway prior to commencing construction of the Development in order to improve vehicle passage in the laneway.

3 SITE SERVICES

Site Servicing is defined as the water, sewer, storm and electrical infrastructure required for the development, including the connections to existing infrastructure. All work shall be completed to City Standards. The Developer must adhere to the following:

- (a) The Developer shall be responsible for the cost of sewer and water connections, and secondary electric power supply or service connections from the location of main service lines to the proposed building site.
- (b) The Developer shall be responsible for the cost of sewer, water, back flow preventers for water service, the electrical service, or any appurtenances thereto, from the property line to any construction on site.
- (c) The Developer shall provide the final design for service lines, including any valves or other devices, for approval by the City's Engineer as part of the water/sewer connection permit issued by the Public Works and Engineering Department. The City reserves the right to withhold connection to the City's water and sewer infrastructure until a complete servicing plan is submitted and approved by the City and a water/sewer connect permit is issued.
- (d) The water services shall be turned off at the main and the services lines must not contain water until such a time as the water service can be put into operation. Full operation includes providing adequate freeze protection for the services.
- (e) Before putting the water service into operation, the Developer shall provide to the City a video inspection of the sewer service clearly showing the condition of the sewer service. Should any issues with the sewer service be identified by the City's Engineer during review of the video inspection, the Developer shall repair the problem area(s) and provide a new video inspection upon completion of repairs.
- (f) The Developer is responsible to put the water service into operation, and when the water service is in operation, the Developer shall:
 - i) Pressure test the service with water, and the test shall be confirmed, in writing, by a Registered Design Professional; and
 - ii) Repair and retest the service if there is leakage.
- (g) The Developer shall ensure that all water mains are properly disinfected prior to being connected to the City's water supply. This includes providing copies of bacteriological testing results as per the City's Standards. Only once the test results have been provided will connection to the City's water supply be possible.
- (h) Freeze Protection
 - i) The Developer will be responsible for all freeze protection as per City of Yellowknife By-law No. 4663, as amended.
- (i) Warranty Period

- i) The Developer covenants to a two (2)-year performance warranty for any maintenance and repairs on the date the Site Servicing is completed to the satisfaction of the Director of Public Works and Engineering (or designate), in conformance with the Water/Sewer Connect Permit and requirements of all applicable laws and regulations.
- (j) Any damage to the City's road and side walk infrastructure (e.g. pavement and grading), caused by the proposed development, and shall be restored by the Developer to the satisfaction of the Director of Public Works and Engineering (or designate).

4 SECURITY FOR COMPLETION OF IMPROVEMENTS

- (a) The Developer shall provide the City with security as follows:

Table 1: Security for Improvements

Type of security		Amount	Due Date
Traffic Improvements to Mitigate Traffic Impacts	Creation of Road Right-of-Way area, including geotechnical evaluation and final design work	\$ 41,000	Prior to the issuance of the Development Permit
	Removal of Overgrowth from the laneway	\$ 0	
Site Improvements	Soft Landscaping	\$ 50,000	Prior to the issuance of the Development Permit
	Hard Landscaping	\$ 35,000	Prior to the issuance of the Development Permit
	Total	\$ 126,000	

- (b) Upon signing this Agreement, the Developer shall deliver and deposit with the City security in an amount of not less than **ONE HUNDRED TWENTY SIX THOUSAND DOLLARS (\$126,000)** to ensure compliance with the Developer's obligations under this Agreement and the Development Permit (the "Security").
- (c) The Security shall consist of cash or an Irrevocable Letter of Credit issued by a Canadian chartered bank and in a form satisfactory to the City's Director of Corporate Services or Senior Administrative Officer, acting reasonably. In addition, any Irrevocable Letter of Credit provided shall contain the following terms and provisions:
 - i) a statement that the Security is issued in favour of the City;

- ii) an acknowledgement by the issuing bank that the City shall be entitled to draw on the Security according to the provisions of this Agreement; and
 - iii) A statement that the Security shall be automatically extended without amendment from year to year until such time as the development is completed to the satisfaction of the City.
- (d) The Developer shall keep the Security in force and in good standing until all Improvements as set out in this Agreement have been accepted by the City or this Agreement has otherwise been terminated.
- (e) Where the Security consists of cash, the City shall not be obligated to pay the Developer any interest on the Security while it is held by the City.

5 CLAIMED COMPLETION OF IMPROVEMENTS

(a) Post-Inspection Report

Upon completion of all Improvements and Site Services in accordance with this Agreement, the Development Permit and all laws and regulations, the Developer or the Developer's agent shall submit a post-inspection report to the City. The deliverables shall include:

- i) a letter to the Director of Planning and Development (or designate) and the Director of Public Works and Engineering (or designate) indicating the completion of all Improvements. Space shall be provided for signatures from the Director of Planning and Development (or designate) and the Director of Public Works and Engineering (or designate) for review of the plans and acceptance of the Improvements and Site Services;
- ii) confirmation that all Improvements, as indicated in Section 1 and 2 of this Agreement, have been completed in accordance with the stamped approved plans;
- iii) confirmation that all Site Services, as indicated in Section 3 of this Agreement, have been completed in accordance with stamped approved plans, including as-built drawings of the site servicing;
- iv) confirmation the work done conforms to City Standards and best practices, including quality control reports for pressure, bacterial, compaction and any other testing required by the City for the Site Services; and
- v) confirmation of restoration of the City's road, laneway and sidewalk infrastructure damaged by the proposed development.

- (b) Within 30 days of the receipt of the Post-Inspection Report, the City shall inspect the work to determine whether all Improvements and Site Services have been completed in accordance with this Agreement. If seasonal conditions make immediate inspection impossible, the City shall inspect the work as soon as weather conditions permit a proper assessment of the work.
- (c) If the Director of Planning and Development (or designate) and the Director of Public Works and Engineering (or designate) are satisfied with the claimed completion, they shall sign the letter in the Post-Inspection Report as the City's acceptance of all Improvements and Site Services. The signed letter will be provided to the Developer and the City will keep a copy.
- (d) When the City notifies the Developer in writing that the City has accepted all Improvements and Site Services, the City shall as soon as reasonably possible return the Security in accordance with the following schedule:

Table 2: Security Refund Schedule

Type of Bond	Amount	Refund Date
100% of Traffic Improvements to Mitigate Traffic Impacts	\$ 41,000	The later of: a. the end of the two-year warranty period following construction b. upon any deficient work (if any) being rectified.
80% of Soft Landscaping	\$ 40,000	Upon signing the Post-Inspection Report by the City.
20% of Soft Landscaping	\$ 10,000	Two (2) years after acceptance of soft landscaping, upon a satisfactory site inspection by City staff confirming proper maintenance of the landscaping
80% of Hard Landscaping	\$ 28,000	Upon signing the Post-Inspection Report by the City.
20% of Hard Landscaping	\$ 7,000	Two (2) years after acceptance of hard landscaping and Site Services upon a satisfactory site inspection by City staff.

- (e) If, in the opinion of the Director of Planning and Development (or designate) and the Director of Public Works and Engineering (or designate) acting reasonably, all or any part of the Improvements and Site Services do not comply with the requirements of this Agreement or the Development Permit, the City shall give the Developer notice in writing of that portion of the work which is not acceptable and the reasons such work is unacceptable. Any deficiencies shall be remediated before the date originally specified for completion of the Improvements or such later date, as the Director (or designate) may, in his or her absolute discretion, specify in the notice rejecting the Improvements and/or Site Services.

6 DEFAULT BY DEVELOPER

- (a) If the City claims that the Developer is in default in the observance and performance of the terms, covenants, and conditions of this Agreement, the City shall give notice in writing of the claimed default, and shall by notice require the Developer to rectify the default within thirty (30) days of the receipt of the notice. If the Developer fails to do so within the time provided by this Agreement, the City may, at its option, complete any incomplete work and remedy, repair or replace any defective work. The City may use contractors or its own employees to perform the work and shall be entitled to reasonable compensation for the use of its own employees and equipment. If the security provided is not sufficient to pay all of the City costs in performing the work, the City shall be entitled to recover any deficiency from the Developer.
- (b) The Developer shall not be deemed to be in default in respect of non-performance of any of its obligations under this Agreement if and so long as the non-performance is due to walkouts, strikes, slowdowns, fires, tempests, or acts of God or the Queen's enemies, or any other cause (whether similar or dissimilar to those enumerated) beyond the Developer's control, but lack of funds shall not be considered a cause beyond the Developer's control.
- (c) The Developer shall indemnify and save harmless the City from any and all losses, costs, damages, actions, causes of action, suits, claims and demand resulting from anything done or omitted to be done by the Developer in pursuance or purported pursuance of this Agreement.

7 COVENANTS TO RUN WITH LANDS

- (a) Pursuant to Section 20 of the *Community Planning and Development Act*, this Agreement may be registered by caveat against the Lands and shall be enforceable against the Developer and all successors in title to the Lands. The City agrees to provide a discharge of this caveat upon completion of all Improvements and Site Services to the City's satisfaction.
- (b) The Agreement shall ensure to the benefit of and be binding upon the respective executors, administrators and successors of the City and the Developer.

8 NOTICES

- (a) Any notice required or permitted to be served on the Developer may be personally served to the Developer or may be mailed to the address on the Certificate of Title for the Lands at the Land Titles Office. If a contractor or other person applied for the Development Permit on behalf of the Developer, any notice respecting the sufficiency of the work may

be served on such contractor or agent and shall be deemed to be sufficient service on the Developer.

- (b) Any notice required or permitted to be served on the City may be personally served on a Development Officer, or may be sent by registered mail to the City at:

City of Yellowknife
 P.O. Box 580
 Yellowknife, NT X1A 2N4
 Attn: Manager, Planning and Lands Division

9 COMPLETE AGREEMENT

This Agreement embodies the complete agreement and understanding among the parties and supersedes and pre-empts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

10 SEVERABILITY

In the event that any of the provisions of this Agreement are held unenforceable or declared invalid for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions of this Agreement and such unenforceable or invalid portion shall be severable from the remainder of this Agreement.

11 CONTINUING OBLIGATIONS

The provisions of this Agreement which expressly state or naturally imply that they survive the termination, cancellation, completion, suspension or expiration of this Agreement, including any other provision that is necessary for the interpretation or enforcement of the same, shall continue as valid and enforceable notwithstanding any such termination, cancellation, completion, suspension or expiration.

12 COUNTERPART EXECUTION

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Delivery of an executed copy of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

[Page Intentionally Left Blank; Execution Page to Follow]

IN WITNESS WHEREOF the City has executed this Agreement as of the 15 day of April, 2021.

THE MUNICIPAL CORPORATION
OF THE CITY OF YELLOWKNIFE

(Seal)

Mayor

City Administrator

IN WITNESS WHEREOF the Developer has executed this Agreement this 13 day of April, 2021.

WITNESS

DEVELOPER
AVENS, A COMMUNITY FOR SENIORS

Signature

Sara Fullerton

Print Name

Daryl Dolynny (Apr 13, 2021 14:52 MDT)

Signature

Daryl Dolynny

Print Name

Chief Executive Officer

Title

(seal)



PL-2020-0335 DEVELOPMENT AGREEMENT FOR EXECUTION APRIL 12 2021 (003)

Final Audit Report

2021-04-13

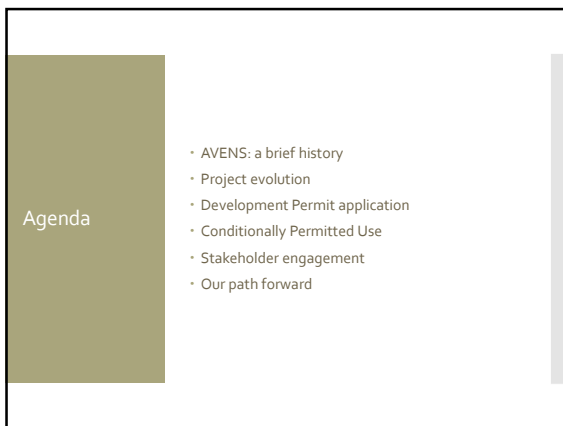
Created:	2021-04-13
By:	Sara Fullerton
Status:	Signed
Transaction ID:	CBJCHBCAABAANnRuzyrllHf3pRhvKrVa5oHNJ7o5K5gU

"PL-2020-0335 DEVELOPMENT AGREEMENT FOR EXECUTION APRIL 12 2021 (003)" History

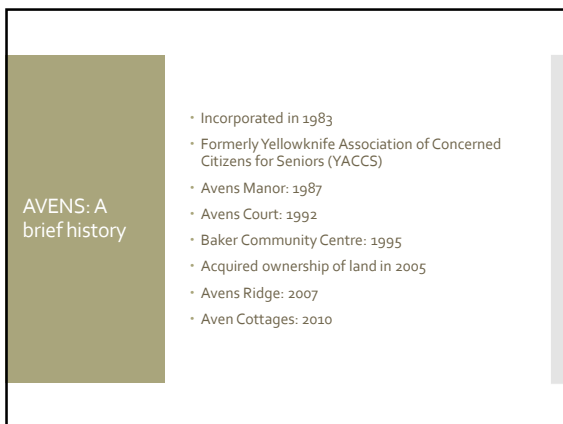
-  Document created by Sara Fullerton
2021-04-13 - 8:47:38 PM GMT- IP address: 50.117.254.233
-  Document emailed to Daryl Dolynny for signature
2021-04-13 - 8:49:21 PM GMT
-  Email viewed by Daryl Dolynny (
2021-04-13 - 8:50:29 PM GMT- IP address: 50.117.234.144
-  Document e-signed by Daryl Dolynny;
Signature Date: 2021-04-13 - 8:52:31 PM GMT - Time Source: server- IP address: 50.117.234.144
-  Agreement completed.
2021-04-13 - 8:52:31 PM GMT



1



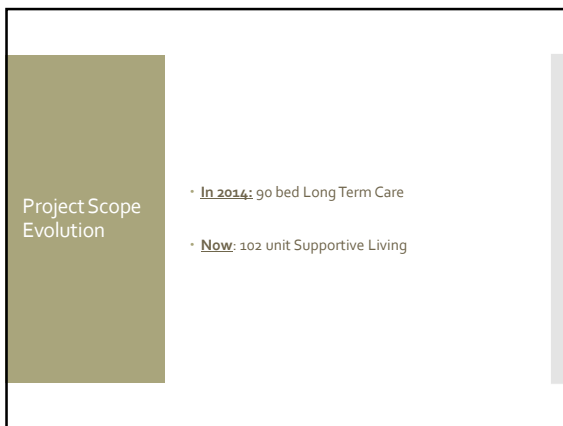
2



3



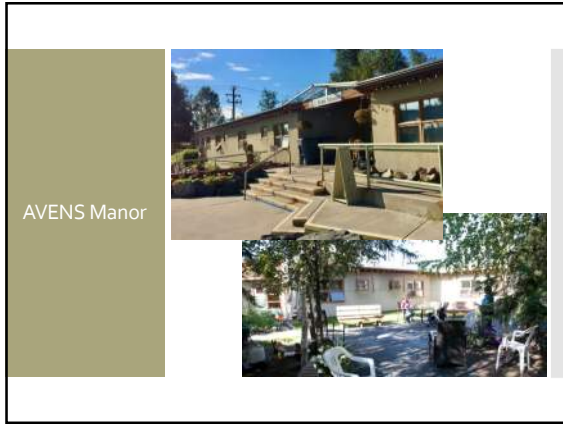
4



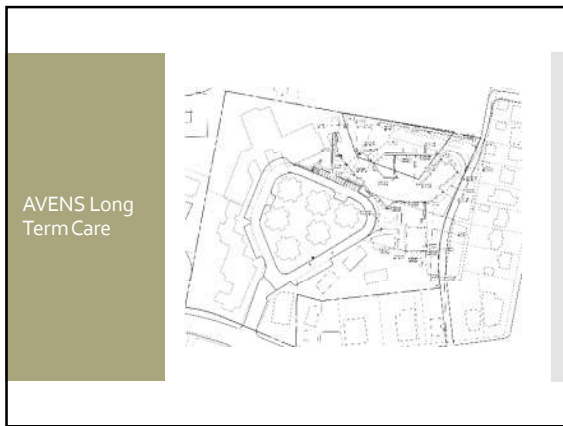
5



6



7



8



9

GNWT Focus on Seniors Living

- 2014: Our Elders: Our Communities:
'Aging in place' refers to the ability of individuals to live in their own homes and communities for as long as possible and to have access to home and community services that will support this ability. Most Elders prefer to receive health care services and personal supports in their homes or in community-based settings that allow them to preserve their independence and quality of life while maintaining social connections with family and friends.
- 2015: Northwest Territories Continuing Care Standards
- 2015: Northwest Territories Long-Term Care Program Review

10

GNWT Long Term Care

- September 20, 2017
- MLA Glen Abernethy, as Minister of Health and Social Services, delivers to 18th Legislative Assembly the vision for the addition of long term care beds:
 - 9 beds in Behchoko
 - 18 beds in Norman Wells
 - 72 beds in Legacy Stanton
 - 48 beds in Hay River

11

Pavilion Project Timeline

- 2014**
Initial bidding for 30 bed long-term care centre
- Jul 2019**
CMHC approves SEED Funding
- Nov 2019**
Need Study identifies critical need for seniors independent and supportive living

12

Need Study

What the Need Study told us:

- Various health indicators suggest that seniors in the Northwest Territories are at a greater risk of needing daily support in their lives - and at an earlier age - compared to the rest of Canada.
- There is a significant lack of adequate, accessible and affordable housing available to NWT seniors.
- Subsidized (affordable) independent and Supportive Living units are in the highest need in the Northwest Territories.

Summary of Projected Gaps for Various Scopes of Senior Living in Yellowknife 2029 - Adjusted to Northern Factor (14-15%)			
Housing Type	Scenario		
	Low	Medium	High
LTC Beds	77	280	335
Supportive Living Units	66	185	436
Senior Subsidized Independent Units	286	366	443

13

Need Study

What the Need Study told us:

- AVENS already offers a portion of the continuum of care for seniors, but it could offer more support to the community by providing independent living and supportive living – at the early onset of the continuum of care.

The diagram illustrates a continuum of care for seniors, represented by a horizontal arrow pointing right. Above the arrow are four icons representing different care levels: a house for Independent Living, a house with a person for Supportive Living, a long-term care facility for Long-term Care, and a person in a bed for Palliative Care. Below the arrow, a bar is divided into two sections: a blue section on the left labeled 'HIGH DEMAND' covering Independent Living and Supportive Living, and a yellow section on the right labeled 'SOME AVAILABILITY' covering Long-term Care and Palliative Care.

14

Renewed Project Purpose

The AVENS Pavilion project seeks to improve concerns and issues identified in the Need Study. It will provide seniors in the Northwest Territories with:

- Increased residential living choices, including:
 - (92) one-bedroom units; and,
 - (10) two-bedroom units.
- Adequate, accessible and affordable housing;
- Energy efficient homes;
- A sense of community within a multifamily complex; and,
- Support across the entire continuum of care, so that seniors can move seamlessly through levels of care without leaving the AVENS Community.

15

Home Care options

The following services facilitate independent and supportive living, but will be a home care model in comparison to the intensive requirements in the Manor and Cottages:

- Parking
- Housekeeping (in units)
- Personal Laundry
- Dietary (food)
- Personal care
- Day-to-day care
- Medication assistance

16

Pavilion Project Timeline

2014
Initial blasting for 90 bed Long-Term Care centre

Jul 2019
CMHC approves SEED Funding

Apr 2020
Design-Build RFP

Nov 2019
Need Study identifies critical need for seniors independent and supportive living

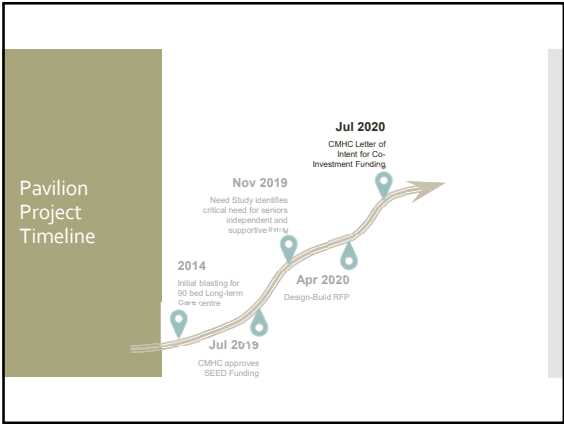
17

Site location

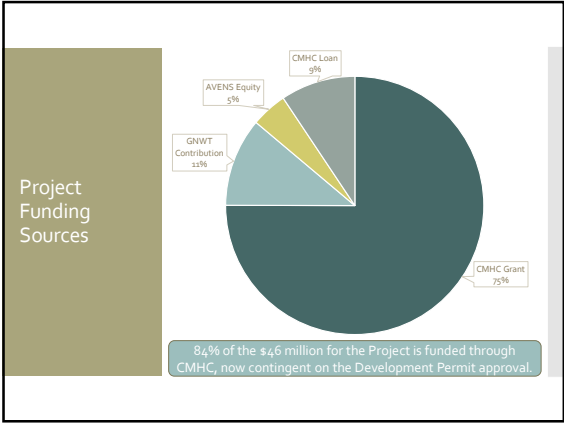
AVENS PAVILION

VICINITY PLAN

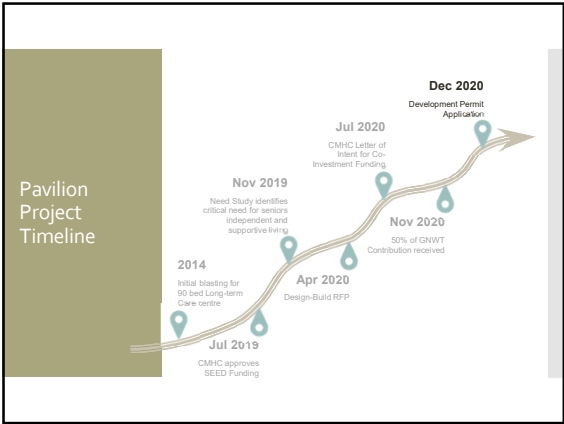
18



19



20



21

Development Permit:
PL-2020-0335

- December 2, 2020 submission included:
 - Application for Conditionally Permitted Use
 - Site Plan
 - Building Elevations
 - Grading Plan
 - Landscaping Plan
 - Servicing Plan
 - Shadow Study
 - Traffic Impact Study (TIS)

22

Zoning By-Law No. 4404:
Pavilion Site: Land Use Zone

23

Zoning By-Law No. 4404:
Conditionally Permitted Use

The AVENS Pavilion project site is located on Land Use Zone R3 – Residential – Medium Density

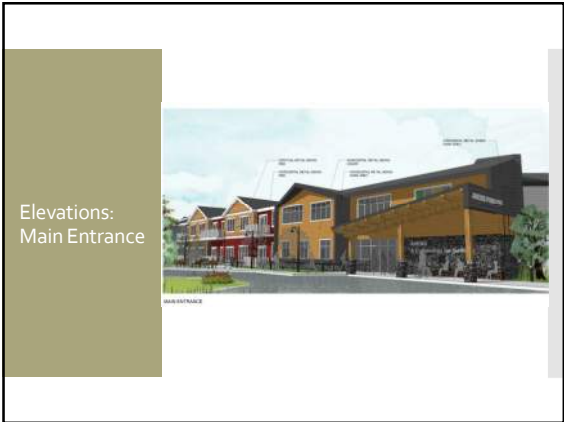
Allows use of Multi-family dwelling

Allows Conditionally Permitted Use of "special care facility"

Whereas,

"special care facility" means a building or portion thereof wherein specialized care is provided to occupants in the form of supervisory, nursing, medical, counselling, home making services, or other services related thereto, but this does not include a child care facility

24



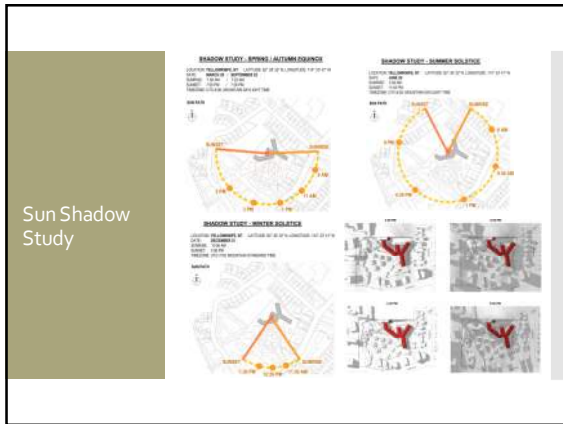
25



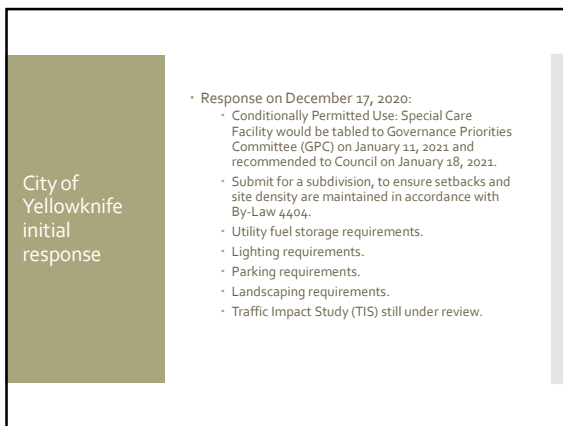
26



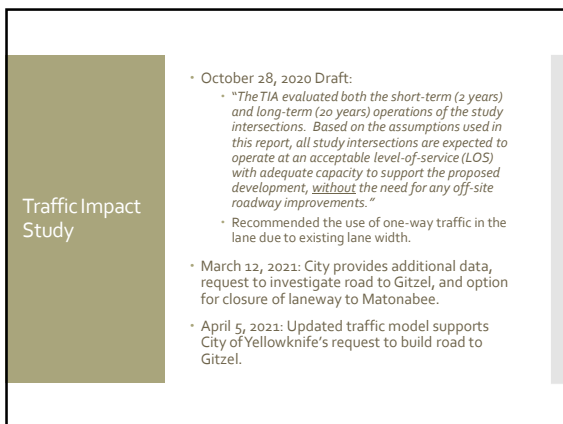
27



28



29



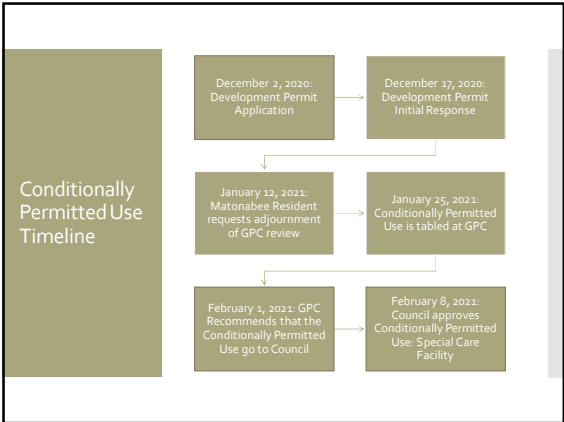
30



31



32



33

Council approval of Conditionally Permitted Use	Concern	Council Response
	Sun Shadows	The R3 zone has a 15m height limit for a multi-family dwelling. Special care facility is reduced to 12m.
	Traffic	Seniors are less likely to drive but also at different peak times.
	Noise pollution	Seniors are less likely to generate noise in comparison to a residents of a multi-family dwelling or a child care facility.
	Light pollution	Seniors are more likely to have lights turned off earlier in the evening.
	Security	Seniors are known for keeping an eye on surrounding properties which improves security.
	Privacy	Seniors are known for going to bed early, so more desirable than residents of a multi-family dwelling.

34

Stakeholder Engagement

35

- Stakeholders
- Our stakeholders include:
- Government of Canada (via CMHC)
 - Government of the Northwest Territories
 - City of Yellowknife
 - NWT Housing Corporation
 - NWT Seniors Society
 - Yellowknife Seniors Society
 - Our clients
 - Our neighbours

36

2014 neighbour engagement

- Timing was that the Pavilion Project was still a go-bed long term care facility.
- Technical concerns raised on December 16, 2014 in a meeting with the City of Yellowknife:
 - Traffic, lane size, parking
 - Lighting
 - Drainage
 - Shadows
 - Generator noise
 - Biomass boiler exhaust / soot
 - Garbage collection
 - Privacy down laneway

37

2020-2021 neighbour engagement

Date	Engagement Summary
April 24, 2020	Letter from Matonabee Residents. Advised that Design-Build RFP closed but still waiting for commitments on funding.
July 27, 2020	Email/Phone call with representative. AVENS provided preliminary concepts, but advised there was still no funding therefore no true design at this time.
September 23, 2020	AVENS annual AGM. Matonabee Residents attended and voiced concerns.
January 12, 2021	Meeting with representative. Requested timeline for meeting with the neighbour group to provide Design update.
January 19, 2021	Video conference with Matonabee residents, provide Design update and collecting concerns.

38

2020-2021 neighbour engagement

Date	Engagement Summary
January 25, 2021	Conditionally Permitted Use application tabled with GPC. Matonabee residents voice concerns at meeting
February 1, 2021	Additional presentation to GPC and City Council. GPC recommends Council approve the Conditionally Permitted Use.
February 8, 2021	Council approves the Conditionally Permitted Use.
March 4, 2021	Video conference with Matonabee residents: reduced windows, changes to laneway, landscaping, lighting. Presented option of road to Gitzel. Advised there would be items we would not address such as reducing building height.
April 15, 2021	Advised representative that DP permit is pending.

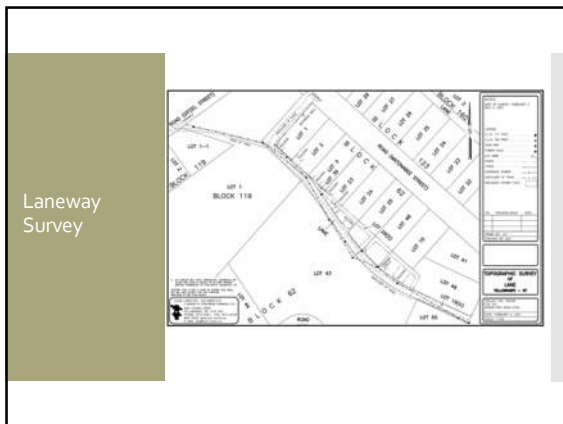
39



40



41



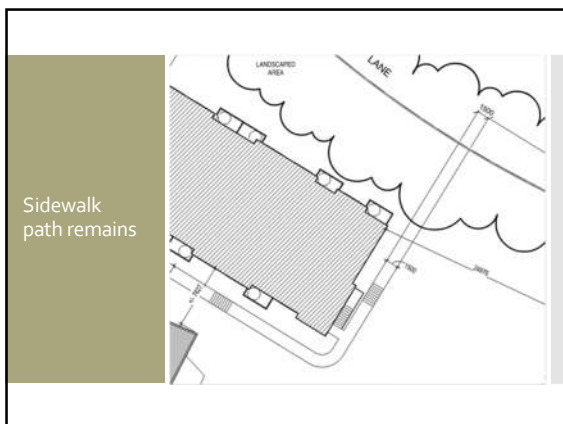
42



43



44



45

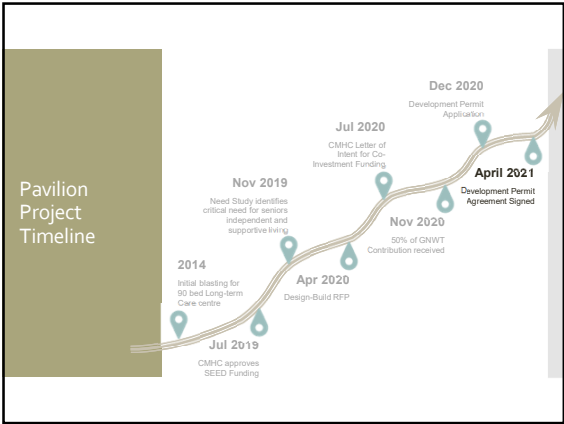
Summary of actions taken in response to Matonabee resident concerns

- Parking stall count reduced to By-Law minimum.
- Light pollution:
 - Bollard lights, previously referenced on landscaping drawings, are removed.
 - Overhead lights will be directional and comply with By-Law.
 - Windows from stairwell parallel to laneway have been removed.
- Walking path kept.
- Traffic impact study revised 3 times.
- New road to Gitzel planned in partnership with City of Yellowknife.
- Agreed to pay for additional design for laneway grading and paving.
- Agreed to City's request to remove overgrowth.

46

Our path forward
Where we are today and where we need to go

47



48

Time is of the essence

- CMHC Co-Investment funding is pending finalization of Development Permit appeal decision
- We have a short construction season (June, July, August, and September if we're lucky). Failing to start construction by June 1, 2021 may result in logistics forcing construction to start 2022 rather than this year.
- Failing to start construction this year may put CMHC funding in jeopardy.
- Ultimately, Seniors in the Northwest Territories will be delayed or prevented from having an opportunity to live in affordable, independent and supportive living.

49

Our ask

- Help us deliver the AVENS Pavilion Project, which is intended to support the GNWT's priorities to provide affordable seniors living, enabling our elders to age in place.
- Given the time constraints and pressures on the Project, we request that a decision be made at this meeting so that the Project can move forward.

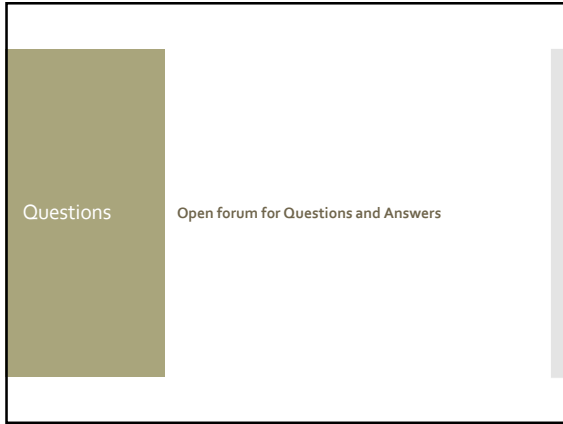
50

Thank you

AVENS would like to thank you for your support and enabling us to provide seniors with personal dignity through housing and care.

We encourage you to continue to advocate for our seniors, helping them live with dignity and grace.

51



52
