DEVELOPMENT APPEAL BOARD AGENDA

200-D1-H1-23

Tuesday, March 14, 2023

Item No.	Description
1.	Introduction of the Board.
2.	Opening Remarks from the Chair.
3.	Presentation from the Appellant.
4.	Presentation from representatives of the City of Yellowknife, regarding the issuance of Development Permit #PL-2023-0001 (130 Moyle Drive).
5.	Presentation from the Developer.
6.	Presentations from persons referred to in subsection 66(2) of the *Community Planning and Development Act*.
7.	Presentation from any other persons the Boards considers necessary.
8.	Summation and closing remarks from the representative for the Appellant.
9.	Summation and closing remarks from the representative for the City of Yellowknife.
10.	Summation and closing remarks from the representative for the Developer.
11.	Summation and closing remarks from any other presenter.
12.	Close of hearing.

Background Documentation

ANNEX A

13.	Letter from Mr. David LeBlanc to the Secretary of the Development Appeal Board serving Notice of Appeal – written submission.

ANNEX B

14.	Written submissions from the City of Yellowknife.

ANNEX C

15. Written submission from the Developer.

ANNEX D

16. Letter from the Secretary of the Development Appeal Board to the Appellant, Mr. David LeBlanc, with respect to the scheduling of a hearing on March 14, 2023.

ANNEX E

17. Letter from the Secretary of the Development Appeal Board to the Developer, Mr. Victor Tarskii, with respect to the scheduling of a hearing on March 14, 2023.

David LeBlanc/Karen Hall
128 Moyle Drive
Yellowknife, NT XIA 0B8

13 February 2023

Development Appeal Board
c/o City Clerk's Office
City of Yellowknife
P.O . Box 580
Yellowknife, NT XIA 2N4

BY EMAIL

Re: Development Permit Application No. PL-2023-0001

I am writing this letter in Opposition to the Proposed Variances in the current Development Permit Application at 130 Moyle Drive. As the adjacent property owner, and someone that brought concerns to the Development Office last year, I am very concerned that we are facing these issues at this time.

1. No letter issued to neighbors in the 30m vicinity to address concerns in March 2022 which is why we face these issues now.
    a. Had a proper letter been issued with a chance for myself and the adjoining neighbors to look at the plan, these issues would have been address. At no point did anyone make myself or the other adjacent property owners aware that a decision to make the rear yard set-back one point.
    b. The developer asked for a relaxation of the front set-back from 6m to 4.5m. I had no issue with that and had no reason to oppose the DP, but the developer went forward with a plan that broke the set-back rules twice with no regard for the By-law 4469.
    c. This original DP was issued behind closed doors between a City employee and the Department manager and done with intent to not allow proper review by the neighbors.
    d. I gave fair warning in May of 2022 that there were issues with this DP and ample time for both the city and developer to address any potential issues. Please see attached Letter.
    e. The developer was intimately aware of the exemptions being granted to him by the “Hardship” of the lot size due to his job within the permit office.
    f. The developer has built outside of the Variance granted to him and in violation of the set-backs as required by the bylaw.

3.3 Neither the issuance of a ***permit*** under this By-law, nor the review and acceptance of the design, drawings, plans or specifications, nor inspections made by an ***Inspector***, shall constitute a representation or warranty that the ***Building Code*** or the By-law have been complied with or the ***building*** meets any standard of materials or workmanship, and no person shall rely on any of those acts as establishing compliance with the ***Building Code*** or this By-law or any standard of construction.

5. **PERMIT CONDITIONS**

5.1 It shall be the full and sole responsibility of the ***Owner*** or his agent to carry out the work in respect of which the ***permit*** was issued in compliance with the ***Building Code*** and this By-law.

5.2 Neither the issuance of a ***permit*** under this By-law nor the acceptance or review of plans, drawings or supporting documents, nor any inspections made by or on behalf of the ***City*** shall in any way relieve the ***Owner*** from full and sole responsibility to perform the work in strict compliance with the ***Building Code*** and this By-law.

5.3 Neither the issuance of a ***permit*** under this By-law nor the acceptance or review of plans, drawings or specifications or supporting documents, nor any inspections made by or on behalf of the ***City*** constitute in any way a representation, warranty, assurance or statement that the ***Building Code*** or this By-law have been complied with.

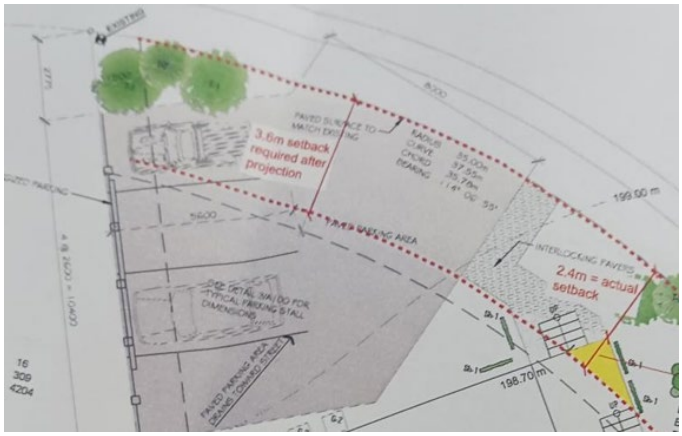
5.4 No person shall rely upon any ***permit*** as establishing compliance with this By-law or assume or conclude that this By-law has been administered or enforced according to its terms. The person to whom the ***permit*** is issued or his agent are responsible for making such determination.

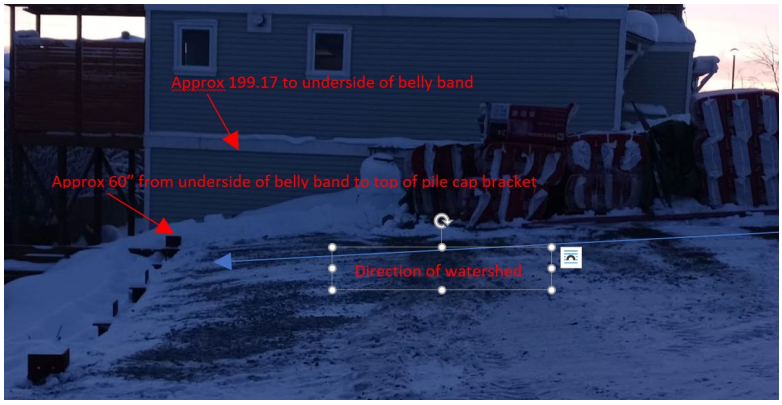
2. The developer is currently starting construction of the structure while the DP process is on-going with full knowledge that he is out of compliance.

a. 5.6 No person shall do any work that is substantially at variance with the accepted design or plans of a ***building*** or other works for which a permit has been issued, unless that variance has been accepted in writing by an ***Inspector***.

3. The developer was granted unprecedented access to the new building bylaw ruling which would allow for a 4-plex in a residential neighborhood, was able to circumvent the requirements of a rear setback definition and be granted relocation of crosswalk and proceeded to violate the ruling in 2 further instances.
    a. Has any other residential permit been issued that eliminated the rear set-back and moving it to one point? If so, please identify when.
    b. Is the developer paying to have the crosswalk moved or will taxpayers be doing that?
    c. Front deck could easily be moved South to not protrude into setback
4. Parking will not meet the requirements for water run-off.
    a. I was required to raise my house 2’ during my development application due to water drainage which resulted in significant additional cost when I built at 128 Moyle.
    b. The elevation at the sidewalk is 199.17, developer shows an elevation of 198.7 which clearly is not the case. See attached picture below

c. There is no way the developer will be able to achieve positive drainage to the road with the current grading
d. I am concerned of drainage effecting my side yard set-back.

5. No ability to review the proposed plan
   a. When I went to the city in April 2022, I was not allowed to view the plans, and had no idea of the parking plan that has a parking lot next to 3 of my bedrooms.
   b. I was not allowed to see the fact that the proposed plan would encroach on both the rear and front set-back.
   c.
6. No idea that a parking lot would be granted next to my bedroom
   a. 

   b. Was any safety impact study done in regards to this parking plan?
   c. As you can clearly see, the developers plan for parking will not in fact be at 199.0m


7. Developer received variance and proceeded to violate the setbacks in 2 other instances.
8. In conversation with current Planning manager, it was relayed that the developer has been told that he should add color to the building, unlike is current build on Findlay Point and his current residence on Moyle Drive. The developer has 4 crates of the same dark brown siding that he used at Findlay Point and his current residence at 122 Moyle. The developer is making zero effort to improve the neighborhood, in fact, each of his 4 builds in the area have gotten progressively less attractive and lowering property values.
9. Developer made no attempt to communicate with neighbors regarding his plan or his lack of compliance with the set-backs.
10. Letter from Convoy dated 05 May 2022 gave multiple opportunities for both the City and the Developer to address concerns that may result.

Please accept this letter as my Appeal in Opposition to the current Development Permit for 130 Moyle Drive.

Sincerely,

David LeBlanc

CONWAY

Alyssa Holland
Direct Line: 613.691.0373
Email: aholland@conwaylitigation.ca

Assistant: Michelle Thibert
Direct Line: 613.691.0374
Email: mthibert@conwaylitigation.ca

May 5, 2022

VIA EMAIL

Charlsey White
Director, Planning & Development
4807 - 52 Street, P.O. Box 580
Yellowknife NT X1A 2N4

Dear Ms. White:

RE: 130 MOYLE DRIVE
OUR MATTER ID: 5589-001

We are legal counsel to David LeBlanc and Karen Hall, Yellowknife homeowners who reside at 128 Moyle Drive. We have been instructed by our clients to raise with you a pressing issue of non-compliance with the development permit issued for the immediately adjacent property, 130 Moyle Drive (the "Development Permit"), where construction of a new multi-unit building is currently underway (the "Development"). We ask that the City of Yellowknife exercise its power under the *Zoning By-Law* to suspend the Development Permit until the non-compliance is remedied.

The City of Yellowknife's website indicates that, on March 22, 2022, a development permit application was approved for Lot 17, Block 309, Plan 4204 (130 Moyle Drive) for the development of a multi-unit dwelling (4-plex). The decision number provided in the City's Notice of Development Approvals is #PL-2002-0047. The decision states that "The front yard setback has been reduced from 6.0 m to 4.5 m". It does not refer to any further variances being granted. A copy of the notice posted online is enclosed as **Appendix A** to this correspondence.

A photograph of the signed Notice of Decision posted at the development site is enclosed as **Appendix B.** This Notice of Decision elaborates on the rationale for the reduction in the front yard setback, as follows:

> The front yard setback has been reduced from 6.0 m to 4.5 m (the subject site is three-sided and presents a challenge to develop – a front yard setback is warranted in order to accommodate the proposed building. The setback variance is not expected to unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land);

The Notice of Decision does not provide for a variance to any other setback, apart from the front yard. Contrary to the terms prescribed in the Notice of Decision and the Notice of Development Approvals for 130 Moyle Drive, the structure currently under construction at that address does not comply with the minimum setback prescribed in section 10.1 of the *Zoning By-Law*. This property, which is zoned low-density residential (R1), requires a minimum rear yard setback of 6 m. As is evident from the enclosed illustration at **Appendix C**, the rear of the building faces onto our client's property at 128 Moyle Drive. The piles on which the building at 130 Moyle drive is being constructed are located approximately 1.2 m, or 4 feet, from the lot line, significantly below the minimum setback.

As the owner and resident of the immediately adjacent property, our clients are very concerned about the non-compliance with the requirements of the *Zoning By-Law* on the use, enjoyment and value of his property. To our knowledge, a variance to the relevant setback has not been granted. Certainly our clients have not been made aware, through the posting of notices at the site or on the City's website, of any additional variances beyond that provided for in decision #PL-2002-0047, nor has he been given the opportunity to comment on any such application or decision. In the absence of any further variance, the construction proceeding at 130 Moyle Drive is non-compliant with the terms of the Development Permit.

The non-compliant development's proximity to our client's residence will block light to three windows, increase noise (particularly given that the Development is a 4-plex) and significantly reduce our client's privacy.

In these circumstances, we request that the City of Yellowknife suspend the Development Permit pursuant to s. 4.15.1 of the *Zoning By-Law*, which provides as follows:

> **4.15.1.** If Development is not being carried out or completed as approved by a Development Permit or other approval issued by the Development Officer, then the Development Officer may suspend or revoke the Development Permit by providing a written order, in accordance with Section 57 (1) of the *Act*.

Construction of the building appears to still be in the preliminary stages. We urge the City of Yellowknife to take immediate steps to address this non-compliance by suspending the Development Permit and requiring the developer to come into compliance with its terms, including with the minimum setbacks recently prescribed by the City of Yellowknife in the *Zoning By-Law*.

The certificate of title for 130 Moyle Drive, enclosed as **Appendix D**, identifies the Municipal Corporation of the City of Yellowknife as the owner of the land on which this development is taking place. While we understand that the City of Yellowknife may have sold or be in the process of selling this property, we further understand that the development is being carried out by Viktor Tarskii. While we do not know the precise nature of Mr. Tarskii's involvement in this project, including whether he is the applicant for Development Permit Application No. PL-2022-0047 and/or purchaser of this property, we note that the City of Yellowknife's staff directory identifies him as a "Building Inspector II" in the Department of Planning and Development, the department responsible for granting development permits.

In such circumstances, it is imperative that the City of Yellowknife act with utmost transparency and rigour in order to maintain public confidence in the administration of municipal law. A failure to enforce

the terms of the City's *Zoning By-Law* against one of its own employees would raise serious concerns about bias in the application and enforcement of municipal by-laws. We trust the City of Yellowknife is alive to this concern and will bring a rigorous approach to addressing the non-compliance with the *Zoning By-Law* at 130 Moyle Drive.

Given the ongoing construction at the Development site, we ask that you give this matter urgent attention, and look forward to your response.

Yours very truly,

Alyssa Holland

\mt

cc: Sheila Bassi-Kellett, City Manager
David LeBlanc and Karen Blondin Hall

David LeBlanc/Karen Hall
128 Moyle Drive
Yellowknife, NT XlA 0B8

26 February 2023

Development Appeal Board
c/o City Clerk's Office City of Yellowknife
P.O . Box 580
Yellowknife, NT XlA 2N4

BY EMAIL

Re: Development Permit Application No. PL-2023-0001

I am writing this letter in Opposition to the PL-2023-0001 at 130 Moyle Drive. As the adjacent property owner, and someone that brought concerns to the Development Office last year, I am very concerned that we are facing these issues at this time.

1. PL-2022-0047 was Approved subject to the following conditions (See Addendum A)
    a. Front yard setback has been reduced from 6.0m to 4.5m
    b. Must comply with approved plans.
2. PL-2022-0047 made no mention of
    a. Elimination of longstanding Rear Yard Definition and creation of single point Rear Yard Setback.
    b. Relocation of current crosswalk to accommodate parking lot on West Side of Property
    c. That proposed 4-car parking area would be 5’ from our bedroom walls.
    d. Not comply with the front yard setback, as requested in PL-2023-0001
    e. Not comply with the rear yard setback, as requested in PL-2023-0001
    f. Not comply with the Main Floor Elevation of House (Plan submission was for 198.7 and actual Elevation is 197.8, 0.9m lower than required)
    g. Not Comply with the Parking Area Elevation (In order to comply the developer will have to build retaining wall to elevate parking area 1.2m higher than Main floor elevation)
    h. Not comply with current planning recommendations to improve the exterior esthetics of the proposed property (the same brown siding as 8 Findlay Point is in crates on the property)
    i. Move the current Crosswalk.
3. Conflict of Interest
    a. With the developer being a member of the Planning and Permitting office, this plan should have been scrutinized more than a normal application.
    b. The grade at the rear of the structure is 195.6m as per the City Grading Plan Issued March 2011 and not 198.0m as identified on the Developers Plan Submission.

4. No letter issued to neighbors in the 30m vicinity to address concerns in March 2022 which is why we face these issues now.
    a. Had a proper letter been issued with a chance for myself and the adjoining neighbors to look at the plan, these issues would have been addressed. At no point did anyone make me or the other adjacent property owners aware that a decision was made to make the rear yard set-back one point, but still 6.0m.
    b. The developer asked for a relaxation of the front set-back from 6m to 4.5m. I had no issue with that and had no reason to oppose the DP, but the developer went forward with a plan that broke the set-back rules twice with no regard for the By-law 4469.
    c. This original DP was issued behind closed doors between a City employee, that was a building inspector responsible for enforcing Building By-laws,, and the Department manager, Rob Lok, and done with intent to not allow proper review by the neighbors.
    d. I gave fair warning in May of 2022 that there were issues with PL-2022-0047 (see Addendum B) and ample time for both the city and developer to address any potential issues. Please see attached Letter.
    e. How was PL-2022-0047 Approved when the plan would require a second PL-2023-0001 to be filed?
    f. The developer was intimately aware of the exemptions being granted to him by the "Hardship" of the lot size due to his job within the permit office.
    g. The Developer choose to place the building on Piles, thus giving up a potential 1600 sq/ft of usable Walk-Out Basement space eliminating any claim of Hardship.
    h. The developer has built outside of the Variance granted to him and in violation of the set-backs as required by the bylaw, Sec 3.3 and 5.1-5.4 see Addendum C

5. The developer has currently started construction of the structure while the PL-2023-0001 process is on-going with full knowledge that he is out of compliance.
    a. 5.6 No person shall do any work that is substantially at variance with the accepted design or plans of a ***building*** or other works for which a permit has been issued, unless that variance has been accepted in writing by an ***Inspector***.
6. Shape of Lot Hardship – There have been numerous mentions of the term "Hardship" with relation to the shape of Lot 130.
    a. The property at 135 Moyle drive clearly illustrates that there are no hardships for the 4-Plex on Lot 130 Moyle. See Addendum D
        1. Separate main floor elevations allow for the building to follow the contour of the lot.
        2. Move the East half of the complex forward 1m to clear the Setback and adjust the front decks to suit.
        3. The developer wanted to re-use the plans he used on 8 Findlay Point and not pay for new plans. That is not a hardship.

7. The developer was granted unprecedented access to the new building bylaw ruling which would allow for a 4-plex in a residential neighborhood, was able to circumvent the requirements of a

rear setback definition and be granted relocation of crosswalk and proceeded to violate the ruling in 2 further instances.

   a. Has any other residential permit been issued that eliminated the rear set-back and moving it to one point? If so, please identify when. When speaking to Niels Konge in April of 2022 he confirmed this has not been the case previously in Yellowknife and felt was the incorrect interpretation of the By-law.
   b. Is the developer paying to have the crosswalk moved or will taxpayers be doing that?
   c. Front deck could easily be moved South to not protrude into setback

8. Parking will not meet the requirements for water run-off.
   a. I was required to raise my house 2' during my development application to comply with water drainage requirements, which resulted in significant additional cost when I built at 128 Moyle.
   b. The elevation at the sidewalk is 199.17, developer shows a Main Floor Elevation of 198.7 which clearly is not the case. See Addendum E
   c. There is no way the developer will be able to achieve positive drainage to the road with the current grading
   d. I am concerned of drainage effecting my side yard set-back and potential ground erosion around my propane tanks.
9. No ability to review the proposed plan
   a. When I went to the city in April 2022, I was not allowed to view the plans, and had no idea of the parking plan that has a parking lot next to 3 of my bedrooms.
   b. I was not allowed to see the fact that the proposed plan would encroach on both the rear and front set-back.
   c.
10. No idea that a parking lot would be granted next to my 3 bedrooms
   a. Was any safety impact study done in regards to this parking plan? See Addendum F
   b. As you can clearly see, the developers plan for parking will not in fact be at 199.0m

11. In conversation with current Planning manager, it was relayed that the developer has been told that he should add color to the building, unlike is current build on Findlay Point and his current residence on Moyle Drive. The developer has 4 crates of the same dark brown siding that he used at Findlay Point and his current residence at 122 Moyle. The developer is making zero

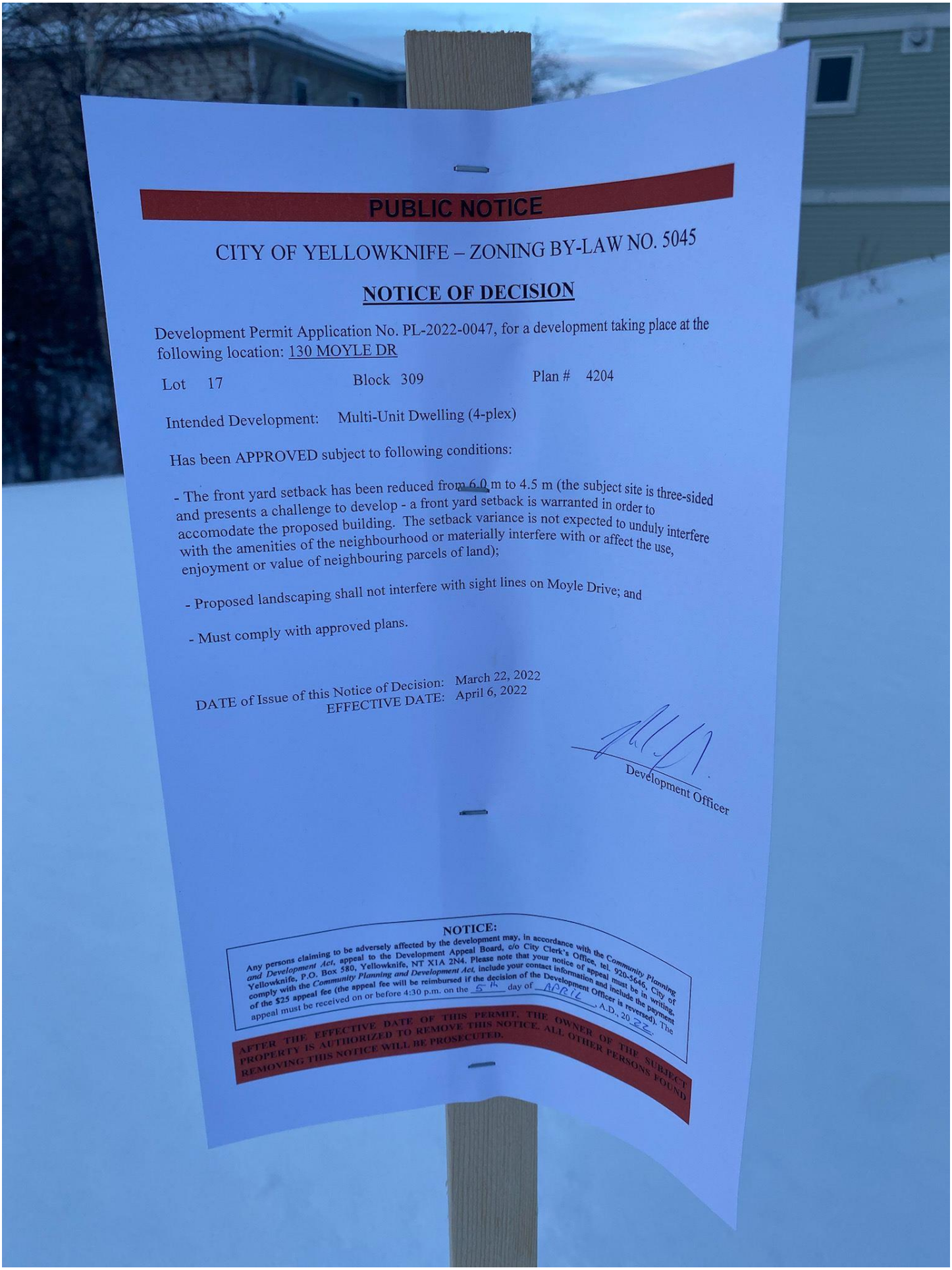
effort to improve the neighborhood, in fact, each of his 4 builds in the area have gotten progressively less attractive and lowering property values.

12. Developer made no attempt to communicate with neighbors regarding his plan or his lack of compliance with the set-backs.
13. Letter from Convoy dated 05 May 2022 gave multiple opportunities for both the City and the Developer to address concerns that may result.

Please accept this letter as my Appeal in Opposition to the current Development Permit for 130 Moyle Drive and request for a Stop Work Order to be placed on the construction of the property until the developer comes into compliance with the By-law and with his current Building Permit, to which he is out of compliance.

David LeBlanc
Owner
128 Moyle Drive, Yellowknife, NT X1A 0B8
867 444 1062

Addendums A, B, C, D, E, F



PUBLIC NOTICE

CITY OF YELLOWKNIFE – ZONING BY-LAW NO. 5045

NOTICE OF DECISION

Development Permit Application No. PL-2022-0047, for a development taking place at the following location: 130 MOYLE DR

Lot 17 Block 309 Plan # 4204

Intended Development: Multi-Unit Dwelling (4-plex)

Has been APPROVED subject to following conditions:

- The front yard setback has been reduced from 6.0 m to 4.5 m (the subject site is three-sided and presents a challenge to develop - a front yard setback is warranted in order to accomodate the proposed building. The setback variance is not expected to unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land);

- Proposed landscaping shall not interfere with sight lines on Moyle Drive; and

- Must comply with approved plans.

DATE of Issue of this Notice of Decision: March 22, 2022
EFFECTIVE DATE: April 6, 2022

Development Officer

NOTICE:

Any persons claiming to be adversely affected by the development may, in accordance with the *Community Planning and Development Act*, appeal to the Development Appeal Board, c/o City Clerk's Office, tel. 920-5646, City of Yellowknife, P.O. Box 580, Yellowknife, NT X1A 2N4. Please note that your notice of appeal must be in writing, comply with the *Community Planning and Development Act*, include your contact information and include the payment of the $25 appeal fee (the appeal fee will be reimbursed if the decision of the Development Officer is reversed). The appeal must be received on or before 4:30 p.m. on the 5th day of April, A.D., 2022.

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

CONWAY

Alyssa Holland
Direct Line: 613.691.0373
Email: aholland@conwaylitigation.ca

Assistant: Michelle Thibert
Direct Line: 613.691.0374
Email: mthibert@conwaylitigation.ca

May 5, 2022

VIA EMAIL

Charlsey White
Director, Planning & Development
4807 - 52 Street, P.O. Box 580
Yellowknife NT X1A 2N4

Dear Ms. White:

RE: 130 MOYLE DRIVE
OUR MATTER ID: 5589-001

We are legal counsel to David LeBlanc and Karen Hall, Yellowknife homeowners who reside at 128 Moyle Drive. We have been instructed by our clients to raise with you a pressing issue of non-compliance with the development permit issued for the immediately adjacent property, 130 Moyle Drive (the "Development Permit"), where construction of a new multi-unit building is currently underway (the "Development"). We ask that the City of Yellowknife exercise its power under the *Zoning By-Law* to suspend the Development Permit until the non-compliance is remedied.

The City of Yellowknife's website indicates that, on March 22, 2022, a development permit application was approved for Lot 17, Block 309, Plan 4204 (130 Moyle Drive) for the development of a multi-unit dwelling (4-plex). The decision number provided in the City's Notice of Development Approvals is #PL-2002-0047. The decision states that "The front yard setback has been reduced from 6.0 m to 4.5 m". It does not refer to any further variances being granted. A copy of the notice posted online is enclosed as **Appendix A** to this correspondence.

A photograph of the signed Notice of Decision posted at the development site is enclosed as **Appendix B.** This Notice of Decision elaborates on the rationale for the reduction in the front yard setback, as follows:

> The front yard setback has been reduced from 6.0 m to 4.5 m (the subject site is three-sided and presents a challenge to develop – a front yard setback is warranted in order to accommodate the proposed building. The setback variance is not expected to unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land);

The Notice of Decision does not provide for a variance to any other setback, apart from the front yard. Contrary to the terms prescribed in the Notice of Decision and the Notice of Development Approvals for 130 Moyle Drive, the structure currently under construction at that address does not comply with the minimum setback prescribed in section 10.1 of the *Zoning By-Law*. This property, which is zoned low-density residential (R1), requires a minimum rear yard setback of 6 m. As is evident from the enclosed illustration at **Appendix C**, the rear of the building faces onto our client's property at 128 Moyle Drive. The piles on which the building at 130 Moyle drive is being constructed are located approximately 1.2 m, or 4 feet, from the lot line, significantly below the minimum setback.

As the owner and resident of the immediately adjacent property, our clients are very concerned about the non-compliance with the requirements of the *Zoning By-Law* on the use, enjoyment and value of his property. To our knowledge, a variance to the relevant setback has not been granted. Certainly our clients have not been made aware, through the posting of notices at the site or on the City's website, of any additional variances beyond that provided for in decision #PL-2002-0047, nor has he been given the opportunity to comment on any such application or decision. In the absence of any further variance, the construction proceeding at 130 Moyle Drive is non-compliant with the terms of the Development Permit.

The non-compliant development's proximity to our client's residence will block light to three windows, increase noise (particularly given that the Development is a 4-plex) and significantly reduce our client's privacy.

In these circumstances, we request that the City of Yellowknife suspend the Development Permit pursuant to s. 4.15.1 of the *Zoning By-Law*, which provides as follows:

> **4.15.1.** If Development is not being carried out or completed as approved by a Development Permit or other approval issued by the Development Officer, then the Development Officer may suspend or revoke the Development Permit by providing a written order, in accordance with Section 57 (1) of the *Act*.

Construction of the building appears to still be in the preliminary stages. We urge the City of Yellowknife to take immediate steps to address this non-compliance by suspending the Development Permit and requiring the developer to come into compliance with its terms, including with the minimum setbacks recently prescribed by the City of Yellowknife in the *Zoning By-Law*.

The certificate of title for 130 Moyle Drive, enclosed as **Appendix D**, identifies the Municipal Corporation of the City of Yellowknife as the owner of the land on which this development is taking place. While we understand that the City of Yellowknife may have sold or be in the process of selling this property, we further understand that the development is being carried out by Viktor Tarskii. While we do not know the precise nature of Mr. Tarskii's involvement in this project, including whether he is the applicant for Development Permit Application No. PL-2022-0047 and/or purchaser of this property, we note that the City of Yellowknife's staff directory identifies him as a "Building Inspector II" in the Department of Planning and Development, the department responsible for granting development permits.

In such circumstances, it is imperative that the City of Yellowknife act with utmost transparency and rigour in order to maintain public confidence in the administration of municipal law. A failure to enforce

the terms of the City's *Zoning By-Law* against one of its own employees would raise serious concerns about bias in the application and enforcement of municipal by-laws. We trust the City of Yellowknife is alive to this concern and will bring a rigorous approach to addressing the non-compliance with the *Zoning By-Law* at 130 Moyle Drive.

Given the ongoing construction at the Development site, we ask that you give this matter urgent attention, and look forward to your response.

Yours very truly,

Alyssa Holland

\mt

cc: Sheila Bassi-Kellett, City Manager
David LeBlanc and Karen Blondin Hall

3.3 Neither the issuance of a ***permit*** under this By-law, nor the review and acceptance of the design, drawings, plans or specifications, nor inspections made by an ***Inspector***, shall constitute a representation or warranty that the ***Building Code*** or the By-law have been complied with or the ***building*** meets any standard of materials or workmanship, and no person shall rely on any of those acts as establishing compliance with the ***Building Code*** or this By-law or any standard of construction.

5. **PERMIT CONDITIONS**

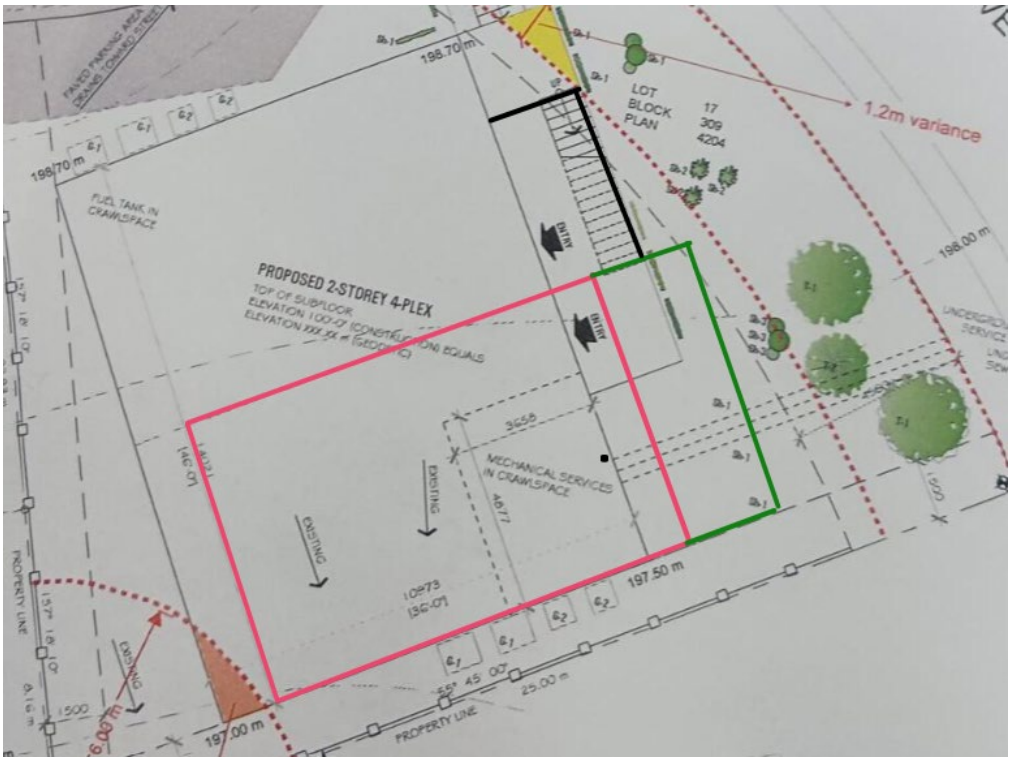
5.1 It shall be the full and sole responsibility of the ***Owner*** or his agent to carry out the work in respect of which the ***permit*** was issued in compliance with the ***Building Code*** and this By-law.

5.2 Neither the issuance of a ***permit*** under this By-law nor the acceptance or review of plans, drawings or supporting documents, nor any inspections made by or on behalf of the ***City*** shall in any way relieve the ***Owner*** from full and sole responsibility to perform the work in strict compliance with the ***Building Code*** and this By-law.

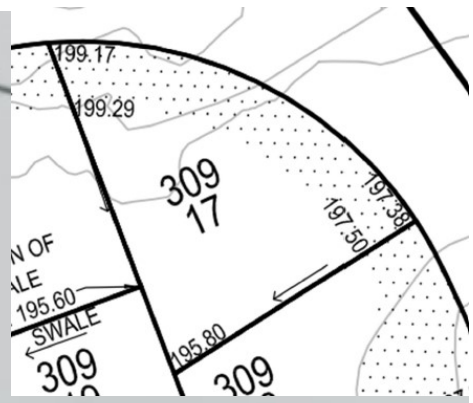
5.3 Neither the issuance of a ***permit*** under this By-law nor the acceptance or review of plans, drawings or specifications or supporting documents, nor any inspections made by or on behalf of the ***City*** constitute in any way a representation, warranty, assurance or statement that the ***Building Code*** or this By-law have been complied with.

5.4 No person shall rely upon any ***permit*** as establishing compliance with this By-law or assume or conclude that this By-law has been administered or enforced according to its terms. The person to whom the ***permit*** is issued or his agent are responsible for making such determination.


135A
135B


1.2m variance
PROPOSED 2-STOREY 4-PLEX
LOT
BLOCK
PLAN
17
309
4204
198.70 m
197.50 m
197.00 m
196.00 m
FUEL TANK IN CRAWLSPACE
MECHANICAL SERVICES IN CRAWLSPACE
EXISTING
PROPERTY LINE
25.00 m

As noted below, even at 199m (which the grade is not) there would not be the required positive drainage to the road as required per the By-law. The current slope of the parking area will drain toward the House and along property line.



MOYLE DRIVE

3.6m setback required after projection

2.4m = actual setback

1.2m variance

Actual Grade Elexation is 197.4m

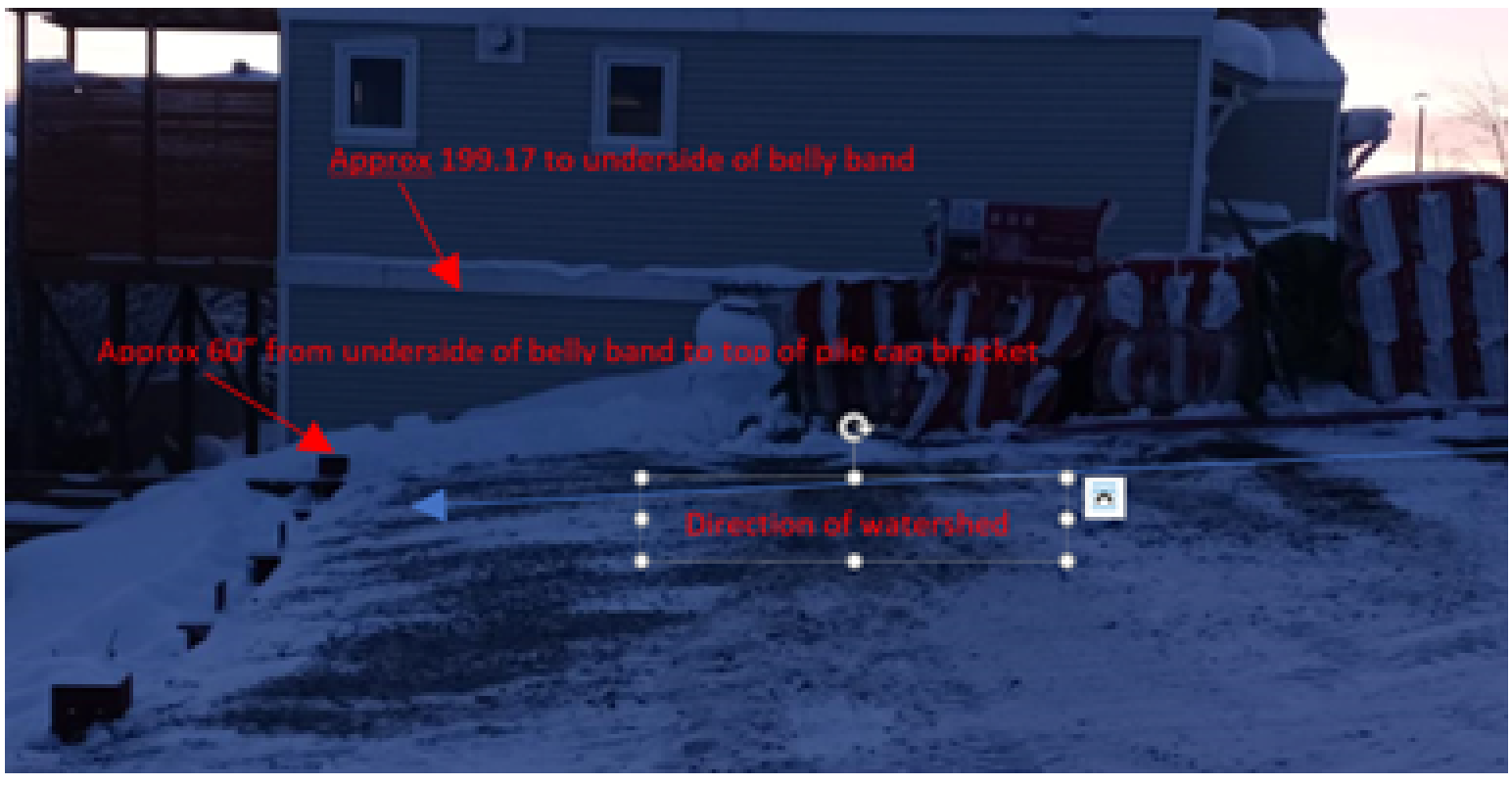
Actual Top of Main Floor Elevation approximately 197.8m

PROPOSED 2-STOREY 4-PLEX

Actual Grade Elevation 195.8m

6.00m

1m variance



Addendum F

Parking

1. Upper parking spot requires driver to pull into traffic blind, a significant safety hazard.
2. Lower spot is does not have safe clearance from the building.
3. Two trucks parked beside each other would have 12” of clearance.
4. Where is the crosswalk being relocated?

Presentation to the Development Appeal Board

March 14, 2023

Development Permit: PL-2023-0001

Lot 17, Block 309, Plan 4202

(130 Moyle Drive, Yellowknife, NT)

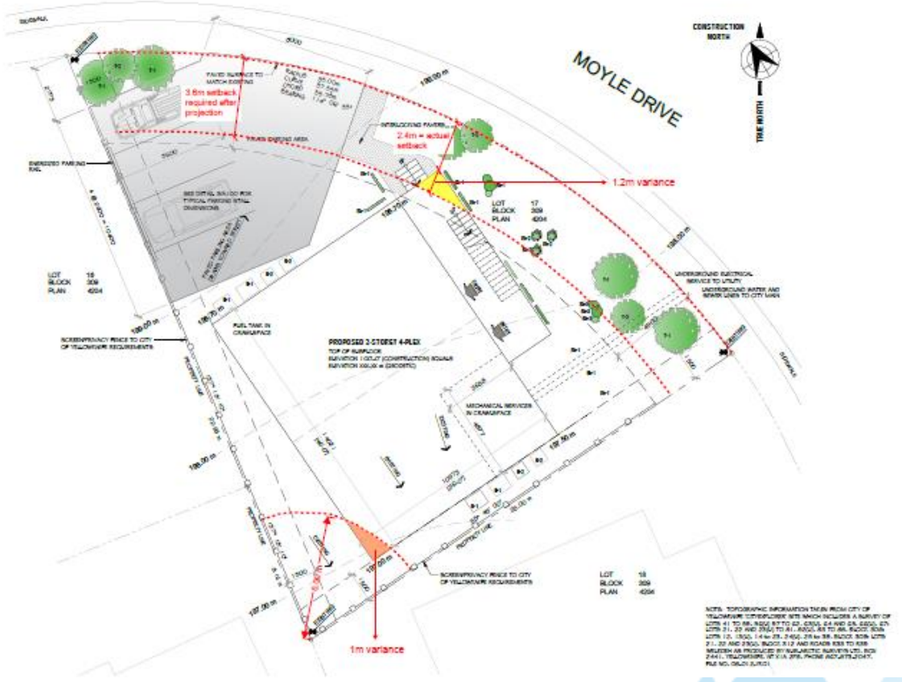
Presented By: Tatsuyuki Setta, RPP, MCIP, AICP

Manager of Planning and Lands

The Subject Property

The Development Proposal

- A new variance to the Front Yard setback of the approved Multi-Unit Dwelling on 130 Moyle Drive (PL-2022-0047) .
- Front Yard be reduced from 3.6m to 2.4m (DP-2023-0001) to allow the 1.2 m projection.

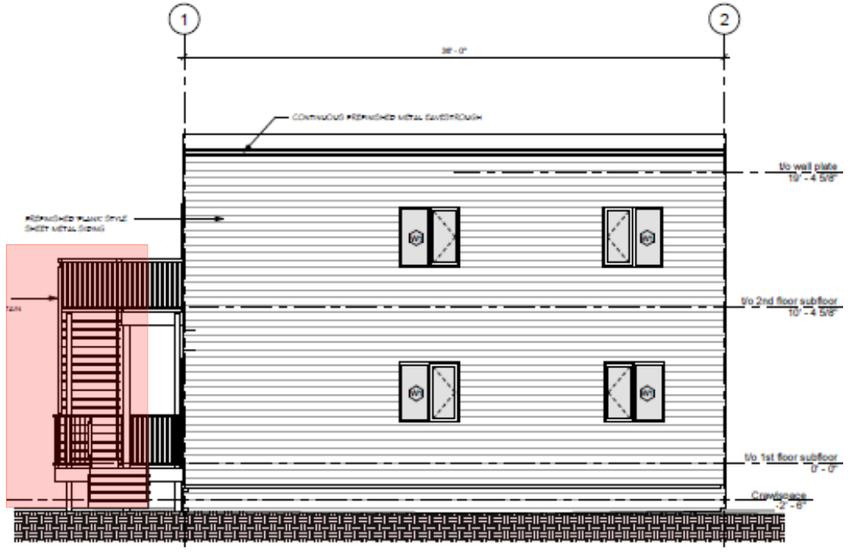


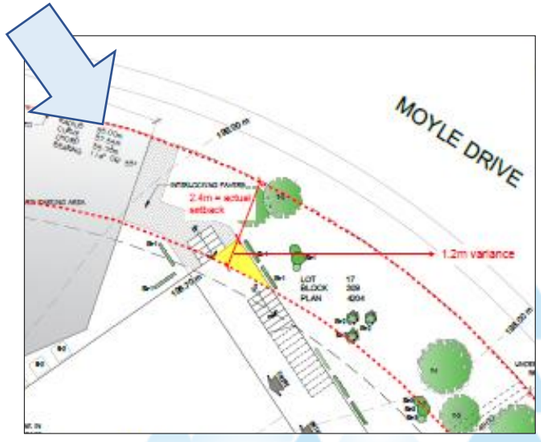
- The required Rear Yard be reduced from 6.0m to 5.0m to allow 1.0. building projection.

Front Yard setback

- Minimum requirement: **6.0m**
- The proposed front yard setback: **2.4m**
- New Variance required: **1.2m**.

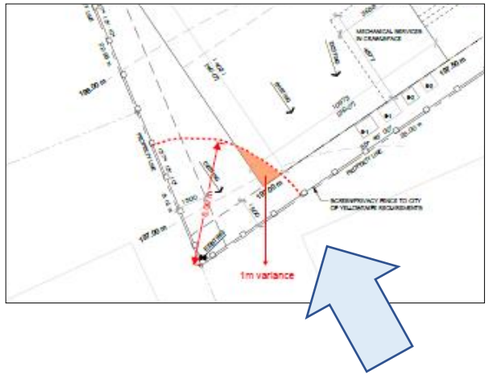
(PL-2022-0047 allowed 3.6m)



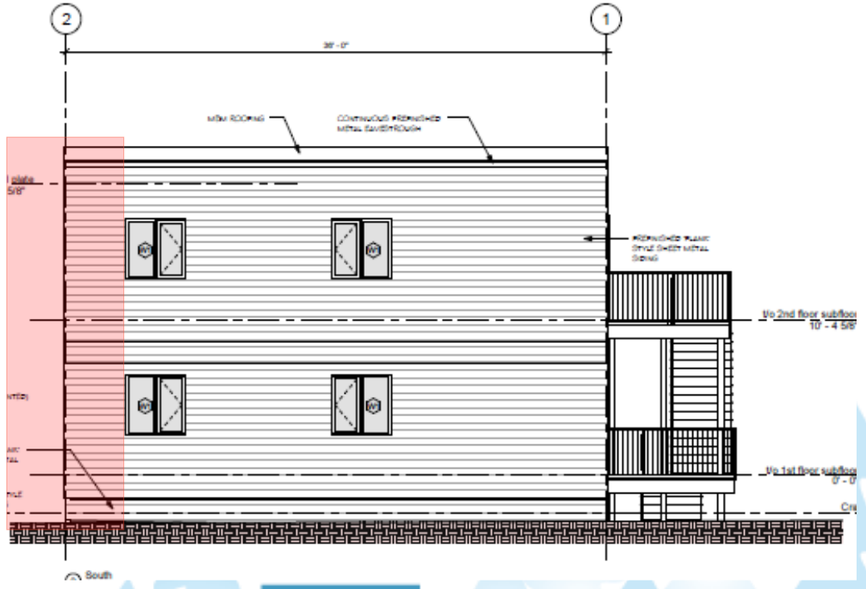


Rear Yard setback

- Minimum requirement: **6.0m**
- PL-2022-0047 determined no rear yard.



- The Rear Yard setback proposed: 5.0m (distance from the intersection of two side lot lines)
- Variance required: 1.0m.



Development Officer's Decision

- The proposed development meets the criteria set out in section 4.9 of the Zoning By-law No. 5045
- There are no negative impacts.

DEVELOPMENT APPEAL PL-2023-0001
MANAGER'S PLANNING REPORT

ISSUE

An appeal of the decision of the Development Officer to issue Development Permit PL-2023-0001.

LOCATION MAP

The property is located at Lot 17, Block 309, Plan 4204 (130 Moyle Drive), zoned R1 – Low Density Residential in Niven Lake neighbourhood.

Figure 1 – Location Map

DEVELOPMENT PROPOSAL

The application was for a new variance for the Front Yard setback of the approved two-story Multi-Unit Dwelling (four-plex). The required front yard, as per DP-2022-0047, was reduced to 3.6m and the application DP-2023-0001 requested a further reduction of the Front Yard to 2.4m. The variance to the requirements of the Zoning By-law No. 5045 would result in a reduced front yard for the 1.2 m projection.

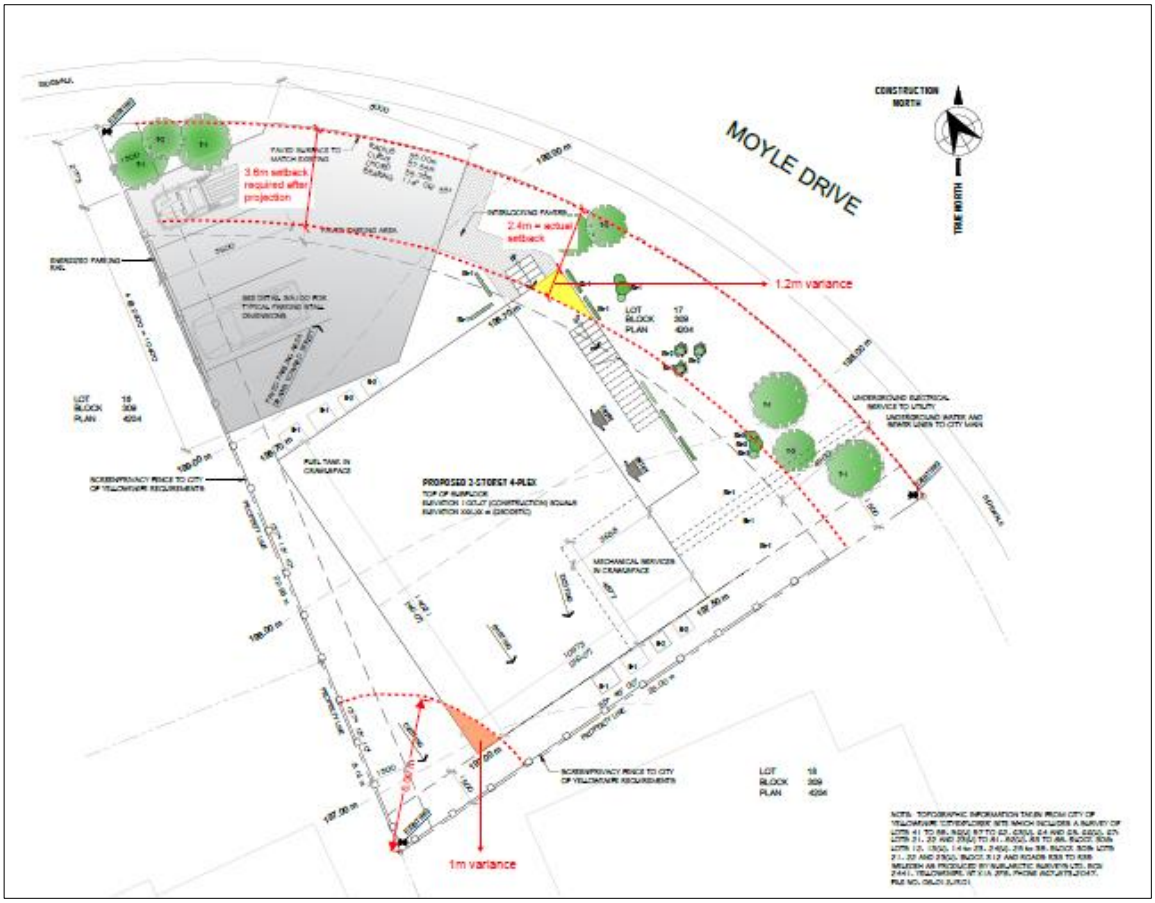


Figure 2 – Proposed Development and Location of Variances

<u>BACKGROUND OF NIVEN DEVELOPMENT</u>

The Niven Lake Development has undergone several subdivision revisions to date, primarily due to rezoning and expansion/ since 1995.

In 1995 the first Niven Lake Development Scheme/ By-law No. 3794 was adopted. Followed by four major Development Schemes or Area Development Plans from 2002 to 2007.

- Niven Lake Development Scheme 2002 By-law No. 4181 was adopted in 2002;
- Niven Lake Development Scheme 2003 By-law No. 4269 was adopted in 2003;
- Niven Lake Development Scheme 2004 By-law No. 4339 was adopted in 2004 and Phases 5 and 6 were proposed;
- Niven Lake Development Scheme 2007 By-law No. 4438 was adopted in 2007. Phase 7 was proposed; and
- Niven Lake Phase 8 has been undeveloped.
  In 2013, a servicing feasibility study was conducted for the Niven Lake Phase 8 Subdivision.

The subject property is located in Phase 7 of the Niven Lake development, an area which is almost fully developed.

CHRONOLOGICAL ORDER OF THE DEVELOPMENT PERMIT ISSUANCE

2022
2022-04-06 Development Permit PL-2022-0047 issued and came in effect

2023
2023-01-05 Development Permit application PL-2023-0001 received
2023-01-31 Technical Review completed
2023-01-31 Review by the Manager of Planning and Lands completed
2023-02-01 Development Permit application PL-2023-0001 approved and issued
2023-02-01 Development Permit Notice of Decision Letter sent out
2023-02-01 Notice of Development Approval posted
2023-02-10 Notice included in the City's Capital Update issued
2023-02-13 The Appellant appealed to the Development Appeal Board
2023-02-15 Last Date to Appeal, by 4:30 p.m.

BACKGROUND OF THE DEVELOPMENT PERMIT APPLICATION PROCESS

Development Permit PL-2022-0047 was approved with a variance to reduce the front yard setback from 6.0m to 4.5m. It was the interpretation of the Manager of Planning and Lands (Development Officer) that with no definition in the Zoning By-law for determining Rear Yard requirements for irregular triangle lots, the lot had no rear yard. Therefore only one Variance (Front Yard) was required.

After laying out the building's foundation piles (following approved Building Permits), the applicant elected to relocate the dwelling's deck and move it north to align with the building's north corner (see appended site plans). The deck would project past the previous variance approved through Development Permit PL-2022-0047. On January 5, 2023 an application for Variance was submitted to the City of Yellowknife.

Review of application PL-2023-0001 was completed by both a different Planner and Manager within the division. It was the interpretation of the Planner and the Manager of Planning and Lands that a Rear Yard setback and Variance should be required. The rationale being that the absence of a definition in the Zoning By-law and with no rear lot line; the physical shape of the property would require reduced Yards surrounding the dwelling. Staff searched other similar properties within the City and discovered one (1) other lot, which is currently undeveloped, in the same neighbourhood. Due to the unique lot shape, the Planner and the Manager decided to

incorporate a Rear Yard setback defined as a 6.0m radius taken from the point (the intersection of the two side yard property lines). Using this as the Rear Yard, it was determined that the dwelling projects a distance of 1.0m into that Rear Yard. A Rear Yard Variance, to decrease the requirement from 6.0m to 5.0m, was added to Development Permit PL-2023-0001.

In support of the application the following documents were submitted:

- YK's Affordable Housing, 130 Moyle Dr, Drawing Package, June 05, 2022, Prepared by *ArchTech Architectural Drafting Service*, DM# 723655

The planner evaluated the proposed development under the criteria set out in section 4.9 of the Zoning By-law and made a judgement that there would be no negative impacts.

It should be noted that two different interpretations were used for determining the rear yard setback between PL-2022-0047 and PL-2023-0001 by accident, because there was a written communication between the City and a neighbor (the Appellant) after Development Permit PL-2022-0047 was issued, stating how the lot lines were determined, therefore a variance for a Rear Yard setback should not have been required. A signed letter was saved in the City's document management system. However, in reviewing Development Permit PL-2023-0001, this information was overlooked by the new Planner and the Manager of Planning and Lands. It was not the intent of the decision to re-evaluate an approved decision under PL-2022-0047.

The Appellant submitted their concerns regarding the development permit to the Development Appeal Board on February 13, 2023.

GENENRAL CONSIDERATIONS IN APPROVAL OF DEVELOPMENT PERMITS

As per the requirements in Section 4.9 of *Zoning By-law* No. 5045, a development permit is required for any development that requires a Variance and reviewed under the provisions of the By-law, as well as associated legislations.

TERRITORIAL LEGISLATION:

Community Planning and Development Act S. N.W.T. 2011, c.22

The Community Planning and Development Act (the "*Act*") establishes the framework for the City to regulate development within its boundaries.

Section 3 of the *Act* states that the purpose of a community plan is to provide a policy framework to guide the physical development of a municipality/ having regard to sustainability, the environment/ and the economic / social and cultural development of the community.

Section 12 of the *Act* states that the purpose of a zoning by-law is to regulate and control the use and development of land and buildings in a municipality in a manner that conforms with a community plan/ and if applicable, to prohibit the use or development of land or buildings in particular areas of a municipality.

Section 15(2) of the *Act* states that a zoning bylaw may specify the circumstances under which a development permit may be amended or the circumstances under which a new development permit is required.

Further, section 16. (1) states that a zoning bylaw must identify either council or a development officer appointed under section 52, or both, as the development authority responsible for (a) making decisions on applications for each type of development permit; and (b) other powers and duties of a development authority under this *Act*, the regulations and the zoning bylaw that relate to the use and development of land and buildings. (2) A zoning bylaw that identifies both council and a development officer as development authorities for a type of development permit, or in respect of other powers and duties, must include provisions respecting the circumstances under which each will act.

Under section 36 of the *Act*, the Ministry of Municipal and Community Affairs Director of Planning is the subdivision authority for approving applications respecting subdivisions for areas not under the jurisdiction of a municipal subdivision authority. The City has no jurisdiction over subdivision approval.

CITY OF YELLOWKNIFE PLANNING AND DEVELOPMENT BY-LAWS*:*

The City of Yellowknife, 2020 Community Plan, By-law No. 5007.

The City of Yellowknife Community Plan was approved by the Minister of Municipal and Community Affairs on the 5th day of July, 2020. The Community Plan/ By-law No. 5007, received Third and Final Reading by City Council on the 27th day of July, 2020 and came into effect.

The Community Plan is a comprehensive outline of the goals and objectives for the City with directive policies to accomplish the objectives. Policies of the Community Plan are to be read together and all applicable policies are to be considered and applied at the time of development.

Section 4.5 of the Community Plan identifies the Niven Residential area as: “a mix of low, medium and high density residential uses with some mixed use activities such as places of worship”.

Policy # 4-a: "*A variety of residential single unit and multiple unit dwelling types will be permitted".* The multi-unit dwelling, approved through PL-2022-0047, proposes four (4), two-bedroom units.

The City of Yellowknife Zoning By-law No. 5045

The City of Yellowknife Zoning By-law No. 5045, received Third and Final Reading by City Council on the 14th day of March, 2022 and came into effect.

Section 1.2 of the *By-law* identifies the purpose of the *By-law* as follows:
"*The purpose of the this By-law is to regulate and control the Use and Development of land and Buildings within the City in a balanced and responsible manner pursuant to the Community Planning and Development Act and in effect Community Plan*."

COMMUNITY PLAN POLICY CONSIDERATIONS

2.3.2 – Housing

Housing starts in the City of Yellowknife were stagnant or declining over the 2001 to 2016 historic planning period included in the Community Plan. Since the beginning of 2022 this trend is reversing within the City and new, or proposed, residential construction is slowly increasing. The needs of residents are not being met by the current housing supply with a near zero vacancy rate and limited dwellings for private sale to date. The City has limited residential lots for development which will not suffice to ease off the demand pressure. New residential multi-unit development is emerging with the trend to provide adequate; suitable; housing options for current and future Yellowknife residents.

To provide an appropriate range and mix of housing to meet the current and projected needs of the City residents, the Community Plan outlines requirements for increased density and the establishment of opportunities for infilling. The development of new housing is to be directed to locations which are designated; have appropriate levels of municipal servicing and access to multiple transportation options (walking, cycling/ transit). Increased residential density and infill opportunities minimize the cost of housing; facilitate compact form and maintain public health and safety.

2.3.4 – Land Details

The amount of land within municipal boundaries is 13,660 ha. Compare to other cities in similar size, the City has a relatively low population density (143.25/km2). Much of the land within the municipal boundary is currently unavailable for immediate development, also a significant amount of this land is water bodies such as lakes. At present, land available (designated, zoned, serviced) for development or re-development is estimated by the Lands Division is less than 1%.

2.3.5 – Land Demand

The Community Plan envisions increased infill and higher density development will reduce the residential land demand into the future, maximize existing municipal infrastructure service capacity and provide new opportunities for different types of housing that meet the community needs.

3.1.1. – Vision

"The vision for the Community Plan is to manage land use in the City in an economically, environmentally and socially sustainable manner that is inclusive and equitable for residents while protecting the natural environment". New development, by infilling or increased density, on lands which are designated, zoned and supported by municipal infrastructure support this vision.

3.2.1 - General Development Goals

The Community Plan includes an outline of goals to which development should be considered and evaluated. Specific to the proposed development, the planner gave consideration to and considered conformity with:

- Develop land in a fiscally responsible and sustainable manner;
- Prioritize utilization of existing capacity of municipal infrastructure for land use;
- development before adding new capacity;
- Reduce land use conflicts by providing clear policies that limit and mitigate incompatible uses;
- Improve resiliency of land development with respect to climate change through a range of mitigation and adaptation measures and standards;
- Improve energy efficiency of land development through intensification or existing developed areas and encouraging mixing of uses;
- Increase housing affordability through increased land use flexibility for residential development; and
- Encourage and facilitate more land use flexibility in core areas of City to support revitalization.

3.2.2 – Contemporary Land Use

Yellowknife's role as a centre for government administration has grown and will remain significant for decades. As mentioned, the population of the City is anticipated to grow, increasing the demand for housing. Newer residential areas such as Niven and the residential areas around Range Lake have developed to accommodate the increasing housing demand. Historically, new residential developments have been low density, automobile oriented and land intensive like

other North American cities. However, the City of Yellowknife intends to make a significant planning effort, through implementation of the new Community Plan and the Zoning By-law to allow higher density development in established neighbourhoods and encourage infill development along with community amenities such as multi-use trails, bike infrastructure and transit services.

4.5 – Niven Residential

Niven is a primarily residential neighbourhood located adjacent to the downtown core and provides easy access to the core of the City by vehicle and multi-modal transportation modes. It will continue to be a mix of low, medium and high density residential uses with some mixed use activities such as places of worship. Most of the residential developments are new as the area has being developed over the last two decades. The last phase of the development site is still vacant and not subdivided. It is anticipated that the area will be accommodating new residential developments over the next 10 years.

Staff consider the following Planning and Development Objectives in the Community Plan, as applicable, in reviewing the proposed development to ensure conformity:

Planning and Development Objectives	Policies
1. To maintain and enhance the existing active transportation network within Niven.	1-a. Gaps in active transportation infrastructure will be identified and filled. 1-b. Active transportation trail improvements will be considered based on the *City of Yellowknife Trail Enhancement and Connectivity Strategy*.
2. To improve public transportation service in Niven as the neighbourhood develops.	2-a. Public transit service will be reviewed based on recommendations in public transit studies.
3. To improve active transportation connections between Niven and downtown.	3-a. Walking and cycling infrastructure connecting to downtown for all ages and abilities will be constructed.
4. To support a mix of residential types and densities.	4-a. A variety of residential single unit and multiple unit dwelling types will be permitted.
5. To encourage affordable housing opportunities.	5-a. Incentives for affordable housing development will be implemented as recommended in *Yellowknife's 10 Year Plan to End Homelessness*.
6. To enhance public outdoor recreation amenities.	6-a. Amenities will be constructed as the area continues to be develop in line with current development standards.

5.1.1 – Climate Change

The Community Plan outlines that future development is to have consideration toward Climate Change mitigation and adaptation. Accomplishing this will require focusing development within the existing built areas of the City and greater attention to sustainable development practice such as avoiding the expansion of municipal infrastructure and services. Policies support increased energy efficiency, as well as, encourage compact urban development at higher densities.

5.1.2 – Environment

Promotion and protection of a healthy natural and built environment are integral concept of the Community Plan. Staff consider the environmental impacts of each development while avoiding negative impacts to the neighbouring properties.

5.2 – Transportation

Transportation is a key component of land use planning and development decisions. Through policies in the Community Plan, the City is committed to a transportation system that is safe, efficient, and accessible for all modes and incorporate more sustainable and more space efficient modes of transportation such as walking, cycling, and public transit into new development. In consideration of new development, better connectivity to services, existing transit routes, and trails is taken into account to link the City together in a safe and efficient manner.

5.2.2 – Active Transportation Infrastructure

The City has an extensive and varied network of interconnected active transportation routes such as recreational walking, biking, dog mushing trails and hiking trails. It also includes infrastructure for commuting and other daily activities such as sidewalks, multi-use paths, painted on-street bike lanes, and separate and raised on-street bike lanes.

5.4 – Subdivision and Land Development Sequencing

The subject property (130 Moyle Drive) is outside of Niven Phase 5 development as identified as a priority residential development and infill opportunity in the Community Plan. However, due to the limited amount of vacant lots available for residential development, the City supports appropriate residential development where permitted. As such, the development of this property will contribute to the provision of housing stock within the City.

6.2 Zoning Bylaw

Zoning is the principal means for implementing the policies for the Community Plan. The Zoning By-law regulates the use of land, conditions of use, erection and use of buildings and structures, yard requirements, parking and loading space requirements, design standards and similar matters. All new development must conform to the intent of the Community Plan and comply with all requirements set out in the Zoning By-law.

Following the adoption of the Community Plan, Council rescinded the Zoning By-Law No. 4404 and adopted a new Zoning By-law No. 5045 to conform to the policies in the Community Plan.

DECISION-MAKING PROCESS OF THE DEVELOPMENT PERMIT PL-2023-0001

Pursuant to section 4.14.1 of the Zoning By-law, Development Permit PL-2022-0047 cannot be amended. As a result, a new Variance application was submitted to the City on January 5, 2023 and a new file number PL-2023-0001 was assigned.

The applicant requested a variance to decrease the Front Yard setback requirement. Review by the Planning and Lands Division identified that a variance for the Rear Yard was also required. The two variances are similar in nature and were considered based on the similar evaluation criteria set out in section 4.9 of the *Zoning By-law* No. 5045. Other than the above mentioned variances, the Planner checked landscaping, drainage and grade, and municipal services requirements, which were addressed and confirmed through PL-2022-0047, and remained the same in the proposed variance of PL-2023-0001. There is no record of any easements affecting the Site.

Front Yard Setback requirement:
Minimum requirement is 6.0m. The Zoning By-law allows for an unenclosed deck and steps to have a 40% reduced setback, which means that the new minimum requirement is 3.6m – the actual front yard setback proposed through PL-2023-0001 is 2.4m – this means that a variance is needed for 1.2m. It should be noted that this front yard variance is only for a corner of the deck's ground-level. The upper-level of the deck is within the required front yard setback, and therefore is not part of this variance to be granted.

The planner evaluated the proposed development under the criteria set out in section 4.9 of the Zoning By-law and made a judgement there is no negative impacts.

Rear Yard Setback requirement:
As noted above, this requirement was deemed unnecessary in the original and effective development permit PL-2022-0047. Even though the building's rear yard dimensions have not changed, it was decided as 'best planning practice' to add the rear yard setback requirement as part of PL-2023-0001 applying generally-accepted approach defines rear yard setbacks.

The site has an irregular curved shape, which makes it challenging to define a rear yard. The site is three-sided. The property line represents the front yard setback while the other two property lines represent the side yard setbacks. There is no definitive rear lot line, but there is a rear point. In the review of the proposed development, the rear yard was considered a 6.0m radius taken

from the intersection of the two side yard property lines to the rear of the site. Therefore, a variance was thought to be needed to decrease the minimum rear yard setback requirement from 6.0m to 5.0m, so that the building can project a distance of 1.0m.

The planner evaluated the proposed development under the criteria set out in section 4.9 of the Zoning By-law and made a judgement there is no negative impacts.

Development Permit PL-2023-0001 and Public Notice were issued on February 1st, 2023

The Conditions of the Permit are:

1. A Variance was approved to decrease the Minimum front yard setback to 2.4m to allow for a corner of the ground-floor deck and exterior staircase to project a distance of 1.2m into the required front yard setback;
2. A Variance was approved to decrease the Minimum rear yard setback to 5m to allow for a comer of the four-plex building to project a distance of 1m into the required rear yard setback;
3. The Development must otherwise comply with the approved plans, drawings, and conditions outlined in the original Development Permit PL-2022-0047; and
4. The development shall comply with the approved and stamped Site Plan and with all Bylaws in effect for the City of Yellowknife.

It is noted that two different Development Officers provided two different interpretations for determining the rear yard setback in the evaluation of PL-2022-0047 and PL-2023-0001. An administrative error was made, because there was a written communication between the City and a neighbor (the Appellant) after Development Permit PL-2022-0047 was issued, stating how the lot lines were determined, therefore a variance for a Rear Yard setback is not required. Development Permit PL-2022-0047 is in effect. A signed letter was saved in the City's document management system. However, in the review of Development Permit PL-2023-0001, this information was overlooked by the new Planner and the Manager of Planning and Lands and a different interpretation of Rear Yard setback was used, as mentioned above.

RESPONSE TO APPELLANT'S LETTER DATED ON FEBRUARY 13, 2023

1. No letter issued to neighbors in the 30m vicinity to address concerns in March 2022 which is why we face these issues now.

    Notice of Decision on previous application was issued on March 23, 2022 and was provided to all property owners within 30 m of the subject property.

a. Had a proper letter been issued with a chance for myself and the adjoining neighbors to look at the plan, these issues would have been address. At no point did anyone make myself or the other adjacent property owners aware that a decision to make the rear yard set-back one point.

This pertains to a previous application and a period of time prior to my employment as Manager of Planning and Lands. I cannot speak to or address the actions or responses of a previous Manager.

b. The developer asked for a relaxation of the front set-back from 6m to 4.5m. I had no issue with that and had no reason to oppose the DP, but the developer went forward with a plan that broke the set-back rules twice with no regard for the By-law 4469.

By-law 4469, which has been repealed and replaced with By-law 5058 is the City of Yellowknife Building By-law. Application PL-2022-0001 is made under the Zoning By-law. This comment cannot be addressed by myself or the DAB as part of this hearing.

c. This original DP was issued behind closed doors between a City employee and the Department manager and done with intent to not allow proper review by the neighbors.

The City has no response to this opinion.

d. I gave fair warning in May of 2022 that there were issues with this DP and ample time for both the city and developer to address any potential issues. Please see attached Letter.

The reference to the previous DP is not subject to decision by the DAB at this time. The City has no response related to the Decision before the board.

e. The developer was intimately aware of the exemptions being granted to him by the "Hardship" of the lot size due to his job within the permit office.

The City has no comment on this opinion.

f. The developer has built outside of the Variance granted to him and in violation of the set-backs as required by the bylaw.

The deck, subject to the front yard variance through PL-2023-0001 is not built.

2. The developer is currently starting construction of the structure while the DP process is on-going with full knowledge that he is out of compliance.

Development Permit PL-2022-0047 is in effect, and associated Building Permits have been issued. Therefore, the development to date is a valid exercise of the permits.

DP-2023-0001 should have only been for the front yard variance and deck, for which there is no effective DP or BP.

3. The developer was granted unprecedented access to the new building bylaw ruling which would allow for a 4-plex in a residential neighborhood, was able to circumvent the requirements of a rear setback definition and be granted relocation of crosswalk and proceeded to violate the ruling in 2 further instances.

There seems a misunderstanding by the Appellant about the purposes of the Building By-law and Zoning By-law. The process for adoption of by-laws is legislated, and the application was evaluated under the provisions of the adopted bylaw. By-laws are approved by City Council through a public process.

a. Has any other residential permit been issued that eliminated the rear set-back and moving it to one point? If so, please identify when.

'Pie' shape lot is nearly non-existent in Yellowknife residential development. Currently, there is only one location identifiable in the City, which is 142 Moyle Drive. The lot is in a similar 'pie' shape and is currently undeveloped. No development permit has been issued for this lot in the past.

b. Is the developer paying to have the crosswalk moved or will taxpayers be doing that?

There is no concern with the location of the crosswalk. This has been reviewed and confirmed by Public Works at the City.

c. Front deck could easily be moved South to not protrude into setback

The City's roles and responsibilities are to evaluate applications under the Zoning By-law. Meanwhile, the applicant has withdrawn the application PL-2023-0001 for the front deck.

4. Parking will not meet the requirements for water run-off.

a. I was required to raise my house 2' during my development application due to water drainage which resulted in significant additional cost when I built at 128 Moyle.

Lot grading is not yet complete and finalized, so that the picture is misleading. The plan has been reviewed by the City's Public Works Department and no concerns are identified. It will be reviewed and confirmed once development is complete and a registered survey plan, with confirmed grading, is provided by the developer before Occupancy Permit is issued.

b. The elevation at the sidewalk is 199.17, developer shows an elevation of 198.7 which clearly is not the case. See attached picture below

Lot grading is not yet complete and finalized, so that the picture is misleading. The plan has been reviewed by the City's Public Works Department and no concerns are identified. It will be reviewed and confirmed once development is complete and a registered survey plan is provided by the developer before Occupancy Permit is issued.

c. There is no way the developer will be able to achieve positive drainage to the road with the current grading

It is the developer's responsibility is to ensure the lot is properly graded and the development has no negative implications per the City's development standards.

d. I am concerned of drainage effecting my side yard set-back.

This statement needs further clarification by the Appellant in order to be answered properly.

5. No ability to review the proposed plan

a. When I went to the city in April 2022, I was not allowed to view the plans, and had no idea of the parking plan that has a parking lot next to 3 of my bedrooms.

This pertains to a previous application and a period of time prior to my employment as Manager of Planning and Lands. I cannot speak to or address the actions or responses of a previous Manager.

b. I was not allowed to see the fact that the proposed plan would encroach on both the rear and front set-back.

If this statement pertains to a previous application PL-2022-0047, I cannot speak to or address the actions or responses of a previous Manager.

If this statement pertains to PL-2023-0001, application materials including approved plans were available for members of the public during application evaluation period as well as appeal period. The appellant, the Planner and I met in my office on February 6, 2023 to review the proposed plan. The Appellant was given explanations of the plan by staff.

6. No idea that a parking lot would be granted next to my bedroom

Application materials including approved plans are available for members of the public during application evaluation as well as appeal period.

Privacy protection is one of the design elements to consider when designing a house in residential lot.

b. Was any safety impact study done in regards to this parking plan?

"Safety Impact Study" is not a term or study used by the City. No "Traffic Impact Study" was required. The site layout, driveways and parking were reviewed by Planning and Development and Public Works Department. No concerns were identified.

c. As you can clearly see, the developers plan for parking will not in fact be at 199.0m

A mock up on a picture is not a survey plan, elevation plan or real property report. It will be reviewed and confirmed once development is complete and a registered survey plan is provided by the developer before an Occupancy Permit is issued.

7. Developer received variance and proceeded to violate the setbacks in 2 other instances.

The City has no comment on this statement as this opinion needs some fact and clarifications as to what is being referred to.

8. In conversation with current Planning manager, it was relayed that the developer has been told that he should add color to the building, unlike is current build on Findlay Point and his current residence on Moyle Drive. The developer has 4 crates of the same dark brown siding that he used at Findlay Point and his current residence at 122 Moyle. The developer is making zero effort to improve the neighborhood, in fact, each of his 4 builds in the area have gotten progressively less attractive and lowering property values.

The City has no response to this statement.

9. Developer made no attempt to communicate with neighbors regarding his plan or his lack of compliance with the set-backs.

The City has no response to this statement.

10. Letter from Convoy dated 05 May 2022 gave multiple opportunities for both the City and the Developer to address concerns that may result.

The City has no comment on this statement.

PAID

JAN 0 5 2023

City of Yellowknife

Form E – Variance Request Application
Zoning By-law No. 4404
Planning and Development Department, City of Yellowknife

Fee: A person making an application to the Planning Administrator to request a variation to development regulation(s) found in the Zoning By-law shall pay the City an application fee of $50.00 for a variance less than or equal to 10%, $200.00 for a variance greater than 10%, and $300 for a variance greater than 25% (50% of variance request fee refundable if variance denied).

I/We hereby make application to request a variation to development regulation(s) found in Zoning By-law No. 4404 in accordance with the information submitted herewith and subject to the provisions of Section 3.5 of the Zoning By-law. We understand that all requests for a variation to development regulations found in Zoning By-law No. 4404 are subject to the provisions of Section 3.5 of the By-law.

Property to be Developed/Property Owner Information						
Property Owner Name	Viktor Tarskii					
Property Owner Telephone(s)	Home:		Work or Cell:	403-561-7143		
Property Owner Email	vtarskii@gmail.com					
Civic Address of Proposed Development	130 Moyle Drive, Yellowknife, NT, X1A0B8					
Mailing Address of Property Owner	124 Moyle Drive, Yellowknife, NT, X1A0B8					
Legal Description of Proposed Development	Lot:	17	Block:	309	Plan:	4204

Applicant Information (if different from owner)				
Applicant Name	same			
Applicant Telephone(s)	Home:	—	Work or Cell:	—
Applicant Email	—			
Mailing Address of Applicant	—			
Civic Address of Applicant	—			
Signature			**Date**	January 4, 2023

FOR OFFICE USE ONLY:

Fee Paid: _____

Invoice #: _____

Associated Permit #: ~~PL-2021-0034~~ PL-2023-0001

Form E – Variance Request Application

Zoning By-law No. 4404

Planning and Development Department, City of Yellowknife

Zoning Requirement to be Varied (indicate and describe variance requested)					
Zoning Requirement	**Required**	**Proposed**	**Zoning Requirement**	**Required**	**Proposed**
Floor area (m^2)			Lot depth (m)		
Site coverage (%)			Lot width (m)		
Height (m)			Site area (m^2)		
Front yard setback (m)	3.6 m	2.1 m	Floor area ratio		
Side yard setback (m)			Landscaping		
Rear yard setback (m)			Parking		

HOW TO CALCULATE THE REQUESTED VARIANCE

Variance Requested = [(proposed - required)/required] x 100 = 41.66 %

Describe the requested variance and the rationale for the request:

Proposed variance to the size of the deck will allow:

1) Increase the comfort of living for the owners.
2) Significantly improve the esthetic look of the building.
3) Optimize the construction process.
4) Substantially enhance accessibility of the building.

Residential Zones (R1 – R7)
Development Permit Technical Review Report
Planning and Development Department, City of Yellowknife

Permit # PL-2023-0001

Required Sign-Offs for all Development Permits:

Title	Technical Review Criteria	Date	Signature
Development Officer	All development permits requiring a review of site regulations (*not Checklists*)	January 05, 2023	Bassel Sleem
Peer Review (Planner)	All residential uses, discretions, and variances		
Manager, Planning & Lands	All residential uses, discretions, and variances	January 31, 2023	Tatsuyuki Setta
Director, Planning & Development	Multi-unit (> 4 units) dwellings, discretions, variances, and conditionally permitted uses		
Director or Manager, Public Works	Grading, site servicing, traffic, vehicular access, and new driveways		

Development Permit Application Recommendation:

Decision	Further explanation including reasons and conditions to be met
Refuse	
Approve with conditions	Approved
Is monitoring required?	

Applicant Information:

Permit Number	PL-2023-0001					
Application Date	January 05, 2023					
Legal Description	Lot:	17	Block:	309	Plan:	4204
Zoning	R1 – Low Density Residential					
Civic Address	130 Moyle Dr					
Applicant Name	Viktor Tarskii					
Property Owner Name	Viktor Tarskii					
Contact Telephone(s)	Home:	(403)-561-7943	Work or Cell:			
Email and/or Fax	vtarskii@gmail.com					

Development Permit Application Technical Review

(Regulated by Zoning By-law No. 5045)

1) Application Compliance:

	Submitted? (Please check ✓)		
Application Requirements	**Yes**	**No**	**Waived or N/A**
Use of prescribed form	X		
Fee Paid	X		
Three copies of all required information			X
Proof of plan circulation (for conditionally permitted uses)			X
Site Planning			
All dimensions in metric	X		
Location and dimensions of all **existing** structures or use	X		
Location and dimensions of **proposed** structure or use	X		
Setbacks (front, side, rear)	X		
Lot lines	X		
Street Names	X		
Landscaping			X
Existing and proposed driveways	X		
Drainage showing gradient			X
Location of outdoor fuel storage facilities			X
Location of any easements affecting the site	X		
Form, mass, and character of development	X		
Building façade and materials	X		
Floor plan (except detached dwellings)	X		
Elevation drawings and exterior dimensions	X		
Grading (existing, proposed, spot elevations)			X
Confirmation of Services			
Services can be provided to proposed development	X		
Proposed development does not infringe on easements	X		
Satisfactory arrangement for supply of municipal services	X		
Satisfactory arrangement for street access	X		

2) Zoning Review

Using the requirements for the zone of the proposed development, describe the existing and proposed development. Include any additional information as required.

Existing Development	Vacant Land
Proposed Development	Multi-Unit Dwelling Four-Plex (approved through PL-2022-0047) - Variance for Front and Rear Yard Setback Requirements
Permitted/Conditionally Permitted/Not Permitted?	Yes, permitted
Surrounding Neighbourhood	R1 – Single Detached Dwellings, Multi-unit Dwellings/Townhouses
Proposed addresses comply with the Municipal Address By-law? (check with the Geomatics Officer)	Yes, 130 Moyle Dr will not change
Additional Information	Multi-Unit Dwelling Four-plex was approved through PL-2022-0047 This was approved with a variance for Front Yard setback from 6m to 4.5m, but now the new setback is proposed to be 2.4m (after a 40% reduced setback due to projection). i.e. a Variance is required for an additional 1.2m in the Front Yard Setback. Note that only the deck at the ground floor is projecting, whereas the upper floor deck is within its setback requirement.

For all Conditionally Permitted Uses, proof of plan circulation to affected neighbours must be included with the Development Permit Application.

3) Site Regulations:

Regulations	Required	Proposed	% variance from required
Lot width	Minimum 15m	-	-
Lot depth	-	-	-
Site area	Maximum 1300sqm	501.4sqm	-
Site coverage of principle/accessory building	Maximum 55%	37%	-
Floor area	-	-	-
Building height	Maximum 12m	8m	-
Front yard setback	Minimum 6m	2.4m*	Yes, 1.2m
Side yard setback	Minimum 1.5m	1.5m	-
Rear yard setback	Minimum 6m	5m**	Yes, 1m
Off-street parking	4 to 8	4	-

*Required Front Yard setback is a minimum of 6m

After projection (40% reduced setback), required setback is 3.6m

Actual proposed setback is 2.4m

i.e. Variance is needed for 1.2m

**The site has an irregular curved shape, which makes it challenging to define a rear yard. The site is three-sided. The property line represents the front yard setback while the other two property limits represent the side yard setbacks. The rear yard setback in this case is a 6m radius taken from the intersection of the two property lines to the rear of the development.

Variance is needed for 1m so that the new rear yard setback is 5m.

4) Landscaping:

Each zone may require different amounts of landscaping. Use the chart below to explain.

Formula for Calculation	**Result**
Zone landscaping requirement	____**%** of front yard/residual/etc.
Residual area* = Total site area – Developed site area	
Required trees = Residual area / 25 m²	
Additional calculations (fill in below):	

*Residual area in this case refers to the residual area within the required landscaped area ONLY, typically the Front yard area.

Landscaping	**Existing**	**Proposed**		
Landscaped area (m²)				
Number of trees				
Shrubbery				
Grassed, gravelled, etc. area (m²)				
General Landscaping Requirements		**Yes**	**No**	**N/A**
Development Officer is satisfied that the quality and extent of landscaping will be maintained on the site for the life of the development				
Adequate means for maintaining the landscaping is provided				
Confirmation that plant material is capable of healthy growth in Yellowknife				
Tree and Shrubbery Planting Requirements		**Yes**	**No**	**N/A**
Deciduous trees are at least 2.0m in height				
Coniferous trees comprise a minimum proportion of 1/3 of all trees planted				
Coniferous trees are a height of 1m				
Deciduous shrubs are at least 0.6m in height or spread				
Coniferous shrubs are at least 0.4m in height or spread				
Coniferous shrubs comprise a minimum proportion of 1/3 of all shrubs planted				

5) Vehicular Access and On-Site Traffic:

Requirements	Yes	No	N/A
Grade of parking area or driveway is not greater than 8%			X
At street intersections, driveways are set back from lot boundaries to ensure safety and efficiency of existing or planned traffic volumes	X		
Driveways are separated by necessary distance to ensure safety and efficiency of existing or planned traffic volumes	X		
Queuing of vehicles does not impact public roadways and will be designed to enhance on-site vehicular circulation and parking.	X		
Driveways and on-site parking have positive surface drainage to the roadway	X		

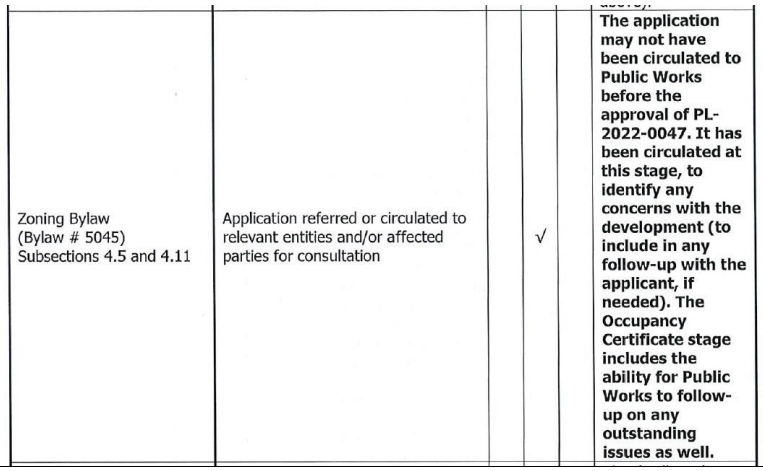
6) Variance(s):

Variance	Yes	No	Explanation
Greater than 10%?			
Greater than 25%?			
Notification (Y/N)	**Date**	**Distance (m)**	**Explanation**
Type of Variance	**Yes**	**No**	**Explanation**
(a)(i) Amenities of Neighbourhood			The variance (one corner of the ground-floor deck and stairs projecting into the front yard setback) will not result in a development that will unduly interfere with the amenities of the neighbourhood.
(a)(ii) Use or Value of Neighbours			The variance will also not materially interfere with or affect the Use, enjoyment or value of neighbouring parcels of land.

(b) Irregular Lot Lines			The site has an irregular curved shape, which makes it challenging to define a rear yard. The site is three-sided. The property line represents the front yard setback while the other two property limits represent the side yard setbacks. The rear yard setback in this case is a 6m radius taken from the intersection of the two property lines to the rear of the development. Variance is needed for 1m so that the new rear yard setback is 5m.
(c) Physical Limitations			Physical limitation is due to the curvilinear shape of the lot.
(d) Natural Features			There are no natural features affecting this variance and development.
(e) Error in Siting			As of time of this variance application, the development has not yet reached the construction stage, except to lay out the foundations.
(f) Use Conforms			Townhouse Dwelling is a permitted Use in the R1 Zone. Niven's residential character in the Community Plan is apparent in this four-plex development. Both setback variances are approved in order to ease the physical limitations of the development and allow for a more uniform building, rather than a curved one that will stand out among the rest of the neighbourhood.
(g) Airport Regulations			The proposed variance does not infringe on Airport zoning regulations.

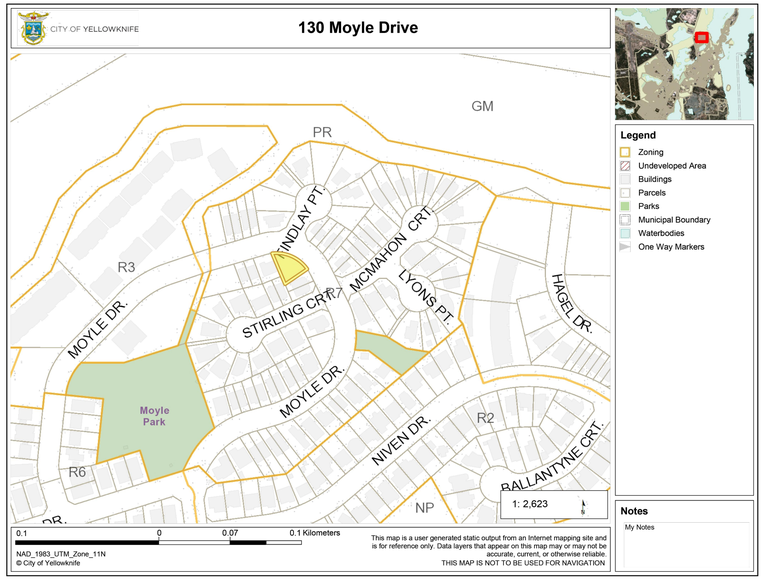
7) Analysis:

Provide your analysis, using the City's regulatory documents, of the following issues (use additional pages if required). Include variances, alternatives to requirements, recommendations, justifications, and any other pertinent information.

Drainage and grading	Addressed through original DP – PL-2022-0047
Landscaping	Addressed through original DP – PL-2022-0047
Parking and driveways	One issue with the driveway is that it aligns with the painted crosswalk connecting Moyle Dr to Findlay Pt. The file was supposedly circulated to Public Works (DM# 719007) so this concern should have been addressed then. Can the crosswalk be repainted on the other side?  Zoning Bylaw (Bylaw # 5045) Subsections 4.5 and 4.11 | Application referred or circulated to relevant entities and/or affected parties for consultation | √ | **The application may not have been circulated to Public Works before the approval of PL-2022-0047. It has been circulated at this stage, to identify any concerns with the development (to include in any follow-up with the applicant, if needed). The Occupancy Certificate stage includes the ability for Public Works to follow-up on any outstanding issues as well.**
Architecture	No comments
Design standards	No comments
Site development	No comments
Variance(s)	Minimum requirement for Front Yard Setback has been reduced from 3.6m (after projection) to 2.4m Reference Variance section above.
Other (explain):	None

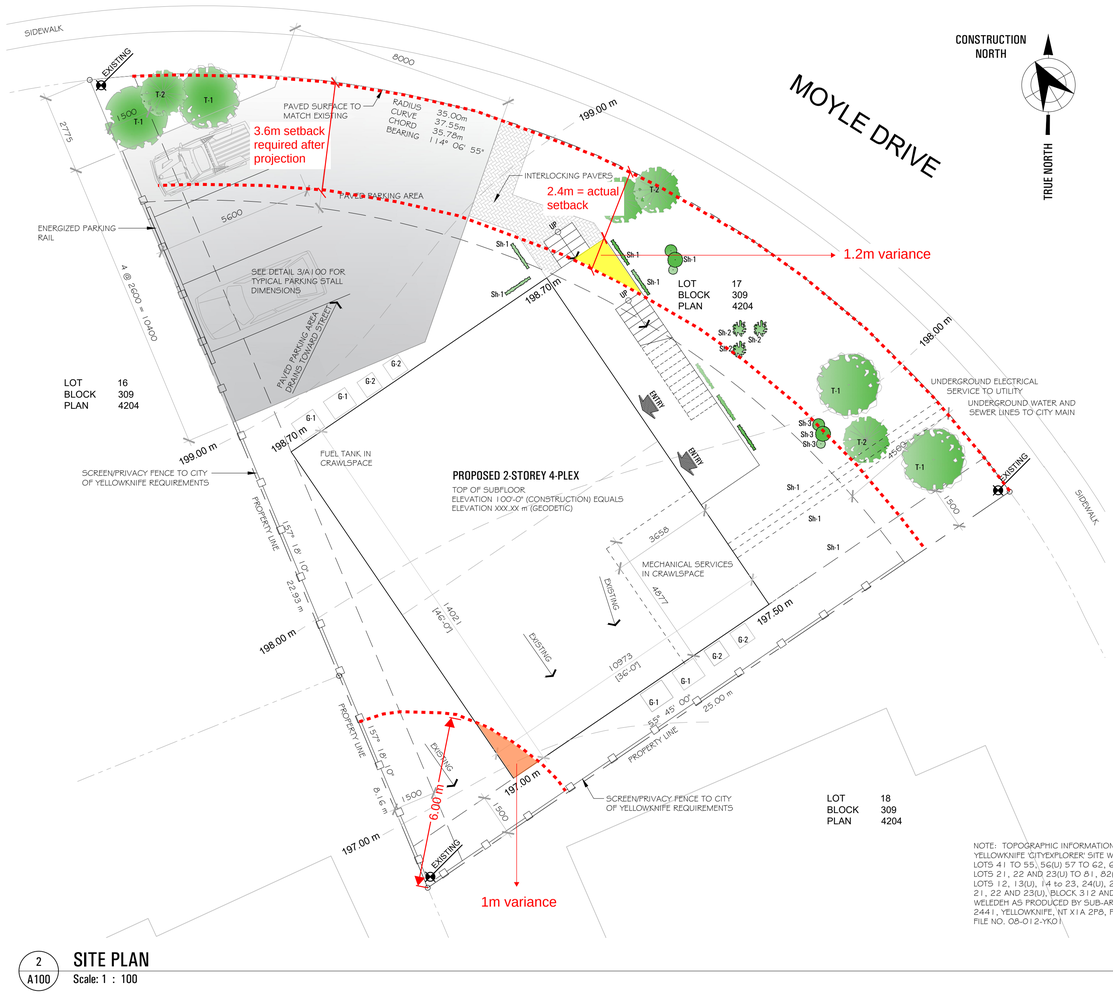
Docs # 722953

Sign off electronic or hard copy and attach to Cityview as PDF.



1 / A100 SITE LOCATION and ZONING PLAN

Scale: N.T.S.



2 / A100 SITE PLAN

Scale: 1 : 100

NOTE: TOPOGRAPHIC INFORMATION TAKEN FROM CITY OF YELLOWKNIFE 'CITYEXPLORER' SITE WHICH INCLUDES A SURVEY OF LOTS 41 TO 55, 56(U) 57 TO 62, 63(U), 64 AND 65, 66(U), 67; LOTS 21, 22 AND 23(U) TO 61, 82(U), 83 TO 88, BLOCK 308; LOTS 12, 13(U), 14 to 23, 24(U), 25 to 39, BLOCK 309; LOT 5 21, 22 AND 23(U), BLOCK 312 AND ROADS R33 TO R35 WELEDEH AS PRODUCED BY SUB-ARCTIC SURVEYS LTD., BOX 2441, YELLOWKNIFE, NT X1A 2P8, PHONE 867-873-2047, FILE NO. 08-012-YK01.

Conditions of Approval:

- Required Front Yard setback is a minimum of 6m
After projection (40% reduced setback), required setback is 3.6m
Actual proposed front yard setback is 2.4m
i.e. Variance is needed for 1.2m (highlighted in yellow).

- Required Rear Yard setback is 6m.
Actual proposed rear yard setback is 5m.
i.e. Variance is needed for 1m (highlighted in orange).

City of Yellowknife

Development Permit # PL-2023-0001

Verified February 01, 2023 (page 1 of 1)

Development Officer Bassel Sleem

YELLOWKNIFE ZONING BYLAW 4404

Street Address :	130 Moyle Drive, Yellowknife, NWT
Legal Description :	Lot 17, Block 309, Plan 4204
Zoning :	R7 - Low Density Restricted Residential
Permitted Use :	Duplex Dwellings
Conditionally Permitted Use :	Multi-attached
Residence	
Yard Set-backs :	front yard 4.5 m (14.76')
	rear yard 6.0 m (19.68')
	side yard 2.0 m (656')
Site Coverage :	maximum of 35%
site area :	501.416 m² (5,397 sf)
new residence	185.8 m² (2,000 sf)
lot coverage	37.0%
Height :	maximum 8.0 m (26'.25')
Landscaping :	100% of front yard
Parking :	1 space per dwelling unit (9.3.1(h))
Driveways :	maximum 2 car widths

ArchTech Architectural Drafting Service
4415 School Draw Avenue, Yellowknife, NT X1A 2K2
c: 867-445-4415 | e: nwticeman@hotmail.com

199.00 m EXISTING ELEVATION
EXISTING PROPOSED ELEVATION
G-1 GARBAGE CONTAINER - REFUSE
G-2 GARBAGE CONTAINER - FOOD REFUSE

A / B — A: DETAIL NO. B: DRAWING NO. - WHERE DETAILED

NO	REVISION	DATE
03	ISSUED FOR BUILDING PERMIT	2022.06.05
02	ISSUED FOR 95% CLIENT REVIEW	2022.06.01
01	ISSUED FOR DEVELOPMENT PERMIT	2022.03.03

JOB TITLE
YK's AFFORDABLE HOUSING
130 MOYLE DRIVE
YELLOWKNIFE, NWT

DRAWING TITLE
SITE LOCATION PLAN, SITE PLAN and ZONING REVIEW

DESIGNED BY V.B.	SCALE AS NOTED
DRAWN BY C.V.D.	DATE FEBRUARY 2022
CHECKED BY C.V.D.	JOB NUMBER ATADS #2022-09

DRAWING NO.
A100

CITY OF YELLOWKNIFE

Development Permit Notification Letter

Date February 01, 2023 File: Lot 17 Block 309 Plan 4204

Viktor Tarskii
124 Moyle Dr
Yellowknife, NT X1A 0B8

Dear Viktor Tarskii,

Re: Approval of Development Permit: Multi-Unit Dwelling Fourplex – Variance for Front and Rear Yard Setback Requirements: Application Number: PL-2023-0001

The City of Yellowknife Planning and Lands Division has approved your application for Development Permit: PL-2023-0001 for Variance for an approved development through PL-2022-0047 at Lot: 17 Block 309 Plan 4204 at 130 Moyle Dr [Roll: 0309001700].

A Public Notice will be posted on the property with the permit effective on the date indicated. The Public Notice must be left up until the effective date, after which you may take it down.

Please note a Development Permit is not a Building Permit. You must apply for and receive a Building Permit before beginning construction. It is also the responsibility of the applicant to apply for and acquire any other permits required from other departments or agencies.

The application was approved with the following conditions:

1. A Variance was approved to decrease the Minimum front yard setback to 2.4m to allow for a corner of the ground-floor deck and exterior staircase to project a distance of 1.2m into the required front yard setback;
2. A Variance was approved to decrease the Minimum rear yard setback to 5m to allow for a corner of the fourplex building to project a distance of 1m into the required rear yard setback;
3. The Development must otherwise comply with the approved plans, drawings, and conditions outlined in the original Development Permit PL-2022-0047;
4. The development shall comply with the approved and stamped Site Plan and with all By-laws in effect for the City of Yellowknife.

If you have any questions please contact me at bsleem@yellowknife.ca or at 867-920-5611 between regular business hours.

Sincerely,

Bassel Sleem, MCP BArch
Planner
Planning and Lands Division
City of Yellowknife

PUBLIC NOTICE

CITY OF YELLOWKNIFE – ZONING BY-LAW NO. 5045

NOTICE OF DECISION

Development Permit Application No. PL-2023-0001, dated the 1st day of February, 2023, for a development taking place at the following location: 130 MOYLE DR [Roll: 0309001700].

Lot 17 Block 309 Plan # 4204

Intended Development: Multi-Unit Dwelling Fourplex - Variance for Front and Rear Yard Setback Requirements

Has been APPROVED subject to the following conditions:

1. A Variance was approved to decrease the Minimum front yard setback to 2.4m to allow for a corner of the ground-floor deck and exterior staircase to project a distance of 1.2m into the required front yard setback;
2. A Variance was approved to decrease the Minimum rear yard setback to 5m to allow for a corner of the fourplex building to project a distance of 1m into the required rear yard setback;
3. The Development must otherwise comply with the approved plans, drawings, and conditions outlined in the original Development Permit PL-2022-0047;
4. The development shall comply with the approved and stamped Site Plan and with all By-laws in effect for the City of Yellowknife.

DATE of Issue of this Notice of Decision: February 01, 2023
EFFECTIVE DATE: February 16, 2023

Development Officer

NOTICE:

Any persons claiming to be adversely affected by the development may, in accordance with the *Community Planning and Development Act*, appeal to the Development Appeal Board, c/o City Clerk's Office, tel. 920-5646, City of Yellowknife, P.O. Box 580, Yellow knife, NT X1A 2N4. Please note that your notice of appeal must be in writing, comply with the *Community Planning and Development Act,* include your contact information and include the payment of the $25 appeal fee (the appeal fee will be reimbursed if the decision of the Development Officer is reversed). The appeal must be received on or before 4:30 p.m. on the 15th day of FEBRUARY, A.D., 2023.

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

IN THE MATTER OF *ZONING BY-LAW NO. 5045* AND AMENDMENTS THERETO

AND IN THE MATTER OF PERMIT #PL-2023-001

WRITTEN LEGAL BRIEF
OF THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE FOR THE DEVELOPMENT APPEAL BOARD HEARING TO BE HEARD ON March 14, 2023

TABLE of CONTENTS

PART I - STATEMENT OF FACTS

1. On March 15, 2022 the Municipal Corporation of the City of Yellowknife (the "City") received an application for a development permit for construction of a dwelling located at Lot 17, Block 309, Plan 4204 (130 Moyle Drive).

2. The application was reviewed and DP-2022-0047 was posted on March 22, 2022. No valid appeals of DP-2022-0047 were received. The permit became effective as of April 6, 2022.

Development Permit PL-2022-0047

3. Construction of the dwelling commenced pursuant to the following Building Permits:
    a. PR–2022-0072 – Foundation Permit – Final – 07/20/2022
    b. PR-2022-0074 – Water and Sewer Connect – issued – 04/26/2022
    c. PR-2022-0286 – Residential Dwelling – issued – 07/27/2022
    d. PR-2022-0374 – Mechanical Permit – issued – 09/21/2022
    e. PR-2023-0015- Sprinkler System – issued – 01/24/2023

Building Permits

4. On January 5, 2023 an application for a variance was submitted for the Front Yard setback of the approved two-story Multi-Unit Dwelling (four-plex) to accommodate relocation of a deck.

Development Permit PL--2023-001

5. Pursuant to section 4.14.1 of Zoning By-law No. 5045, the Development Officer could not amend Development Permit PL-2022-0047 as a new variance was required. A new Development Permit for the change was required.

Zoning By-law No. 5045
Section 4.14.1
Section 4.14.3

6. The Development Officer issued PL-2023-001 which reviewed the same dwelling construction approved in PL-2022-0047 and included the new variance as requested, as well as adding a variance to decrease the rear-yard setback.

Development Permit PL-2023-001

7. PL-2-23-001 was posted and an appeal was filed.

8. On February 21, 2023 the City's Planning and Development Department provided a letter to the Secretary to the DAB identifying that the application for a variance had been withdrawn and PL-2-23-001 had been closed.

Letter to the DAB dated February 21, 2023

PART II – POINTS AT ISSUE

The City submits that the following points are at issue in this hearing:

A. Preliminary Matter

9. Is there a development permit that requires a decision of the Development Appeal Board (DAB)?

B. Appeal

10. If the DAB determines that there is a development permit that requires a decision of the DAB then the DAB must decide whether the appeal can be heard. And if yes, was the permit issued properly?

PART III - SUBMISSIONS

I. No permit exists for DAB to consider

11. The DAB may confirm, revoke or vary the decision of a Development Officer.

Section 5.1.4 of Zoning By-law No. 5045

12. The City submits the DAB is not required to make a decision as the application for a variance was withdrawn. Development Permit PL-2023-001 has been closed.

13. It is the City's position that the DAB cannot deal with the merits of the appeal as the DAB's jurisdiction with respect to the development has ceased due to its withdrawal.

14. In *SDAB2014-0007 (Re)*, a decision of the Calgary Subdivision and Appeal Board, after finding that the permit at issue in the appeal was withdrawn and therefore cancelled, the Board stated:

> The Board's jurisdiction upon appeal with respect to a proposed development is in principal limited to the development permit application made. Any concerns the appellant have regarding the existing development on the property and whether the existing approved development is in compliance with the permit or Land Use Bylaw are not within the purview of the Board. There is a valid development permit in place regarding the existing development. The appellants have the remedy to file complaints about this matter with Development Inspection Services of the Development Authority

APPEAL NO. SDAB2014-0007

15. It is the City's further submission that the arguments of the Appellant are essentially a challenge to the validity of PL-2022-0047. Under Section 5.1.2 of Zoning By-law No. 5045, the DAB can only consider the validity of a development permit on appeal filed within 14 days of the issuance of the permit. The 2022 Permit was not appealed and as such the DAB has no jurisdiction to consider its validity.

16. In *Thorne v. Wood Buffalo (Regional Municipality) Subdivision and Appeal Board* [2017] A.J. No. 762, the Alberta Court of Appeal held that the "SDAB correctly did not embark on a consideration of the validity of the 2006 Permit, nor should this Court. These arguments do not have a reasonable chance of success on appeal".

Thorne v. Wood Buffalo (Regional Municipality) Subdivision and Appeal Board

[2017] A.J. No. 762, Paragraph 16

II. The DAB is estopped from considering PL-2023-001

17. In March 2022 the City approved the developer's application for a development permit for a "two-story Multi-Unit Dwelling (four-plex) pursuant to PL-2022-0047. The City further approved numerous building permits for construction of the dwelling.

18. Once a Development is initiated in relationship to an approved Development Permit, the Development Permit remains valid until the work is completed. The City submits that PL-2022-0047 remains valid until the work is completed.

Section 4.13 of Zoning By-law No. 5045

19. The City asserts that the 2022 decision permits construction of the dwelling, and, therefore, issue estoppel prevents the DAB from considering the permitted development in 2023.

20. The four conditions necessary for issue estoppel are:

(i) The decision said to create the estoppel was final;
(ii) The same issue arises for decision again;
(iii) The same parties are involved; and
(iv) It is fair and appropriate to apply issue estoppel.

Thorne v. Wood Buffalo (Regional Municipality) Subdivision and Appeal Board [2017] A.J. No. 762, Paragraph 34

21. The City submits that the four conditions of issue estoppel are met:

(i) *Decision was final* - The 2022 Permit was not appealed, became effective and construction commenced.
(ii) *Same issues arise* - Appellant, in their written appeal, has clearly raised concerns that relate to the 2022 Permit. This is a very clear case of

requesting two decisions on the same issue and, therefore, issue estoppel applies.

(iii) *Same parties* – The same parties are involved. The Appellant missed the opportunity to appeal the 2022 Permit and has attempted to raise concerns related to that permit in this appeal.

(iv) *Fair and Appropriate* – The developer proceeded with construction of the approved dwelling. Application for a change was withdrawn and the developer chose to continue with the approved 2022 Permit and not relocate the deck. It would be unfair and unreasonable to decide that construction to date, completed pursuant to valid and existing development and building permits was invalid.

III. Mootness

22. The leading authority regarding the law of mootness is *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342. the Supreme Court canvassed the nature of mootness and established a two-step approach for deciding whether an appeal should be struck as being moot (at 353):

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter. The approach in recent cases involves a two-step

> analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.
>
> **Wilson Olive and Friends of the Aquifer v. Keys (Rural Municipality), 2020 SKCA 124**

23. The City submits that construction of the dwelling has commenced pursuant to PL-2022-0047. The Appellant's appeal relates to a previously approved development that has already been constructed. The approval of the rear yard setback is no longer a live issue and as such the current appeal is moot.

IV. Validity of PL-2023-001

24. If the DAB determines that PL-2023-001 could not be withdrawn, and that a decision of the DAB is required, then the City submits that the Development Officer erred in considering the entirety of the development.

25. Pursuant to Section 4.14.3 of Zoning By-law No. 5045, requests for **changes** to an Effective Development Permit that do not meet the criteria set out in Section 4.14.1 require a new Development Permit.

26. It is the City's position that the Development Officer, in considering the application for a variance to accommodate relocation of a deck, was limited to the reviewing the application for the change as requested and not the entirety of the development that had already been approved. It was not the opportunity to perform an additional assessment of the development that had already been approved.

27. A Development Officer may revoke a development permit issued in error. It is the City's position that PL-2023-001 could have been revoked if the applicant did not withdraw the application.

Section 4.15.3 of Zoning By-law No. 5045

28. In the further alternative, if the DAB finds that PL-2023-001 exists and a valid appeal has been filed, then the City submits that the permit was issued properly in accordance with Zoning By-law No. 5045.

See Manager's Planning Report

PART IV - REQUESTED FINDING

29. The City requests that the DAB makes a determination that PL-2023-001 was withdrawn and as such no decision of the DAB is required.

30. In the alternative, if the DAB determines that PL-2023-001 exists, the City requests that the DAB dismiss the Appeal and confirm the Permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of March, 2023.

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

Per: _____
Kerry L. Thistle
Solicitor for the City of Yellowknife

CASELAW

1. APPEAL NO. SDAB2014-0007
2. *Thorne v. Wood Buffalo (Regional Municipality) Subdivision and Appeal Board* [2017] A.J. No. 762, Paragraph 34
3. *Wilson Olive and Friends of the Aquifer v. Keys (Rural Municipality)*, 2020 SKCA 124

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE
SPEAKERS LIST

1. Tatsuyuki Setta
   Manager, Planning and Development
   City of Yellowknife

2. Kerry Thistle LLB
   Director, Economic Development & Strategy/City Solicitor
   City of Yellowknife

Calgary Subdivision and Development Appeal Board
P.O. Box 2100, Station M, # 8110,
Calgary, AB T2P 2M5
Email: sdab@calgary.ca

Subdivision & Development APPEAL BOARD

CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2014 CGYSDAB 07

Case Name: SDAB2014-0007 (Re)

File No: DP2013-3614

Appeal by:	Anne Naumann representing the Highland Park Community Association
Appeal against:	Development Authority of The City of Calgary
Hearing date:	February 13, 2014 and March 06, 2014
Decision date:	March 11, 2014
Members present:	Rick Grol, Chairman Jo Anne Atkins Katherine Camarta Dale Hodges Natasha Pashak

DECISION

Basis of appeal:

This is an appeal from an approval by the Development Authority for a development permit made on the application of **IBI Group** for **a revision: changes to site plan (parking reconfiguration, landscaping and retaining wall changes)** at 307 35 Avenue NE.

Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with an approval by the Development Authority of a development permit for revisions/ changes to site plan (parking reconfiguration, landscaping and retaining wall changes) at 307 35 Avenue NE. The property is located in the community of Greenview Industrial Park and has a land use designation of DC Direct Control pursuant to Bylaw 96D2010.

Adjournment:

The hearing for this appeal commenced on February 13, 2014. During that hearing, the Board decided to adjourn the hearing to March 06, 2014 with the consent of all parties involved.

Hearing:

The Board heard verbal submissions from:

Amanda Szpecht of IBI Group, the applicant;
Marek Otwinowski of IBI Group;
Anne Naumann representing the Highland Park Community Association, the appellant;
Bill Morrison, former Director of Land Use with the Highland Community Association; and
Andy Orr, representing the Development Authority.

Summary of Evidence:

The Board report contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application, and forms part of the evidence presented to the Board. The Board report contains the notice of appeal and any documents, materials or written submissions submitted by the appellant, applicant and any other parties to the appeal.

Appendix A attached to this decision contains the summary of evidence from the parties submitted at the hearing and forms part of the Board's decision.

Decision:

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations; and
- Considered all the relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application.

1. **The appeal is allowed in part and the decision of the Development Authority is overturned.**

2. **Development permit DP2013-3614 is null and void.**

Reasons:

1 Having considered the written, verbal, and photographic evidence submitted, the Board notes that the appeal pertains to an approval by the Development Authority of a development permit for revisions/ changes to site plan (parking reconfiguration, landscaping and retaining wall changes) at 307 35 Avenue NE. The property is located in the community of Greenview Industrial Park and has a land use designation of DC Direct Control pursuant to Bylaw 96D2010.

2 In rendering its decision the Board has particular regard to section 687(3) of the *Municipal Government Act,* RSA 2000, c M-26, as amended, which states in part:

> **687(3)** In determining an appeal, the subdivision and development appeal board
>
> (a) […]
>
> (a.1) […]
>
> (b) […]
>
> (c) may confirm, revoke or vary the order, decision or issue or confirm the issue of a development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
>
> (d) […]

3 The Board has particular regard to the following sections of Land Use Bylaw 1P2007:

Section 43 states:

> **Suspension or Cancellation of a Development Permit**
>
> **43** **(1)** The ***Development Authority*** may suspend or cancel a ***development permit*** following its approval or issuance if:
>
> (a) the application contains a misrepresentation;
>
> (b) facts have not been disclosed which should have been at the time of consideration of the application for the ***development permit***;
>
> (c) the ***development permit*** was issued in error;
>
> (d) the requirements or conditions of the ***development permit*** have not been complied with; or
>
> (e) the applicant requests, by way of written notice to the ***Development Authority***, the cancellation of the ***development permit***, provided that commencement of the ***use***, ***development*** or construction has not occurred.
>
> **(2)** If the ***Development Authority*** suspends or cancels a ***development permit***, the ***Development Authority*** must provide written notice of the suspension or cancellation to the applicant.
>
> **(3)** Upon receipt of the written notice of suspension or cancellation, the applicant must cease all ***development*** and activities to which the ***development permit*** relates.

4 Section 685(2) of the *Municipal Government Act* provides for an appeal to the Board by any person affected by an order, decision or development permit made or issued by the Development Authority.

5 The applicant advised the Board that it requests to withdraw the subject development permit application as they no longer wish to proceed with this application. At the hearing the applicant confirmed this request.

6 The Board accepts the evidence of the applicant that it has no intention to proceed with the proposed development and wants to surrender the development permit approval.

7 Under the scheme of the *Municipal Government Act* and Land Use Bylaw 1P2007, and its operations, an applicant to development permit application has the right to withdraw the application or to request a cancellation of an approved and issued development permit. The Board therefore finds that an applicant has the right to withdraw a development permit application, despite that the subject application and

development was approved and a development permit was issued and despite the appeal against the Development Authority's decision respecting the application.

8 Pursuant to section 687(3)(c) of the *Municipal Government Act*, the Board has the power to revoke a development permit.

9 Pursuant to section 687(3)(c) of the *Municipal Government Act,* the Board finds it is warranted in this instance to revoke development permit DP2013-3614 based upon the request to do so by the applicant.

10 The Board cannot entertain the appellant's request to ascertain further jurisdiction with respect to the proposed development. The Board's jurisdiction upon appeal with respect to a proposed development is in principal limited to the development permit application made. Any concerns the appellant have regarding the existing development on the property and whether the existing approved development is in compliance with the permit or Land Use Bylaw are not within the purview of the Board. There is a valid development permit in place regarding the existing development. The appellants have the remedy to file complaints about this matter with Development Inspection Services of the Development Authority.

11 Therefore the Board determines that there is no need to deal with the merits of the appeal as consequently the Board's jurisdiction with respect to the development has ceased due to the revocation.

12 For the above reasons the Board allows the appeal in part and to that extent overturns the approval decision of the Development Authority by revoking the development permit.

13 Development permit DP2013-3614 is revoked and, therefore, is null and void.

_____

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 11th day of March, 2014

APPENDIX A

Summary of evidence:

Evidence presented at the hearing and considered by the Subdivision and Development Appeal Board.

Applicant:

Prior to the hearing, the applicant, Ms. Amanda Szpecht of IBI Group, sent a written request on behalf of Wing Kei Care Association, the owner of the subject property, to the Board outlining their intention to withdrawn their development permit application.

At the hearing, Ms. Szpecht and Mr. Marek Otwinowski, also of IBI Group, formally informed the Board that, on behalf of the property owner, they no longer wish to proceed with the subject development permit application. The applicants requested that the Board accept this request and withdrawn their application.

Appellant:

Ms. Anne Naumann, on behalf of the Highland Park Community Association, the appellant, addressed this issue with the Board:

- In her estimation, the withdrawal of this application is simply a cynical attempt to not have to deal with the community's concerns, many of them ongoing from the original development permit application. The community has attempted to meet with the application and they were given assurances that these concerns would be addressed and rectified. Yet the community has not seen such assurances come to pass. The appellant stated that the only way to correctly deal with the situation would be for the Board to deny the withdrawal of this application and, in turn, make a ruling on the proposed changes. Ms. Naumann stated that in her option this is the proper way to deal with the appeal as this is the community's opportunity to have their concerns and issues addressed.
- Further, they are concerned that even if the applicant were to revert to the original approved development permit, this would not adequately address their concerns.
- The appellant also confirmed that they recognize that the appeal filed against the original development permit was withdrawn. That appeal was withdrawn based on assurances from the property owner. Ms. Naumann stated on record that the applicant's attempt, as she mentioned previously, is a very cynical way to assure they do not have to address the community's concerns in regard to the development.

Mr. Bill Morrison, a former Director for Land Use with the Highland Park Community Association, also addressed the request to withdraw the development permit application:

- He was involved with the community association at the time the land use designation for the subject site was changed but he was not involved with the original development permit application or the resulting appeal that was ultimately withdrawn by the then president of the community association.
- Mr. Morrison also commented that there are some unfortunate and unavoidable elements in this application that could have perhaps been better handled by the applicant. That being the case, in his estimation this particular application could have helped medicate some of the community's concerns. In his opinion, this particular application and the subject appeal may very well have rectified some of their issues and ultimately served a greater purpose.
- In his past role with the community association he has worked as a mediator, Mr. Morrison stated that he hopes the applicants and the community can work together to resolve the issues surrounding this development.
- He requested that the applicant withdraw their intent to cancel the subject development permit and allow the appeal to proceed so that they can deal with these issues today.

The Development Authority:

Mr. Andy Orr, representing the Development Authority, confirmed that he has reviewed the applicant's request and it is obviously their intent to withdraw the development permit application. He further commented that there is a different, valid, development permit pertaining to the subject site and as such, the applicant and property owner are obliged to now proceed with that permit as per those approved plans or it would become an enforcement issue. Should they wish to deviate from those plans, a new application would have to be submitted for review and consideration by the Development Authority.

Thorne v. Wood Buffalo (Regional Municipality) Subdivision and Development Appeal Board

Alberta Judgments

Alberta Court of Appeal

S.J. Greckol J.A.

Heard: July 11, 2017.

Judgment: July 25, 2017.

Docket: 1703-0090-AC

Registry: Edmonton

[2017] A.J. No. 761 | 2017 ABCA 241

Between Andrew Thorne, Jodi Thorne, Dino Demartin, Tracey Demartin, Marilynn Moore, Richard Browne, Cindy Archer, Lyle Hueser, Nancy Hueser, Daphne Van T'wout, Glenn Van T'wout, Jim Kostiuk, Harry Osteneck, Stella Osteneck, Warren Ouellette and Nicole Wilson, Applicants, and Regional Municipality of Wood Buffalo (Subdivision and Development Appeal Board), Regional Municipality of Wood Buffalo, Dunvegan Gardens (AB) Ltd., Dunvegan Gardens (Fort McMurray) Ltd., Bradley Friesen, Terri Friesen and Grandma's Attic Ltd., Respondents

(42 paras.)

Case Summary

Municipal law — Municipal boards and tribunals — Judicial review — Grounds — Application by RMWB residents for leave to appeal decision by RMWB Subdivision and Development Appeal Board dismissed — Respondent, Dunvegan Gardens, operated market garden business — Development Authority issued stop order in respect of seven land usages — Board varied order, revoking provisions related to landscaping and stockpiling of related materials — Proposed grounds of appeal did not raise issues of law with reasonable chance of success or questions of sufficient importance — Grounds amounted to impermissible attacks on underlying development permit, interpretations devoid of merit, or findings contrary to prior proceedings before Board.

Application by municipal residents of RMWB for leave to appeal a decision by the RMWB Subdivision and Development Appeal Board. A municipal Development Authority issued a stop order in respect of a market garden business, Dunvegan Gardens. The stop order identified seven land usages contrary to the land use bylaw, including unauthorized commercial landscaping and related stockpiling of materials, an unauthorized retaining wall, unauthorized sale of goods, unauthorized electrical panels, unauthorized farm animals and an unauthorized park. Dunvegan Gardens appealed the stop order to the Board. The Board varied several provisions of the stop order. It revoked the provisions regarding landscaping and related materials, including the retaining wall. The Board confirmed the other items, with modifications. The applicants sought leave to appeal the Board's variation decision. The applicants submitted the Board erred in law or jurisdiction by allowing Dunvegan Gardens to sell nursery and bedding plants without a valid development permit, by not finding that the landscaping or stockpiling operations were unauthorized, and by allowing such stockpiling without a valid development permit.
HELD: Application dismissed.

None of the proposed grounds of appeal raised an issue of law with a reasonable chance of success and of sufficient importance to warrant a further appeal. The ground of appeal related to the sale of goods was an impermissible collateral attack on the development permit, or otherwise made arguments regarding the permit's interpretation that had no reasonable chance of success. The ground of appeal related to unauthorized commercial

landscaping alleged a gross error of fact that did not raise a jurisprudentially significant issue or unsettled question of law. The ground of appeal related to stockpiling landscaping materials had no reasonable chance of success given past rulings by the Board on the issue. Leave to appeal was thus refused.

Statutes, Regulations and Rules Cited:

Alberta Rules of Court, AR 124/2010, Rule 14.40(1)(b)

Municipal Government Act, *RSA 2000, c M-26, s. 686*(1), s. 688(3), s. 689(1)(a)

Appeal From:

Application for Permission to Appeal.

Counsel

A.G. Thorne and S. Khokhar, for the Applicants.

G.J. Stewart-Palmer, for the Respondent Regional Municipality of Wood Buffalo (Subdivision and Development Appeal Board).

D. Leflar (no appearance), for the Respondent Regional Municipality of Wood Buffalo.

R. Noce, Q.C., for the Respondents Dunvegan Gardens (AB) Ltd., Dunvegan Gardens (Fort McMurray Ltd., Bradley Friesen, Terri Friesen and Grandma's Attic Ltd.

Reasons for Decision

S.J. GRECKOL J.A.

I. INTRODUCTION AND FACTUAL BACKGROUND

1 This is an application for leave to appeal a decision of the Regional Municipality of Wood Buffalo (RMWB) Subdivision and Development Appeal Board (SDAB) dated March 16, 2017 (2017 SDAB Decision). In that decision, the SDAB varied several provisions of a stop order issued by the local Development Authority on September 23, 2016 (Stop Order). The applicants are residents of Draper in the RMWB and the respondents are the SDAB and the owners of Dunvegan Gardens - the property that was the subject of the Stop Order and the 2017 SDAB Decision.

2 Dunvegan Gardens is a market garden business that operates in Draper. The parties dispute the exact nature and scope of Dunvegan Gardens' commercial activities. The applicants live near Dunvegan Gardens and argue the peaceful enjoyment of their homes is disturbed by the commercial activity Dunvegan Gardens brings to Draper. They submit that Dunvegan Gardens has several business activities that are beyond the scope of its development permits.

3 For the reasons set out below, the application for leave to appeal is dismissed.

II. DECISIONS BELOW

(i) The Stop Order

4 On September 23, 2016, the Development Authority of the RMWB issued a Stop Order, identifying seven

development/land uses at Dunvegan Gardens that were not permitted by the *Land Use Bylaw*, RMWB, bylaw No 99/059, [*LUB*]:

(1) unauthorized commercial landscaping;

(2) unauthorized stockpiling of commercial landscaping materials;

(3) unauthorized retaining wall;

(4) unauthorized sale of goods;

(5) unauthorized farm animals;

(6) unauthorized park; and

(7) unauthorized electrical panels.

5 The Stop Order required Dunvegan Gardens to stop all activity and remove all items related to these impermissible uses. The owners of Dunvegan Gardens appealed the Stop Order to the SDAB.

(ii) The SDAB's decision

6 The SDAB issued its decision on March 16, 2017. It revoked the Stop Order with respect to: (1) unauthorized commercial landscaping; (2) unauthorized stockpiling of commercial landscaping materials; and (3) unauthorized retaining wall. The SDAB overturned these aspects of the Stop Order because it found that the RMWB had not established these unauthorized uses were occurring on site. The SDAB confirmed the other items in the Stop Order with some modifications.

7 The applicants seek to appeal the SDAB's revocation of the Stop Order regarding unauthorized commercial landscaping and unauthorized stockpiling of commercial landscaping materials. They also seek to appeal the SDAB's failure to vary the Stop Order to prohibit the selling of nursery and bedding plants, on the basis that selling those products is not permitted by existing development permits.

III. TEST FOR GRANTING LEAVE TO APPEAL

8 A single judge of this Court may grant permission to appeal from a decision of the SDAB under s 688(3) of the *Municipal Government Act*, RSA 2000, c M-26 [*MGA*], if the appeal: (1) involves a question of law or jurisdiction; (2) is of sufficient importance to merit a further appeal; and (3) has a reasonable chance of success.

IV. GROUNDS OF APPEAL

9 The applicants argue that the SDAB erred in law or jurisdiction by:

(a) allowing Dunvegan Gardens to sell nursery and bedding plants without a valid development permit to do so;

(b) not finding that unauthorized landscaping or stockpiling operations were being conducted on Dunvegan Gardens; and

(c) allowing Dunvegan Gardens to store/stockpile certain landscaping materials without a valid development permit.

V. PRELIMINARY MATTERS

(i) Admission of new evidence

10 The applicants filed an affidavit summarizing the evidence they believed to be relevant to their appeal. The respondents challenged the admissibility of the affidavit, arguing that s 689(1)(a) of the *MGA* prevents admission of evidence that was not before the SDAB. Though Rule 14.40(1)(b) of the Alberta *Rules of Court*, AR 124/2010, vol 1

[*Rules*], allows the applicants to file a supporting affidavit, the affidavit should not contain evidence that is not part of the record of proceedings before the SDAB, subject to certain limited exceptions which do not apply here: *Bergstrom v Beaumont (Town)*, 2016 ABCA 221 at paras 32-34, 268 ACWS (3d) 880. Accordingly, I have not taken into consideration any evidence not clearly derived from the record and I have disregarded opinions contained in the applicants' affidavit.

(ii) Applicants' standing

11 The respondents also challenged the standing of several of the named applicants to appeal the 2017 SDAB Decision. They argued that, apart from Andrew and Jodi Thorne, the applicants did not meet their burden of proving that they are "affected by the application [for permission to appeal]" for the purpose of s 688(3) of the *MGA* and so did not have standing to participate in the application, or any subsequent appeal. This group of applicants were not participants in the appeal to the SDAB, so the SDAB made no ruling as to their standing.

12 These applicants submitted that they were affected by the Stop Order, pointing to some brief hearsay remarks in the affidavit of Andrew Thorne about the nuisance and irritation caused to them by the operations at Dunvegan Gardens.

13 It is not necessary for me to decide whether this group of applicants has standing to participate in the appeal of the SDAB decision since the application for permission to appeal is dismissed.

VI. ANALYSIS

(i) Did the SDAB err in law or jurisdiction by allowing Dunvegan Gardens to sell nursery and bedding plants without a valid development permit?

14 The SDAB held that Dunvegan Gardens was selling general retail goods (e.g., candy, toys) without a valid development permit. However, the SDAB also found that Dunvegan Gardens is permitted to sell nursery and bedding plants under a 2006 development permit for "Accessory Building (Greenhouse)" (2006 Permit). The SDAB concluded that the 2006 Permit authorized that use based on language in Dunvegan Gardens' letter of application for the permit to build the greenhouse - namely that the greenhouse would be built "for the production of bedding plants, nursery and vegetables". The SDAB found expressly that the application letter was stamped and part of the 2006 Permit.

15 The applicants argue that the 2006 Permit is invalid or inapplicable for several reasons, including that:

(a) the approved principal use of the land at the time was for a "Market Garden", which allows for the "growing of vegetables or fruit for commercial purposes": *LUB*, s 10; the permit for an "Accessory Building (Greenhouse)" only permitted use of the greenhouse for the principal purpose (i.e., Market Garden) - not for also selling nursery and bedding plants;

(b) the selling of nursery and bedding plants requires a "Greenhouse/Plant Nursery" permit, which is not allowed in the Small Holdings district where Dunvegan Gardens is located;

(c) the 2006 Permit was issued for a building that was destroyed in 2007 and so ceased to have effect; and

(d) the 2006 Permit impermissibly authorized an accessory building without a development permit for a principal use as required by s 50.10 of the *LUB*.

16 Properly characterized, these arguments are not about the interpretation of the 2006 Permit, but a challenge to its validity. The SDAB did not consider the validity of the 2006 Permit, and it had no jurisdiction to do so. Under s 686(1) of the *MGA*, the SDAB can only consider the validity of a permit on appeal filed within 14 days of the issuance of the permit. This Court does not have authority to rule on the validity of a development permit that was not appealed to the SDAB within the requisite appeal period. The SDAB correctly did not embark on a consideration

of the validity of the 2006 Permit, nor should this Court. These arguments do not have a reasonable chance of success on appeal.

17 The applicants also argued that the SDAB misinterpreted the 2006 Permit as authorizing the sale of nursery and bedding plants. These arguments did not challenge the validity of the 2006 Permit and so do not amount to a collateral attack on it, but rather concern its interpretation. According to the applicants, the 2006 Permit does not authorize the selling of nursery and bedding plants for two reasons. First, the letter attached to the development permit application, which indicated that the greenhouse would be used for producing nursery and bedding plants, does not form a part of the approved development permit. Second, even if the letter was part of the approved development permit, it only authorized the *production* of nursery and bedding plants, not their sale.

18 Concerning the first argument, it is not reasonably arguable that the application letter was not part of the approved development permit: the letter was stamped "Development Permit Approval" by the RMWB.

19 Concerning the second argument, the stamped application letter states that the greenhouse is "for production of Bedding Plants, Nursery and Vegetables. Initially we will grow mostly tomatoes, peppers and cucumbers *for the local market here*": Respondent's Extracts of the Record, Tab 2 at 175 [emphasis added]. This language indicates that the purpose of producing these greenhouse items is to sell them at the local market; it is expressly stated that tomatoes will be sold at market, and implicit that the other products mentioned will be sold in due course. The argument that the 2006 Permit only approved production but not sale lacks a reasonable prospect of success.

20 These arguments do not meet the test for granting leave to appeal because neither argument has a reasonable chance of success. Further, the interpretation of particular language in a document incorporated into a single development permit does not raise a question of law of sufficient importance to warrant a further appeal.

21 Therefore, the applicants' first proposed ground of appeal does not meet the test for granting leave to appeal to this Court.

(ii) Did the SDAB err in law or jurisdiction by failing to conclude that unauthorized landscaping or stockpiling operations were being conducted on Dunvegan Gardens?

22 All parties agreed that commercial landscaping is not authorized at Dunvegan Gardens, however, there is a factual dispute about whether commercial landscaping in fact occurs at Dunvegan Gardens. At the SDAB hearing, Dunvegan Gardens acknowledged it conducts the business of commercial landscaping, but maintained it is based at another site, not Dunvegan Gardens. The owners of Dunvegan Gardens did not oppose the SDAB upholding the Stop Order with respect to the ban on commercial landscaping.

23 The applicants argued that commercial landscaping is occurring at Dunvegan Gardens. In their submissions to the SDAB, the applicants submitted what they claimed to be over 1500 photos of "landscaping vehicles and dump trucks...coming to and going from the property of Dunvegan Gardens", many of which were "emblazoned with the logo of Dunvegan Gardens": Applicants' Memorandum of Argument at para 22. The applicant, Andrew Thorne, provided the photographs to the SDAB in paper copy and digitally, on a USB key, informing the SDAB that the photographs on the USB key could be enlarged using a zoom function.

24 The applicants argued that this evidence established that the owners of Dunvegan Gardens operate a commercial landscaping business from Dunvegan Gardens. However, the SDAB found at para 119 that:

> There is nothing in the photographs linking specifically the [owners of Dunvegan Gardens] to the trucks. In the absence of better or more specific evidence, the Board is not convinced that the evidence submitted to it supports a conclusion that the [owners of Dunvegan Gardens] are operating a commercial landscaping operation.

The SDAB came to this conclusion after examining the relevant photographs submitted to it: 2017 SDAB Decision at paras 114, 116, 119.

25 The applicants argued that the SDAB made a gross error of fact since there was overwhelming evidence that commercial landscaping was occurring at Dunvegan Gardens. They submitted that the SDAB ignored written evidence and did not closely examine the photos submitted via a USB key and that this error was so profound that it was an error of law.

26 This Court held in *Calterra Land Developments Inc v Rocky View (Municipal District No 44)* that "a finding of fact made in the absence of evidence is a jurisdictional error": *2005 ABCA 356* at para 3, *144 ACWS (3d) 159*; see also *Karagic v Calgary (City)*, *2012 ABCA 309* at para 13, 223 ACWS (3d) 518. The applicants' submission seems to be that, though the SDAB members may have looked at the paper copy of the photos, they did not enlarge the photos on the USB key, which would have disclosed that the trucks were owned by Dunvegan Gardens and were carrying landscaping materials to and from Dunvegan Gardens.

27 Assuming, for the sake of argument, that the SDAB members did not "zoom in" on the digital copies of the photos contained on the USB key when assessing the evidence, and assuming that failing to do so meant that their findings were "made in the absence of evidence", thereby amounting to an error of law, this ground of appeal still fails on the basis that it is not of sufficient importance to merit a further appeal.

28 In *Carleo Investments Ltd v Strathcona (County)*, *2014 ABCA 302* at para 10, [2014] AWLD 4389, this Court held that:

> As a general rule, applicants for leave to appeal from a subdivision and development approval board should be prepared to show that the decision has implications which go beyond the dispute between the parties. The wider and more deeply those implications are felt, the greater it will tend to support a submission that the prospective appeal is of "sufficient importance". That does not mean, however, that an appeal which matters to no-one other than the parties themselves can never be "sufficiently important"...although this will usually militate against granting leave to appeal.

29 The issue of whether the SDAB made a gross error of fact by failing to enlarge the photos provided, and not drawing the obvious conclusion that commercial landscaping is taking place at Dunvegan Gardens, is not jurisprudentially significant: it does not raise a question of law that is unclear or unsettled. Nor have the applicants demonstrated that a decision by this Court on this issue would have implications that go beyond the dispute between the parties.

30 The applicants argued that this issue is "of 'significant importance'" as the district has been effectively 'rezoned' by the SDAB to allow retail and industrial 'uses' of large proportions, thus drastically reducing the quiet use and enjoyment inherent in the character of the district": Applicants' Memorandum of Argument at para 11. However, the SDAB's decision, at least with respect to commercial landscaping, does not alter which activities are permitted or prohibited in Dunvegan Gardens' Small Holdings district: it does not exclude certain activities from being classified as "commercial landscaping", nor does it take activities previously classified as "commercial landscaping" out of that category. The SDAB's decision simply fails to find that commercial landscaping is occurring at Dunvegan Gardens on the evidence submitted to it. This cannot be characterized as an effective rezoning of the district and it is not an issue of sufficiently significant importance to merit an appeal to this Court.

31 The fact that the Stop Order prohibited commercial landscaping at Dunvegan Gardens was unopposed by the respondents, so that all concerned - Dunvegan Gardens, the Development Authority, and the neighbouring property owners - are agreed that commercial landscaping should not, and cannot, be carried out on the Dunvegan Gardens site.

32 Therefore, the applicants' second proposed ground of appeal does not meet the test for granting leave to appeal to this Court.

(iii) Did the SDAB err in law or jurisdiction by allowing Dunvegan Gardens to store/stockpile certain landscaping materials without a valid development permit?

33 The applicants make three arguments under this proposed ground of appeal:

(a) a March 2011 SDAB Decision estopped the SDAB from deciding in the 2017 Decision to allow any stockpiling at Dunvegan Gardens;

(b) the RMWB contravened a September 2011 SDAB Decision by allowing stockpiling at Dunvegan Gardens in a letter of October 2011; and

(c) the 2017 SDAB Decision could not authorize any stockpiling at Dunvegan Gardens because the definition of "Market Garden" does not include stockpiling anything and stockpiling is not an allowable use in the Small Holdings district.

I will deal with each of these arguments in turn.

(a) A March 2011 SDAB Decision estopped the SDAB from deciding in the 2017 Decision to allow any stockpiling at Dunvegan Gardens

34 In March 2011, the SDAB denied Dunvegan Gardens' application for a development permit for "Intensive Agriculture (Stockpiling)": Affidavit of Andrew Thorne, Tab G at 93-94 [March 2011 SDAB Decision]. In the present application, the applicants asserted that this decision prohibits stockpiling of any kind at Dunvegan Gardens and, therefore, issue estoppel prevented the SDAB from allowing any stockpiling at Dunvegan Gardens in the 2017 SDAB Decision.

35 The four conditions necessary for issue estoppel are: (i) the decision said to create the estoppel was final; (ii) the same issue arises for decision again; (iii) the same parties are involved; and (iv) it is fair and appropriate to apply issue estoppel: *Spruce Grove Gun Club v Parkland (County) Subdivision and Development Appeal Board*, 2016 ABCA 29 at para 34, 616 AR 148; *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 33, [2001] 2 SCR 460; *Sihota v Edmonton (City)*, 2013 ABCA 43 at para 8, 542 AR 229.

36 The applicants have no reasonable chance of establishing that the same issue has arisen again in this case. In its March 2011 Decision, the SDAB denied Dunvegan Gardens' application for "Intensive Agriculture (Stockpiling)". Contrary to the appellants' submissions, this is not equivalent to holding that no stockpiling of any kind is allowed at Dunvegan Gardens. The 2017 SDAB Decision held that Dunvegan Gardens is authorized to store limited materials related to their Market Garden use; it did not allow for "Intensive Agriculture (Stockpiling)". This is not a case of two inconsistent decisions on the same issue and, therefore, issue estoppel does not apply. In conclusion, their argument has no reasonable chance of success.

(b) The RMWB contravened a September 2011 SDAB Decision by allowing stockpiling at Dunvegan Gardens by letter of October 2011

37 In September 2011, the SDAB confirmed a stop order requiring Dunvegan Gardens to cease all activity on its land related to commercial landscaping (including the stockpiling of commercial landscaping materials): Respondent's Extracts of the Record, Tab 4 [September 2011 SDAB Decision]. However, the September 2011 SDAB Decision allowed Dunvegan Gardens to keep materials on its property for use in its Market Garden operation (the activity is covered by a valid permit), provided that the RMWB confirmed in writing that the materials were necessary for that use: September 2011 SDAB Decision at 265. The RMWB conducted an inspection in October 2011 and confirmed in a letter (October 2011 Letter) which materials could remain at Dunvegan Gardens. One of the approved items the RMWB confirmed could remain was "Stock pile - used for customers, gardens on the site and beautification of the property"; a photo of the stockpile was attached to the letter: Respondent's Extracts of the Record, Tab 5 at 1278.

38 The September 2011 SDAB Decision provided that all "equipment and material used for the market garden business as determined and confirmed in writing by the Municipality may remain on the Site": September 2011 SDAB Decision at 265. In the October 2011 Letter, the RMWB confirmed that certain stockpiled materials at

Dunvegan Gardens were related to their market garden and, therefore, authorized to remain. This was not a contravention of the September 2011 SDAB Decision. The applicants' argument that the October 2011 Letter was a contravention of the September 2011 SDAB Decision has no reasonable chance of success.

(c) The 2017 SDAB Decision could not authorize any stockpiling at Dunvegan Gardens because the definition of "Market Garden" does not include stockpiling anything and stockpiling is not an allowable use in the Small Holdings district

39 The SDAB found that the evidence did not show commercial landscaping materials were being stockpiled at Dunvegan Gardens. Rather it found that the materials complained of - shown in photographs - were the same type of materials that the RMWB had confirmed were necessary to the operation of the Market Garden in the October 2011 Letter: 2017 SDAB Decision at paras 122-128. As such, the September 2011 SDAB Decision, communicated via the October 2011 Letter, authorized Dunvegan Gardens to store those materials.

40 The applicants argued that the SDAB erred in its 2017 Decision by authorizing stockpiling because stockpiling is not a permitted or discretionary use in the Small Holdings district. This argument challenges the validity of the September 2011 SDAB Decision since, in 2017, the SDAB relied on its holding in September 2011 that limited stockpiling is authorized at Dunvegan Gardens. The argument that the September 2017 SDAB Decision could not authorize any stockpiling at Dunvegan Gardens is a collateral attack on the 2011 SDAB Decision and has no reasonable chance of success because the appeal period for that decision expired long ago.

41 Therefore, the applicants' third proposed ground of appeal does not meet the test for granting leave to appeal to this Court.

VII. CONCLUSION

42 The application for leave to appeal is dismissed. None of the applicants' proposed grounds of appeal raise an issue of law with a reasonable chance of success and of sufficient importance to warrant a further appeal.

Reasons filed at Edmonton, Alberta this 25th day of July, 2017

S.J. GRECKOL J.A.

Court of Appeal for Saskatchewan
Docket: CACV3472

Citation: *Wilson Olive and Friends of the Aquifer v Keys (Rural Municipality)*, 2020 SKCA 124
Date: 2020-11-04

Between:

Wilson Olive and Friends of the Aquifer

Respondents/Appellants (Appellants)

And

Rural Municipality of Keys No. 303

Applicant/Respondent (Respondent)

Before:	Richards C.J.S., Caldwell and Kalmakoff JJ.A.
Disposition:	Application granted
Written reasons by:	The Honourable Chief Justice Richards
In concurrence:	The Honourable Mr. Justice Caldwell The Honourable Mr. Justice Kalmakoff
On application from:	2019 SKMB 076, Regina
Application heard:	October 9, 2020
Counsel:	Milad Alishahi and Allison Graham for the Applicant Merrilee Rasmussen, Q.C., and Jaime Carlson for the Respondents

Richards C.J.S.

I. INTRODUCTION

[1] This is an application by the respondent, the Rural Municipality of Keys No. 303 [RM], to quash the appeal of Wilson Olive and Friends of the Aquifer [collectively, "Mr. Olive"] on the ground that it is moot.

[2] As explained below, the RM's application should be granted. Mr. Olive's appeal is moot and this is not a situation where it would be appropriate for the Court to proceed notwithstanding that fact.

II. BACKGROUND

[3] The key features of the background to this application can be summarized as follows:

(a) The RM's Official Community Plan speaks to the allowable number of sites on a quarter-section of land in these terms:

> 4.3.2 In any area of the municipality designated to be an agricultural district there shall be a maximum of 3 sites within any quarter-section (as registered on a township plan) that may contain a farmstead, residence, or commercial development which may allow an accessory residential use.

"Farmstead" is not defined in the Official Community Plan. However, s. 10.2.3(2) of the Plan indicates that "[t]he interpretation of words as contained in the zoning bylaw shall apply to the words in this statement".

(b) The RM's Zoning Bylaw, as it read when this story began, provided as follows with respect to allowable farmsteads:

> 5.3.4 Farmsteads
>
> (1) A farmstead may contain the following where located on the same parcel:
>
> (a) A residence for the operator of an agricultural use.
>
> (b) A bunkhouse or additional residence for employees and partners of the operator engaged in the agricultural operation.

> (c) Facilities for the temporary holding of livestock raised in an operation, in lesser numbers than constitutes an I.L.O. (unless approved as an I.L.O.).
>
> (d) Buildings for permitted accessory and ancillary uses.

(c) In February of 2018, the Hutterian Brethren of Crystal Lake [HBCL] sought permission from the RM to construct a collective dwelling.

(d) The RM's administration and council concluded that the Zoning Bylaw should be amended and, in May of 2018, the approach to "farmsteads" in the Bylaw was changed as follows:

> 1. THAT the following section 5.3.4 (b) be amended as follows:
>
> a. Section 5.3.4 Farmsteads
>
> (1) A farmstead may contain the following where located on the same parcel:
>
> (b) A bunkhouse, additional residence, or collective dwellings for employees and partners of the operator engaged in the agricultural operation.
>
> 2. THAT the following Definitions be added as follows:
>
> PART II – DEFINITIONS
>
> Bunkhouse – A large open room with multiple beds or cots used for farmhands in a ranching or farming operation.
>
> Collective Dwellings – As declared to Stats Canada during the Census Period.

(e) On June 19, 2018, the RM council passed a resolution approving what the minutes of the council meeting referred to as HBCL's "development application".

(f) Mr. Olive appealed to the local Development Appeals Board [Board] pursuant to s. 219(1)(a) of *The Planning and Development Act, 2007*, SS 2007, c P-13.2 [*Act*]. He asked that what he called the "development permit" issued by the RM to HBCL be "cancelled" and be held to be of no effect for so long as the Zoning Bylaw (as amended) was inconsistent with the Official Community Plan.

(g) The Board dismissed Mr. Olive's appeal. It found there was no inconsistency between the Official Community Plan and the amended Zoning Bylaw.

(h) Mr. Olive then appealed to the Planning Appeals Committee of the Saskatchewan Municipal Board [Appeals Committee]. He argued, in relevant part, that (i) the

Zoning Bylaw amendment was inconsistent with the Official Community Plan and was therefore invalid, (ii) the Zoning Bylaw amendment was invalid because some members of the RM council who had voted on it had been in a conflict of interest, (iii) the Zoning Bylaw amendment was invalid because HBCL had not applied for it, and (iv) the development application made by HBCL was invalid because the Zoning Bylaw amendment that authorized it was invalid.

(i) On July 26, 2019, the Appeals Committee dismissed Mr. Olive's appeal. It referred to s. 219(1) of the *Act* which speaks to the right of appeal to the Board and, in particular, to s. 219(1)(a) – the provision relied on by Mr. Olive – which provides for an appeal if there is "an alleged misapplication of a zoning bylaw in the issuance of a development permit". The Appeals Committee concluded that, notwithstanding Mr. Olive's understanding, there had been no development application and no development permit had been issued. As a result, the Committee found that it did not have jurisdiction to entertain Mr. Olive's appeal. The Appeals Committee also concluded that, to the extent Mr. Olive's appeal was concerned with the validity of the amendment to the Zoning Bylaw, it had no jurisdiction in that regard either. It said its remit was limited to development permits and that only the courts could quash bylaws.

(j) Mr. Olive then sought leave to appeal to this Court. By way of an order dated October 30, 2019, Caldwell J.A. granted leave on two questions:

> [i] Did the Committee err when it found it did not have jurisdiction under s. 219(1) of *The Planning and Development Act, 2007* to hear the appeal as framed by [Mr. Olive]?
>
> [ii] Did the Committee err in law or fail to recognise its jurisdiction when it declined to address [Mr. Olive's] assertion of a denial of procedural fairness at the Board level?

(k) On December 5, 2019, the RM council amended the Zoning Bylaw to provide for a Form A (development application) and a Form B (development permit).

(l) On January 7, 2020, the RM's Development Officer issued a development permit [2020 permit] to HBCL.

(m) Mr. Olive first obtained a copy of the 2020 permit in September of 2020. He then filed a fresh appeal with the Board. He emphasized several points: (i) what to him appeared to be the absence of an application in Form A; (ii) the references in the 2020 permit to council resolution 148-2018; and (iii) his ongoing concern that the amendment to the Zoning Bylaw was inconsistent with the Official Community Plan.

(n) On October 2, 2020, the secretary of the Board advised Mr. Olive that his appeal had not been received within 30 days of the date of the issuance of the 2020 permit and hence would not be provided to the members of the Board.

(o) Mr. Olive, says his counsel, has asked the Board secretary to forward his appeal to the Board itself for its consideration and has done so on the basis of his belief that the secretary has no authority to determine that an appeal is out of time.

III. ANALYSIS

[4] The RM contends the issuance of the 2020 permit and its Development Officer's decision not to interfere with HBCL's project have rendered Mr. Olive's appeal moot. It then goes on to argue that the Court should not exercise its discretion to hear the appeal notwithstanding the mootness problem.

[5] I propose to consider the RM's arguments by (a) briefly confirming the principles that govern applications of this kind, (b) determining whether the appeal is moot, and (c) examining whether, if Mr. Olive's appeal is moot, it should be heard and decided anyway.

A. Governing principles

[6] There is no dispute about the legal framework that governs the RM's application. The leading authority is *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*]. There, the Supreme Court canvassed the nature of mootness and established a two-step approach for deciding whether an appeal should be struck as being moot (at 353):

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The

> general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.
>
> The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

See also: *Dearborn v Saskatchewan (Financial and Consumer Affairs Authority)*, 2017 SKCA 63 at para 16 [*Dearborn*]; *Prince Albert Right to Life Association v Prince Albert (City)*, 2020 SKCA 96 at para 47 [*Right to Life*]; *Radiology Associates of Regina Medical PC Inc. v Sun Country Regional Health Authority*, 2016 SKCA 57 at para 15, [2016] 10 WWR 662.

B. Is the appeal moot?

[7] Speaking generally, an appeal is moot if deciding it will not have the effect of resolving a live controversy. Writing recently in *Right to Life*, Ottenbreit J.A. explained as follows:

> [54] Without attempting to define the term exhaustively, based on the foregoing, I conclude that a live controversy may cease to exist in the following circumstances: when the tangible and concrete dispute has disappeared; when the decision will or may no longer actually affect the rights of the parties; where the practical relief sought is no longer available because of alterations in the factual or legal matrix of the case; where the question before the court has ceased to exist or the substratum of the litigation has disappeared; where a decision on the merits would have no practical effect on the parties' rights; and where the question the court is now being asked to resolve has been overtaken by post-decision events or a subsequent decision of a decision-maker.

[8] The RM submits this appeal is moot for two independent reasons. First, it says the 2020 permit has overtaken these proceedings with the result that a decision by the Court will have no effect on Mr. Olive's efforts to block HBCL's development. Second, the RM says this appeal is moot because its Development Officer has indicated that, given the now advanced state of the

HBCL development, he would not take enforcement proceedings against HBCL even if the development is found to be noncompliant with the *Act* or any bylaw. I will deal with these arguments in turn.

[9] The first issue, accordingly, is whether the appeal involves a live controversy between the RM and Mr. Olive. In my view, it does not. The reality is that, since Mr. Olive commenced the proceedings that underpin this appeal, the RM has amended the Zoning Bylaw to provide for Forms A and B, and the RM's Development Officer has issued the 2020 permit in Form B. As a result, the legality of HBCL's development approval now turns on the 2020 permit, not on the June 19, 2018, resolution of the RM council that is at issue in this appeal.

[10] Mr. Olive contends, however, that the 2020 permit is tied to the council's resolution of June 19, 2018. He points out that the 2020 permit carries the application number 2018-148 which is the identifying number of the June 19, 2018, RM council resolution that purported to approve the "development application" of HBCL at that time. As well, Mr. Olive notes that the 2020 permit contains, as Schedule A, a reference to the RM council's June 19, 2018, resolution. All of this leads Mr. Olive to suggest the RM council's June 19, 2018, resolution – what he describes as his original target of legal attack – is the animating decision that underpins the 2020 permit. He suggests the 2020 permit is "just a new piece of paper attached to the same decision".

[11] I am not persuaded by this line of thinking. Regardless of what arguments might be made about the validity of the 2020 permit, the fact remains that HBCL's existing authorization to proceed with the development flows from the permit, not from the RM council's purported approval of the development back in 2018. Mr. Olive's own actions make this point in that he is attempting to appeal the 2020 permit to the Board. If he thought that the validity of the 2020 permit was not consequential or that it was at play in this appeal, there would be no need to ask the Board to review it.

[12] In the end, therefore, I am persuaded that Mr. Olive's appeal is moot on the basis that it has been overtaken by the 2020 permit. The validity of the RM council's purported approval of the development in 2018 is no longer a live issue.

[13] As indicated, the RM also contends that Mr. Olive's appeal is moot because its Development Officer has advised that he will take no enforcement steps against HBCL, come what may. The Development Officer avers as follows:

> 15. Because HBC's development was approved by following the same process for every other development in the RM in 2018 and received a Form B development permit in 2020, and because of the significant effort and money already put into the development, if the approval is found to be invalid, or if the underlying development is found to be in contravention of any provision of the *PDA*, regulations, any bylaw or any order made pursuant to the *PDA*, I will use the discretion afforded to me, as per above, not to issue any order pursuant to s. 242(5).

[14] Section 242(5) of the *Act*, the provision to which the Development Officer refers, reads as follows:

> 242(5) In a written order made pursuant to subsection (4), the development officer:
>
> (a) shall specify the contravention;
>
> (b) may direct the person to whom the order is issued to do all or any of the following:
>
> (i) discontinue the development or form of development;
>
> (ii) alter the development or form of development so as to remove the contravention;
>
> (iii) restore the land, building or premises to its condition immediately before the undertaking of the development or form of development;
>
> (iv) complete all work necessary to comply with the zoning bylaw;
>
> (c) shall set a time in which a direction made pursuant to clause (b) is to be complied with; and
>
> (d) shall advise of the right to appeal the order to the Development Appeals Board.

[15] The RM's argument on this front raises an issue about whether the Development Officer can lawfully limit or fetter his authority in the way he suggests that he has done. However, it is unnecessary to decide this question, given that I have already found this appeal to be moot because of the effect of the 2020 permit.

[16] As a bottom line, therefore, I conclude that Mr. Olive's appeal is moot.

C. Should the appeal be heard even if it is moot?

[17] The second issue to be considered in determining whether this appeal should be quashed is whether the Court should exercise its discretion to decide it notwithstanding the mootness problem. I summarized the nature of this inquiry in *Dearborn* at paragraph 16:

> … The second step is to determine whether, notwithstanding that the appeal is moot, the court should nonetheless exercise its discretion to hear the case. That exercise of discretion, according to *Borowski*, should be undertaken with reference to the underlying basis of the mootness doctrine itself: (a) the presence of an ongoing adversarial context, perhaps because of the collateral consequences of the outcome of the appeal, (b) the importance of conserving judicial resources, and (c) the need for a court to be sensitive to its proper law-making function, *i.e.*, its role as an adjudicator of disputes affecting the rights of parties.

The factors referred to in this passage should not be examined in a rigid fashion. As Sopinka J. indicated in *Borowski* at page 363, "[t]he principles…may not all support the same conclusion. The presence of one or two of the factors may be overborne by the absence of the third, and vice versa". All of that said, it is useful to examine each of the *Borowski* considerations in turn.

[18] The first consideration is the existence of an adversarial context. The RM contends that such a context no longer exists because the approval it gave to HBCL's development in 2018 has been rendered of no consequence by the 2020 permit and because Mr. Olive's appeal in relation to the 2020 permit has been rejected by the secretary of the Board. Relying on these two points, the RM says there is no longer any ongoing controversy and therefore no adversarial context.

[19] In my view, the RM misapprehends the adversarial context inquiry outlined in *Borowski*. The point with respect to adversarial context is whether, notwithstanding a mootness problem, the issues in a proceeding will be well and fully argued before a court so that it can have the benefit of the "anvil and hammer" dynamic that makes for the competent resolution of disputes. Here, there is no suggestion of any sort that the RM would not oppose or participate in the appeal should it go forward. Indeed, the vigour with which the RM has pursued this application to quash would seem to be proof positive of its continuing interest in the issues raised by Mr. Olive. In short, there is an ongoing adversarial context here that weighs in favour of hearing the appeal.

[20] I turn then to consideration of what *Borowski* calls the issue of judicial economy. This factor recognizes that judicial resources are finite. It invites consideration of whether the particular

circumstances of a case make it worthwhile to employ such scarce resources to resolve the issues at stake.

[21] The RM says this consideration cuts against proceeding with the appeal. It submits the issues concerning the jurisdiction of the Appeals Committee on which leave has been granted can be raised in the context of any appeal that Mr. Olive might succeed in taking to the Committee in connection with the 2020 permit. Further, the RM stresses that, in any event, it is unlikely that the question of the validity of the 2020 permit will in fact make its way back to the Appeals Committee given that the secretary of the Board has declined to accept Mr. Olive's notice of appeal. The RM also submits that the issues in this appeal concerning the jurisdiction of the Appeals Committee have not been shown to be widespread or recurring and that they are not the sorts of matters that unfold on such a short timeline that they must be considered when moot if this Court is ever going to have the opportunity to pronounce upon them.

[22] Mr. Olive, for his part, suggests that the issues raised by this appeal are bound to reoccur and that it would be unfortunate if they had to be relitigated back up to this Court when, by allowing the appeal to proceed, the Court could deal with them now. Mr. Olive also emphasizes that the questions concerning the Appeals Committee's authority or jurisdiction are self-evidently of general importance.

[23] In overall terms, I agree with the RM that the issue of judicial economy weighs against proceeding with this appeal. This becomes apparent by thinking through what will happen if the appeal is argued and Mr. Olive ultimately succeeds in having it decided in his favour. In this regard, it would appear that there are only two tracks open to Mr. Olive. On the first track, Mr. Olive would find himself back before the Appeals Committee with a Court of Appeal decision that says the Committee has the jurisdiction to entertain his appeal from the 2018 Board decision. However, that appeal would be beside the point because, as explained above, the RM's 2018 purported approval of HBCL's development is no longer the controlling decision.

[24] The second track possibly open to Mr. Olive is one where he would convince the Board to consider his appeal concerning the 2020 permit notwithstanding that, on the face of things at any rate, his appeal is out of time. If Mr. Olive does get the 2020 permit before the Board but does not manage to convince the Board to upset it, he could appeal to the Appeals Committee. However, at

that stage of things, it is unclear how much utility there would be in a decision rendered by the Court in the present appeal. The scope of the first question before the Court – the one concerning the jurisdiction of the Committee to hear Mr. Olive's appeal "as framed" – is not entirely clear. In his factum, Mr. Olive has in effect taken it to have two dimensions. The first is whether the Appeals Committee has jurisdiction to hear an appeal when there is no development permit. The second is whether the Appeals Committee can entertain arguments about the validity of bylaws.

[25] The issue about the jurisdiction of the Appeals Committee to hear appeals where there is no development permit would no longer be in play in a return trip to the Appeals Committee concerning the 2020 permit. That would be because any appeal in relation to the 2020 permit would involve a proceeding where there had been an approval granted in Form B. In other words, the basis on which the Appeals Committee found it had no jurisdiction in the context of the present proceedings would no longer exist and, hence, any decision of this Court on that point would be of no consequence.

[26] As for the issue of the Appeals Committee's authority to hear a challenge to the validity of a bylaw, it appears that this could have some consequence in a return trip to the Appeals Committee concerning the 2020 permit. Of course, that would be the case only if the Court addresses that point in its decision and only if the alleged invalidity of the amendment to the Zoning Bylaw were to be part of Mr. Olive's challenge to the 2020 permit.

[27] Thus, overall, the ongoing utility to Mr. Olive and the RM of a decision of this Court on the first question presented by this appeal would appear to be both quite limited and uncertain.

[28] Continuing to consider what I have referred to as the second track available to Mr. Olive, what of the other question on which leave was granted in this case, the one concerning the Appeals Committee's jurisdiction to deal with allegations of conflict of interest? The Court's answer to that question could relate to a live issue before the Appeals Committee on an appeal concerning the 2020 permit but only if Mr. Olive can somehow tie his original allegation that some council members were in a conflict of interest when they amended the Zoning Bylaw to the Development Officer's decision to issue the 2020 permit. It is unclear how Mr. Olive could do this given that the decision to issue the 2020 permit was a decision of the *Development Officer*, not of the *council*. After all, s. 2.5(1)(a) of the Zoning Bylaw provides that, on reviewing an application for

development, the Development Officer "shall…issue a development permit for a permitted use". There is no council involvement in the process.

[29] Thus, although the overall picture might not be wholly clear, it appears that proceeding with this appeal would be of dubious practical consequence or impact on the ongoing controversy about HBCL's development that underlies these proceedings. By requesting that the appeal be heard and decided, Mr. Olive effectively asks the Court and the RM to expend time and resources on deciding a case that might well have no on-the-ground effect on the dispute between him and the RM.

[30] I observe too that Mr. Olive has not established that the questions on which leave to appeal has been granted are ones which arise frequently such that a decision of the Court would have some larger or more general utility beyond the four corners of this appeal. I accept, of course, that issues concerning the jurisdiction of a public agency like the Appeals Committee are important by definition. However, that does not mean they arise on a regular basis and there is nothing before this Court to suggest that they do. Further, to the extent that the potential broader importance of this appeal might nonetheless be taken into account, it is useful to note a case on which leave to appeal has been granted recently: *SBLP Southland Mall Inc. v Regina (City)* (9 October 2020), CACV3642 (Sask CA). This is a property tax appeal and, as a result, it does not concern the Appeals Committee itself. However, it does raise the question of whether a committee of the Saskatchewan Municipal Board can deal with arguments based on a denial of procedural fairness. It appears, therefore, that the second issue raised by the present appeal will be answered by the Court even if the RM's application to quash is granted.

[31] Overall, I conclude that the considerations of judicial economy weigh somewhat heavily against proceeding to hear and decide this appeal.

[32] I turn, lastly, to the third factor flagged in *Borowski*, the proper role of the judiciary. It involves consideration of the extent to which, in hearing a moot case, the Court would be departing from its traditional role and improperly intruding into the domain of the Legislature. I see no meaningful concern of that sort here. The issues before the Court in this appeal are specific and narrow and they arise in a context very much at the centre of the Court's mandate.

[33] As is apparent, this is one of those cases where not all of the *Borowski* considerations point in the same direction. The notions of an adversarial context and of the judicial role suggest that it might be appropriate to proceed. On the other hand, concerns about judicial economy cut against hearing the appeal. Overall, and taking into account all of the relevant factors, the balance tips against the idea of hearing the appeal even though it is moot.

IV. CONCLUSION

[34] I conclude, for the reasons given above, that the RM's application should be granted and Mr. Olive's appeal quashed.

[35] Mr. Olive submits that he should nonetheless receive costs on a solicitor and client basis in relation to the application for leave to appeal and in relation to the preparation of his factum. He takes this position on the basis that, if the RM believed the appeal was moot, it could have consented to leave being granted and then moved immediately with an application to quash. Instead, notes Mr. Olive, the RM vigorously opposed the application for leave to appeal and brought its application to quash only after insisting that he file his factum.

[36] Costs with respect to the application for leave to appeal were left by Caldwell J.A. to the discretion of the panel hearing the appeal. As matters have unfolded, this costs decision must be made in the context of this application to quash the appeal.

[37] I am not persuaded that the RM should pay costs in relation to the leave application. It was entitled to oppose Mr. Olive's attempt to obtain leave knowing that matters would be at an end if the application was denied. It is asking too much to suggest that the RM should not have opposed the leave application and placed all of its eggs in the mootness basket. That said, the RM could have made the issue of mootness a centrepiece of its argument against granting leave but did not. Accordingly, in all of the circumstances here, I would make no costs award one way or the other in relation to the application for leave.

[38] Mr. Olive's factum is a different matter. The RM contended from the outset that the appeal was moot. Indeed, it filed an application to quash even before the leave to appeal application had been argued. That application to quash was withdrawn when Caldwell J.A., in Chambers, pointed

out that it was premature. In light of the RM's position on mootness, it is curious that it obliged Mr. Olive to file his factum and only then brought its application to quash. In the particular circumstances of this case, therefore, I am persuaded that the RM should indemnify Mr. Olive for the solicitor and client costs incurred in the preparation of his factum.

[39] As for the rest of the costs equation, the RM is entitled to costs on Column 2 of the Tariff of Costs in relation to this application.

[40] If Mr. Olive and the RM are unable to agree on how the two sides of this costs order work out by way of a bottom line, the matter will be taxed by the Registrar.

"Richards C.J.S."

Richards C.J.S.

I concur. "Caldwell J.A."

Caldwell J.A.

I concur. "Kalmakoff J.A."

Kalmakoff J.A.

February 20, 2023

Charlsey White

Director, Planning & Development Department

4807, 52 Street,

Yellowknife, NT, X1A 2N4

Dear Ms. White:

Re: Request to withdraw PL-2023-0001

Thank you for processing my application for variances for a new building located at 130 Moyle Drive. However, please, accept this letter as a formal request to withdraw/cancel the **PL-2023-0001**. I have decided to construct the building, in accordance with the plans, drawings and conditions outlined in the original and effective Development Permit PL-2022-0047.

I apologise for any inconvenience it may cause.

Sincerely,

Viktor Tarskii

Owner of the 130 Moyle Drive

Development Appeal Board
CITY OF YELLOWKNIFE

P.O. BOX 580,
YELLOWKNIFE, NT
X1A 2N4

Tel (867) 920-5646
Fax (867) 920-5649

February 16, 2023 200-D1-H1-23

REGISTERED MAIL

Mr. David LeBlanc
128 Moyle Drive
Yellowknife, NT X1A 0B8

Dear Mr: LeBlanc

Re: Appeal of Development Permit #PL-2023-0001

We acknowledge receipt of your letter appealing the decision of the Development Officer to issue a Development Permit #PL-2023-0001 for a Multi-Unit Dwelling Fourplex on Lot 17, Block 309, Plan 4204 (130 Moyle Drive).

This letter is to confirm that a hearing of the City of Yellowknife Development Appeal Board, to consider your appeal, has been scheduled for Tuesday, March 14, 2023, at 7:00 p.m. in the City Hall Council Chamber.

With respect to the submission of written documentation for the Appeal Board's consideration, please be advised that, pursuant to section 5.1.6.(a) of the Yellowknife Zoning By-law, all maps, plans, drawings and written material that you intend to submit in support of your appeal must be filed with the Secretary of the Appeal Board no later than ten days before the day fixed for the appeal. As this day falls on a Saturday, you have until 8:30 a.m. on Monday, March 6, 2023 to submit your documentation to the Secretary of the Appeal Board at City Hall or via email to cityclerk@yellowknife.ca. Should your submission be too large to email, please contact me and we will make arrangements to provide you with our File Transfer Site.

Enclosed are copies of the sections of the *Community Planning and Development Act* of the Northwest Territories and the City of Yellowknife Zoning By-law that describe the Appeal Board's composition and procedures.

Please contact me should you have any questions with respect to the appeal.

Yours truly,

Cole Caljouw
Secretary, Development Appeal Board

Enclosure DM#724317

c) approve, add any specific provision(s), or deny all applications for an amendment to this By-law ; and

d) make a decision and recommend any terms and conditions on any other planning, or Development matter referred to it by the Development Officer.

3.3. Development Appeal Board

3.3.1. The Development Appeal Board is hereby established in accordance with Section 30 (1) of the *Act*.

3.3.2. The Development Appeal Board shall:

a) be composed of at least three persons and not more than seven, and one shall be a member of Council, but shall not include employees of the City;

b) elect one member as a chairperson;

c) elect one member as a vice-chairperson;

d) hold a hearing within 30 days after an appeal has been received;

e) ensure that reasonable notice of the hearing is given to the appellant, Landowners and lessees within 30 m of the boundary of land in respect of which the appeal relates, and all persons who in the opinion of the Development Appeal Board may be affected;

f) consider each appeal having due regard to the circumstances and merits of the case and to the purpose, scope and intent of the Community Plan, Area Development Plan, and any Council approved plans or policies, and to this By-law;

g) where an appeal is heard, the Development Appeal Board shall provide the persons referred to in Section 66 (2) of the *Act* the opportunity to be heard as referenced in Section 68 of the *Act.*

h) render its decision in writing with reasons and provide a copy of the decision to the appellant and any other parties, as described in Section 69 (3) of the *Act* within 60 calendar days after the date on which the hearing is concluded; and

i) conduct a hearing pursuant to Section 5.1 of this By-law.

3.3.3. The Development Appeal Board may:

a) in determining an appeal, confirm, reverse or vary the decision appealed from and may impose conditions or limitations that it considers proper and desirable in the circumstances. Decisions of the Development Appeal Board must be in compliance with this Zoning By-law, the Community Plan and any applicable Area Development Plan; and

b) appoint the City Clerk to act as Secretary for the Development Appeal Board.

3.4. Secretary to the Development Appeal Board

3.4.1. The Secretary for the Development Appeal Board shall:

a) ensure that reasonable notice of the hearing is given to the appellant, Landowners and lessees within 30 m of the boundary of land in respect of which the appeal relates, and all persons who in the opinion of the Development Appeal Board may be affected;

b) prepare and maintain a file of the minutes of the business transacted at all meetings of the Development Appeal Board;

c) issue the decision of the Development Appeal Board with reasons and provide a copy of the decision to the appellant and any other parties, as described in Section 69 (3) of the *Act* within 60 calendar days after the date on which the hearing is concluded; and

d) carry out administrative duties as the Development Appeal Board may specify.

5. Appeals and Amendments

5.1. Development Appeal Process

5.1.1. A person whose application for a Development Permit is refused, or who is approved for a Development Permit subject to a condition that they consider to be unreasonable, may appeal the refusal or the condition to the Development Appeal Board pursuant to Section 61 of the *Act* by serving written notice of appeal to the Secretary of the Development of the Appeal Board within 14 days after the day the application for the Development Permit is approved or refused.

5.1.2. A person claiming to be affected by a decision of the Development Officer or Council made under this By-law may appeal to the Development Appeal Board pursuant to Section 62 of the *Act*, by serving written notice of appeal to the Secretary of the Development Appeal Board within 14 days after the day the application for the Development Permit is approved.

5.1.3. Filing for an appeal must include the information listed in Section 65 (1) of the *Act*.

5.1.4. Where an appeal is made, a Development Permit shall not come into effect until a decision by the Development Appeal Board has been made to either confirm, reverse or vary the decision of the Development Officer pursuant to Section 69 of the *Act*.

5.1.5. An appeal must be heard by a quorum of the Development Appeal Board, and a quorum shall consist of at least two members and the Chairperson or a Vice-Chairperson.

5.1.6. Hearing procedures are as follows:

a) the appellant and any other interested party shall, not later than ten days before the day fixed for the hearing of the appeal, file with the Secretary of the Development Appeal Board all maps, plans, drawings and written material that they intend to submit to the Development Appeal Board or use at the hearing;

b) the Development Officer or Council shall, if required by the Development Appeal Board, transmit to the Secretary of the Development Appeal Board, before the day fixed for the hearing of the appeal, the original or true copies of maps, plans, drawings and written material in its possession relating to the subject matter of the appeal;

c) all maps, plans, drawings and written material, or copies thereof, filed or transmitted pursuant to Section 5.1 of this By-law shall, unless otherwise ordered by the Development Appeal Board, be retained by the Development Appeal Board and be part of its permanent records; but, pending the hearing of the appeal, all the material shall be made available for the inspection of any interested person;

d) where a member of the Development Appeal Board has a conflict of interest in the matter before the Development Appeal Board, that member is not entitled to participate, deliberate, or vote thereon;

e) in determining the decision of an appeal, the Development Appeal Board shall not:

    i approve Development that is not consistent with the regulations in the Zoning By-law;

    ii approve Development in a manner that is incompatible with the Community Plan;

f) a decision concurred with by a majority of the Development Appeal Board present at the hearing is the decision of the Development Appeal Board;

g) the decision of the Development Appeal Board shall be based on the facts and merits of the case and shall be in the form of a written decision. The decision shall include a summary of all representations made at the hearing and setting forth the reasons for the decision. Decisions may be signed by the chair, acting chair or vice-chair;

h) the Secretary shall issue, within 60 days of the conclusion of the hearing, the decision to all parties of the hearing; and

i) a decision of the Development Appeal Board is final and binding on all parties and there is no right to appeal from the decision of the Development Appeal Board, pursuant to Section 70 of the *Act*.

Use and development restricted

(2) On the registration of a caveat,

(a) the order binds the heirs, executors, administrators, assigns, transferees and successors in title of the owner of the land affected by the order; and

(b) until the caveat is withdrawn, no use or development of the land or buildings located on it may take place except in accordance with the order.

Usage et aménagement restreints

(2) Dès l'enregistrement de l'opposition :

a) d'une part, l'ordonnance lie, à l'égard du propriétaire du bien-fonds touché, ses héritiers, exécuteurs, administrateurs, cessionnaires et destinataires du transfert;

b) d'autre part, jusqu'au retrait de l'opposition, aucun usage ou aménagement du bien-fonds ou des bâtiments situés sur celui-ci n'est possible si ce n'est conformément à l'ordonnance.

Withdrawal

(3) A municipal corporation shall withdraw the caveat when the order of the Supreme Court has been complied with.

Retrait

(3) La municipalité retire l'opposition lorsque l'ordonnance de la Cour suprême est respectée.

Debt owed to municipal corporation

60. Any expenses and costs of an action taken by a municipal corporation under subsection 58(4) to carry out an order of the Supreme Court are a debt owing to the municipal corporation by the person required by the order to comply, and may be recovered from the person in default by civil action for debt, or by charging it against real property of which the person is the owner in the same manner as arrears of property taxes under the *Property Assessment and Taxation Act*.

Créance de la municipalité

60. Les dépenses et les frais d'une action que prend la municipalité en vertu du paragraphe 58(4), en vue d'exécuter une ordonnance de la Cour suprême, constituent une créance de la municipalité à l'égard de la personne visée dans l'ordonnance, qui peut être recouvrée auprès de la personne en défaut soit en intentant une poursuite civile, soit en constituant une charge sur le bien réel dont la personne est le propriétaire évalué comme s'il s'agissait d'arriérés d'impôt foncier visés par la *Loi sur l'évaluation et l'impôt fonciers*.

DIVISION B - APPEALS

Development Appeals

DIVISION B - APPELS

Appels en matière d'aménagement

Appeal of refusal or conditions

61. (1) A person whose application to a development authority for a development permit is refused, or who is approved for a development permit subject to a condition that he or she considers to be unreasonable, may appeal the refusal or the condition to the appeal board.

Appel du refus ou des conditions

61. (1) La personne dont la demande de permis d'aménagement a été refusée par l'autorité d'aménagement ou dont le permis d'aménagement est assorti d'une condition qu'elle estime déraisonnable peut en appeler du refus ou de la condition à la commission d'appel.

Exception

(2) A condition that is required by a zoning bylaw to be on a development permit is not subject to appeal under subsection (1).

Exception

(2) La condition obligatoirement assortie au permis d'aménagement en vertu d'un règlement de zonage ne peut faire l'objet d'un appel en vertu du paragraphe (1).

Application deemed refused

(3) For the purposes of subsection (1), an application to a development authority for a development permit is, at the option of the applicant, deemed to be refused if the decision of the development authority is not made within 40 days after the day the application is received in its complete and final form.

Demande réputée refusée

(3) Aux fins du paragraphe (1), la demande de permis d'aménagement auprès d'une autorité d'aménagement est, au choix de son auteur, réputée refusée si la décision de l'autorité d'aménagement n'est pas prise dans un délai de 40 jours à compter de la date de réception de la demande sous forme finale.

Commencing development appeal

(4) An appeal under subsection (1) must be commenced by providing a written notice of appeal to the appeal board within 14 days after the day the application for a development permit is approved or refused.

(4) L'appel en vertu du paragraphe (1) se forme au moyen d'un avis d'appel écrit donné à la commission d'appel au plus tard 14 jours après la date d'approbation ou de refus de la demande de permis d'aménagement.

Formation de l'appel en matière d'aménagement

Appeal of development permit

62. (1) A person other than an applicant for a development permit may only appeal to the appeal board in respect of an approval of an application for a development permit on the grounds that the person is adversely affected and

(a) there was a misapplication of a zoning bylaw in the approval of the application;
(b) the proposed development contravenes the zoning bylaw, the community plan or an area development plan;
(c) the development permit relates to a use of land or a building that had been permitted at the discretion of a development authority;
(d) the application for the development permit had been approved on the basis that the specific use of land or the building was similar in character and purpose to another use that was included in a zoning bylaw for that zone;
(e) the application for the development permit had been approved under circumstances where the proposed development did not fully conform with a zoning bylaw; or
(f) the development permit relates to a non-conforming building or non-conforming use.

62. (1) Toute personne à l'exception de l'auteur d'une demande de permis d'aménagement peut en appeler à la commission d'appel concernant l'approbation d'une demande de permis d'aménagement au motif qu'elle est lésée et que, selon le cas :

a) il y a eu une erreur dans l'application du règlement de zonage lors de l'approbation de la demande;
b) le projet d'aménagement contrevient au règlement de zonage, au plan directeur ou a plan d'aménagement régional;
c) le permis d'aménagement vise un usage d'un bien-fonds ou d'un bâtiment qui avait été permis à la discrétion d'une autorité d'aménagement;
d) la demande de permis d'aménagement avait été approuvée sur le fondement que l'usage particulier du bien-fonds ou du bâtiment était semblable quant à sa nature et à son but à un autre usage prévu dans le règlement de zonage à l'égard de cette zone;
e) la demande de permis d'aménagement avait été approuvée à l'égard d'un projet d'aménagement qui ne respectait pas en tous points le règlement de zonage;
f) le permis d'aménagement vise un bâtiment dérogatoire ou un usage non conforme.

Appel d'un permis d'aménagement

Restriction

(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.

(2) Il est entendu qu'un appel portant sur l'approbation d'une demande de permis d'aménagement visant un usage qu'un règlement de zonage précise comme usage permis d'un bien-fonds ou d'un bâtiment, visé aux sous-alinéas 14(1)c)(i) ou (ii) de la présente loi, n'est possible qu'en présence d'erreur présumée dans l'application du règlement de zonage lors de l'approbation de la demande.

Restriction

Commencing appeal of permit

(3) An appeal under subsection (1) must be commenced by providing a written notice of appeal to the appeal board within 14 days after the day the application for the development permit is approved.

(3) L'appel en vertu du paragraphe (1) se forme au moyen d'un avis d'appel écrit donné à la commission d'appel au plus tard 14 jours après la date d'approbation de la demande de permis d'aménagement.

Formation de l'appel du permis

Appeal of Order

Appeal to appeal board

63. (1) A person who is subject to an order issued by a development officer under subsection 57(1) of this Act, or under a zoning bylaw, may appeal the order to the appeal board.

Commencing appeal of order

(2) An appeal under subsection (1) must be commenced by providing a written notice of appeal to the appeal board within 14 days after the day the order of the development officer is served on the person.

Subdivision Appeals

Appeal of refusal of application

64. (1) A person whose application under subsection 43(1) to a municipal subdivision authority for approval of a proposed subdivision is refused, may appeal the refusal to the appeal board.

Appeal of rejection of plan

(2) A person whose plan of subdivision, submitted to a municipal subdivision authority under section 46, is rejected, may appeal the rejection to the appeal board.

Commencing subdivision appeal

(3) An appeal under subsection (1) or (2) must be commenced within 30 days after the day an application for approval of a proposed subdivision is refused or a plan of subdivision is rejected.

Appeal Board Procedure, Evidence and Hearing

Notice of appeal

65. (1) A notice of appeal to the appeal board must

(a) state the reasons for the appeal;
(b) summarize the supporting facts for each reason;
(c) indicate the relief sought; and
(d) if applicable, be submitted with the filing fee required by the zoning bylaw.

Person adversely affected

(2) A notice of appeal by a person appealing the approval of an application for a development permit under subsection 62(1) must state how he or she is adversely affected.

Hearing within 30 days

66. (1) The appeal board shall commence hearing an appeal within 30 days after the day the notice of appeal is received, and shall complete the hearing as soon as is reasonably practicable.

Notice

(2) The appeal board shall ensure that reasonable notice of a hearing is served on

(a) the appellant;

Appel d'un ordre

Appel à la commission d'appel

63. (1) La personne visée dans un ordre de l'agent d'aménagement en vertu du paragraphe 57(1) de la présente loi ou d'un règlement de zonage peut en appeler de l'ordre à la commission d'appel.

Formation de l'appel d'un ordre

(2) L'appel en vertu du paragraphe (1) se forme au moyen d'un avis d'appel écrit donné à la commission d'appel au plus tard 14 jours après la date à laquelle l'ordre de l'agent d'aménagement a été signifié à la personne qu'il vise.

Appels en matière de lotissement

Appel du refus d'une demande

64. (1) La personne dont la demande visant un projet de lotissement présentée à l'autorité de lotissement municipale en vertu du paragraphe 43(1) est refusée peut en appeler du refus à la commission d'appel.

Appel du rejet d'un plan

(2) La personne dont le plan de lotissement présenté à l'autorité de lotissement municipale en vertu de l'article 46 est rejeté peut en appeler du rejet à la commission d'appel.

Formation de l'appel en matière de lotissement

(3) L'appel en vertu des paragraphes (1) ou (2) doit être interjeté au plus tard 30 jours après la date du refus d'une demande d'approbation d'un projet de lotissement ou du rejet d'un plan de lotissement.

Règles de procédure, présentation de la preuve et audition de l'appel

Avis d'appel

65. (1) L'avis d'appel à la commission d'appel doit, à la fois :

a) indiquer les motifs d'appel;
b) résumer les faits à l'appui des allégations;
c) préciser le redressement demandé;
d) être accompagné des droits de dépôt prévus dans le règlement de zonage, s'il y a lieu.

Personne lésée

(2) La personne qui interjette appel de l'approbation d'une demande de permis d'aménagement en vertu du paragraphe 62(1) doit préciser les motifs pour lesquels elle se sent lésée.

Délai d'audition de 30 jours

66. (1) La commission d'appel commence l'audition de l'appel au plus tard 30 jours après la date de réception de l'avis d'appel et la termine dans les meilleurs délais.

Avis

(2) La commission d'appel veille à ce que les personnes suivantes reçoivent signification d'un avis d'audition raisonnable :

(b) owners and lessees of land within 30 metres of the boundary of the land in respect of which the appeal relates;
(c) the development authority, in the case of an appeal of a decision of a development authority;
(d) the development authority and the development officer, in the case of an appeal of an order of a development officer; and
(e) the municipal subdivision authority, in the case of an appeal of a decision of a municipal subdivision authority.

a) l'appelant;
b) les propriétaires et les locataires d'un bien-fonds dans un rayon de 30 mètres des limites du bien-fonds visé dans l'appel;
c) l'autorité d'aménagement, s'il s'agit de l'appel de sa décision;
d) l'autorité d'aménagement et l'agent d'aménagement, s'il s'agit de l'appel d'un ordre de l'agent d'aménagement;
e) l'autorité de lotissement municipale, s'il s'agit de l'appel de sa décision.

Service

(3) Notice of a hearing may be served by
(a) personal service;
(b) registered mail; or
(c) such other method as may be authorized by the regulations.

(3) L'avis d'audition peut être signifié, selon le cas :
a) à personne;
b) par courrier recommandé;
c) de toute autre façon prévue par règlement, le cas échéant.

Signification

Rules of procedure

67. (1) Subject to this Act, the regulations and the zoning bylaw, an appeal board may establish rules of procedure for appeals.

67. (1) Sous réserve de la présente loi, des règlements et du règlement de zonage, la commission d'appel peut fixer les règles de procédure applicables aux appels.

Règles de procédure

Evidence

(2) Subject to the regulations, evidence may be given before the appeal board in any manner that it considers appropriate, including by telephone or by an audiovisual method, and the appeal board is not bound by the rules of evidence pertaining to actions and proceedings in courts of justice, but may proceed to ascertain the facts in the manner that it considers appropriate.

(2) Sous réserve des règlements, la présentation de la preuve devant la commission d'appel peut se faire par tout moyen que cette dernière estime indiquée, notamment par téléphone ou par méthode audiovisuelle; la commission d'appel n'est pas tenue aux règles de preuve qui régissent les actions et les poursuites devant les tribunaux judiciaires, et elle peut procéder à la vérification des faits de la façon qu'elle estime indiquée.

Présentation de la preuve

Oaths, affirmations

(3) The chairperson of the appeal board may administer oaths and affirmations, or in his or her absence an acting chairperson or vice-chairperson may do so.

(3) Le président de la commission d'appel peut faire prêter serment et recevoir les affirmations solennelles ou, en son absence, le président suppléant ou le vice-président peut le faire.

Serments, affirmations solennelles

Quorum

(4) A majority of members of the appeal board constitute a quorum for hearing an appeal, but subject to subsection (5), if a member is disqualified from hearing the matter or becomes unable to continue with a hearing, the appeal board may, in the absence of the member or members, conduct or continue the hearing with less than a majority.

(4) La majorité des membres de la commission d'appel constitue le quorum pour siéger à un appel. Toutefois, sous réserve du paragraphe (5), si un membre est dessaisi ou est incapable de poursuivre l'audition de l'appel, la commission d'appel peut, dans l'absence du ou des membres, instruire ou poursuivre l'appel en présence d'un nombre inférieur à la majorité.

Quorum

Requirement

(5) An appeal board may not conduct or continue a hearing with fewer than three members.

(5) La commission d'appel ne peut siéger à un appel ou le poursuivre en présence de moins de trois membres.

Exigence

Hearing public

(6) A hearing of the appeal board must be open to the public.

(6) L'audition devant la commission d'appel est publique.

Audition publique

Hearing

68. (1) At a hearing, the appeal board shall provide the persons referred to in subsection 66(2) with the opportunity to be heard, and may hear from any other persons that it considers necessary.

68. (1) Lors de l'audition de l'appel, la commission d'appel donne aux personnes visées au paragraphe 66(2) l'occasion de témoigner et peut entendre le témoignage de toute autre personne qu'elle juge essentiel.

Audition

Absence of person

(2) The appeal board may, on proof of service of notice of a hearing on a person referred to in subsection 66(2), proceed with the hearing in the absence of the person and determine the appeal in the same manner as if that person had attended.

(2) La commission d'appel peut, sur preuve de signification d'un avis d'appel à une personne visée au paragraphe 66(2), procéder à l'audition de l'appel en l'absence de cette personne et trancher l'appel comme si la personne y avait été présente.

Personne absente

Decision of Appeal Board

Décision de la commission d'appel

Decision

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

69. (1) La commission d'appel peut confirmer, infirmer ou modifier la décision portée en appel et peut imposer les conditions qu'elle juge indiquées en l'espèce.

Décision

Conflict with plans

(2) A decision of the appeal board on an appeal must not conflict with a zoning bylaw, subdivision bylaw, community plan or area development plan.

(2) La décision de la commission d'appel à la suite d'un appel ne doit pas être contraire au règlement de zonage, au règlement de lotissement, au plan directeur ou plan d'aménagement régional.

Incompatibilité avec les plans

Time limit

(3) The appeal board shall, within 60 days after the day on which a hearing is concluded, issue a written decision with reasons and provide a copy of the decision to the appellant and other parties to the appeal.

(3) La commission d'appel, dans un délai de 60 jours à compter de la fin d'une audition, rend une décision par écrit et motivée et en remet une copie à l'appelant et aux autres parties à l'appel.

Délai

Signature

(4) Decisions and other documents may be signed on behalf of the appeal board by the chairperson or by an acting chairperson or vice-chairperson, and when so signed may be admitted in evidence as proof of the decision or document without proof of the signature or the designation.

(4) Les décisions et les autres documents peuvent être signés au nom de la commission d'appel par le président, ou par le président suppléant ou le vice-président; cette signature est admissible en preuve et fait foi de la décision ou du document sans qu'il soit nécessaire de faire la preuve de l'authenticité de la signature ou de la désignation.

Signature

Decision public record

(5) A decision of the appeal board is a public record.

(5) La décision de la commission d'appel constitue un document public.

Document public

No appeal

70. A decision of the appeal board is final and binding on all parties and is not subject to appeal.

70. La décision de la commission d'appel est finale et exécutoire, et elle est sans appel.

Aucun appel

Subdivision Appeal to Arbitrator

Recours à l'arbitrage en matière de lotissement

Arbitration: refusal of proposed subdivision

71. (1) If an application to the Director of Planning under subsection 43(1) for approval of a proposed subdivision is refused, the subdivision applicant may initiate an arbitration for the purpose of determining an appeal of the refusal.

71. (1) L'auteur d'une demande de lotissement dont la demande d'approbation d'un projet de lotissement présentée au directeur de la planification en vertu du paragraphe 43(1) est refusée peut prendre l'initiative d'un arbitrage pour décider de l'appel du refus.

Arbitrage : refus du projet de lotissement

Development Appeal Board

CITY OF YELLOWKNIFE

P.O. BOX 580,
YELLOWKNIFE, NT
X1A 2N4

Tel (867) 920-5646
Fax (867) 920-5649

February 16, 2023 200-D1-H1-23

REGISTERED MAIL

Mr. Victor Tarskii
124 Moyle Drive
Yellowknife, NT X1A OB8

Dear Mr. Tarskii:

Re: Development Appeal Board Hearing - Permit #PL-2023-0001
Lot 17, Block 309, Plan 4204 (130 Moyle Drive)

This letter is to formally notify you that Development Permit #PL-2023-0001, which the City issued to you on February 1, 2023 for a Multi-Unit Dwelling Fourplex has been appealed to the City's Development Appeal Board.

Pursuant to Section 5.1.4. of the City of Yellowknife's Zoning By-law, your Development Permit shall not come into effect until the appeal is determined and the permit confirmed, reversed, or varied.

The Appeal Board will hold a public hearing on Tuesday, March 14, 2023 at 7:00 p.m. in the City Hall Council Chamber to consider this appeal.

With respect to the submission of written documentation for the Appeal Board's consideration, you are hereby informed that, pursuant to section 5.1.6.(a) of the Yellowknife Zoning By-law, all maps, plans, drawings and written material that you intend to submit in support of your development must be filed with the Secretary of the Appeal Board no later than ten days before the day fixed for the appeal. As this day falls on a Saturday, you have until 8:30 a.m. on Monday, March 6, 2023 to submit your documentation to the Secretary of the Appeal Board at City Hall or via email to cityclerk@yellowknife.ca. Should your submission be too large to email, please contact me and we will make arrangements to provide you with our File Transfer Site.

Enclosed are copies of the sections of the *Community Planning and Development Act* of the Northwest Territories and the City of Yellowknife Zoning By-law that describe the Appeal Board's composition and procedures.

200-D1-H1-23
February 16, 2023

Please contact me should you have any questions with respect to the appeal.

Yours truly,

Cole Caljouw
Secretary,
Development Appeal Board

CC/sj

Enclosure

DM#724316

c) approve, add any specific provision(s), or deny all applications for an amendment to this By-law ; and

d) make a decision and recommend any terms and conditions on any other planning, or Development matter referred to it by the Development Officer.

3.3. Development Appeal Board

3.3.1. The Development Appeal Board is hereby established in accordance with Section 30 (1) of the *Act*.

3.3.2. The Development Appeal Board shall:

a) be composed of at least three persons and not more than seven, and one shall be a member of Council, but shall not include employees of the City;

b) elect one member as a chairperson;

c) elect one member as a vice-chairperson;

d) hold a hearing within 30 days after an appeal has been received;

e) ensure that reasonable notice of the hearing is given to the appellant, Landowners and lessees within 30 m of the boundary of land in respect of which the appeal relates, and all persons who in the opinion of the Development Appeal Board may be affected;

f) consider each appeal having due regard to the circumstances and merits of the case and to the purpose, scope and intent of the Community Plan, Area Development Plan, and any Council approved plans or policies, and to this By-law;

g) where an appeal is heard, the Development Appeal Board shall provide the persons referred to in Section 66 (2) of the *Act* the opportunity to be heard as referenced in Section 68 of the *Act.*

h) render its decision in writing with reasons and provide a copy of the decision to the appellant and any other parties, as described in Section 69 (3) of the *Act* within 60 calendar days after the date on which the hearing is concluded; and

i) conduct a hearing pursuant to Section 5.1 of this By-law.

3.3.3. The Development Appeal Board may:

a) in determining an appeal, confirm, reverse or vary the decision appealed from and may impose conditions or limitations that it considers proper and desirable in the circumstances. Decisions of the Development Appeal Board must be in compliance with this Zoning By-law, the Community Plan and any applicable Area Development Plan; and

b) appoint the City Clerk to act as Secretary for the Development Appeal Board.

3.4. Secretary to the Development Appeal Board

3.4.1. The Secretary for the Development Appeal Board shall:

a) ensure that reasonable notice of the hearing is given to the appellant, Landowners and lessees within 30 m of the boundary of land in respect of which the appeal relates, and all persons who in the opinion of the Development Appeal Board may be affected;

b) prepare and maintain a file of the minutes of the business transacted at all meetings of the Development Appeal Board;

c) issue the decision of the Development Appeal Board with reasons and provide a copy of the decision to the appellant and any other parties, as described in Section 69 (3) of the *Act* within 60 calendar days after the date on which the hearing is concluded; and

d) carry out administrative duties as the Development Appeal Board may specify.

5. Appeals and Amendments

5.1. Development Appeal Process

5.1.1. A person whose application for a Development Permit is refused, or who is approved for a Development Permit subject to a condition that they consider to be unreasonable, may appeal the refusal or the condition to the Development Appeal Board pursuant to Section 61 of the *Act* by serving written notice of appeal to the Secretary of the Development of the Appeal Board within 14 days after the day the application for the Development Permit is approved or refused.

5.1.2. A person claiming to be affected by a decision of the Development Officer or Council made under this By-law may appeal to the Development Appeal Board pursuant to Section 62 of the *Act*, by serving written notice of appeal to the Secretary of the Development Appeal Board within 14 days after the day the application for the Development Permit is approved.

5.1.3. Filing for an appeal must include the information listed in Section 65 (1) of the *Act*.

5.1.4. Where an appeal is made, a Development Permit shall not come into effect until a decision by the Development Appeal Board has been made to either confirm, reverse or vary the decision of the Development Officer pursuant to Section 69 of the *Act*.

5.1.5. An appeal must be heard by a quorum of the Development Appeal Board, and a quorum shall consist of at least two members and the Chairperson or a Vice-Chairperson.

5.1.6. Hearing procedures are as follows:

a) the appellant and any other interested party shall, not later than ten days before the day fixed for the hearing of the appeal, file with the Secretary of the Development Appeal Board all maps, plans, drawings and written material that they intend to submit to the Development Appeal Board or use at the hearing;

b) the Development Officer or Council shall, if required by the Development Appeal Board, transmit to the Secretary of the Development Appeal Board, before the day fixed for the hearing of the appeal, the original or true copies of maps, plans, drawings and written material in its possession relating to the subject matter of the appeal;

c) all maps, plans, drawings and written material, or copies thereof, filed or transmitted pursuant to Section 5.1 of this By-law shall, unless otherwise ordered by the Development Appeal Board, be retained by the Development Appeal Board and be part of its permanent records; but, pending the hearing of the appeal, all the material shall be made available for the inspection of any interested person;

d) where a member of the Development Appeal Board has a conflict of interest in the matter before the Development Appeal Board, that member is not entitled to participate, deliberate, or vote thereon;

e) in determining the decision of an appeal, the Development Appeal Board shall not:

   i approve Development that is not consistent with the regulations in the Zoning By-law;

   ii approve Development in a manner that is incompatible with the Community Plan;

f) a decision concurred with by a majority of the Development Appeal Board present at the hearing is the decision of the Development Appeal Board;

g) the decision of the Development Appeal Board shall be based on the facts and merits of the case and shall be in the form of a written decision. The decision shall include a summary of all representations made at the hearing and setting forth the reasons for the decision. Decisions may be signed by the chair, acting chair or vice-chair;

h) the Secretary shall issue, within 60 days of the conclusion of the hearing, the decision to all parties of the hearing; and

i) a decision of the Development Appeal Board is final and binding on all parties and there is no right to appeal from the decision of the Development Appeal Board, pursuant to Section 70 of the *Act*.

Use and development restricted

(2) On the registration of a caveat,

(a) the order binds the heirs, executors, administrators, assigns, transferees and successors in title of the owner of the land affected by the order; and

(b) until the caveat is withdrawn, no use or development of the land or buildings located on it may take place except in accordance with the order.

(2) Dès l'enregistrement de l'opposition :

a) d'une part, l'ordonnance lie, à l'égard du propriétaire du bien-fonds touché, ses héritiers, exécuteurs, administrateurs, cessionnaires et destinataires du transfert;

b) d'autre part, jusqu'au retrait de l'opposition, aucun usage ou aménagement du bien-fonds ou des bâtiments situés sur celui-ci n'est possible si ce n'est conformément à l'ordonnance.

Usage et aménagement restreints

Withdrawal

(3) A municipal corporation shall withdraw the caveat when the order of the Supreme Court has been complied with.

(3) La municipalité retire l'opposition lorsque l'ordonnance de la Cour suprême est respectée.

Retrait

Debt owed to municipal corporation

60. Any expenses and costs of an action taken by a municipal corporation under subsection 58(4) to carry out an order of the Supreme Court are a debt owing to the municipal corporation by the person required by the order to comply, and may be recovered from the person in default by civil action for debt, or by charging it against real property of which the person is the owner in the same manner as arrears of property taxes under the *Property Assessment and Taxation Act*.

60. Les dépenses et les frais d'une action que prend la municipalité en vertu du paragraphe 58(4), en vue d'exécuter une ordonnance de la Cour suprême, constituent une créance de la municipalité à l'égard de la personne visée dans l'ordonnance, qui peut être recouvrée auprès de la personne en défaut soit en intentant une poursuite civile, soit en constituant une charge sur le bien réel dont la personne est le propriétaire évalué comme s'il s'agissait d'arriérés d'impôt foncier visés par la *Loi sur l'évaluation et l'impôt fonciers*.

Créance de la municipalité

DIVISION B - APPEALS

DIVISION B - APPELS

Development Appeals

Appels en matière d'aménagement

Appeal of refusal or conditions

61. (1) A person whose application to a development authority for a development permit is refused, or who is approved for a development permit subject to a condition that he or she considers to be unreasonable, may appeal the refusal or the condition to the appeal board.

61. (1) La personne dont la demande de permis d'aménagement a été refusée par l'autorité d'aménagement ou dont le permis d'aménagement est assorti d'une condition qu'elle estime déraisonnable peut en appeler du refus ou de la condition à la commission d'appel.

Appel du refus ou des conditions

Exception

(2) A condition that is required by a zoning bylaw to be on a development permit is not subject to appeal under subsection (1).

(2) La condition obligatoirement assortie au permis d'aménagement en vertu d'un règlement de zonage ne peut faire l'objet d'un appel en vertu du paragraphe (1).

Exception

Application deemed refused

(3) For the purposes of subsection (1), an application to a development authority for a development permit is, at the option of the applicant, deemed to be refused if the decision of the development authority is not made within 40 days after the day the application is received in its complete and final form.

(3) Aux fins du paragraphe (1), la demande de permis d'aménagement auprès d'une autorité d'aménagement est, au choix de son auteur, réputée refusée si la décision de l'autorité d'aménagement n'est pas prise dans un délai de 40 jours à compter de la date de réception de la demande sous forme finale.

Demande réputée refusée

Commencing development appeal

(4) An appeal under subsection (1) must be commenced by providing a written notice of appeal to the appeal board within 14 days after the day the application for a development permit is approved or refused.

(4) L'appel en vertu du paragraphe (1) se forme au moyen d'un avis d'appel écrit donné à la commission d'appel au plus tard 14 jours après la date d'approbation ou de refus de la demande de permis d'aménagement.

Formation de l'appel en matière d'aménagement

Appeal of development permit

62. (1) A person other than an applicant for a development permit may only appeal to the appeal board in respect of an approval of an application for a development permit on the grounds that the person is adversely affected and

(a) there was a misapplication of a zoning bylaw in the approval of the application;

(b) the proposed development contravenes the zoning bylaw, the community plan or an area development plan;

(c) the development permit relates to a use of land or a building that had been permitted at the discretion of a development authority;

(d) the application for the development permit had been approved on the basis that the specific use of land or the building was similar in character and purpose to another use that was included in a zoning bylaw for that zone;

(e) the application for the development permit had been approved under circumstances where the proposed development did not fully conform with a zoning bylaw; or

(f) the development permit relates to a non-conforming building or non-conforming use.

62. (1) Toute personne à l'exception de l'auteur d'une demande de permis d'aménagement peut en appeler à la commission d'appel concernant l'approbation d'une demande de permis d'aménagement au motif qu'elle est lésée et que, selon le cas :

a) il y a eu une erreur dans l'application du règlement de zonage lors de l'approbation de la demande;

b) le projet d'aménagement contrevient au règlement de zonage, au plan directeur ou a plan d'aménagement régional;

c) le permis d'aménagement vise un usage d'un bien-fonds ou d'un bâtiment qui avait été permis à la discrétion d'une autorité d'aménagement;

d) la demande de permis d'aménagement avait été approuvée sur le fondement que l'usage particulier du bien-fonds ou du bâtiment était semblable quant à sa nature et à son but à un autre usage prévu dans le règlement de zonage à l'égard de cette zone;

e) la demande de permis d'aménagement avait été approuvée à l'égard d'un projet d'aménagement qui ne respectait pas en tous points le règlement de zonage;

f) le permis d'aménagement vise un bâtiment dérogatoire ou un usage non conforme.

Appel d'un permis d'aménagement

Restriction

(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.

(2) Il est entendu qu'un appel portant sur l'approbation d'une demande de permis d'aménagement visant un usage qu'un règlement de zonage précise comme usage permis d'un bien-fonds ou d'un bâtiment, visé aux sous-alinéas 14(1)c)(i) ou (ii) de la présente loi, n'est possible qu'en présence d'erreur présumée dans l'application du règlement de zonage lors de l'approbation de la demande.

Restriction

Commencing appeal of permit

(3) An appeal under subsection (1) must be commenced by providing a written notice of appeal to the appeal board within 14 days after the day the application for the development permit is approved.

(3) L'appel en vertu du paragraphe (1) se forme au moyen d'un avis d'appel écrit donné à la commission d'appel au plus tard 14 jours après la date d'approbation de la demande de permis d'aménagement.

Formation de l'appel du permis

Appeal of Order

Appeal to appeal board

63. (1) A person who is subject to an order issued by a development officer under subsection 57(1) of this Act, or under a zoning bylaw, may appeal the order to the appeal board.

Commencing appeal of order

(2) An appeal under subsection (1) must be commenced by providing a written notice of appeal to the appeal board within 14 days after the day the order of the development officer is served on the person.

Subdivision Appeals

Appeal of refusal of application

64. (1) A person whose application under subsection 43(1) to a municipal subdivision authority for approval of a proposed subdivision is refused, may appeal the refusal to the appeal board.

Appeal of rejection of plan

(2) A person whose plan of subdivision, submitted to a municipal subdivision authority under section 46, is rejected, may appeal the rejection to the appeal board.

Commencing subdivision appeal

(3) An appeal under subsection (1) or (2) must be commenced within 30 days after the day an application for approval of a proposed subdivision is refused or a plan of subdivision is rejected.

Appeal Board Procedure, Evidence and Hearing

Notice of appeal

65. (1) A notice of appeal to the appeal board must
(a) state the reasons for the appeal;
(b) summarize the supporting facts for each reason;
(c) indicate the relief sought; and
(d) if applicable, be submitted with the filing fee required by the zoning bylaw.

Person adversely affected

(2) A notice of appeal by a person appealing the approval of an application for a development permit under subsection 62(1) must state how he or she is adversely affected.

Hearing within 30 days

66. (1) The appeal board shall commence hearing an appeal within 30 days after the day the notice of appeal is received, and shall complete the hearing as soon as is reasonably practicable.

Notice

(2) The appeal board shall ensure that reasonable notice of a hearing is served on
(a) the appellant;

Appel d'un ordre

Appel à la commission d'appel

63. (1) La personne visée dans un ordre de l'agent d'aménagement en vertu du paragraphe 57(1) de la présente loi ou d'un règlement de zonage peut en appeler de l'ordre à la commission d'appel.

Formation de l'appel d'un ordre

(2) L'appel en vertu du paragraphe (1) se forme au moyen d'un avis d'appel écrit donné à la commission d'appel au plus tard 14 jours après la date à laquelle l'ordre de l'agent d'aménagement a été signifié à la personne qu'il vise.

Appels en matière de lotissement

Appel du refus d'une demande

64. (1) La personne dont la demande visant un projet de lotissement présentée à l'autorité de lotissement municipale en vertu du paragraphe 43(1) est refusée peut en appeler du refus à la commission d'appel.

Appel du rejet d'un plan

(2) La personne dont le plan de lotissement présenté à l'autorité de lotissement municipale en vertu de l'article 46 est rejeté peut en appeler du rejet à la commission d'appel.

Formation de l'appel en matière de lotissement

(3) L'appel en vertu des paragraphes (1) ou (2) doit être interjeté au plus tard 30 jours après la date du refus d'une demande d'approbation d'un projet de lotissement ou du rejet d'un plan de lotissement.

Règles de procédure, présentation de la preuve et audition de l'appel

Avis d'appel

65. (1) L'avis d'appel à la commission d'appel doit, à la fois :
a) indiquer les motifs d'appel;
b) résumer les faits à l'appui des allégations;
c) préciser le redressement demandé;
d) être accompagné des droits de dépôt prévus dans le règlement de zonage, s'il y a lieu.

Personne lésée

(2) La personne qui interjette appel de l'approbation d'une demande de permis d'aménagement en vertu du paragraphe 62(1) doit préciser les motifs pour lesquels elle se sent lésée.

Délai d'audition de 30 jours

66. (1) La commission d'appel commence l'audition de l'appel au plus tard 30 jours après la date de réception de l'avis d'appel et la termine dans les meilleurs délais.

Avis

(2) La commission d'appel veille à ce que les personnes suivantes reçoivent signification d'un avis d'audition raisonnable :

(b) owners and lessees of land within 30 metres of the boundary of the land in respect of which the appeal relates;
(c) the development authority, in the case of an appeal of a decision of a development authority;
(d) the development authority and the development officer, in the case of an appeal of an order of a development officer; and
(e) the municipal subdivision authority, in the case of an appeal of a decision of a municipal subdivision authority.

a) l'appelant;
b) les propriétaires et les locataires d'un bien-fonds dans un rayon de 30 mètres des limites du bien-fonds visé dans l'appel;
c) l'autorité d'aménagement, s'il s'agit de l'appel de sa décision;
d) l'autorité d'aménagement et l'agent d'aménagement, s'il s'agit de l'appel d'un ordre de l'agent d'aménagement;
e) l'autorité de lotissement municipale, s'il s'agit de l'appel de sa décision.

Service

(3) Notice of a hearing may be served by
(a) personal service;
(b) registered mail; or
(c) such other method as may be authorized by the regulations.

(3) L'avis d'audition peut être signifié, selon le cas :
a) à personne;
b) par courrier recommandé;
c) de toute autre façon prévue par règlement, le cas échéant.

Signification

Rules of procedure

67. (1) Subject to this Act, the regulations and the zoning bylaw, an appeal board may establish rules of procedure for appeals.

67. (1) Sous réserve de la présente loi, des règlements et du règlement de zonage, la commission d'appel peut fixer les règles de procédure applicables aux appels.

Règles de procédure

Evidence

(2) Subject to the regulations, evidence may be given before the appeal board in any manner that it considers appropriate, including by telephone or by an audiovisual method, and the appeal board is not bound by the rules of evidence pertaining to actions and proceedings in courts of justice, but may proceed to ascertain the facts in the manner that it considers appropriate.

(2) Sous réserve des règlements, la présentation de la preuve devant la commission d'appel peut se faire par tout moyen que cette dernière estime indiquée, notamment par téléphone ou par méthode audiovisuelle; la commission d'appel n'est pas tenue aux règles de preuve qui régissent les actions et les poursuites devant les tribunaux judiciaires, et elle peut procéder à la vérification des faits de la façon qu'elle estime indiquée.

Présentation de la preuve

Oaths, affirmations

(3) The chairperson of the appeal board may administer oaths and affirmations, or in his or her absence an acting chairperson or vice-chairperson may do so.

(3) Le président de la commission d'appel peut faire prêter serment et recevoir les affirmations solennelles ou, en son absence, le président suppléant ou le vice-président peut le faire.

Serments, affirmations solennelles

Quorum

(4) A majority of members of the appeal board constitute a quorum for hearing an appeal, but subject to subsection (5), if a member is disqualified from hearing the matter or becomes unable to continue with a hearing, the appeal board may, in the absence of the member or members, conduct or continue the hearing with less than a majority.

(4) La majorité des membres de la commission d'appel constitue le quorum pour siéger à un appel. Toutefois, sous réserve du paragraphe (5), si un membre est dessaisi ou est incapable de poursuivre l'audition de l'appel, la commission d'appel peut, dans l'absence du ou des membres, instruire ou poursuivre l'appel en présence d'un nombre inférieur à la majorité.

Quorum

Requirement

(5) An appeal board may not conduct or continue a hearing with fewer than three members.

(5) La commission d'appel ne peut siéger à un appel ou le poursuivre en présence de moins de trois membres.

Exigence

Hearing public

(6) A hearing of the appeal board must be open to the public.

(6) L'audition devant la commission d'appel est publique.

Audition publique

Hearing

68. (1) At a hearing, the appeal board shall provide the persons referred to in subsection 66(2) with the opportunity to be heard, and may hear from any other persons that it considers necessary.

68. (1) Lors de l'audition de l'appel, la commission d'appel donne aux personnes visées au paragraphe 66(2) l'occasion de témoigner et peut entendre le témoignage de toute autre personne qu'elle juge essentiel.

Audition

Absence of person

(2) The appeal board may, on proof of service of notice of a hearing on a person referred to in subsection 66(2), proceed with the hearing in the absence of the person and determine the appeal in the same manner as if that person had attended.

(2) La commission d'appel peut, sur preuve de signification d'un avis d'appel à une personne visée au paragraphe 66(2), procéder à l'audition de l'appel en l'absence de cette personne et trancher l'appel comme si la personne y avait été présente.

Personne absente

Decision of Appeal Board

Décision de la commission d'appel

Decision

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

69. (1) La commission d'appel peut confirmer, infirmer ou modifier la décision portée en appel et peut imposer les conditions qu'elle juge indiquées en l'espèce.

Décision

Conflict with plans

(2) A decision of the appeal board on an appeal must not conflict with a zoning bylaw, subdivision bylaw, community plan or area development plan.

(2) La décision de la commission d'appel à la suite d'un appel ne doit pas être contraire au règlement de zonage, au règlement de lotissement, au plan directeur ou plan d'aménagement régional.

Incompatibilité avec les plans

Time limit

(3) The appeal board shall, within 60 days after the day on which a hearing is concluded, issue a written decision with reasons and provide a copy of the decision to the appellant and other parties to the appeal.

(3) La commission d'appel, dans un délai de 60 jours à compter de la fin d'une audition, rend une décision par écrit et motivée et en remet une copie à l'appelant et aux autres parties à l'appel.

Délai

Signature

(4) Decisions and other documents may be signed on behalf of the appeal board by the chairperson or by an acting chairperson or vice-chairperson, and when so signed may be admitted in evidence as proof of the decision or document without proof of the signature or the designation.

(4) Les décisions et les autres documents peuvent être signés au nom de la commission d'appel par le président, ou par le président suppléant ou le vice-président; cette signature est admissible en preuve et fait foi de la décision ou du document sans qu'il soit nécessaire de faire la preuve de l'authenticité de la signature ou de la désignation.

Signature

Decision public record

(5) A decision of the appeal board is a public record.

(5) La décision de la commission d'appel constitue un document public.

Document public

No appeal

70. A decision of the appeal board is final and binding on all parties and is not subject to appeal.

70. La décision de la commission d'appel est finale et exécutoire, et elle est sans appel.

Aucun appel

Subdivision Appeal to Arbitrator

Recours à l'arbitrage en matière de lotissement

Arbitration: refusal of proposed subdivision

71. (1) If an application to the Director of Planning under subsection 43(1) for approval of a proposed subdivision is refused, the subdivision applicant may initiate an arbitration for the purpose of determining an appeal of the refusal.

71. (1) L'auteur d'une demande de lotissement dont la demande d'approbation d'un projet de lotissement présentée au directeur de la planification en vertu du paragraphe 43(1) est refusée peut prendre l'initiative d'un arbitrage pour décider de l'appel du refus.

Arbitrage : refus du projet de lotissement