CITY OF YELLOWKNIFE DEVELOPMENT APPEAL BOARD

Permit No. PL-2022-0075 / Lot 11-12, Block 307, Plan 4441 (Hagel Drive Niven Lake Phase 5)

WRITTEN SUBMISSIONS OF THE PERMIT HOLDER

We represent the interests of the Permit holder, 507726 N.W.T LTD. (the "Developer"), in this matter and we present the following and the attached in support of the dismissal of the Appeals filed herein.

Permitted Use:

Under the provisions of the Community Planning and Development Act, S.N.W.T. 2011, c.22 (the "Act"), a Zoning Bylaw is required to specify one or more of the following for each zone, namely: (i) the permitted uses of land, (ii) the permitted uses of buildings, (iii) the uses of land that may be permitted at the discretion of a development authority, and (iv) the uses of buildings that may be permitted at the discretion of a development authority [sec. 14(1)(c)].

In the present case, the within Development Permit Application was approved as a Permitted Use [Multi-Unit Dwelling] in the R2 Medium Density Residential Zone. No variances to the requirements of the Zoning Bylaw were requested and none were granted.

Standing to Appeal:

Pursuant to section 62(1)(a) of the Act, no appeal lies with respect to a Permitted Use development that complies in all respects with the Zoning Bylaw and in respect of which no variances were granted unless "*there was a misapplication of a zoning bylaw in the approval of the application*". The restriction is underscored in section 62(2) of the Act which provides: "*(2) For greater certainty, an appeal respecting the approval of an application for a development permit for a use specified in a zoning bylaw as a permitted use of land or a building, as referred to in subparagraph 14(1)(c)(i) or (ii) of this Act, may only be made if there is an alleged misapplication of the bylaw in the approval of the application*."

Accordingly, it is respectfully submitted that, prior to embarking on any hearing on the merits of the various appeals filed, the Board must first determine whether the Zoning Bylaw has been misapplied by the Development Officer.

Both the Condo Corporation 61 Appeal and the Condo Corporations 50 / 54 Appeal cite the lack of an updated traffic impact analysis as a misapplication of the Zoning Bylaw, though neither appeal demonstrates how the Zoning Bylaw was misapplied. Instead, each of these Appeals relies on what the Appellants argue could have been done by the Development Officer in terms of ordering up a new traffic study. Respectfully, this approach cannot and does not support any claim that the Zoning Bylaw was misapplied for the reasons that follow.

Both Appeals also confirm the Appellants' shared concerns over possible traffic and parking concerns in the area, but these concerns do not amount to evidence that the Zoning Bylaw was misapplied. In point of fact and at law, the Zoning Bylaw was correctly and accurately applied throughout with the result that both sets of Appellants lack the necessary standing to appeal.

The Appeal by Steen / Doyle / MacInnes (which is similar to the Appeals referenced above) was simply filed out of time, and these Appellants therefore lack the necessary standing to appeal.[1]

Application Requirements:

Section 4.4 of the Zoning Bylaw describes the Development Permit Application process. Section 4.4.3 sets out the required materials which must be included with a Development Permit Application in any Zone. Section 4.4.4 sets out additional materials which may be required for an Application at the discretion of the Development Officer.

The Appellants suggest that the Development Officer should have requested a traffic impact analysis pursuant to 4.4.4(d) of the Zoning Bylaw in the course of reviewing the within Development Permit Application, and they suggest, further, that the absence of that study somehow renders the Development Permit in question appealable. With respect, the arguments of the Appellants cannot be sustained in light of the following:

1. The decision of the Development Officer to require additional materials from an applicant is a discretion given by the Bylaw solely to the Development Officer and not to any third party including, with respect, to the Development Appeal Board. Whether the Development Officer might require additional materials in any case will be, in substantive measure, dependant upon whether those additional materials would be likely to affect the Officer's decision on the Development Permit Application under consideration.

2. In the case of a Permitted Use Application that otherwise meets all the requirements of the Zone without the need for any variances, the Development Officer's options are limited by section 4.6.2 of the Zoning Bylaw which provides:

> **4.6.2** In making a decision on an application for a Development Permit for a Permitted Use, the Development Officer:
>
> **(a)** **shall** approve, with or without conditions, the application if the proposed Development conforms with this By-law; or

[1] This late filing would not preclude these would-be Appellants from participating as interested parties in any valid Appeal taken in respect of the subject Development Permit. However, since there is no valid Appeal before the Board, the issue of these persons' potential participation is moot.

> **(b) shall** refuse the application if the proposed Development does not conform to this By-law, unless a Variance has been authorized pursuant to Sections 4.8 to 4.10 of this By-law.

3. Similarly, section 25(1) of the Act provides:

> **25(1)** A development authority **shall**, subject to any applicable conditions, approve an application for a development permit for a use specified in a zoning bylaw as a permitted use of land or of a building, as referred to in subparagraph 14(1)(c)(i) or (ii) of this Act, if the development authority is satisfied that the applicant meets all the requirements of the bylaw.

4. Thus, whether an additional traffic impact analysis had been requested or not, that report could have no impact whatsoever on the Development Officer's decision to issue the Development Permit in question. The Officer was duty bound to approve the Permit because the underlying development comprises a Permitted Use that complies, in every respect, with the Zoning Bylaw. Additional studies cannot and could not change that reality.

5. The Board, too, is duty bound to deny standing to appeal to the various Appellants herein. The Board has, with respect, no jurisdiction to do otherwise.

Allowing the within appeals to proceed on the merits in light of the foregoing would have the incongruous effect of turning a Permitted Use into a Use into a Discretionary Use, and only the Yellowknife City Council can exercise this authority – Council has already decided otherwise. A Use of land can only be Permitted or Discretionary – it cannot be both.[2]

Conclusions and Request for Relief:

Where a developer has applied for the development of a Permitted Use and where the Application is in complete conformity with the requirements of the applicable Zone and other mandatory requirements of the Zoning Bylaw, the requested Development Permit cannot be denied and cannot be revoked on appeal to the Development Appeal Board. This is one of the very few, inalienable rights available to landowners in the Northwest Territories pursuant to the Community Planning and Development Act.

Here, the lands under consideration have been made available by the City of Yellowknife for sale and development since August of 2003 [see extract from Council Minutes at TAB 3]. The Developer has purchased the subject lands from the City of Yellowknife on the express condition that a Permitted Use Development be undertaken and completed thereon within certain, prescribed time limits [see redacted Purchase Agreement at TAB 4]. Due to the filing of the within

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[2] See ***Chrumka v. Calgary (Development Appeal Board)***, 1981 ABCA 282 [TAB 1]; ***Liquor Stores Limited Partnership v. Edmonton (City)***, 2017 ABCA 435 [TAB 2].

appeals, those time limits have been placed in jeopardy, thus threatening the Developer's ability to provide much needed housing in an area of Yellowknife which the City has identified for some time as being desirable for a project of this sort.

The Developer has done everything required of it by the City of Yellowknife to bring this project to fruition at a time when the need for additional housing in the City is critical. The demand for housing in the City remains high, and supply of units is limited. The additional housing units to be provided by this project will help to reduce the current imbalance, and this is a step which would clearly benefit the City as a whole.

In the interests of seeing this project move forward on a timely basis, we are respectfully requesting that:

1. The within Appeals be dismissed summarily for want of standing and want of jurisdiction; and

2. The Board issue its written decision in that regard in a timely fashion and not unnecessarily extend the decision-making process to the full 60 day period otherwise permitted under the Act.

All of which is respectfully submitted this 18th day of July, 2022 by:

OGILVIE LLP, Solicitors for the Developer

"J.W. Murphy, Q.C."

Per: James W. Murphy, Q.C.

TAB 1

Most Negative Treatment: Distinguished
Most Recent Distinguished: Postman v. Lethbridge (County) No. 26 Development Appeal Board | 1998 ABCA 370, 1998 CarswellAlta 1025, 83 A.C.W.S. (3d) 1044, [1998] A.J. No. 1253 | (Alta. C.A. [in Chambers], Nov 16, 1998)

1981 ABCA 282
Alberta Court of Appeal

Chrumka v. Calgary (Development Appeal Board)

1981 CarswellAlta 78, 1981 ABCA 282, [1981] A.J. No. 555, 12 A.C.W.S. (2d) 18, 130 D.L.R. (3d) 61, 16 Alta. L.R. (2d) 328, 18 M.P.L.R. 95, 33 A.R. 233

CHRUMKA v. CALGARY DEVELOPMENT APPEAL BOARD and CALGARY

Clement, Moir and Laycraft JJ.A.

Judgment: November 17, 1981
Docket: Calgary Appeal No. 13790

Counsel: *B. Scott* and *J. D. Merrett*, for appellant,
B. R. Inlow, for respondents.

Subject: Public; Contracts

Headnote

Construction Law --- Statutory regulation — Building permits — Application for permit — Substantive requirements

Municipal Corporations — Zoning and building construction by-laws — Planning — Development control — Applicant applying for permit for permitted use under by-law — Discretionary uses also prescribed — Development officer approving — Approval revoked by Development Appeal Board — Appeal from board allowed — Use could not be permitted and discretionary at the same application — If use permitted, officer or board had no discretion to refuse the application.

The appellant applied under a Calgary land use by-law for a permit for a single detached residence on his lot. The development officer held that the use was discretionary, but approved the permit. The approval was contested by a neighboring landowner. The Development Appeal Board, holding that the use was discretionary, revoked the approval. This decision was appealed.

Held:

Appeal allowed.

Section 67(5) of the Planning Act did not have the effect of supporting the development officer's approval on a discretionary basis as it dealt with discretionary power given to an officer other than that provided in the by-law. The Development Appeal Board was bound by the construction of a land use by-law put on it by the court in the exercise of its supervisory jurisdiction. The application complied with all the requirements for a permitted use, and the development officer and the board were under an obligation to approve the permit. The by-law did not contemplate both a permitted and a discretionary use operating at the same time in respect of one application. There was no discretion to refuse the permit. The development officer's approval was reinstated.

Table of Authorities

Statutes considered:

Planning Act, 1977 (Alta.), c. 89, ss. 2, 67 [am. 1979, c. 61, s. 13], 69, 81 [am. 1979, c. 61, s. 18(*b*)], 83, 89 [am. 1979, c. 61, ss. 23, 43(1); 1980, c. 82, s. 11].

Authorities considered:

Laux, The Planning Act (Alberta) (1979), p. 37.

Appeal from a decision of Development Appeal Board respecting a building permit.

The judgment of the court was delivered by *Clement J.A.*:

1 This appeal has its root in an application by the appellant Millan K. Chrumka for a development permit for a dwelling on his lot: it has its cause in the refusal of a permit by the Development Appeal Board of the city of Calgary. I will recount only facts that are essential to the issues.

2 In 1979 the Calgary Planning Commission approved subdivision of an area in the city of Calgary known then as the Grayburn Estate. By the subdivision, land of Mr. Chrumka in the area became lot 1, block 4, Bel-Aire Estates. It was then, and continues to be, in a district designated by the Calgary Land Use By-law No. 2P80 (the "by-law") as RR-1: Restricted Residential Single-Detached District. Section 21 prescribes this district as required by s. 69 of the Planning Act, 1977 (Alta.), c. 89 ("the Act"). Its purpose is stated in subs. (1):

> **(1) Purpose**
>
> The purpose of this district is to provide for very low density residential development in areas where compatibility with special environmental characteristics is essential.

I will later return in more particularity to this section from which arises the principal contention in appeal.

3 The subdivision approval was made subject to conditions including:

> (h) that Development Permit applications be made for all buildings to be erected on the site.

It appears that the commission had then in mind the purpose subsequently stated in s. 21 of the by-law. It is submitted on behalf of Mr. Chrumka that the commission had no authority to impose such a condition on its approval of the subdivision. There is nothing decisive in the point. It is not necessary to determine whether such a condition is included in the powers given to a subdivision approving authority either at the time or now by s. 89 [am. 1979, c. 61, ss. 23, 43(1); 1980, c. 82, s. 11] of the Act. Such significance as may be attributed to the condition must be shaded by the provisions of s. 81(1) of the Act:

> 81(1) Except as otherwise provided in a land use by-law or the land use regulations, no person shall commence any development unless he has been issued a development permit in respect thereof.

4 The by-law was enacted after the conditional subdivision approval. Section 8 thereof provides in part:

> **8. Development Permits**
>
> ***(1) Developments Requiring A Development Permit***
>
> Except as otherwise provided in Section 8(2), the approval of a development permit application and the release of a development permit must be obtained before development can commence or be allowed to continue.
>
> ***(2) Developments Not Requiring A Development Permit***
>
> It shall not be necessary to obtain a development permit prior to commencement of any of the following types of development provided that such development complies with all applicable provisions of this By-law and is not subject to the Airport Vicinity Special Regulations set out in Section 19: ...
>
> (d) the construction of, or external addition to, a single-detached, semi-detached or duplex dwelling except where such dwelling is a discretionary use;

Insofar as condition (h) may continue to have any legal effect, it must be interpreted in conformity with the by-law, not in derogation of it, since the by-law was enacted by the very authority to whom the matter of development permits is entrusted by the legislature. I refer to Pt. 4 of the Act which provides for the implementation of planning concepts by a land use by-law. It

makes clear that development permits are intended as the foundation of control over use and development of land in a planning area. Section 8(2)(d) of the by-law provides an avenue of approach for the matters in contention. For Mr. Chrumka it is said that his proposed dwelling is a permitted use under s. 21 and requires no permit and that even though he has applied for one, it is unnecessary and in any event should be issued to him as of right.

5 I should briefly observe here that a little time was spent in somewhat perfunctory discussion of the provisions in the by-law for release from the requirement of the development permit. It might be that a developer could on some occasion feel sufficiently self-assured in his project to proceed without the prior approval of the development officer, thereby hazarding the possibility of difficulties as the project advanced. More experienced ones would get prior approval by resorting to s. 11 of the by-law (see below).

6 For the respondents it is urged that under s. 21 a single-detached dwelling is a discretionary use on which the development officer and the Development Appeal Board are entitled to exercise a discretion as to approval of a permit. A subsidiary point is taken if it is found that Mr. Chrumka's proposed dwelling is a discretionary use, namely, that provisions in the by-law relating to discretionary uses are ultra vires the Council of the city of Calgary.

7 In March 1981 Mr. Chrumka made application to the city of Calgary Planning Department for a development permit under the by-law in compliance with the requirements of its s. 10. It was for a single-detached dwelling as prescribed by s. 21 of which the subsections relevant to the issues are these:

(2) Permitted Uses

Accessory buildings

Essential public services

Parks and playgrounds

Single-detached dwellings

Utilities

8 Subsection (3) prescribes some particular rules for permitted uses additional to the General Rules for Residential Districts. The section then continues:

(4) Discretionary Uses

In addition to the Permitted Uses contained in Section 21(2), the following uses may apply:

Child care facilities (N.P.)

Home occupations

Public and quasi-public buildings (N.P.)

Signs

Note: N.P. — Notice Posting is mandatory for these uses in accordance with Section 10(4).

Subsection (5) prescribes rules relating to signs for discretionary uses additional to the General Rules for Residential Districts. The section continues with conditions of development that do not need to be taken into account as the appeal is not concerned with conditions.

9 Section 11 bears the title "Decision Process". It provides in part:

(1) Permitted Uses

(a) A Development Officer's Discretion

(i) A Development Officer shall approve an application for a development permit where

A the proposed use of the site is included on the permitted use list of the land use district for which the site is designated, and

B the proposed development conforms in every respect to the provisions of this By-law appropriate to a permitted use for the land use district for which the site is designated ...

(2) Discretionary Uses

(a) The Approving Authority's Discretion

(i) The Approving Authority may approve, either permanently or for a limited period of time, a development permit application which meets the requirements of this By-law, with or without such conditions as the Approving Authority may deem necessary, based on the merits of the application including any approved statutory plan or approved policy affecting the site.

(ii) The Approving Authority may refuse a development permit application on its merits even though it meets the requirements of this By-law.

10 The application was approved by the development officer. The record appears to confirm that he did so on the footing that the development proposed was a discretionary use under s. 21(4) of the by-law having regard to the history of the development of the Grayburn Estate (which it is not necessary to recount here because of the intervening changes in the statute law), but that planning considerations warranted the approval. I am of opinion that s. 67(5) [am. 1979, c. 61, s. 13(*c*)] of the Act cannot avail to support the approval on this ground. It enacts:

67(5) A land use by-law may authorize a development officer to decide upon an application for a development permit notwithstanding that the proposed development does not comply with the land use by-law if, in the opinion of the development officer,

(*a*) the proposed development would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring properties,

and

(*b*) the proposed development conforms with the use prescribed for that land or building in the land use by-law.

This provides for a discretion that has some relation to the other discretions given to a development officer by Pt. 4, but it rests on a distinction between the planning merits of the particulars of a proposed development, and the land use prescribed for the district in which the developer's land is located. By its terms it has no relevance here and requires no discussion.

11 Vital to the question are provisions of s. 69:

69(1) Subject to section 68, upon the establishment of districts under a land use by-law, the council shall prescribe in the by-law

(*a*) those one or more uses of land or buildings that are permitted in each district, with or without conditions, or

> (*b*) those one or more uses of land or buildings that may be permitted in each district in the discretion of a development officer with or without conditions,
>
> or both.
>
> (2) Where a person applies for a development permit in respect of a development permitted by a land use by-law pursuant to subsection (1), clause (*a*), the development officer shall, where the application otherwise conforms to the land use by-law, issue a development permit.
>
> (3) Where a person applies for a development permit in respect of a development that may, in the discretion of a development officer be permitted pursuant to subsection (1), clause (*b*), the development officer may issue a development permit.

12 Mr. Sunderland is an adjoining neighbour and he appealed the approval to the Development Appeal Board: s. 81(4) [en. 1979, c. 61, s. 18(*b*)] of the Act. It is not disputed that his appeal raises planning considerations affecting his enjoyment of his neighbouring dwelling even although the application conformed to the specifications of s. 21 of the by-law for permitted uses. The jurisdiction of the board under the Act includes the following:

> 83(3) In determining an appeal, the development appeal board
>
> (*a*) shall comply with any regional plan, ministerial regional plan, statutory plan and, subject to clause (*c*), any land use by-law or land use regulations in effect ...

13 Clause (*c*) gives the same discretion to the Development Appeal Board as is given to a development officer by s. 67(5) and is not relevant here for the same reasons.

14 The appeal was heard in June and much material was put before the board, evidence given and representations heard. Mr. Sunderland adduced evidence and made representations in support of his appeal.

15 The issue became clear in the course of the proceedings: Was the proposed development a permitted use under s. 21 of the by-law, which involves only compliance with the prescribed particulars, or was it a discretionary use which enabled the development officer and the Development Appeal Board to take a broader view?

16 In the result the board resolved that it had jurisdiction to treat the application as a discretionary use and on that basis by Order 73/81 it allowed the appeal and rescinded the approval of the development officer. The reasons given were based on planning considerations which were open to the board if it could properly exercise a discretion on the planning merits of the particulars of the proposed development. This returns us to the issue in appeal.

17 By s. 83(3)(*a*) of the Act the board in coming to its decision was required to comply with the by-law. In construing its provisions the board is not to be accorded reasonable tolerance by this court as it might be in construing other planning instruments. Judicial restraint is not applicable to the construction of a land use by-law: the board is bound by the construction put upon it by a court in the exercise of its supervisory jurisdiction.

18 It is acknowledged by the respondents that the application of Mr. Chrumka complies with all of the requirements of s. 21 of the by-law for a single-detached dwelling within the categorization of permitted uses; and it is agreed that if the development officer and the Development Appeal Board erred in law in treating the application as for a discretionary use by which either could with propriety refuse the application, then there was an obligation on the board to approve issue of a permit pursuant to s. 69(2) of the Act and this court could with propriety make a substitutional order to that effect pursuant to s. 83(3)(*b*).

19 The gist of the argument advanced for the respondents is that the language of s. 21(4) of the by-law, prescribing discretionary uses, imports into that category the permitted uses spoken of in subs. (2). The contention rests on the opening words of subs. (4):

In addition to the Permitted Uses contained in Section 21(2), the following uses may apply:

20 Section 67(2)(*b*) of the Act draws a clear distinction between permitted uses and discretionary uses:

67(2) A land use by-law shall ...

(*b*) unless the district is designated as a direct control district pursuant to section 68, prescribe with respect to each district, in accordance with section 69 and with or without conditions,

(i) the permitted uses of land or buildings, or

(ii) the discretionary uses of land or buildings,

or both; ...

21 The distinction is emphasized by s. 69. A permitted use is one so designated for which development criteria are prescribed by the by-law. In such case no discretion is given to a development officer. The only prerequisite for a development permit (or dispensing with it) is full conformity with the relevant development criteria. The function of a development officer then is limited to determining whether there has been full conformity.

22 The discretion with which this appeal is concerned arises in Pt. 4 of the Act and is first spoken of in mandatory terms in s. 67(2)(*b*). This is followed by s. 67(2)(*d*)(vi):

67(2) A land use by-law shall

(*d*) establish a method of making decisions on applications for development permits and issuing development permits to persons for any development including provision for ...

(vi) the discretion that a development officer is permitted to exercise with respect to development permits ...

23 It is spoken of again in s. 69(3). It is clearly the same discretion that is spoken of in each of these provisions and in the end is to be exercised by a development officer in the first instance but within proper limits, to which I will come.

24 A land use by-law must provide for permitted uses, or discretionary uses, or both: it does not contemplate both such uses operating at the same time in respect of an application. If it were otherwise the statutory distinction between the two could readily be eroded by a land use by-law, and the rights of developers sustained by s. 2 of the Act would be thrown into uncertainty and confusion — a consequence which Pt. 4 of the Act seeks to minimize.

25 I accept as well founded the distinction between permitted and discretionary uses drawn by F. A. Laux in his The Planning Act (Alberta) (1979), at p. 37:

> The philosophy behind the distinction between permitted and discretionary uses is simply that, where uses are shown as permitted within a particular district, they are regarded to be of that type as are clearly compatible with one another and, therefore, unlikely to adversely affect neighbouring properties in the same district. On the other hand, discretionary uses are classed as such because, by their nature and although generally acceptable in a particular district, they may or may not be reasonably compatible with neighbouring properties, depending upon the circumstances. Hence, it is necessary to confer upon the land use administrator a discretion as to whether or not to allow a particular application for such a use. To take a simple illustration, a day care centre is generally regarded as an appropriate use in a neighbourhood where one family dwellings are permitted uses. However, whether a particular day care centre on a particular lot in such a district is desirable will depend upon such factors as demand for such a facility, the amount of traffic in the neighbourhood, the size and design of the structure proposed for the facility, the amount and location of available outdoor play area and the like. Consequently, it is considered appropriate to permit administrators to take into account such factors and either allow or reject the application, depending upon a reasonable assessment of all relevant variables.

This passage supports the view I have expressed above that a specified land use is not to be treated as both permitted and discretionary at the same time, by either a development officer or a development appeal board: different purposes are served by the distinction. The opening phrase of s. 21(4) of the by-law must be interpreted accordingly. "In addition to Permitted Uses" can be taken no further than a statement that council, having prescribed the permitted uses for the RR-1 district pursuant to s. 67(2)(*b*)(i) of the Act, is also exercising the additional power to prescribe discretionary uses given by s. 67(2)(*b*)(ii), both of which are open to it.

26 It follows that the discretion given to the development officer by s. 11(2) of the by-law in respect of discretionary uses must be construed as a discretion as to whether an ancillary use such as prescribed by s. 21(4) is appropriate in all of the circumstances on sound planning principles. He erred in law in transposing specific permitted uses to specific ancillary discretionary uses. But in the purported exercise of discretion he came to the right result: a permit should go pursuant to s. 11(1). The Development Appeal Board erred in law in not affirming the approval on the proper grounds.

27 It is not necessary to pursue further the issues in appeal. I would allow the appeal, revoke the order of the Development Appeal Board, and substitute for it an order affirming the approval of the development permit given by the development officer.

Appeal allowed.

TAB 2

2017 ABCA 435
Alberta Court of Appeal

Liquor Stores Limited Partnership v. Edmonton (City)

2017 CarswellAlta 2738, 2017 ABCA 435, [2018] A.W.L.D. 468, 287 A.C.W.S. (3d) 164, 67 Alta. L.R. (6th) 1

Liquor Stores Limited Partnership, by its General Partner, Liquor Stores GP Inc. (Appellant) and The City of Edmonton, The City of Edmonton Subdivision and Development Appeal Board and Vishal Aggarwal (Respondents)

Patricia Rowbotham, Barbara Lea Veldhuis, Thomas W. Wakeling JJ.A.

Heard: November 29, 2017
Judgment: December 19, 2017
Docket: Edmonton Appeal 1703-0055-AC

Counsel: R. Noce, Q.C., for Appellant
M.S. Gunther, for Respondent, The City of Edmonton
K.L. Hurlburt, Q.C., for Respondent, The City of Edmonton Subdivision and Development Appeal Board
J.W. Murphy, Q.C., for Respondent, Vishal Aggarwal

Subject: Property; Public; Municipal

Headnote

Municipal law --- Zoning — Enforcement of zoning by-laws — Practice and procedure on enforcement

A applied for permit to operate liquor store in plaza — LS Inc. operated liquor stores on other corners across from plaza — Municipality refused application on grounds other liquor stores were within 500 metres — A appealed to Subdivision and Development Appeal Board — Board concluded development was permitted use under s. 320.2(12) of By-law and complied with recently amended zoning By-law and allowed appeal — LS Inc. obtained leave to appeal decision on grounds it had not been given notice by Board — Appeal dismissed — A entitled to permit as of right — Presence of verb "may" in s. 85(2) of By-law did not give development authority or Board discretion to dismiss application that constituted permitted use — As A's application was for permitted use any evidence LS Inc. or other alcohol store owner might present regarding impact of another liquor store in immediate area was be irrelevant — Party that can only provide irrelevant information cannot be "affected" party entitled to notice.

Table of Authorities

Cases considered:

Caminetti v. United States (1917), 242 U.S. 470 (U.S. Sup. Ct.) — considered

Chrumka v. Calgary (Development Appeal Board) (1981), 16 Alta. L.R. (2d) 328, 18 M.P.L.R. 95, 130 D.L.R. (3d) 61, 33 A.R. 233, 1981 CarswellAlta 78, 1981 ABCA 282 (Alta. C.A.) — referred to

Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd. (2016), 2016 SCC 47, 2016 CSC 47, 2016 CarswellAlta 2106, 2016 CarswellAlta 2107, 54 M.P.L.R. (5th) 1, 8 Admin. L.R. (6th) 179, 402 D.L.R. (4th) 236, [2016] 12 W.W.R. 215, [2016] 2 S.C.R. 293 (S.C.C.) — referred to

Garneau Community League v. Edmonton (City) (2017), 2017 ABCA 374, 2017 CarswellAlta 2409, 60 Alta. L.R. (6th) 1, 68 M.P.L.R. (5th) 8 (Alta. C.A.) — referred to

Lenz v. Sculptoreanu (2016), 2016 ABCA 111, 2016 CarswellAlta 675, 399 D.L.R. (4th) 1, 88 C.P.C. (7th) 94, 78 R.F.L. (7th) 29, 37 Alta. L.R. (6th) 48, 616 A.R. 346, 672 W.A.C. 346 (Alta. C.A.) — referred to

Liquor Stores Limited Partnership v. Edmonton (City) (2017), 2017 ABCA 130, 2017 CarswellAlta 725, 64 M.P.L.R. (5th) 43 (Alta. C.A.) — referred to

Montreal (Ville) v. 2952-1366 Québec inc. (2005), 2005 SCC 62, 2005 CarswellQue 9633, 2005 CarswellQue 9634, 201 C.C.C. (3d) 161, 32 Admin. L.R. (4th) 159, 15 M.P.L.R. (4th) 1, 33 C.R. (6th) 78, (sub nom. *Montreal (City) v. 2952-1366*

Québec Inc.) 340 N.R. 305, 258 D.L.R. (4th) 595, 18 C.E.L.R. (3d) 1, *(*sub nom. *Montréal (City) v. 2952-1366 Québec Inc.)* 134 C.R.R. (2d) 196, [2005] 3 S.C.R. 141, 36 C.R. (6th) 78 (S.C.C.) — considered

R. v. Big M Drug Mart Ltd. (1985), [1985] 1 S.C.R. 295, 18 D.L.R. (4th) 321, 58 N.R. 81, [1985] 3 W.W.R. 481, 37 Alta. L.R. (2d) 97, 60 A.R. 161, 18 C.C.C. (3d) 385, 85 C.L.L.C. 14,023, 13 C.R.R. 64, 1985 CarswellAlta 316, 1985 CarswellAlta 609 (S.C.C.) — considered

Thomson v. Canada (Department of Agriculture) (1992), 133 N.R. 345, 3 Admin. L.R. (2d) 242, *(*sub nom. *Thomson v. Canada (Deputy Minister of Agriculture))* [1992] 1 S.C.R. 385, *(*sub nom. *Thomson v. Canada (Deputy Minister of Agriculture))* 89 D.L.R. (4th) 218, 1992 CarswellNat 544, 51 F.T.R. 267 (note), 1992 CarswellNat 651 (S.C.C.) — considered

Statutes considered:

Interpretation Act, R.S.A. 2000, c. I-8

s. 10 — considered

Municipal Government Act, R.S.A. 2000, c. M-26

s. 640 — considered

s. 640(2)(b) — considered

s. 642 — considered

s. 642(1) — considered

s. 642(2) — considered

s. 686 — considered

s. 686(3) — considered

s. 686(3)(c) — considered

Words and phrases considered:

affected

[Counsel for the appellant] argued that his client was "affected" by [respondent's] application and entitled to notice of the Board's hearing of [respondent's] appeal. Counsel relied on s. 686(3)(c) of the Municipal Government Act: "The subdivision and development appeal board must give at least 5 days' notice in writing of the hearing . . . to those owners required to be notified under the land use bylaw and any other person that the . . . board considers to be affected by the appeal".

. . .

We cannot conclude that [the appellant] and any other liquor store owners carrying on business within 500 meters of [the respond's] premises are "affected by the appeal".

The purpose of the notice provision is to increase the likelihood that the Board will make an informed decision having access to all relevant information. Given that the Board has no residual discretion to deny [the respondent's] development application because it is for a permitted use and it conforms with all land use requirements under the Edmonton Zoning Bylaw 12800, any evidence [the appellant] or any other alcohol store owner may present regarding the cumulative impact of another liquor store in the immediate area would be irrelevant. This evidence could not possibly change the outcome of the appeal before the Board. A party that can only provide irrelevant information cannot be an "affected" party.

APPEAL from decision of City of Edmonton Subdivision and Development Appeal Board allowing appeal of dismissal of application for permit.

***Per curiam*:**

I. Introduction

1 This is an appeal against a decision of Edmonton's Subdivision and Development Appeal Board [1] granting Vishal Aggarwal, the respondent, permission to operate a retail liquor store with a floor area in excess of 275 square meters. [2]

II. Questions Presented

2 Liquor Stores GP Inc., the appellant, alleges that s. 686(3)(c) of the *Municipal Government Act* [3] obliged the Board to give it notice of the respondent's appeal to the Board against a decision of the development authority denying his permit application. Section 686(3)(c) states that the Board "must give at least 5 days' notice in writing of the hearing . . . to ... any ... person that [it] considers to be affected by the appeal and should be notified".

3 The appellant operates two separate stores — one sells liquor, the other wine — within 500 meters of the premises which are the subject of Mr. Aggarwal's application. Had it been given notice it would have appeared before the Board and expressed concerns about the increased concentration of liquor stores in this specific part of the city.

4 Was Liquor Stores GP Inc. entitled to notice because it was a "person . . . affected by the appeal"?

5 Mr. Murphy, Q.C., counsel for Mr. Aggarwal, argues that Liquor Stores GP Inc. was not entitled to notice. He claims that the Board had a legal obligation to grant his client a permit and that nothing Liquor Stores GP Inc. or any other competitor might have said could have altered the result. Mr. Murphy relied on two indisputable conditions. First, Mr. Aggarwal's proposed business was a permitted use under s. 320.2(12) of the *Edmonton Zoning Bylaw 12800*. According to s. 642(1) of the *Municipal Government Act*, an applicant who seeks a permit for a permitted use and complies with all land use bylaw requirements is entitled to a permit. The development authority or the Board must grant a permit. Second, Mr. Aggarwal met all the applicable criteria under the zoning bylaw, including s. 85(2) which stipulates the conditions that an applicant who seeks a permit for "Major Alcohol Sales" within 500 meters of another liquor store must meet.

6 Was Mr. Aggarwal entitled to the development permit that the Board gave him as of right because his application was for a permitted use and met the applicable requirements set out the *Edmonton Zoning Bylaw 12800*, including s. 85(2)?

III. Brief Answers

7 An applicant who seeks a permit to operate a liquor store that is a permitted use under s. 320.2(12) of the *Edmonton Zoning Bylaw 12800* and complies with the criteria recorded in s. 85(2) of the *Edmonton Zoning Bylaw 12800*, along with all other requirements set out the zoning bylaw, is entitled to a development permit as of right. Mr. Aggarwal was such an applicant.

8 Because the Board had to grant Mr. Aggarwal his permit and nothing Liquor Stores GP Inc. could say would have affected the result, the appellant cannot be an "affected party" under s. 686(3)(c) of the *Municipal Government Act* and entitled to notice and to participate in the Board's hearing.

IV. Statement of Facts

A. The Development Authority Refused Mr. Aggarwal's Application

9 Sometime in 2016 Mr. Aggarwal applied to Edmonton's development authority for a development permit to operate a liquor store in the Terwillegar Gardens Shopping Centre. This shopping centre is located on the southwest corner of the intersection of 23 Avenue and Rabbit Hill Road. It covers 2.12 hectares.

10 There is a shopping centre on each quadrant of the intersection. The Magrath Market is on the southeast corner of the intersection — across the Rabbit Hill Road. It is built on a 3.54 hectare site. The Terwillegar Heights Towne Square is on the northeast quadrant of the intersection. It sits on a 3.05 hectare site. Liquor Stores GP Inc. operates a liquor store in the Magrath

Market and a wine store in Terwillegar Heights Town Square. The unnamed shopping centre in the northwest quadrant of the intersection is the location of Sobey's Wine Cellars. This site is 2.80 hectares.

11 Each shopping centre is zoned "CSC Commercial Shopping Centre".

12 On October 14, 2016 the development authority refused Mr. Aggarwal's development permit application. It did so for three reasons. First, the proposed location was within 500 meters of two other retail liquor stores. This fact engaged s. 85 of the *Edmonton Zoning Bylaw 12800*. As of October 14, 2016, s. 85 stated that there could not be two liquor stores within 500 meters of each other. This was the case until City Council amended s. 85 on December 12, 2016 and it assumed its current form. [4] Second, the proposal provided insufficient parking. According to Mr. Murphy, this is a common deficiency if the premises are located on a shopping center site. It is easily solved and a variation is generally granted. Third, the proposal did not comply with the crime-prevention-through-environmental-design criteria incorporated in s. 85(12) of the *Edmonton Zoning Bylaw 12800*.

B. The Subdivision and Development Appeal Board Allowed Mr. Aggarwal's Appeal

13 On October 24, 2016 Mr. Aggarwal appealed to the Board.

14 In compliance with its practice, [5] the Board gave written notice to land owners within a sixty-meter radius of Mr. Aggarwal's proposed retail store.

15 The Board gave no notice to Liquor Stores GP Inc. Although we do not know the Board's reasons for declining to do so, the record demonstrates that Liquor Stores GP Inc. did not own land within sixty meters of Mr. Aggarwal's proposed retail store. We can also infer that the Board did not consider Liquor Stores GP Inc. to be an "affected" party under s. 686(3)(c) of the *Municipal Government Act*. The fact that the Board addressed the applicability of s. 85(2) of the *Edmonton Zoning Bylaw 12800* compels the conclusion that the Board was clearly aware that there were other liquor stores within 500 meters of Mr. Aggarwal's proposed premises.

16 No one from Liquor Stores GP Inc. appeared at the Board hearing held on January 11, 2017.

17 The Board allowed Mr. Aggarwal's appeal. It granted him a development permit to operate a liquor store in the Terwillegar Gardens Shopping Centre. The new s. 85(2) greatly assisted Mr. Aggarwal. The Board concluded that the development was a permitted use under s. 320.2(12) of the *Edmonton Zoning Bylaw 12800* and complied with s. 85(2) of the recently amended zoning bylaw. [6] The Board granted a variance for the parking deficiency and imposed a condition to resolve the design concern. [7]

C. Liquor Stores GP Inc. Secured Permission To Appeal

18 Liquor Stores GP Inc. applied for and received permission from a single judge of this Court to appeal the questions of law identified in part II. [8]

V. Applicable Statutory Provisions

19 Parts of ss. 640, 642 and 686 of the *Municipal Government Act* [9] are as follows:

> 640(2) A land use bylaw
>
> . . .
>
> (b) must . . . prescribe with respect to each district,
>
> (i) the one or more uses of land or buildings that are permitted in the district, with or without conditions, or
>
> (ii) the one or more uses of land or buildings that may be permitted in the district at the discretion of the development authority, with or without conditions,

or both . . . .

. . .

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw, . . . issue a development permit with or without conditions as provided for in the land use bylaw.

(2) When a person applies for a development permit in respect of a development that may, in the discretion of a development authority, be permitted pursuant to section 640(2)(b)(ii), the development authority may . . . issue a development permit with or without conditions as provided for in the land use bylaw.

. . .

686(3) The subdivision and development appeal board must give at least 5 days' notice in writing of the hearing

(a) to the appellant,

(b) to the development authority whose order, decision or development permit is the subject of the appeal, and

(c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

. . .

20 Parts of ss. 7.4, 11.1, 12.1, 85, 320 and 360 of the *Edmonton Zoning Bylaw 12800* read as follows:

7.4 Commercial Uses

. . .

30. Major Alcohol Sales . . . means development used for the retail sales of any and all types of alcoholic beverages to the public where the Floor Area for the individual business premises is greater than 275 m^2. This Use may include retail sales of related products such as soft drinks and snack foods.

. . .

34. Minor Alcohol Sales . . . means development used for the retail sale of any and all types of alcoholic beverages to the public. This Use may include retail sales of related products such as soft drinks and snack foods. The maximum Floor Area for this Use shall be no more than 275 m^2 per individual business premises.

. . .

11.1. Duties with Respect to Development Applications

1. The Development Officer shall receive all applications for development and:

. . .

e. shall approve, without conditions, or with such conditions as required to ensure compliance, an application for development of a Permitted Use . . . .

. . .

g. may . . . approve, with or without conditions . . . an application for development of a Discretionary Use, having regard to the regulations of this Bylaw and the provisions of any applicable Statutory Plan . . . .

. . .

12. Development Classes

12.1 General

1. The following classes of development are hereby established:

a. Class A Permitted Development; and

b. Class B Discretionary Development

. . .

85 Major Alcohol Sales and Minor Alcohol Sales

1. Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.

2. Notwithstanding subsection 85(1), a Major Alcohol Sales or Minor Alcohol Sales may be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales if all the following regulations are met:

a. the Major Alcohol Sales or Minor Alcohol Sales are located on separate Sites;

b. the Major Alcohol Sales or Minor Alcohol Sales are located outside the boundary shown in Appendix 1 to Section 85; and

c. at least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.

. . .

320 (CSC) Shopping Centre Zone

320.1 General Purpose

The purpose of this Zone is to provide for larger shopping centre developments intended to serve a community or regional trade area. . . .

320.2 Permitted Uses

. . .

12. Major Alcohol Sales, on a Site of 2 ha or larger

. . .

320.3 Discretionary Uses

. . .

11. Major Alcohol Sales, on a Site of less than 2 ha.

. . .

360 (CO) Commercial Office Zone

360.2 Permitted uses

. . .

6. Minor Alcohol Sales

. . .

360.3 Discretionary Uses

. . .

14. Major Alcohol Sales

VI. Analysis

A. Mr. Aggarwal Was Entitled to a Development Permit as of Right

1. Major Alcohol Sales Is a Permitted Use on Land Zoned CSC Commercial Shopping Centre Under the Edmonton Zoning Bylaw 12800

21 Mr. Aggarwal sought the Board's permission to operate a retail alcohol store from premises with a floor area in excess of 275 square meters [10] located in the Terwillegar Gardens Shopping Centre. The Terwillegar Gardens Shopping Centre is zoned CSC and occupies 2.12 hectares.

22 This is a permitted use under s. 320.2(12) of the *Edmonton Zoning Bylaw 12800*.[11]

23 Section 320.2(12) of the *Edmonton Zoning Bylaw 12800* declares that "Major Alcohol Sales, on a site of 2 ha or larger" is a permitted use. Section 7.4(30) provides that "Major Alcohol Sales . . . means development used for retail sales of any and all types of alcoholic beverages to the public where the Floor Area for the individual business premises is greater than 275 m^2 ".

2. Mr. Aggarwal's Application Conformed with Other Applicable Parts of the Edmonton Zoning Bylaw 12800

24 Mr. Aggarwal's application complied with s. 85(2) of the *Edmonton Zoning Bylaw 12800*. Each of the stores operated by Liquor Stores GP Inc. and Sobey's along with Mr. Aggarwal's proposed premises were on "separate Sites". [12] As well, none of those businesses were inside "the boundary shown in Appendix 1 to Section 85". [13] Finally, each of the shopping centres on the four quadrants of the intersection of 23 Avenue and Rabbit Hill Road are zoned CSC and all of the businesses except for Mr. Aggarwal's proposed premises are located on sites greater than 2.5 hectares in size. [14] It also conformed with all other applicable parts of the zoning bylaw.

B. Section 85(2) of the Edmonton Zoning Bylaw 12800 Does Not Affect the Permitted Use Status of Mr. Aggarwal's Development

25 Mr. Noce, Q.C., counsel for the appellant, argued that the Board had a discretion to dismiss Mr. Aggarwal's development permit application even though it related to a permitted use and complied with the s. 85(2) criteria. This argument relied on the presence of the verb "may" in s. 85(2) of the *Edmonton Zoning Bylaw 12800*, which is set out below:

85 Major Alcohol Sales and Minor Alcohol Sales

> 1. Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales.
>
> 2. Notwithstanding subsection 85(1), a Major Alcohol Sales or Minor Alcohol Sales may be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales if all the following regulations are met:
>
> a. the Major Alcohol Sales or Minor Alcohol Sales are located on separate Sites;
>
> b. the Major Alcohol Sales or Minor Alcohol Sales are located outside the boundary shown in Appendix 1 to Section 85; and
>
> c. at least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.

26 In order to assess the merits of Mr. Noce's submission, we must recall the fundamental principles of statutory interpretation.

27 Contested text must be interpreted so as to "[ensure] the attainment of its objects"[15] and to give the text a meaning it may reasonably bear. Words must be given their ordinary meaning.[16] A court must never give text "a meaning that it cannot bear"[17] or is "implausible".[18]

28 We are satisfied that the presence of the verb "may" in s. 85(2) does not bestow on either the development authority or the Board the discretion to dismiss a development permit application that constitutes a permitted use under s. 320.2(12) of the *Edmonton Zoning Bylaw 12800* and meets the criteria set out in s. 85(2).[19]

29 Instead, the verb "may" introduces an exception to the general rule that is formulated in s. 85(1) — a liquor store must not be located within 500 meters of another liquor store.

30 Here is the example we used during oral argument to illustrate the point. Suppose that parents who imposed a weekend-midnight curfew on their fifteen year old informed their teenager that he may come home after midnight on December 31. The parents, in effect, created an exception to the general rule that the teenager must be home before midnight on weekends. They did not intend to amend the general rule — the teenager was still subject to a weekend-midnight curfew.

31 If we accepted this aspect of Mr. Noce's argument, we would convert a development that was a permitted use under s. 320.2(12) of the *Edmonton Zoning Bylaw 12800* — "Major Alcohol Sales, on a Site of 2 ha or larger" — into a discretionary use. This cannot be done.[20] Section 320.3 of the *Edmonton Zoning Bylaw 12800* already lists discretionary uses in a "CSC Shopping Centre Zone" and no mention is made of a use that displays the features incorporated in s. 85(2) of the *Edmonton Zoning Bylaw 12800*. In addition, s. 85(2) does not state that a "Major Alcohol" or "Minor Alcohol" sales use that has the features recorded in s. 85(2)(a)(b) and (c) constitutes a discretionary use. It would take unequivocal language to satisfy us that a part of the *Edmonton Zoning Bylaw 12800* outside s. 320.3 created a discretionary use in the "CSC Shopping Centre Zone".

C. Liquor Stores GP Inc. Is Not Entitled to Notice

32 Mr. Noce argued that his client was "affected" by Mr. Aggarwal's application and entitled to notice of the Board's hearing of Mr. Aggarwal's appeal. Counsel relied on s. 686(3)(c) of the *Municipal Government Act*: "The subdivision and development appeal board must give at least 5 days' notice in writing of the hearing . . . to those owners required to be notified under the land use bylaw and any other person that the . . . board considers to be affected by the appeal".

33 The Board gave written notice to the land owners within a sixty meter radius of the proposed development. As Liquor Stores GP Inc. did not own a lot within sixty meters of the location of Mr. Aggarwal's premises, this Board practice did not assist Liquor Stores GP Inc.

34 We cannot conclude that Liquor Stores GP Inc. and any other liquor store owners carrying on business within 500 meters of Mr. Aggarwal's premises are "affected by the appeal".

35 The purpose of the notice provision is to increase the likelihood that the Board will make an informed decision having access to all relevant information. Given that the Board has no residual discretion to deny Mr. Aggarwal's development application because it is for a permitted use and it conforms with all land use requirements under the *Edmonton Zoning Bylaw 12800*, any evidence Liquor Stores GP Inc. or any other alcohol store owner may present regarding the cumulative impact of another liquor store in the immediate area would be irrelevant. This evidence could not possibly change the outcome of the appeal before the Board. A party that can only provide irrelevant information cannot be an "affected" party.

36 It makes no sense to compel the Board to incur the expense associated with identifying liquor stores within a 500 meter radius of an applicant's proposed place of business and giving them notice of a hearing the outcome of which they cannot possibly influence.

37 This determination does not deprive Liquor Stores GP Inc. or any other liquor store from participating in the public debate about the appropriate concentration of alcohol stores in various segments of Edmonton. The fact that City Council amended s. 85 of *Edmonton Zoning Bylaw 12800* on December 12, 2016 is strong evidence that the issue may still be a live one.

D. Standard of Review Is Not an Issue

38 The parties also discussed the applicable standard of review.[21] It is not necessary to decide this issue. The Board's decision satisfies the standards of both reasonableness and correctness.

VII. Conclusion

39 The appeal is dismissed.

40 The Court acknowledges the very able and helpful submissions of Messrs. Noce, Murphy and Gunther.

Appeal dismissed.

Footnotes

1 Section 4 of Edmonton's *Subdivision and Development Appeal Board Bylaw* states that the legal name of the Board is "Subdivision and Development Appeal Board". *Bylaw No. 11136*.

2 The *Edmonton Zoning Bylaw 12800*, s. 7.4(30) refers to this as a "Major Alcohol Sales" use.

3 R.S.A. 2000, c. M-26.

4 *Bylaw 17836*.

5 Mr. Aggarwal's factum states that "[t]he Board's long standing policy is to provide notice of its hearings to all assessed property owners within 60 meters of the proposed development location".

6 1 Appeal Record F5 & F6.

7 Id. F6 & F7.

8 *Liquor Stores Limited Partnership v. Edmonton (City)*, 2017 ABCA 130 (Alta. C.A.), 52; 64 M.P.L.R. (5th) 43 (Alta. C.A.), 61-62.

9 R.S.A. 2000, c. M-26.

10 *Edmonton Zoning Bylaw 12800*, 7.4(30).

11 "Major Alcohol Sales" is a permitted use in some zones and a discretionary use in some zones. For example, "Major Alcohol Sales" is a discretionary use on land zoned "CO Commercial Office Zone". *Edmonton Zoning Bylaw 12800*, s. 360.3.

12 *Edmonton Zoning Bylaw 12800*, s. 85(2)(a).

13 Id. s. 85(2)(b).

14 Id s. 85(2)(c).

15 *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10 ("An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects"). See also *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 (S.C.C.), 331 ("All legislation is animated by an object the legislature intends to achieve") & *Montreal (Ville) v. 2952-1366 Québec inc.*, 2005 SCC 62 (S.C.C.), 23; [2005] 3 S.C.R. 141 (S.C.C.), 156 ("Identifying the purpose of a regulation can be helpful in determining the meaning of a given word or expression").

16 *Edmonton Zoning Bylaw 12800*, s. 3.5(2)("Words that are not capitalized should be given their plain and ordinary meaning as the context requires"); *Thomson v. Canada (Department of Agriculture)*, [1992] 1 S.C.R. 385 (S.C.C.), 399-400 (unless an enactment indicates a contrary intention, a word should be given its ordinary or usual meaning); *Caminetti v. United States*, 242 U.S. 470 (U.S. Sup. Ct. 1917), 485-86 ("Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them"); R. Sullivan, Sullivan on the Construction of Statues 28 (6th ed. 2014) ("It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature") & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 69 (2012)("Words are to be understood in their ordinary, everyday meanings — unless the context indicates that they bear a technical sense").

17 A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 31 (2012). See also Frankfurter, "Some Reflections on the Reading of Statutes", 47 Colum. L. Rev. 527, 543 (1947)("Violence must not be done to the words chosen by the legislature").

18 *Lenz v. Sculptoreanu*, 2016 ABCA 111 (Alta. C.A.), 4; (2016), 399 D.L.R. (4th) 1 (Alta. C.A.), 6.

19 The following draft may be clearer:Two or more Major Alcohol Sales or Minor Alcohol Sales must not be located within 500m of each other unlessa. the Major Alcohol Sales or Minor Alcohol Sales are located on separate sites;b. the Major Alcohol Sales or Minor Alcohol Sales are located outside the boundary shown in Appendix 1 to Section 85; andc. at least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a site greater than 2.5 ha in size and is zoned CSCa, UVCa, GVC, TC-C, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.

20 See *Chrumka v. Calgary (Development Appeal Board)*, 1981 ABCA 282 (Alta. C.A.), 20-21; (1981), 130 D.L.R. (3d) 61 (Alta. C.A.), 68-69.

21 See *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293 (S.C.C.) & *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374 (Alta. C.A.).

TAB 3

CITY OF YELLOWKNIFE

Adopted Council Minutes

Regular Meeting

Monday, August 25, 2003 at 7:00 p.m.

Present: Mayor G. Van Tighem,
Councillor W. Bisaro,
Councillor R. Hawkins,
Councillor B. Lyons,
Councillor D. McCann,
Councillor B. McDonald,
Councillor K. O'Reilly,
Councillor D. Ramsay, and
Councillor A. Woytuik.

City Staff: M. Hall,
L. Bouwmeester,
R. Charpentier,
D. Gillard,
D. Jones,
G. Kehoe,
B. Kelln,
P. Neugebauer,
D. Nicklen, and
D. Euchner.

1. Councillor Ramsay read the Opening Prayer/Meditation.

AWARDS, CEREMONIES AND PRESENTATIONS

2. There were no awards, ceremonies or presentations for the agenda.

ADOPTION OF MINUTES FROM PREVIOUS MEETING(S)

#0248-03 3. Councillor Bisaro moved,
Councillor Hawkins seconded,

That the Minutes of Council for the regular meeting of Monday, July 28, 2003 be adopted as amended.

MOTION CARRIED UNANIMOUSLY

#0261-03 44. Councillor McDonald moved,
Councillor Bisaro seconded,

That By-law No. 4278 be presented for Third Reading.

MOTION DEFEATED
(Councillor Ramsay opposed)

45. Council recessed at 10:00 p.m. and reconvened at 10:13 p.m.

46. By-law No. 4279 - A by-law authorizing the sale of Phases 5, 6 and 7 of the Niven Lake residential area, was presented for First and Second Reading.

#0262-03 47. Councillor McDonald moved,
Councillor Hawkins seconded,

First Reading of By-law No. 4279.

MOTION CARRIED UNANIMOUSLY

#0263-03 48. Councillor McDonald moved,
Councillor Hawkins seconded,

Second Reading of By-law No. 4279.

MOTION CARRIED UNANIMOUSLY

#0264-03 49. Councillor McDonald moved,
Councillor Bisaro seconded,

That By-law No. 4279 be presented for Third Reading.

MOTION CARRIED UNANIMOUSLY

#0265-03 50. Councillor McDonald moved,
Councillor Bisaro seconded,

Third Reading of By-law No. 4279.

MOTION CARRIED UNANIMOUSLY

51. By-law No. 4280 - A by-law to authorize the City to borrow on the surety of debentures the sum of $1,180,000 for the purpose of financing the 2004 Road Rehabilitation and Paving Program, was presented for First and Second Reading.

#0266-03 52. Councillor McDonald moved,
Councillor Hawkins seconded,

First Reading of By-law No. 4280.

MOTION CARRIED UNANIMOUSLY

#0267-03 53. Councillor McDonald moved,
Councillor Ramsay seconded,
Second Reading of By-law No. 4280.

#0268-03 54. Councillor McDonald moved,
Councillor Bisaro seconded,

That By-law No. 4280 be amended by deleting "$1,180,000" and replacing it with "$1,930,000".

Council noted that the amended figure will allow Administration to seek a more enduring means to repair the Old Town hill.

MOTION TO AMEND CARRIED UNANIMOUSLY

MAIN MOTION CARRIED UNANIMOUSLY

TAB 4

This Agreement made in duplicate the **14th** day of **December, 2021**.

BETWEEN:

THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE

(the "City")

OF THE FIRST PART

and

507726 N.W.T LTD.

(the "Purchaser")

OF THE SECOND PART

PURCHASE AGREEMENT

WHEREAS

A. The City wishes to sell the property, legally described as the portions of Lots 11 and 12, Block 307, Plan 4441, Yellowknife; as outlined as Lot A in Schedule "D" (the "Property"), attached hereto and forming part of this Agreement;

B. The City has adopted By-law No. 4279, authorizing the disposal of the Property;

C. The Purchaser requires access to the Property immediately, notwithstanding the plan of survey subdividing the Property has not yet been completed or registered;

D. The Purchaser wishes to purchase the Property in accordance with the terms and conditions contained herein;

NOW THEREFORE, this Agreement witnesses that for and in consideration of the purchase price and the mutual covenants and agreements herein contained, the parties hereby covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, the following words and phrases when capitalized shall have the following meanings:

a. **"Closing Date"** means **14th** day of **December, 2022** (12 months from the date of execution of this Agreement), unless otherwise agreed to in writing by both parties;

b. **"Purchase Price"** means the sum of [redacted], not including the applicable Goods and Services Tax, subject to adjustments as set out in this Agreement;

c. **"Non-refundable Deposit"** means 15% of the Purchase Price;

d. **"Balance of the Purchase Price"** means 85% of the Purchase Price more or less, subject to adjustments, if any, as set forth herein, not including the GST, payable on the Closing Date by certified cheque or solicitor's trust cheque;

e. **"Goods and Services Tax"** means the Goods and Services payable by the Purchaser to the City pursuant to the *Excise Tax Act* (5% of the Purchase Price), subject to the terms of this Agreement;

f. **"Possession Date"** means the date of execution of this Agreement;

g. **"Development"** means the carrying out of any construction or excavation or other operations in, on, over or under land, or the making of any change in the use or the intensity of use of any land or building;

h. **"Permitted Uses"** means a use listed in a permitted use table that shall be approved with or without conditions provided the requirements and regulations of Zoning By-law No. 4404, as amended, are satisfied;

i. **"Conditionally Permitted Use"** means a use listed in a conditionally permitted use table that may be permitted by Council after due consideration is given to the impact of that use upon neighboring land and other lands in the City, subject to Zoning By-law No. 4404, as amended;

j. **"Approved Development Permit"** means a document authorizing a development issued pursuant to the City of Yellowknife Zoning By-law No. 4404, as amended;

k. **"Permitted Encumbrances"** means those encumbrances described in Schedule "A" attached hereto including, without restriction, the caveat respecting the Option Agreement as contemplated within this Agreement; and

l. **"Option Agreement"** means the agreement set forth in Schedule "B" attached hereto.

1.2 The captions and headings in this Agreement are for convenience and reference only and shall not be considered when interpreting the provisions of this Agreement. All references in this Agreement to Articles, Sections, and Schedules refer to the corresponding Articles, Sections, and Schedules of this Agreement.

1.3 All references to currency shall be in Canadian dollars.

1.4 Any reference in this Agreement to a statutory enactment of any Government Authority shall include all amendments thereto and substitutions therefore from time to time.

1.5 This Agreement shall be interpreted and enforced in accordance with the laws of the Northwest Territories.

1.6 In the event that the Closing Date or any other dates stipulated in this Agreement is not a Business Day, the said closing dates or such other dates shall be deemed to be the next regular day of business.

2. PURCHASE AND SALE

2.1 The Purchaser hereby agrees to purchase the Property subject only to the Permitted Encumbrances, and free and clear of all tenancies, for the Purchase Price and the City hereby agrees to sell the Property to the Purchaser in accordance with the terms and conditions herein set out.

2.2 The Purchaser hereby agrees that the Property shall be subject to infrastructure easements and that such easements will be evidenced by registration of a caveat or caveats against the title to the Property. The Purchaser further agrees and covenants with the City, in the event that title to the Property is transferred to the Purchaser before the said caveat or caveats are registered, to execute such other documents as may be necessary to permit registration of the said easements with the Land Titles Office in the Northwest Territories.

2.3 The Purchase Price is [redacted], plus applicable Goods and Services Tax (GST), and shall be paid as follows:

a. Upon execution of this Agreement: [redacted] the Non-refundable Deposit paid on the **14th** day of **December 2021**, the receipt of which the City hereby acknowledges;

b. Within twelve (12) months of execution of this Agreement: **14th** day of **December 2022**, [redacted] representing the Balance of the Purchase Price; and

c. Goods and Services Tax means the Goods and Services Tax in the amount of [redacted], payable on the Closing Date by certified cheque or solicitor's trust cheque.

2.4 To the extent that this transfer of Property between the Purchaser and the City is subject to GST, it is understood and agreed between the parties that:

a. if the Purchaser is not a registrant, the Purchaser shall be required to pay applicable

GST to the City on the Closing Date;

b. if the Purchaser is a registrant, the Purchaser shall not be required to pay GST to the City provided the Purchaser provides the City with its GST number and a duly executed copy of the GST undertaking attached as Schedule "C" hereto.

In either case, the Purchaser shall do or cause to be done such further acts, and execute and deliver or cause to be executed and delivered such further documents, as may be required for the Purchaser to fully comply with the requirements of applicable GST legislation.

2.5 In the event that any of the following events takes place, with respect to the Purchaser's payment of the Purchase Price, as set forth under this Agreement, the Purchaser shall be required to pay the remaining Balance of the Purchase Price, GST, and any administrative cost owing, without delay:

a. If any lien is filed against the Property pursuant to the *Mechanics Lien Act* of the NWT and that lien remains registered against the Property for three months;

b. If any party files an application for bankruptcy proceedings on behalf of the Purchaser;

c. If the Purchaser sells, leases, or provides the Property as collateral to a third party for purposes other than the Purchaser's intended objective for the Property.

3. SITE SERVICES

3.1 The City will allow the Purchaser to hook-up to the City's water main, storm main, and sewer main at the Purchaser's sole expense. Any work required to hook-up to the City services shall be the sole responsibility of the Purchaser and must be completed to City standards and approval.

3.2 The Purchaser shall, at the Purchaser's sole expense, be responsible for making any and all arrangements for electric power, gas, telephone, and cable services required to complete the Development on the Property.

3.3 In addition to all other Plans, Specifications and Construction requirements the Purchaser must adhere to the following:

a. all the water services shall be turned off at the main and the service lines must not contain water until such a time as the water service can be put into operation. The Consulting Engineer shall provide the final design for service lines, including any valves or other devices, for approval by the City's Engineer.

b. when the water service is put into operation, the Purchaser shall at its own expense:

i) pressure test the service with water and the test shall be confirmed, in writing, by the Consulting Engineer; and

ii) repair and retest the service if there is leakage.

3.4 If the Purchaser chooses to phase the construction of the development, the Purchaser shall prevent the water and sewer mains from freezing. The cost of installation and operation of any device or method to prevent the mains from freezing shall be the responsibility of the Purchaser until such time as all the underground portion of the whole development has been completed.

3.5 The Purchaser shall ensure the development area is developed with buried water and sewer infrastructure and underground electrical power, telephone and cable services.

4. CROSS ACCESS EASEMENT AGREEMENT

4.1 The Purchaser hereby agrees that the Property shall be subject to a cross access easement agreement between the City and the Purchaser for the City's access to and provision of municipal services at a portion of Lot C, as set out in Schedule "D" to this Agreement, and such easement agreement may be evidenced by registration of a caveat against the title to the Property.

4.2 The Purchaser agrees to enter into a cross access easement agreement with the City as a condition of the purchase of the Property. The Purchaser further agrees and covenants with the City to execute such other documents as may be necessary to permit registration of the said easement with the Land Titles Office in the Northwest Territories.

5. SUBDIVISION

5.1 The City and the Purchaser shall co-operate with the surveyors in reviewing, approving and registering a final plan of subdivision prepared by a duly qualified land surveyor retained by the City, which is registrable at the Land Titles Office and which provides for the creation of fee simple lots (the "Subdivision Plan").

5.2 The preparation of the Subdivision Plan shall be the sole cost and responsibility of the City.

5.3 The City shall take reasonable steps to prosecute the processing of a Subdivision Plan to create fee simple lots subject to such modifications as may be necessary to obtain subdivision approval.

5.4 The City shall provide its written consent to all necessary applications for the subdivision of the Property at the request of the Purchaser, including a letter in support of such applications, and shall provide further assurances as the City, in its capacity as an approving government authority, may require from time to time.

6. CONVEYANCING MATTERS

6.1 Vacant possession of the Property shall be given to the Purchaser at 12:00 o'clock noon on the Possession Date, but the Purchaser shall not be entitled to obtain title to the Property until the Balance of the Purchase Price for the Property has been paid in full. The Purchaser shall be responsible for the payment of all property taxes on the Property as of the Possession Date and the Purchase Price shall be subject to adjustment for property taxes, if any, on the Closing Date.

6.2 If the City agrees to accept late payment of the Balance of the Purchase Price, the Purchaser shall pay interest at **21.6%** per annum to the City calculated daily from and including the Closing Date to but excluding the day that the Balance of the Purchase Price is paid in full.

6.3 Upon being granted possession of the Property, the Purchaser shall assume all risks and liabilities with respect to the Property.

6.4 The City is not obliged to accept payment of the Balance of the Purchase Price after the Closing Date, but the City may agree to accept late payment, subject to reasonable trust conditions.

6.5 The City shall provide a registrable Transfer of Land to the Purchaser when the Balance of the Purchase Price has been paid in full on reasonable trust conditions which will allow the transaction to close in accordance with the terms hereof, including the requirement to register the City's caveat or caveats respecting the Option Agreement.

6.6 In the event that the City fails to perform its obligations hereunder, the Purchaser's deposits shall forthwith be releasable to the Purchaser without interest and without prejudice to the Purchaser's ability to enforce any rights or remedies which the Purchaser may have under this Agreement, in law or in equity. In the event that the Purchaser fails to perform its obligations hereunder, the City shall be entitled to retain the Purchaser's deposits as being automatically forfeited to the City on account of liquidated damages without prejudice to the City's ability to enforce any rights or remedies which the City may have under this Agreement, in law or in equity.

7. CONDITIONS OF THE PROPERTY

7.1 For the purposes of this Agreement, the parties agree that the Property is sold in an "**as is condition**" and the City makes no warranty or representation as to the developability of the Property, nor with respect to any soil conditions or other geotechnical considerations or services available to the Property, and the Purchaser further acknowledges that the Purchaser has inspected the Property and is aware of all physical and legal aspects pertaining to the Property, and that this agreement contains the entire agreement between the parties and cannot be modified in any way except by further agreement in writing, signed by each of the parties hereto.

7.2 The Purchaser must adhere to the requirements outlined in applicable by-laws and regulations, including but not limited to Zoning By-law No. 4404, as amended, Building By-law No. 4469, as amended, and the overall final grading plan of the area.

8. IMPROVEMENTS TO THE LAND

8.1 The City and the Purchaser agree that the Purchase Price for the Property includes the following:

a. Primary electrical power utilities (mains) adjacent to the Property; and

b. Sanitary sewer, storm pipe, and water services adjacent to the Property.

8.2 The City and the Purchaser agree that the Purchase Price for the Property does not include the following:

a. The cost of sewer or water connections, or electrical service connections from the location of service lines adjacent to the property to the proposed building site;

b. The cost of sewer, water, back flow preventers for water service, or the electrical service, or any appurtenances thereto, from the Property line to any construction on site; and

c. Any cost associated with stripping, grading, drainage or landscaping or site finishing from subgrade to final grade that the City may require the Purchaser to do or that the Purchaser may determine to be necessary to facilitate its development.

9. DEVELOPMENT REQUIREMENTS AND OPTION

9.1 The Purchaser agrees to enter into a Development Agreement as a condition of the Development Permit. This Agreement will detail development obligations including but not limited to satisfaction of development schedule with conditions of completion.

9.2 The Purchaser acknowledges that the City has only agreed to sell the Property because of the Purchaser's expressed intention to construct its development thereon. Without a commitment to construct, the City would not sell the Property to the Purchaser. It is therefore a Condition Precedent of this Agreement and a fundamental obligation of the Purchaser to ensure that the development is built within the time stated and in compliance with the conditions of this Agreement and with the development standards, policies, and by-laws of the City. The covenant of the Purchaser to so develop is a fundamental term of this agreement running with the Property in favour of the City and shall not merge on transfer of title.

9.3 The Purchaser covenants to obtain an **Approved Development Permit** for a *Permitted Use*, on the Property **within twelve (12) months from the Possession Date.**

9.4 The Purchaser covenants to **complete construction of the development** on the Property **within thirty-six (36) months from the Possession Date**. The Purchaser further acknowledges, covenants, and agrees that if the Purchaser fails to satisfy this requirement, the City shall have the option to repurchase the Property in accordance with the Option Agreement attached hereto as Schedule "B". Concurrently with this Agreement, the Purchaser shall execute and deliver the Option Agreement to the City and the City shall be entitled to register the Option Agreement against title to the Property by way of caveat.

9.5 Should any dispute arise as to whether the City is entitled to exercise the option to repurchase the Property granted hereunder, the Council for the City of Yellowknife may appoint a single Arbitrator to whom all questions of fact shall be referred for determination. The decisions of the Arbitrator shall be final and binding. Except as provided herein, the provisions of the *Arbitration Act* of the Northwest Territories shall apply.

9.6 In addition, the Purchaser covenants and agrees that it shall not sell, transfer, or lease the Property to any third party without first obtaining an Approved Development Permit for a *Permitted Use* or *Conditionally Permitted Use* on the Property in accordance with all applicable building permits, development permits, development agreements, by-laws, regulations, building and safety codes, and restrictions affecting the Property and the Development. The Purchaser further acknowledges that the City shall also have the option to repurchase the Property in accordance with the Option Agreement attached hereto as Schedule "B" in the event that the Purchaser sells, transfers or leases or purports to sell, transfer or lease, the Property prior to commencement and completion of the Development as required within this Agreement.

9.7 Notwithstanding anything contained in this agreement, if the Purchaser is not able to obtain an Approved Development Permit for its intended development (provided such plans are *bona fide* plans suitable to the site), this Agreement shall be terminated and all deposit monies paid by the Purchaser to the City shall be forfeited absolutely to the City as liquidated damages and not as a penalty.

9.8 For the purposes of this Agreement, development of the Property shall be deemed to be complete when the principal building or structure has been erected, the principal use established and site grading completed in accordance with an Approved Development Permit and an Occupancy Permit for the principal building has been approved, to the satisfaction of the City's Director of the Department of Planning and Development. For greater certainty, the principal building or structure shall be substantially completed subject only to minor deficiencies or seasonal work, in the opinion of the Director of the Department of Planning and Development, acting reasonably.

9.9 The Purchaser acknowledges that it is his responsibility to determine which building permits, development permits, by-laws, regulations, building and safety codes, and restrictions affecting the Property and the Development are relevant and applicable for

the purposes of his purchase and development and it is his responsibility to read, gain understanding of, and act in full accordance with the same.

9.10 Nothing in this Agreement waives and nullifies the Purchaser's obligations to comply with provisions of all applicable federal, territorial and municipal laws, including, but not limited to, the City of Yellowknife Zoning By-law No. 4404, as amended from time to time.

9.11 The Purchaser hereby acknowledges that he has read and understands this Agreement and all Schedules attached hereto.

10. SECURITY FOR DEVELOPMENT REQUIREMENTS

10.1 On closing, the Purchaser will deliver to the City a Transfer of Land into the name of the City to be held in trust for use in accordance with the terms of this Agreement.

10.2 The City shall be entitled to register and maintain a caveat or caveats against title to the Property, to protect the City's interest therein and covenants contained in this Agreement to be performed by the Purchaser, until completion of the development and payment of all monies required to be paid hereunder.

10.3 Upon completion of the Development to the reasonable satisfaction of the Development Officer and upon the Purchaser complying with the terms and conditions of this Agreement, the City shall issue a Withdrawal of Caveat to be registered by the Purchaser, at the Purchaser's expense, and shall return to the Purchaser the unregistered Transfer of Land into the name of the City.

11. DEFAULT OF DEVELOPMENT OBLIGATIONS

11.1 If the Purchaser fails to obtain an Approved Development Permit and complete development within the time provided, the City may declare the Purchaser to be in default of its fundamental obligations under this Agreement. In that event, the City will have the right to:

a. take immediate possession of the Property;

b. register the Transfer of Land in the name of the City;

c. refund to the Purchaser all amounts paid by it, less:

i. all Deposits;

ii. any expenses incurred by the City in clearing and restoring the Property to its original condition, including all costs necessary to remove any foundations or debris or other material;

iii. any sum required to obtain a discharge of mortgage, lien, or security interest registered against title;

iv. the cost of registering the Transfer of Land;

v. any legal fees or expenses paid by the City to its solicitors as to enforce its rights under this Agreement; and

d. recover from the Purchaser any expenses or amounts paid by the City under provisions of this paragraph which are in excess of the amounts previously received from the Purchaser by the City.

11.2 If the City exercises its remedies under this part, then all improvements erected on the Property shall become the property of the City and the City shall not have any obligations to compensate the Purchaser for them.

11.3 The remedies available in this paragraph shall be in addition to any other remedies which the City may have available.

11.4 If the Purchaser fails to complete the Development as required, then, in addition to any of the remedies available to the City at law or under this Agreement, the City may declare the Purchaser to be in default of its fundamental obligations and may require that the Purchaser pay to the City on demand in each calendar year after the date for completion of Development, an amount equal to the difference between the municipal taxes actually levied against the Property and any improvements thereon, and an amount equal to the taxes if the Development had been completed as contemplated hereunder.

12. GENERAL

12.1 Any notices to be given pursuant to this Agreement shall be in writing and shall be given and deemed to have been received as provided herein at the following addresses:

a. to the City at: City of Yellowknife
P.O. Box 580
4807-52nd Street
Yellowknife, NT X1A 2N4

Attention: Planning Administrator

b. to the Purchaser at: 1000, 13920 Yellowhead Trail
Edmonton, AB T5L 3C2

Attention: Milan Mrdjenovich

or such other address as either party may designate from time to time by written notice to the other. Any notice shall be delivered to and left at the address for notice of the party to whom it is to be given during normal business hours on a business day and shall have been deemed to be received on the date of delivery.

12.2 The City represents and warrants that it is not a non-resident within the meaning of the *Income Tax Act* of Canada, nor is it an agent or a trust for anyone with an interest in the Property who is a non-resident.

12.3 The terms of this Agreement shall not merge upon the transfer of the Property from the City to the Purchaser and shall be enforceable against the Purchaser, his heirs, executors, administrators, and successors in title.

12.4 The Purchaser shall not be entitled to assign this Agreement, either in whole or in part, without the prior written consent of the City.

12.5 Nothing contained herein shall preclude the City from resorting to any remedy provided by law in respect of any breach hereof or any right, interest or claim of the City hereunder, and the waiver of any term of this Agreement in any instance shall not be deemed to be a general waiver of any other term of this Agreement.

12.6 The City warrants:

a. that the Purchaser may enter upon the Property prior to the Possession Date to perform geotechnical testing only, subject to any municipal regulations or policies that may apply and any operational requirements of the City for the installation of municipal infrastructure and other essential services for the subdivision; and

b. that the City will manage the Property as a prudent owner from the date of this agreement to the Possession Date.

12.7 Time is of the essence with respect to the completion and fulfilment of all the terms, covenants, and conditions of this Agreement.

12.8 In addition to anything else contained in this Agreement, the Purchaser agrees that a copy of this Agreement may be registered against the title of the Property by way of caveat until the required development of the Property has been completed, at which time the City will prepare a withdrawal of caveat document to be registered by the Purchaser at the Purchaser's own expense. Further, the City agrees to provide a postponement of the caveat registration in favour of any bona fide mortgage lender for the purchase of the Property or development of the Property.

12.9 This Agreement shall constitute the entire agreement between the parties and the parties acknowledge that there are no other representations, conditions, or warranties with respect to this Agreement other than those which are contained herein. The following schedules shall form part of this Agreement:

i. Schedule "A" – the Property and Permitted Encumbrances;

ii. Schedule "B" – the Option Agreement;

iii. Schedule "C" – GST Undertaking; and

iv. Schedule "D" – Sketch

v. Transfer of Land back in the name of the City.

12.10 Whenever the singular or masculine is used throughout this Agreement the same shall be construed as meaning the plural or feminine or a body corporate where the context or the parties so requires, and in the case of two or more purchasers, the covenants herein contained on their part shall be deemed joint and several.

12.11 The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

12.12 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.

IN WITNESS whereof this Purchase Agreement has been duly executed by the parties on the day and year first above written.

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

Per: _____ *(Seal)*
PLANNING ADMINISTRATOR

WITNESS

Signature

PRACHI NEGI
Print Name

PURCHASER

Signature

Milan Madjenovich
Print Name

Owner
Title

(Seal)

SCHEDULE "A"

PROPERTY AND PERMITTED ENCUMBRANCES

The Property

Portions of lots 11 and 12, Block 307, Plan 4441 as outlined in Schedule "D" (the "Property"), attached hereto and forming the part of this Agreement.

Permitted Encumbrances

(a) Caveat re: Cross Access Agreement
(b) Municipal Drainage Easement (if applicable)
(c) Utility Right of Way/Caveat re: Electrical (if applicable)
(d) Caveat re: Option to Purchase (in favour of City)

SCHEDULE "B" – THE OPTION AGREEMENT

This Agreement made in duplicate the **14th** day of **December, 2021**.

OPTION TO PURCHASE

BETWEEN:

507726 N.W.T. LTD.

(the "Grantor")

and

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

(the "Grantee")

WHEREAS:

A. Pursuant to a Purchase Agreement dated **14th** day of **December 2021**, between the Grantor and the Grantee (the "Purchase Agreement"), the Grantor purchased from the Grantee all those lands and premises legally described as follows:

Portions of Lots 11 and 12
Block 307
Plan 4441
Yellowknife

as outlined as Lot A in Schedule "D" (the "Lands") , attached hereto and forming the part of this Agreement;

B. The Grantee agreed to sell the Lands to the Grantor on the express obligation and condition that the Grantor commence, diligently and continuously pursue, and complete development which is more particularly described within the Purchase Agreement and the Development Permit issued in favour of the Grantor respecting the Lands (the "Development Permit"), all which must have been substantially completed to the point of issuance of final inspection report by the City of Yellowknife and said report not being subject to any conditions that, when left unremedied, may be deemed to be injurious to health and safety, as determined by the Director of the Department of Planning and Development for the City of Yellowknife and in accordance with the terms, covenants and conditions set forth within the Purchase Agreement, the Development Permit and, if applicable, a Development Agreement, as well as in accordance with all applicable building permits, development permits, by-laws, regulations, building and safety codes, and restrictions affecting the Lands and the above-noted improvements (the "Development").

C. The Grantor has agreed to grant the Grantee the option to re-purchase the Lands upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the Grantee to sell the Lands to the Grantor, and in payment of the sum of ONE ($1.00) DOLLAR to the Grantor by the Grantee, the receipt and sufficiency of which is hereby wholly acknowledged, it is hereby agreed that:

1) The Grantor hereby grants the Grantee the irrevocable option to purchase the Lands at and for the sum of the original Purchase Price, minus the 15% non-refundable deposit and less the outstanding balance owing under any mortgage or other financial charge registered against the Property, subject the following permitted encumbrances and any other matters identified herein:

   (a) Mortgage/Financing Documents;
   (b) Cross Access Agreement;
   (c) Utility Right of Way/Caveat re: Electrical (if applicable);
   (d) Caveat re: Option to Purchase;
   (e) Municipal Drainage Easement (if applicable)

2) This Option to Purchase may be exercised by the Grantee at any time before the third anniversary of the Closing Date or within 60 days following that date if:

   i) the Grantor fails to obtain an Approved Development Permit on or before **14th** day of **December 2022** (12 months from the Possession Date);

   ii) the Grantor fails to complete construction of the Development on or before **14th** day of **December 2024** (36 months from the Possession Date); or

   iii) the Grantor sells, leases, or otherwise transfers or purports to sell, lease, or transfer any interest in the Lands or any portion thereof prior to completion of the Development in accordance with the terms of the Purchase Agreement.

   In such case, the Grantee shall be entitled to repurchase the Lands pursuant to the exercise of the option granted within this Option to Purchase.

3) The City shall exercise the option referred to above by sending a notice in writing by registered mail to the registered owner of the Property, at the address shown on the title at the Land Titles Office, stating the grounds on which the option is being exercised and such notice shall be deemed to have been received by the recipient on the third day following the sending of such notice by single registered mail.

4) Ten (10) days after notice of the City's intention to repurchase the Property has been mailed, the City will submit to the Land Titles Office the registrable land transfer documents held in escrow. Upon registration of the land transfer, the City will pay the option price less the amount required to discharge any encumbrances against the Property within seven (7) days of the receipt of the Certificate of Title for the Property.

5) The Grantee shall be entitled to register a caveat against the title to the Lands pursuant to this Option to Purchase. In this regard, the Grantor covenants not to take any steps whatsoever to discharge this registration including, without restriction, the service of any notice to take proceedings on such caveat. The caveat registered pursuant to this Option to Purchase will not be discharged unless the City is satisfied that all requirements pursuant to the Development have been met. The City retains the sole right in its discretion to discharge the caveat.

6) The Grantor shall indemnify and hold the Grantee harmless from and against any and all losses, liabilities, damages, costs and expenses of any kind whatsoever, including but not restricted to all legal costs on a solicitor and his own client full indemnity basis, which may be paid by, incurred by, or asserted against the Grantee as a direct or indirect result of any act or omission of the Grantor which constitutes a breach of any term, covenant or condition under this Option to Purchase and the Purchase Agreement.

7) This Agreement may not be assigned by the Grantor, either in whole or in part, without the prior written consent of the Grantee.

8) This Agreement shall enure to the benefit of and be binding on all parties hereto and their respective successors and permitted assigns. Specifically, and without limiting the generality of the foregoing, this option shall bind on the Grantor and all future owners of the Lands.

[Remainder of page intentionally left blank]

IN WITNESS whereof this Option Agreement has been duly executed by the parties on the day and year first above written.

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

Per: _____ *(Seal)*
PLANNING ADMINISTRATOR

WITNESS

_____
Signature

PRACHI NEGI
Print Name

GRANTOR

_____
Signature

Milan Medjenovich
Print Name

owner
Title

(Seal)

SCHEDULE "C" – GST UNDERTAKING

To: The Municipal Corporation of the City of Yellowknife

(the "City")

Re: Portions of Lots 11 and 12, Block 307, Plan 4441 as outlined in Schedule "D"

(the "Property")

Municipal Address: N/A

The undersigned Purchaser of the above-noted property acknowledges that the Purchase Price does not include Goods and Services Tax ("GST") and that the City has not collected the GST with respect to the sale of the Property.

The Undersigned confirm that it is registered under Part IX (Goods and Services Tax), Division V, Subdivision "D" of the *Excise Tax Act* (Canada) and our registration number is _____ and hereby covenants and agrees that it will be responsible for any GST that may be imposed on the sale of the Property, and that it will, as required by law:

1) Register and/or file any documentation required pursuant to any GST legislation;

2) If any GST is or becomes payable respecting the sale of the said Property, the undersigned Purchaser shall pay the same to the Government of Canada and it shall indemnify and save harmless the City of and from any liability for or payment of applicable GST.

These undertakings shall survive the close and completion of the sale.

Dated at the City of Yellowknife in the Northwest Territories this _____ day of _____, 20___.

Per: _____

Per: _____

(c/s)

AFFIDAVIT OF EXECUTION

I, Prachi Negi, of the City of Yellowknife, in the Northwest Territories, MAKE OATH AND SAY:

1. I was present and saw Milan Mrdjenovich, the person named in the within instrument who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. That the said instrument was executed at the City of Yellowknife in the Northwest Territories and that I am the subscribing witness thereto.

3. That I know the said Milan Mrdjenovich who is in my belief of the full age of nineteen years.

SWORN before me at the City of Yellowknife)
in the Northwest Territories this 14 day)
of, December 2021.)
)
_____) _____
)
Stacey Ann Blondin) (Signature)
A Notary Public in and for the Northwest)
Territories.)
Appointment Expires on: Nov. 23, 2023)

LAND TITLES ACT
TRANSFER OF LAND

507726 N.W.T. LTD. a body corporate, registered under Part XXI of the *Business Corporations Act* of the Northwest Territories, having a registered office in the City of Yellowknife in the said Territories, being the registered owners or being entitled to be the registered owner of an estate in fee simple subject to the encumbrances and interests listed below or which apply under the *Land Titles Act*, in land described as follows:

Portions of Lots 11 and 12
Block 307
Plan 4441
Yellowknife

as outlined as Lot A in Schedule "D" to the Purchase Agreement dated December 14, 2021.

does hereby in consideration of the sum of **ONE DOLLAR ($1.00)** paid to it by The Municipal Corporation of the City of Yellowknife, the receipt of which sum it does hereby acknowledge, transfer to The Municipal Corporation of the City of Yellowknife, in the Northwest Territories, all my (our) estate and interest in the said land.

Dated this 14 day of December, 2021.

Signed in the presence of:

WITNESS

Prachi
Signature

PRACHI NEGI
Print Name

507726 N.W.T. LTD.

Signature

Milan Medjanovich
Print Name

Owner
Title

(I have authority to bind the Corporation)

Postal address of Transferee: P.O. Box 580
Yellowknife, NT X1A 2N4

Subject to the reservations and exceptions contained in the original grant from the Crown and:

- See attached Schedule

AFFIDAVIT OF VALUE

I, _____, of the City of Yellowknife, Northwest Territories, MAKE OATH AND SAY THAT:

1. I am one of the transferees named in the annexed instrument.

2. The within described parcel of land together with all buildings and other improvements thereon, is in my opinion of the value of [redacted] and no more.

SWORN before me at the City of Yellowknife in the Northwest Territories this _____ day of, _____ 20___.

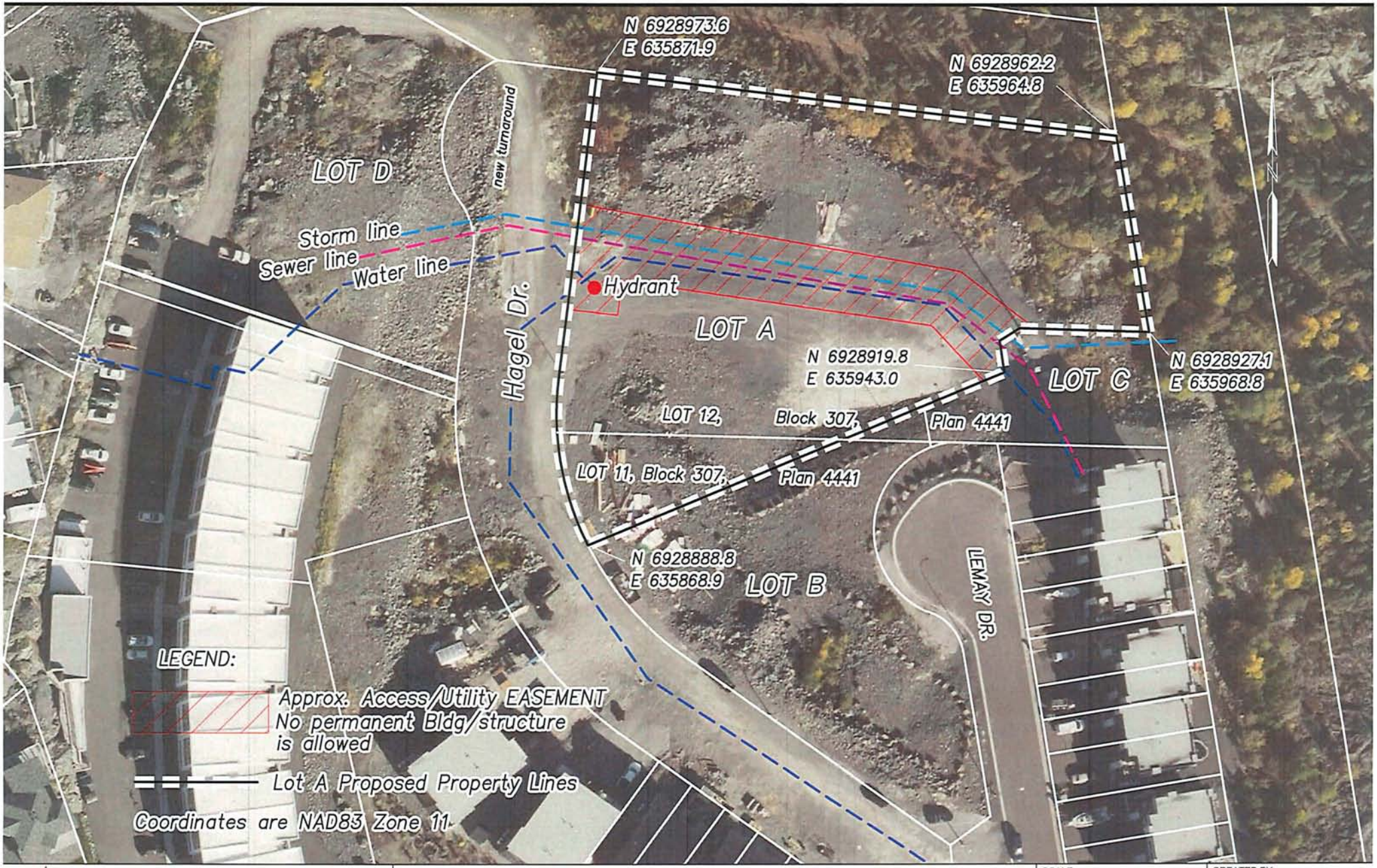
_____

_____

A Notary Public in and for the Northwest Territories.

Appointment Expires on:_____

_____
Transferee



City of Yellowknife
Planning & Lands Division

PROJECT:	PROPOSED SUBDIVISION OF LOT A BLOCK 307
TITLE:	SCHEDULE D
SCALE: 1:600	CREATED BY: VF
FILE: DM#672150	
DATE: November 5, 2021	