

CITY OF YELLOWKNIFE DEVELOPMENT APPEAL BOARD

IN THE MATTER of a development appeal between:

**Yellowknife Condominium Corporation #61
Yellowknife Condominium Corporation #50 and #54**

Appellants

- and -

The Municipal Corporation of the City of Yellowknife (Development Officer)

Respondent

Issued: August 10, 2022

File: 200-D1-H1-22

This is the decision of the City of Yellowknife Development Appeal Board ("Board") with respect to an appeal submitted pursuant to s. 62 of the *Community Planning and Development Act* ("Act").

Date of Board Hearing: July 28, 2022

Board Members in Attendance: Mr. W.R. (Bill) Gault, Chairperson
Ms. Ann Peters,
Councillor Steve Payne, and
Ms. Georgina Rolt.

Ms. Slavica Jovic, Secretary

Appearances:

Mr. Andre Corbeil Representative for the Appellants, Yellowknife
Condominium Corporation #61

Mr. Dave Fournier Representative for the Appellants, Yellowknife
Condominium Corporation #50 and #54

Elizabeth Doyle In support of the Appellants

Paulo Ranzani In support of the Appellants

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| Mr. Vic Fontanilla | Development Officer, City of Yellowknife |
| Ms. Charlse White | Director, Planning and Development Department, City of Yellowknife |
| Mr. Cole Caljouw | Legal Counsel for the City of Yellowknife |
| Mr. Milan Mrdjenovich | Developer |
| Mr. James Murphy | Legal Counsel for the Developer |

Decision:

After reviewing the submission of the Appellants, Developer and Development Officer, and the evidence of the parties present at the hearing, and after reviewing the written submissions filed with the Board; the Board, having due regard to the facts and circumstances, the merits of the Appellant's case and to the purpose, scope, and intent of the Community Plan and the Zoning By-law, determined that the decision of the Development Officer dated June 17, 2022 to approve Development Permit No. PL-2022-0075 with conditions noted in Development Permit Notification Letter, be **confirmed**.

The Board's reasons for this decision are as follows:

BACKGROUND

1. The role of the City of Yellowknife Development Appeal Board ("Board"), as set out in the Act, is to review development decisions of the Development Authority made under a Zoning By-law. The Board has the power to confirm, reverse or vary the decision appealed from and may impose conditions or limitations that it considers appropriate in the circumstances.
2. Mr. Milan Mrdjenovich, 507726 NWT Ltd., submitted a Development Permit application to the Municipal Corporation of the City of Yellowknife's Development Officer ("Respondent") to construct a Multi-Unit Dwelling composed of 70 Units ("proposed development") at Lots 11-12, Block 307, Plan 4441 YELLOWKNIFE within the municipal boundaries of the City of Yellowknife and within the Niven Phase 5 Subdivision. This land is zoned as R2 – Medium Density Residential Zone ("R2 Zone") pursuant to City of Yellowknife Zoning By-law No. 5045 ("By-law No. 5045").
3. Section 10.2 of By-law No. 5045 regulates the R2 – Medium Density Residential Zone and the purpose of the Zone is to provide areas for medium to higher density residential development that encourages a mix of dwelling types and compatible uses.

GROUND OF APPEAL

4. The Appellants submitted that the grounds for their appeal include:
 - i. The Development Officer misapplied Zoning By-law No. 5045 when they approved the Development Permit application;

- ii. The Development Plan for the Niven Phase 5 Subdivision was changed as part of the Zoning By-law reform without public notification to residents that are directly affected;
 - iii. The area density has been increased without notification to the public;
 - iv. There is insufficient parking for the anticipated occupancy of the proposed development, given that 56 of the 70 units are two-bedroom;
 - v. The 2012 Traffic Impact Study is insufficient to adequately determine the impact that this development will have on the area and a new Traffic Impact Study ought to have been required and analyzed prior to consideration and approval of the Development Permit Application.
5. The Board considered the Appellants' written and oral submissions and after hearing representations from the Appellants, Developer and the Development Officer, the Board determined that it is required to consider whether a Traffic Impact Study was necessary and whether there was a misapplication of By-law No. 5045 when issuing Development Permit No. PL-2022-0075.

Each of these issues will be addressed in turn, below.

TRAFFIC IMPACT STUDY

6. The Appellants allege that the Respondent was lacking important traffic and density information when determining whether to approve the Development Permit, and that the proposed development will have an undue impact on the neighbourhood by significantly increasing the number of vehicles accessing and parking in the area. A Traffic Impact Study was conducted in 2012 and the Appellants note that the Study provides for a second access to the Niven Phase 5 Subdivision, by the year 2022, that would extend Hagel Drive and connect it with Moyle Drive. This extension of roadway has not taken place and therefore there is only one entry/exit to the Niven Phase 5 Subdivision.
7. The Board heard evidence that the 2012 Traffic Impact Study reflects a full build-out of 156 residential dwelling units in the Niven Phase 5 Subdivision and recommends that the City continue to monitor whether separate left and right turning lanes are warranted on Niven Gate at Highway 4, and whether the intersection of Franklin Avenue and 43rd Street needs to be restriped to provide for separate eastbound left and right turn lanes. To date 86 residential dwelling units have been built in the Niven Phase 5 Subdivision and the proposed development would add an additional 70 dwelling units, totaling 156 residential dwelling units for this area.
8. The Respondent submits that traffic volumes in 2022 are less than proposed and used in the 2012 Traffic Impact Study as Niven Phase 8 has never been built (250 units were projected in the Study); the Condo development beside Moyle Park built only 19 units (30 units were projected in the Study) and five R1 residential lots in Phase 7 are still undeveloped.

9. A traffic count was completed in December 2018 by the Department of Public Works and Engineering at the intersection of Lemay / Hagel / Ballantyne Court / Niven Drive as a result of a request for a 4-way stop sign. The numbers were considered low and did not warrant the installation of the sign.
10. The Board considered the evidence provided and determined the Appellants did not prove that the traffic impacts of the proposed development would be unreasonable, nor that an updated Traffic Impact Study is warranted. The Board therefore dismisses this ground of appeal.

MISAPPLICATION OF ZONING BY-LAW NO. 5045

11. The Board heard evidence and is satisfied that the property which is the subject of the appeal is located in the "R2" – Medium Density Residential Zone as defined by By-law No. 5045. Multi-Unit Dwellings are a permitted use within the R2 Zone.
12. The Board heard further evidence that the proposed development meets all regulations of By-law No. 5045 that are applicable to the R2 Zone, and no variances are required. The total number of parking spaces for the proposed development complies with and exceeds the minimum parking requirements as set out in Section 7.8.4 – Parking Standards - of By-law No. 5045.
13. The submissions of the Appellants did not persuade the Board to conclude that there was an error in the application of By-law No. 5045 in approval of the permit application, as the decision is in keeping with the *Community Planning and Development Act*, conforms to the City of Yellowknife Community Plan and complies with the City of Yellowknife Zoning By-law regulations. The Board determined that any alleged misapplication did not rise to a level to merit a reversal or amendment to the outcome. As a result, this ground of appeal is dismissed.

ALL OTHER ISSUES RAISED

14. The Board determined that all other issues raised by the Appellants are all beyond the scope of the Board's jurisdiction. As a result, the Board dismisses those grounds of appeal.

DISPOSITION

15. In conclusion, it is the determination of the Board that the evidence presented is insufficient to declare that the Respondent erred in issuing the Development Permit. The Development Appeal Board confirms the Decision of the Development Officer to approve the issuance of Development Permit No. PL-2022-0075 with conditions as noted in Development Permit Notification Letter.

16. Pursuant to s. 70 of the *Community Planning and Development Act*, this decision of the Board is final and binding on all parties and is not subject to appeal.

Dated this 10th day of August, 2022.



W.R. Gault, Chairperson



Slavica Jovic, Secretary