DEVELOPMENT APPEAL BOARD AGENDA

200-D1-H1-24

Tuesday, June 4, 2024 at 7:00 p.m. City Hall, Council Chamber

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Item No.	Page 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 No. PL-2023-0070.
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 Appellants.
9.		Summation and closing remarks from the representatives for the City of Yellowknife.
10.		Summation and closing remarks from the representatives for the Developer.
11.		Summation and closing remarks from any other presenter.
12.		Close of hearing.

Background Documentation

ANNEX A		
13.	3	Letter from the Appellant, Ms. Elizabeth Doyle to the Secretary of the Development Appeal Board serving Notice of Appeal – written submission.
ANNEX B		
14.	17	Written submission from the City of Yellowknife.

Development Appeal Board c/o City Clerk's Office
City of Yellowknife
P.O. Box 580
Yellowknife, NT X1A 2N4

Re: Development Permit Application No. PL-2023-0070

This serves as an appeal to the above noted Development Permit Application No. PL-2023-0070 (the **Development**) by Elizabeth Doyle, resident of NT, X1A 3Y3.

As per Government of the *Northwest Territories Community Planning and Development Act* 2013, (The Act), Division B – Appeals, 62 (1), this appeal is submitted on the grounds that I am adversely affected by the development, 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; or (e) the application for the development permit had been approved under circumstances where the proposed development did not fully conform with a zoning bylaw.

1) Niven Lake Development Scheme (appeal under s. 62(1)(b))

   Under Section 62(1)(b) of the *Municipal Planning and Development Act*, the Development contravenes the Area Development Plan, which is the Niven Lake Development Scheme By-law No. 4339 (NLDS).

   The NLDS section 1 says, "1a) The Niven Lake residential area shall provide for detached, duplex, multi-attached and multi-family dwellings, as defined under the current Zoning By-law, in areas designated R – LD (Residential Low Density) and R – MD (Residential Medium Density).".

   In reading the City of Yellowknife's (the City**)** Governance and Priorities Committee Report, dated April 15, 2024, "the developer is also required to meet a particular density requirement established in the Niven Lake Development Scheme (NLDS)". The City's Report clarifies as follows:

   "*Under previous legislation an Area Development Plan was called a Development Scheme, which is addressed in the new Act, section 80(2)(c), where it states: "a development scheme adopted in accordance with the former Act remains in force and is deemed to be an area development plan adopted in accordance with this Act, to the extent that it is not expressly inconsistent with this Act, until it is repealed or another is made in its stead. Therefore, the NLDS shall continue, and this subsection of the Act has been appropriately applied. The subject lots was zoned R-3 Residential – Medium Density under the Zoning By- law No. 4404, as amended. In R-3 zone, the allowable density was set to one unit per 125m2."*.

Under Zoning Bylaw 5045 and the *Act*, the development cannot contravene the NLDS, which the Development appears to because it contravenes its "medium density" zoning requirements under the NLDS. In reviewing the permit plans, it appears that the Development lot size of the Development is approximately 2042 square metres, at 24 units which is approximately 85 square metres per unit, a significant variation that is inconsistent with the NLDS's requirement of 125 square metres per unit.

Therefore in this regard, and as the City states in the Governance and Priorities Committee Report, the Development contravenes the NLDS and the information upon which the Development was permitted and should be reversed.

2) "Density" (appeal under s. 62(1)(b), 62(1)(e) or 62(1)(a))

In issuing the permit for the Development, the City relied on Zoning Bylaw, 5045, which in s.2 defines density as "the maximum number of dwelling units permitted by this By-law based on lot area;" but fails to provide actual numbers of units based on lot area in the bylaw to clarify how many dwelling units based on lot area are permitted in different zones. Niven Phase V, for example is in an R2 Zone, described as "medium density residential zoning" in the Index, as opposed to R1 Zoning, which is "low density residential zoning". Bylaw 5045 does provide information about building sizes and requirements for how a building can fit in relation to a lot, but not how many units can be added to a "medium density residential" R2 Zone, an R1 Zone, or other zoning.

By omitting the information required by its own definition, the City has approved the Development based on density requirements that it has failed to provide. The City uses the terms R2 and R1 zoning for residential zoning, but does not provide the information to conform to its definition of "density" so that residents can figure out what number of units the zoning allows.

In its Governance and Priorities Committee Report, dated April 15, 2024, it states that "there is no density limit set out in the current Zoning By-law. This is to align with the planning objective and policy of the Community Plan.". While I don't agree that unlimited lots per area aligns the planning objective and policy of the Community Plan, which I address below, or the definition of "density" in the City's own definition, this clarifies the City's intention, which runs contrary to the city's own definition of density that underpins the current active Zoning Bylaw and the Community Plan, which was news to me.

While the decision to remove the limits on the number of units based on lot area in a given type of zoning may have been intentional, ,the City's definition of density in 5045 Zoning indicates that it was not, that there are limits to the number of units in a given area, as the definition the City provides says. Further, no limits on the number of units in the area does not align with the NLDS, as addressed above.

The Development is in contravention because the City has failed to provide the information required by its definition of “density” leaving a gap that needs to be addressed before the Development can proceed, and the density doesn’t align with the NLDS.

Further, I question why the City wants to keep increasing the number of units in Niven Phase V. The Community Plan, Bylaw 5077, uses NWT Statistics figures to project population, but while the Community Plan projected that by 2035 the population of Yellowknife will be 22,814, those numbers are based a 2020 population of 21,109 residents, that was never reached. In fact, as of November 30 2023, according to Statistics Canada, the population of Yellowknife was only 20,673. Also, the City’s Back Background Report Community Plan Update 2019 by Dillon Consulting, the report relied on to write Bylaw 5077, section 8.3.4. indicates that that the city will need a greater supply of low density land by 2035, so adding high density construction to Niven Phase V is out of line with both population projections and land demand projections. The City of Yellowknife is commendably bringing around 300 1 and 2 bedroom apartments to the market at present, but what is the basis for 24 more units in Niven Phase V, on a lot originally intended for 14 units, when the population data indicates that previous population estimates were well above the reality of population figures as they are?

<u>Variances and Density</u>

I would like to note that the City Report’s assertion that there are no density limits means that no variances are required for any development based on density. As long as a building meets other zoning requirements, the number of units per square area is unlimited, in spite of the definition of “density” and residential zoning described by “density". But, if this is the case that there are no limits on density in development permits, then there is no longer a basis for appeal if residents have evidence that a development will “unduly interfere with the amenities of the neighbourhood; or (b) detract from the use, enjoyment or value of neighbouring parcels of land” because of its density.

This is perhaps why residents of Niven Phase V had no recourse when the 49 unit building that was planned for Niven Phase V was suddenly approved as a 70-unit building, and leaves no recourse now on the basis that the current Development will “unduly interfere with the amenities of the neighbourhood"; or “detract from the use, enjoyment or value of neighbouring parcels of land” based on density, which I believe it will, and in conversations with neighbours, they believe it will.

This seems administratively unfair and as a resident, had I known this was a factor in Zoning Bylaw 5045, I would have objected, possibly quite loudly, but I only just learned this in the process of deciding whether to appeal the Development.

3) The Community Plan((appeal under s. 62(1)(b))

As mentioned above, in its Governance and Priorities Committee Report, dated April 15, 2024, the City states that "there is no density limit set out in the current Zoning By-law. This is to align with the planning objective and policy of the Community Plan". In looking at the "planning objective and policy of the Community Plan", I do not see an alignment.

Section 3.2.6. of the Community Plan, Bylaw 5077, describes the planning objectives and policy of the Community Plan as follows: "For the purpose of the Community Plan, specific definitions are used for objectives and policies: Objectives – Measurable outcomes or targets. Policies – Proposed decision or action."

This chart provides the specific Planning and Development Objectives for Niven Lake, located in section 3.5:

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.

I would argue that these “objectives” are not “measurable outcomes or targets” at all, rather they are general statements of broad objectives. In terms of density, the City provides that there will be “a mix of residential types and densities”, which is neither a measurable outcome nor target. This leaves residents unable to assess density, and does not indicate a policy or objective that removes density requirements, in fact it refers to density without providing further detail. The only definition of density provided, is the definition in Bylaw 5045 which is units/area. I would also suggest that the policy, the “proposed decision or action” is also vague and does not provide “proposed decisions or action” other than in unspecific general proposals to build a range of building types, but never a determination to increase density from the previous measures.

The City’s policies and objectives are inadequate according to their own definition of the information they will provide because it does not provide “measurable outcomes or targets”, and even as a general policy plan, the Community Plan supports mixed densities in Niven Lake, which is undefined, but it certainly does not specify that it wants to specifically increase densities from the previous community plan, and does not define densities beyond the definition in the Zoning Bylaw 5045, so it’s unclear and the permit contravenes these general policy guidelines because the removal of zoning limits encourages one type of development only: higher density, which is also unsupported by population projections.

Further, the City’s current Community Plan is also incomplete and is missing the information required under section 4.(e) of the *Municipal Planning and Development Act,* which requires that the Community Plan “include a schedule of the sequence in which specified areas of land may be developed or redeveloped, and the manner in which the services and facilities referred to in paragraph (d) will be provided in specified areas”.

This information is not provided for Niven Phase V. As described above, the Community Plan is vague on specifics about Niven and does not provide the detailed information required by the legislation. There is no schedule of the sequence in which Niven Phase V may be developed and the manner in which the city intents to provide the services outlined in subsection (d), rather the city provides a “Policy framework” in 5.4.1 of the Community Plan which says that Niven will be developed in 2021 and 2022, and that’s it. There is no “schedule of the sequence in which specified areas of land may be developed”. This makes it difficult for affected residents in Niven Phase V to figure out why the City is adding so many units to the development, especially since the previous General Plan, Bylaw 4656, anticipated that by 2021, the population of Yellowknife would be 23,500, but according to Statistics Canada, only reached 20,673 as of November 30, 2023, according to Statistics Canada.

Finally, in section 1.2, Bylaw 5077 calls for “regulation and control” in a “balanced and responsible manner”. Allowing arbitrary zoning arguably contradicts section 1.2 of Zoning Bylaw 5045 because in the case of the Development, it’s not based on regulation or control, it’s based

on subjective, arbitrary factors and these are unclear to residents, leading me to argue that the Development contravenes the Community Plan because the Community Plan isn't adequate to support the Development.

I submit that because the Community Plan does not provide the information required by law, or the specific information the City itself says it is including in the Community Plan, but isn't included for Niven Phase V, that the Community Plan must be completed before further development in Niven Phase V is approved.

<u>The Old Community Plan, Bylaw 4565</u>

In trying to find some detail to inform a decision to appeal, I looked at the old Community Plan, Bylaw 4656, which can provide vital information on the Niven Phase V development scheme.

Table 5, page 16, of Bylaw 4656 proposes 90 units on Niven Phase V total. Not only does Bylaw 4656 suggest 90 units, it further says in a footnote regarding "Grace Lake", "An analysis of land suitable for development has not yet been undertaken and therefore this number is subject to change" regarding Grace Lake ONLY, indicating that the figures for Niven Lake were based on an analysis of the land suitable for development and that the number is *not* subject to change. The new Community Plan, Bylaw 5077, does not vary these figures at all; it omits them.

According to the last appeal on *Niven Phase V, Yellowknife Condominium Corporation #61 v Yellowknife (Development Officer), 2022 CanLII 143517 (NT YDAB),* at paragraph 7, Niven Phase V is currently at 156 units, without the Development's 24 units, and developments on the remaining lots of land. The development will be at 180 units if the Development is approved. And with 2 more lots to be developed, and no zoning limits, the number of units will likely be well over 200, which is completely detached from the 90 unit figure in Bylaw 4656, and is not aligned with population projections which are significantly lower than the figure of 90 units provided in 4656, which were not subject to change according to the City.

4) Recreational Space (appeal under s. 62(1)(b) or 62(1)(e))

The development contravenes zoning bylaw for recreational space under section under section 8.1.3 of the Zoning Bylaw "c) In addition, for Multi-Use Dwelling Development without individual Street Access, an outdoor space, suitable for intended occupants, shall be provided to the satisfaction of the Development Officer. Developments with more than 15 units shall have outdoor common areas. d) Outdoor Parks and Recreation areas within 250 m proximity of the residential Development will be considered fulfillment of the outdoor Recreation Space".

No provisions in the permit drawing provide for this. The City has mentioned a park next to the Development, but this is not provided for in the Permit, and it remains unclear what "recreation area" will be provided. The open land next to the Development is not suitable for children since the Development will increase 2-way traffic on either side of the area the City has suggested as

a park, and the City has declined to research traffic impacts to Niven Phase V, so it's impossible to know whether the piece of land that could fulfill this requirement is suitable. The City should provide updated information on the recreational space that twill be provided prior to allowing the Development to move forward.

5) Traffic (appeal under (62(1)(a))

Traffic remains an issue. As Per Zoning Bylaw 5045, section 4.4.4, "when considering a development application "The Development Officer may also require any of the following..." "d) a traffic Impact analysis prepared by a qualified professional which shall address, but not be limited to, Impact on adjacent public roadways, pedestrian circulation on and off-Site, vehicular movement circulation on and off-Site, turning radius diagrams for large truck movement on and off-Site, and any other similar information required by the Development Officer;".

The hearing for the previous Niven Lake Phase V development, decision Yellowknife Condominium Corporation #61 v Yellowknife (Development Officer), 2022 CanLII 143517 (NT YDAB) also addressed traffic. In its decision, the Appeal Board said " 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 in additional 70 dwelling units, totaling 156 residential dwelling units for this area."

Niven Phase V is currently at 156 units, and will be at 180 Units with the Development and at least 2 more lots left, with no limits on the number of units the city will allow on those lots. I would like to request that the city perform its traffic study, and not only on Niven Gate at Highway 4, or Franklin avenue and 43rd street, but once the 70 Unit building is complete, the City should do a traffic study of Niven at Lemay/Hagel/Ballantyne and delay the Development until a proper traffic assessment is completed, especially in light of the increased density over the 156 units anticipated by the 2012 traffic study.

5) Street Scape (Appeal under s. 62(1)(b)

Finally, section 3 of the NLDS requires that "Within road rights-of-way, streets shall be developed at the minimum width prescribed by the Public Works Department to accommodate two way traffic, parking on one or both sides as required, sidewalks on both sides, and landscaped boulevards". I did not find a definition for "road rights-of-way", but the City of Edmonton defines it as "Road right-of-way defines the use of public property designated for traffic and pedestrians".

Lemay Drive already doesn't meet these requirements for street scape, but now it will have heavier 2-way traffic but no sidewalks or landscaping. It is also unclear what the city plans for Hagel Drive, and whether they have left enough space. The Permit has not provided information to show that with the current Development, there will be space for all of the required streetscaping, and this was not addressed in the permit documents. The Development should not continue until the city addresses this requirement.

Conclusion

I seek the relief of variation or reversal of the Development decision until the City of Yellowknife addresses the above concerns through this appeal.

Documents Relied On (outside of Laws and Bylaws)

 Population Projections NWT Bureau of Statistics 2018 to 2035.numbers

https://www12.statcan.gc.ca/census-recensement/2021/ref/amendments-modifications-eng.cfm

https://www.yellowknife.ca/en/city-government/resources/Current_Committees_of_Council/Development-Appeal-Board/DAB-Agenda-July-28,-2022--HAGEL-DRIVE-NIVEN-PHASE-5/ANNEX-D---WRITTEN-SUBMISSION-FROM-CITY-OF-YELLOWKNIFE.pdf

https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p5.html Definitions.

https://events.yellowknife.ca/meetings/Detail/2024-04-15-1205-Governance-and-Priorities-Committee/b35f2f3b-49e8-4eb8-935d-b1560165f816

Development Appeal Board c/o City Clerk's Office
City of Yellowknife
P.O. Box 580
Yellowknife, NT X1A 2N4

BY HAND
Re: Development Permit Application No. PL-2023-0070

This letter serves as an appeal to the above noted Development Permit Application No. PL-2023-0070 (the **Development**) by Elizabeth Doyle, [redacted], Yellowknife NT, X1A 3Y3.

As per Government of the *Northwest Territories Community Planning and Development Act* (2013), Division B – Appeals, 62 (1), this appeal is submitted on the grounds that I am adversely affected by the development, 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; or (e) the application for the development permit had been approved under circumstances where the proposed development did not fully conform with a zoning bylaw.

I submit that the appeal must be heard because the Development is a misapplication of the city's zoning bylaws, does not fully conform with a zoning bylaw or contravenes the zoning bylaws, the community plan, or an area development plan.

1) Niven Lake Development Scheme (appeal under s. 62(1)(b))

   As per Section 62(1)(b) of the *Municipal Planning and Development Act*, The Development contravenes the Area Development Plan, which is the Niven Lake Development Scheme By-law No. 4339 (NLDS).

   As Per the City of Yellowknife's (the **City)** Governance and Priorities Committee Report, dated April 15, 2024, "the developer is also required to meet a particular density requirement established in the Niven Lake Development Scheme (NLDS)". The City's Report clarifies as follows:

   "Under previous legislation an Area Development Plan was called a Development Scheme, which is addressed in the new Act, section 80(2)(c), where it states: "a development scheme adopted in accordance with the former Act remains in force and is deemed to be an area development plan adopted in accordance with this Act, to the extent that it is not expressly inconsistent with this Act, until it is repealed or another is made in its stead. Therefore, the NLDS shall continue, and this subsection of the Act has been appropriately applied. The subject lots was zoned R-3 Residential – Medium Density under the Zoning By- law No. 4404,

as amended. In R-3 zone, the allowable density was set to one unit per 125m2.".

While the city suggests that these zoning requirements form the basis for the NLDS, they also dismiss them and rely on Bylaw 5045. My submission is that the NLDS remains in effect, and the Development contravenes its zoning requirements under the NLDS. The Development lot sizes are approximately 2042 square metres, at 24 units which is approximately 85 square metres per unit, a significant variation, that is inconsistent with the NLDS's requirement of 125 square metres per unit.

Furthermore, relying on the NLDS, the former "General Plan", bylaw 4656, which similarly to Bylaw 4044, underpinned the NLDS prior to Bylaw 5077, the current Community Plan, can provide vital information on the Niven Phase V development scheme. Table 5, page 16, of bylaw 4656 proposes 90 units on Niven Phase V total. Not only does bylaw 4656 suggest 90 units, it further says in a footnote regarding "Grace Lake", "An analysis of land suitable for development has not yet been undertaken and therefore this number is subject to change" regarding Grace Lake ONLY, indicating that the figures for Niven Lake were based on an analysis of the land suitable for development and that the number is *not* subject to change. The new Community Plan, bylaw 5077, does not vary these figures at all; it omits them.

Niven Phase V is currently at 156 units, without the Development's 24 units, and developments on the remaining lots of land. Furthermore, the NLDS was based on community plan projections of Yellowknife's population increasing to 23,500 in 2021. The population of Yellowknife was 20,340 in 2021, according to Statistics Canada, and no information indicates that in 2024, the population has reached 23,500. Therefore in this regard, the Development doesn't comply with the NLDS and the information upon which the Development was permitted.

The relief sought is that the Development be halted until the city aligns the NLDS with the Zoning Bylaw and the Community Plan so that zoning and community plan requirements underpinning the Development are clearly provided.

2) "Density" (appeal under s. 62(1)(b), 62(1)(e) or 62(1)(a))

The City relied on its new Zoning Bylaw, 5045, which, defines density as "the maximum number of dwelling units permitted by this By-law based on lot area;" but fails to provide any actual numbers of units based on lot area anywhere in the bylaw. By omitting the information required by its own definition, the City has approved the Development based on density requirements that it has failed to provide. The City uses the terms R2 and R1 zoning for residential zoning, but does not provide the information to conform to its definition of "density" so that residents can figure out what number of units the zoning allows. The City should provide the information its density definition requires before any further development of Niven Phase V is allowed to proceed,.

In its Governance and Priorities Committee Report, dated April 15, 2024, it states that "there is no density limit set out in the current Zoning By-law. This is to align with the planning objective and policy of the Community Plan."

Limitless units is not provided for either in the Community Plan. In fact, section 1.2 calls for "regulation and control" in a "balanced and responsible manner". Allowing arbitrary zoning arguably contradicts section 1.2 of Zoning Bylaw 5045 because in the case of the Development, it's not based on regulation or control, it's based on subjective, arbitrary factors, like in this case, the mayor being worried that the developer will walk away, as she said in a Cabin Radio article dated April 16, 2024, "We can deny the extra four units and it might kill the project for the developer.". Yes. It might. And it is arguably "balanced and responsible" to deny a permit where a development decision is not based on "regulation and control" rather fears that the developer will walk away, as this Developer has threatened to do in the recent past (https://cabinradio.ca/100409/news/yellowknife/major-yellowknife-housing-developer-says-forget-it-i-quit/).

Since there is no information provided based on the definition of "density" set out in the current Zoning By-law, but because the NLDS is still in effect according to the City of Yellowknife, 125m2 per unit is the most recent information we have on how to apply the definition of "density". I submit that if the city wanted to changed the meaning of density to remove the number of units as the way to define "density", it should have changed the definition of "density" but it did not do so. The Development is in contravention because the City has failed to provide the information required by its definition of "density" leaving a gap that needs to be addressed before the Development can proceed.

3) Missing Schedule of Development ((appeal under s. 62(1)(b))

The City's current Community Plan is incomplete and is missing vital information, in particular the required elements of section 4.(e) of the *Municipal Planning and Development Act*.

This information is not provided for Niven. In fact the Community Plan is vague on specifics about Niven and does not provide the detailed information required by the legislation. There is no schedule of the sequence in which Niven may be developed and the manner in which the city intents to provide the services outlined in subsection (d), rather the city provides a "Policy framework" in 5.4.1 of the Community Plan which says that Niven will be developed in 2021 and 2022, and that's it. There is no "schedule of the sequence in which specified areas of land may be developed". This makes it difficult for affected residents in Niven Phase V to figure out why the City is adding so many units to the development, especially since the previous General Plan, bylaw 4656, anticipated that by 2021, the population of Yellowknife would be 23,500, but according to Statistics Canada, only reached around 20,500 in 2021.

4) Recreational Space (appeal under s. 62(1)(b) or 62(1)(e))

The development contravenes zoning bylaw for recreational space under section under section

8.1.3 of the Zoning bylaw, "c) In addition, for Multi-Use Dwelling Development without individual Street Access, an outdoor space, suitable for intended occupants, shall be provided to the satisfaction of the Development Officer. Developments with more than 15 units shall have outdoor common areas. d) Outdoor Parks and Recreation areas within 250 m proximity of the residential Development will be considered fulfillment of the outdoor Recreation Space".

No provisions in the permit drawing provide for this. The City has mentioned a park next to the Development, but this is not provided for in the Permit, and it remains unclear what "recreation area" will be provided. The open land next to the Development is not suitable for children since the Development will increase 2-way traffic on either side of the area the City has suggested as a park, and the City has declined to research traffic impacts to Niven Phase V, so it's impossible to know whether the piece of land that could fulfill this requirement is suitable. The City should provide updated information on the recreational space that twill be provided prior to allowing the Development to move forward.

5) Traffic (appeal under (62(1)(a))
Traffic remains an issue. As Per Zoning bylaw 5045, section 4.4.4, "when considering a development application "The Development Officer may also require any of the following..." "d) a traffic Impact analysis prepared by a qualified professional which shall address, but not be limited to, Impact on adjacent public roadways, pedestrian circulation on and off-Site, vehicular movement circulation on and off-Site, turning radius diagrams for large truck movement on and off-Site, and any other similar information required by the Development Officer;".

The hearing for the previous Niven Lake Phase V development, decision Yellowknife Condominium Corporation #61 v Yellowknife (Development Officer), 2022 CanLII 143517 (NT YDAB) also addressed traffic. In its decision, the Appeal Board said " 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 in additional 70 dwelling units, totaling 156 residential dwelling units for this area."

Niven Phase V is currently at 156 units, and will be at 180 Units with the Development and at least 2 more lots left, with no limits on the number of units the city will allow on those lots. I would like to request that the city perform its traffic study, and not only on Niven Gate at Highway 4, or Franklin avenue and 43rd street, but once the 70 Unit building is complete, the City should do a traffic study of Niven at Lemay/Hagel/Ballantyne and delay the Development until a proper traffic assessment is completed, especially in light of the increased density over the 156 units anticipated by the 2012 traffic study.

5) Street Scape (Appeal under s.
Finally, section 3 of the NLDS requires that "Within road rights-of-way, streets shall be developed at the minimum width prescribed by the Public Works Department to accommodate two way traffic, parking on one or both sides as required, sidewalks on both sides, and landscaped boulevards". Lemay Drive already doesn't meet these requirements, but now it will have heavier 2-way traffic but no sidewalks. It is also unclear what the city plans for Hagel Drive, and whether they have left enough space. The Permit has not provided information to show that with the current Development, there will be space for all of the required streetscaping, and this was not addressed in the permit documents. The Development should not continue until the city addresses this requirement.

Conclusion

I seek the relief of variation or reversal of the Development decision until the City of Yellowknife addresses the above concerns through this appeal.

Elizabeth Dovle

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

AND IN THE MATTER OF PERMIT #PL-2023-0070

WRITTEN LEGAL BRIEF
OF THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE FOR THE DEVELOPMENT APPEAL BOARD HEARING TO BE HEARD ON JUNE 4, 2024

Contents

PART I - STATEMENT OF FACTS

1. On April 22, 2024 City Council issued a Development Permit # PL-2023-0070 for a 24-unit Multi-Unit Dwelling on Lots 33 & 34, Block 307, Plan 4809 (110 Hagel Drive).

   Development Permit PL-2023-0070

2. On May 7, 2024, Elizabeth Doyle, the Appellant appealed PL-2023-0070 to the Development Appeal Board.

PART III - SUBMISSIONS

I. Niven Lake Development Scheme 2004

3. The Appellant submits that the Niven Lake Development Scheme 2004 requires that the lot in question be developed in accordance with the density requirement set out in the previous Zoning By-law 4404, as opposed to the present Zoning By-law 5045.

4. The Niven Lake Development Scheme 2004 (Attachment 1) by virtue of the transition provision 80(2)(c) of the *Community Planning and Development Act* (the Act) remains in force and is deemed to be an area development plan under the Act. For clarity there is also Niven Lake Development Scheme 2007, however it applies to other phases of development, and not the area in question.

5. The Niven Lake Development Scheme 2004 labels the area in question on the map MD – Medium Density. Since 2004 there have been three Zoning By-laws in effect, 4024, 4044, and 5045 – all of them have zoned the area in question Medium Density.

6. The Niven Lake Development Scheme 2004 on the right hand column of the map reads:

> 1a) The Niven Lake residential area shall provide for detached, manufactured (double-wide) duplex, multi-attached and multi-family dwellings, as defined under the Zoning By-law No. 4404, in areas designated LD- Low Density and MD-Medium Density.

7. The section 1a reference to the previous Zoning By-law concerns definitions of what dwellings may be built. The reference to Zoning By-Law No. 4044, is solely adopting definitions of building types, not a wholesale adoption of all aspects of Zoning By-law 4404 at a given point in time.

8. In regards to the definitions referenced, as per Zoning By-law No. 4044 “multi-family” means a building or portion of a building containing three or more dwelling units with shared entrance facilities. The proposed development meets this definition of “multi-family” and is therefore permitted under the Niven Lake Development Scheme 2004 on the lot in question. The City acknowledges that if an industrial building was to be proposed in the area in question, even if a new zoning by-law permitted it, the Niven Lake Development Scheme 2004 would not. However, a multi-family dwelling in medium density zoning as proposed by the development is exactly what the Scheme prescribes.

9. The Niven Lake Development Scheme 2004 is one tool along with the Community Plan and Zoning By-law that guides development on the lot in question. The specific calculations of units per square meter referenced by the Appellant are no longer in force upon the Adoption of Zoning By-law 5045 being passed and 4404 being repealed.

10. As per the *Act* section 8(1):

> The purpose of an area development plan is to provide a framework for the subdivision or development of an area of land within a municipality.

11. The Niven Lake Development Scheme 2004 is a high-level framework. It is a single page document that guides development for an area. It is not a replacement of a zoning by-law or Community Plan. When interpreting legislation, which includes municipal bylaws, the Supreme Court of Canada has made clear that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” (Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC), [1998] 1 SCR 27, [Rizzo] at para 21) In this case the purpose of the Niven Lake Development Scheme was, as stated in the Act, to provide a *framework* for

subdivision or development. The City's interpretation of the reason for the reference to By-law 4044, as defining the types of dwellings but not wholesale adopting By-law 4044, is consistent with the purpose of the Niven Lake Development Scheme. The Supreme Court of Canada further emphasized that "[i]t is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences." (*Rizzo*, at para 27).

12. Extrapolating the Appellant's argument leads to an absurdity that all the Area Development Plans the City has also adopt the very specific aspects of whatever zoning by-law was in effect at the time the Area Development Plan was passed. This would lead to the City having multiple repealed zoning by-laws in force across the City with all of their amendments at a fixed point in time. This cannot have been the intention of Council when the Niven Lake Development Scheme 2004 was adopted.

Density

13. The Appellant argues that the City must continue to use Zoning By-law 4044's density calculation due to the Niven Lake Development Scheme 2004. The Act as per section 9(1)(c) states that a Development Plan must:

> describe the population density for the area, either generally or with respect to specific parts of the area;

The Act requires a general description, there is no requirement on how to define density, or that a specific formula must be used. The Area is labeled as "Medium Density" with a description of the types of dwellings permitted, this meets the requirements under the Act — any further specifics are left to the Zoning By-law.

14. There is one other reference to "density" in the Act under section 18(1) which states that a zoning by-law may either generally or with respect to any zone control the density of population in the municipality. This being permissive there is no obligation to have the definition of density the appellant is requesting in the Zoning By-law, Community Plan or a Development Plan.

15. The City submits that all the Niven Lake Development Scheme 2004 does, and has ever done, is provide a general definition and a framework to be further specified via zoning. The Area in question remains medium density which permits the type of development proposed. Whether a specific lot calculation for a specific building is 24 units or 20 units is not something the Niven Lake Development Scheme 2004 can or does prescribe.

16. The Scheme does not set out specific units per lot, which is a site specific analysis done at the time of application for a development. There is no further information to be provided here as requested by the Appellant. The calculation of density for a specific development has always be restricted by multiple factors, from height, setback, lot coverage, parking space requirement, building/fire safety codes, landscaping, greenspace, stairwells and others that must be considered on the basis of each development. The City has the ability to further specify in the By-law what 'density' means in a specific zone. For example, by defining appropriate floor area ratio (FAR) or the number of units. However, that is not the case in the Zoning By-law No. 5045 presently and there is no requirement to do so created by the Niven Lake Development Scheme 2004.

17. The new Zoning By-law No. 5045, adopted on March 14, 2022, is the current and operative law governing development within the City of Yellowknife. The City submits that the Board can not hear an appeal on the grounds that there is in an insufficiency in the Zoning By-Law. The Board's role is to ensure the Zoning By-law is followed in decisions of a Development Officer. It is not the role of the Board to stand in for the City of Yellowknife Council and consider changes to the Zoning By-Law such as how density should be defined as requested by the Appellant. Section 3.3.3 of the Zoning By-Law states: "Decisions of the Development Appeal Board must be in compliance with this Zoning By-law, the Community Plan and any applicable Area Development Plan." The Board is tasked with reviewing compliance of the Zoning By-Law – there is no interpretation that permits the Board to alter or consider the sufficiency of the Zoning By-Law, or to hold permits pending council update that By-law.

PART IV – REQUESTED FINDING

1. The City requests that the Board confirm the development permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of May, 2024.

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

Per: _____
Rylund Johnson
Counsel for the City of Yellowknife

ATTACHMENTS

1. Niven Lake Development Scheme 2004
2. Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC), [1998] 1 SCR 27, [Rizzo] at para 21, https://canlii.ca/t/1fqwt#par21)

THE CITY OF YELLOWKNIFE

NORTHWEST TERRITORIES

CONSOLIDATION OF
NIVEN LAKE DEVELOPMENT SCHEME 2004
BY-LAW NO. 4339

Adopted February 28, 2005

AS AMENDED BY

By-law No. 4362 – August 22, 2005
By-law No. 4438 – May 28, 2007
By-law No. 4481 – August 25, 2008
By-law No. 4586 – October 25, 2010

(This Consolidation is prepared for convenience only.
For accurate reference, please consult the
City Clerk's Office, City of Yellowknife)

CITY OF YELLOWKNIFE
BY-LAW NO. 4339

A BY-LAW of the Council of the Municipal Corporation of the City of Yellowknife in the Northwest Territories, authorizing the Municipal Corporation of the City of Yellowknife to repeal the City of Yellowknife Niven Lake Development Scheme By-law No. 4269, as amended.

PURSUANT TO:

a) Section 25 to 29 inclusive of the *Planning Act*, R.S.N.W.T., 1988, c. P-7;

b) Due notice to the public, provision for inspection of this by-law and due opportunity for objections thereto to be heard, considered and determined; and

c) The approval of the Minister of Municipal and Community Affairs, certified hereunder.

WHEREAS the Municipal Corporation of the City of Yellowknife has evaluated the Niven Lake Development Scheme By-law No. 4269, as amended;

AND WHEREAS the Municipal Corporation of the City of Yellowknife wishes to adopt the City of Yellowknife Niven Lake Development Scheme 2004 By-law No. 4339;

NOW THEREFORE, THE COUNCIL OF THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE, in regular session duly assembled, hereby enacts as follows:

SHORT TITLE

1. This By-law may be cited as the Niven Lake Development Scheme 2004.

APPLICATION

2. The City of Yellowknife Niven Lake Development Scheme 2004 comprised of the attached Schedule No. 1 and 2, is hereby adopted.

REPEALS

3. By-law Nos. 4181 and 4269 are hereby repealed.

EFFECT

4. That this by-law shall come into effect upon receiving Third Reading and otherwise meets the requirements of Section 75 of the *Cities, Towns and Villages Act*.

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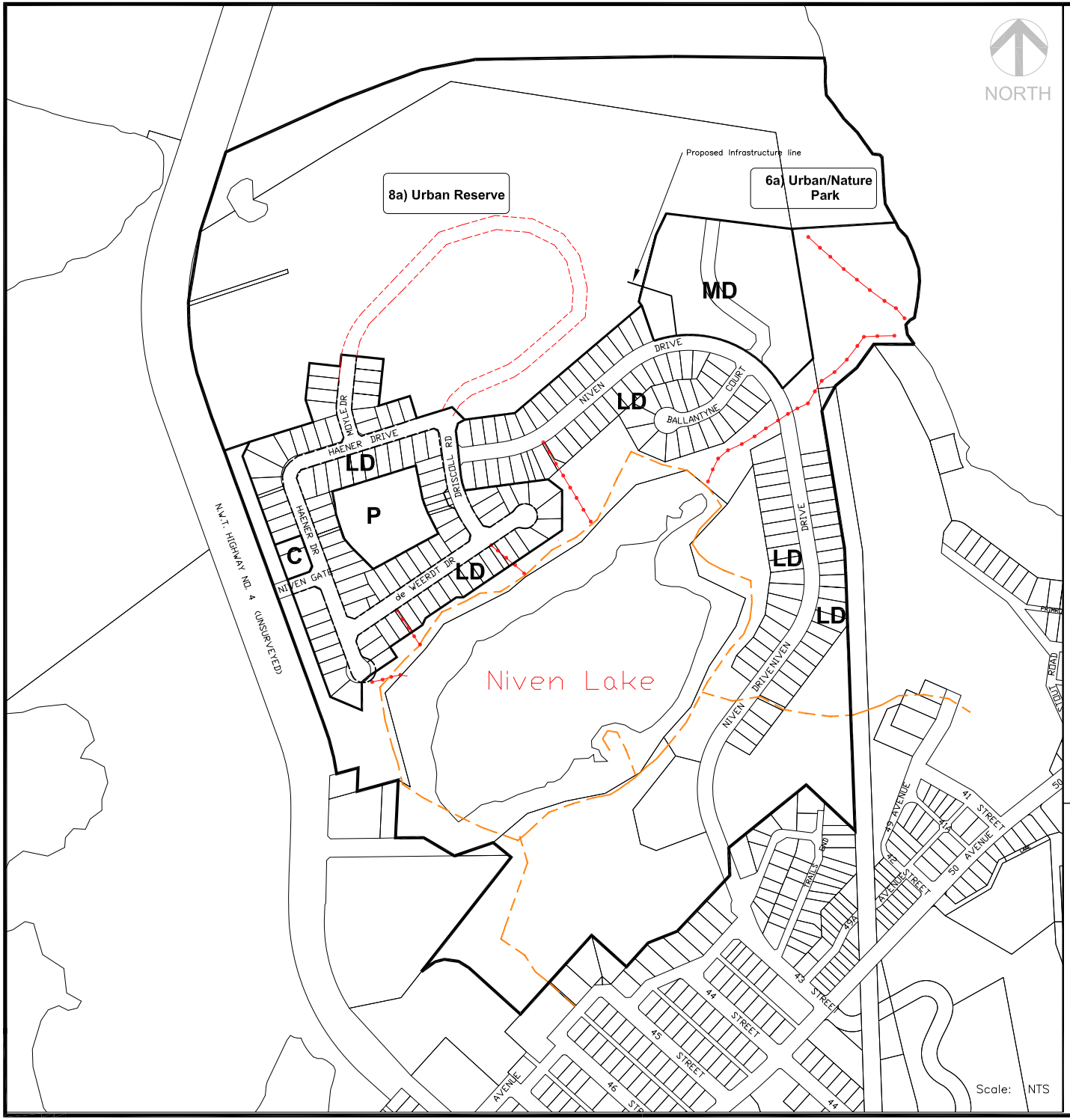

Niven Lake

DEVELOPMENT SCHEME 2004

Schedule No.1 to By-law No. 4339

As amended by By-law No. 4481, August 25, 2008

As amended by By-law No. 4586, October 25, 2010

1. Housing

Section 1a) as amended by By-law No. 4362 August 22, 2005

1a) The Niven Lake residential area shall provide for detached, manufactured (double-wide) duplex, multi-attached and multi-family dwellings, as defined under the Zoning By-law No. 4404, in areas designated LD- Low Density and MD-Medium Density.

1b) Residential development within the Niven Lake residential area shall be in accordance with the design standards specified under the Zoning By-law No. 4404.

2. Pathways

2a) Connections will be provided to the Niven Lake pedestrian/bicycle trail from the Frame Lake trail; 49th Avenue; Fritz Theil Park; the proposed urban/nature park, and to the Jackfish Ravine north of the Niven Lake subdivision. The intent is to connect the Niven Lake trail both to the surrounding residential subdivision and to recreational opportunities outside of the Niven Lake subdivision.

2b) An identified snow machine trail will be provided connecting Niven Lake to Frame Lake and Back Bay.

2c) In an area where the pathway system is not in a road right of way or in a park a pathway right of way will be created.
The width of the pathway right-of-way will be based on the natural features adjacent to the proposed pathway and will be designed to provide a satisfactory buffer between the pathway and future development. These pathway right-of-way will be eventually established by a plan of survey.

3. Niven Lake Shoreline

3a) The Niven Lake shoreline shall be maintained in a natural state except where modification is necessary to reduce the potential for human physical contact with the lake.

4. Roads and Utilities

4a) Within road rights-of-way, streets shall be developed at the minimum width required to accommodate two way traffic and parking on both sides of the street.

5. Public Transit

5a) When deemed appropriate City transit routes will be considered in the area.

6. Parks

6a) As outlined in the Waterfront Management Plan (2001-2008)), an urban/nature park will be developed adjacent to the Niven Lake subdivision along an area of the Back Bay shoreline which will enhance access to the shoreline while preserving the natural attributes of the area. Seasonal moorage will be provided.

6b) Playground /Playing field will be considered in the Urban Reserve

7. Highway Buffer

7a) A 20 meter buffer strip shall be established between the east boundary of N.W.T. Highway No.4 right-of-way and any proposed lots. The buffer strip shall be maintained in a natural, undeveloped state.

8. Urban Reserve

8a) The area adjacent to Jackfish Ravine will be subject to future study for residential, parks, recreation and educational purposes.

9. Neighbourhood Node Site (as amended by By-law 4586, October 25, 2010)

9a) Sites will be provided for both neighbourhood convenience stores and other public or quasi-public uses that promote the development of a neighbourhood node.

10. Development Scheme Boundaries

10a) Parcel and right-of-boundaries will be established by engineering anaylsis and plans of survey.

LEGEND

- MD — MEDIUM DENSITY RESIDENTIAL
- LD — LOW DENSITY RESIDENTIAL
- C — COMMERCIAL or OTHER NEIGHBOURHOOD NODE DEVELOPMENT (as amended by By-law 4586, October 25, 2010)
- P — PARK/OPEN SPACE
- DEVELOPMENT SCHEME BOUNDARY
- FUTURE PATHWAYS
- EXISTING PATHWAYS
- PROPOSED ROAD ROW (To be determined by a plan of survey)

By-Law 4339 - NL Development Scheme - Amended Oct.25 2010.dwg

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez and Lindy Wagner on their own behalf and on behalf of the other former employees of Rizzo & Rizzo Shoes Limited *Appellants*

v.

Zittrer, Siblin & Associates, Inc., Trustees in Bankruptcy of the Estate of Rizzo & Rizzo Shoes Limited *Respondent*

and

The Ministry of Labour for the Province of Ontario, Employment Standards Branch *Party*

INDEXED AS: RIZZO & RIZZO SHOES LTD. (RE)

File No.: 24711.

1997: October 16; 1998: January 22.

Present: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Employment law — Bankruptcy — Termination pay and severance available when employment terminated by the employer — Whether bankruptcy can be said to be termination by the employer — Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2(3) — Bankruptcy Act, R.S.C., 1985, c. B-3, s. 121(1) — Interpretation Act, R.S.O. 1990, c. I.11, ss. 10, 17.

A bankrupt firm's employees lost their jobs when a receiving order was made with respect to the firm's property. All wages, salaries, commissions and vacation pay were paid to the date of the receiving order. The province's Ministry of Labour audited the firm's records to determine if any outstanding termination or severance pay was owing to former employees under the *Employment Standards Act* ("*ESA*") and delivered a proof of claim to the Trustee. The Trustee disallowed the claims on the ground that the bankruptcy of an employer does not constitute dismissal from employment and accordingly creates no entitlement to sever-

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez et Lindy Wagner en leur propre nom et en celui des autres anciens employés de Rizzo & Rizzo Shoes Limited *Appelants*

c.

Zittrer, Siblin & Associates, Inc., syndic de faillite de Rizzo & Rizzo Shoes Limited *Intimée*

et

Le ministère du Travail de la province d'Ontario, Direction des normes d'emploi *Partie*

RÉPERTORIÉ: RIZZO & RIZZO SHOES LTD. (RE)

Nº du greffe: 24711.

1997: 16 octobre; 1998: 22 janvier.

Présents: Les juges Gonthier, Cory, McLachlin, Iacobucci et Major.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Employeur et employé — Faillite — Indemnités de licenciement et de cessation d'emploi payables en cas de licenciement par l'employeur — Faillite peut-elle être assimilée au licenciement par l'employeur? — Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22, art. 2(3) — Loi sur la faillite, L.R.C. (1985), ch. B-3, art. 121(1) — Loi d'interprétation, L.R.O. 1990, ch. I.11, art. 10, 17.

Les employés d'une entreprise en faillite ont perdu leur emploi lorsqu'une ordonnance de séquestre a été rendue à l'égard des biens de l'entreprise. Tous les salaires, les traitements, toutes les commissions et les paies de vacances ont été versés jusqu'à la date de l'ordonnance de séquestre. Le ministère du Travail de la province a vérifié les dossiers de l'entreprise pour déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi* (la «*LNE*») et il a remis une preuve de réclamation au syndic. Ce dernier a rejeté les réclamations pour le

ance, termination or vacation pay under the *ESA*. The Ministry successfully appealed to the Ontario Court (General Division) but the Ontario Court of Appeal overturned that court's ruling and restored the Trustee's decision. The Ministry sought leave to appeal from the Court of Appeal judgment but discontinued its application. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested and were granted an order granting them leave to appeal. At issue here is whether the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*.

Held: The appeal should be allowed.

At the heart of this conflict is an issue of statutory interpretation. Although the plain language of ss. 40 and 40*a* of the *ESA* suggests that termination pay and severance pay are payable only when the employer terminates the employment, statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Moreover, s. 10 of Ontario's *Interpretation Act* provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

The objects of the *ESA* and of the termination and severance pay provisions themselves are broadly premised upon the need to protect employees. Finding ss. 40 and 40*a* to be inapplicable in bankruptcy situations is incompatible with both the object of the *ESA* and the termination and severance pay provisions. The legislature does not intend to produce absurd consequences and such a consequence would result if employees dismissed before the bankruptcy were to be entitled to these benefits while those dismissed after a bankruptcy would not be so entitled. A distinction would be made between employees merely on the basis of the timing of their dismissal and such a result would arbi-

motif que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*. En appel, le ministère a eu gain de cause devant la Cour de l'Ontario (Division générale) mais la Cour d'appel de l'Ontario a infirmé ce jugement et a rétabli la décision du syndic. Le ministère a demandé l'autorisation d'interjeter appel de l'arrêt de la Cour d'appel mais il s'est désisté. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé et obtenu l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. En l'espèce, il s'agit de savoir si la cessation d'emploi résultant de la faillite de l'employeur donne naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*.

Arrêt: Le pourvoi est accueilli.

Une question d'interprétation législative est au centre du présent litige. Bien que le libellé clair des art. 40 et 40*a* de la *LNE* donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé, l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. Il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur. Au surplus, l'art. 10 de la *Loi d'interprétation* ontarienne dispose que les lois «sont réputées apporter une solution de droit» et qu'elles doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

L'objet de la *LNE* et des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. Conclure que les art. 40 et 40*a* sont inapplicables en cas de faillite est incompatible tant avec l'objet de la *LNE* qu'avec les dispositions relatives aux indemnités de licenciement et de cessation d'emploi. Le législateur ne peut avoir voulu des conséquences absurdes mais c'est le résultat auquel on arriverait si les employés congédiés avant la faillite avaient droit à ces avantages mais pas les employés congédiés après la faillite. Une distinction serait établie entre les employés sur la seule base de la date de leur

trarily deprive some of a means to cope with economic dislocation.

The use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise. Section 2(3) of the *Employment Standards Amendment Act, 1981* exempted from severance pay obligations employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent. Section 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. If this were not the case, no readily apparent purpose would be served by this transitional provision. Further, since the *ESA* is benefits-conferring legislation, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant.

When the express words of ss. 40 and 40*a* are examined in their entire context, the words "terminated by an employer" must be interpreted to include termination resulting from the bankruptcy of the employer. The impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Termination as a result of an employer's bankruptcy therefore does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *Bankruptcy Act* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. It was not necessary to address the applicability of s. 7(5) of the *ESA*.

Cases Cited

Distinguished: *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343; **referred to:** *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213;

congédiement et un tel résultat les priverait arbitrairement de certains des moyens dont ils disposent pour faire face à un bouleversement économique.

Le recours à l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié. En vertu du par. 2(3) de l'*Employment Standards Amendment Act, 1981*, étaient exemptés de l'obligation de verser des indemnités de cessation d'emploi, les employeurs qui avaient fait faillite et avaient perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale. Le paragraphe 2(3) implique nécessairement que les employeurs en faillite sont assujettis à l'obligation de verser une indemnité de cessation d'emploi. Si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin. En outre, comme la *LNE* est une loi conférant des avantages, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur.

Lorsque les mots exprès employés aux art. 40 et 40*a* sont examinés dans leur contexte global, les termes «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui sont licenciés pour quelque autre raison serait arbitraire et inéquitable. Une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. La cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. Il était inutile d'examiner la question de l'applicabilité du par. 7(5) de la *LNE*.

Jurisprudence

Distinction d'avec les arrêts: *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343; **arrêts mentionnés:** *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. c. Hydro-Québec*,

Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103; *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701; *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546; *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1; *R. v. Vasil*, [1981] 1 S.C.R. 469; *Paul v. The Queen*, [1982] 1 S.C.R. 621; *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513; *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25; *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025.

Statutes and Regulations Cited

Bankruptcy Act, R.S.C., 1985, c. B-3 [now the *Bankruptcy and Insolvency Act*], s. 121(1).
Employment Standards Act, R.S.O. 1970, c. 147, s. 13(2).
Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5) [rep. & sub. 1986, c. 51, s. 2], 40(1) [rep. & sub. 1987, c. 30, s. 4(1)], (7), 40*a*(1) [rep. & sub. *ibid*., s. 5(1)].
Employment Standards Act, 1974, S.O. 1974, c. 112, s. 40(7).
Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2.
Interpretation Act, R.S.O. 1980, c. 219 [now R.S.O. 1990, c. I.11], ss. 10, 17.
Labour Relations and Employment Statute Law Amendment Act, 1995, S.O. 1995, c. 1, ss. 74(1), 75(1).

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APPEAL from a judgment of the Ontario Court of Appeal (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. No. 586 (QL), reversing a judgment of the Ontario Court (General Division) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, ruling that the Ministry of Labour could prove claims on behalf of employees of the bankrupt. Appeal allowed.

Steven M. Barrett and *Kathleen Martin*, for the appellants.

Raymond M. Slattery, for the respondent.

David Vickers, for the Ministry of Labour for the Province of Ontario, Employment Standards Branch.

The judgment of the Court was delivered by

IACOBUCCI J. — This is an appeal by the former employees of a now bankrupt employer from an order disallowing their claims for termination pay (including vacation pay thereon) and severance pay. The case turns on an issue of statutory interpretation. Specifically, the appeal decides whether, under the relevant legislation in effect at the time of the bankruptcy, employees are entitled to claim termination and severance payments where their employment has been terminated by reason of their employer's bankruptcy.

1. Facts

Prior to its bankruptcy, Rizzo & Rizzo Shoes Limited ("Rizzo") owned and operated a chain of retail shoe stores across Canada. Approximately 65 percent of those stores were located in Ontario. On April 13, 1989, a petition in bankruptcy was filed against the chain. The following day, a receiving

Sullivan, Ruth. *Statutory Interpretation*. Concord, Ont.: Irwin Law, 1997.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. nº 586 (QL), qui a infirmé un jugement de la Cour de l'Ontario (Division générale) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, statuant que le ministère du Travail pouvait prouver des réclamations au nom des employés de l'entreprise en faillite. Pourvoi accueilli.

Steven M. Barrett et *Kathleen Martin*, pour les appelants.

Raymond M. Slattery, pour l'intimée.

David Vickers, pour le ministère du Travail de la province d'Ontario, Direction des normes d'emploi.

Version française du jugement de la Cour rendu par

LE JUGE IACOBUCCI — Il s'agit d'un pourvoi interjeté par les anciens employés d'un employeur maintenant en faillite contre une ordonnance qui a rejeté les réclamations qu'ils ont présentées en vue d'obtenir une indemnité de licenciement (y compris la paie de vacances) et une indemnité de cessation d'emploi. Le litige porte sur une question d'interprétation législative. Tout particulièrement, le pourvoi tranche la question de savoir si, en vertu des dispositions législatives pertinentes en vigueur à l'époque de la faillite, les employés ont le droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi lorsque la cessation d'emploi résulte de la faillite de leur employeur. 1

1. Les faits

Avant sa faillite, la société Rizzo & Rizzo Shoes Limited («Rizzo») possédait et exploitait au Canada une chaîne de magasins de vente au détail de chaussures. Environ 65 pour 100 de ces magasins étaient situés en Ontario. Le 13 avril 1989, une pétition en faillite a été présentée contre la 2

order was made on consent in respect of Rizzo's property. Upon the making of that order, the employment of Rizzo's employees came to an end.

chaîne de magasins. Le lendemain, une ordonnance de séquestre a été rendue sur consentement à l'égard des biens de Rizzo. Au prononcé de l'ordonnance, les employés de Rizzo ont perdu leur emploi.

3 Pursuant to the receiving order, the respondent, Zittrer, Siblin & Associates, Inc. (the "Trustee") was appointed as trustee in bankruptcy of Rizzo's estate. The Bank of Nova Scotia privately appointed Peat Marwick Limited ("PML") as receiver and manager. By the end of July 1989, PML had liquidated Rizzo's property and assets and closed the stores. PML paid all wages, salaries, commissions and vacation pay that had been earned by Rizzo's employees up to the date on which the receiving order was made.

Conformément à l'ordonnance de séquestre, l'intimée, Zittrer, Siblin & Associates, Inc. (le «syndic») a été nommée syndic de faillite de l'actif de Rizzo. La Banque de Nouvelle-Écosse a nommé Peat Marwick Limitée («PML») comme administrateur séquestre. Dès la fin de juillet 1989, PML avait liquidé les biens de Rizzo et fermé les magasins. PML a versé tous les salaires, les traitements, toutes les commissions et les paies de vacances qui avaient été gagnés par les employés de Rizzo jusqu'à la date à laquelle l'ordonnance de séquestre a été rendue.

4 In November 1989, the Ministry of Labour for the Province of Ontario, Employment Standards Branch (the "Ministry") audited Rizzo's records to determine if there was any outstanding termination or severance pay owing to former employees under the *Employment Standards Act*, R.S.O. 1980, c. 137, as amended (the "*ESA*"). On August 23, 1990, the Ministry delivered a proof of claim to the respondent Trustee on behalf of the former employees of Rizzo for termination pay and vacation pay thereon in the amount of approximately $2.6 million and for severance pay totalling $14,215. The Trustee disallowed the claims, issuing a Notice of Disallowance on January 28, 1991. For the purposes of this appeal, the relevant ground for disallowing the claim was the Trustee's opinion that the bankruptcy of an employer does not constitute a dismissal from employment and thus, no entitlement to severance, termination or vacation pay is created under the *ESA*.

En novembre 1989, le ministère du Travail de la province d'Ontario, Direction des normes d'emploi (le «ministère») a vérifié les dossiers de Rizzo afin de déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi*, L.R.O. 1980, ch. 137 et ses modifications (la «*LNE*»). Le 23 août 1990, au nom des anciens employés de Rizzo, le ministère a remis au syndic intimé une preuve de réclamation pour des indemnités de licenciement et des paies de vacances (environ 2,6 millions de dollars) et pour des indemnités de cessation d'emploi (14 215 $). Le syndic a rejeté les réclamations et a donné avis du rejet le 28 janvier 1991. Aux fins du présent pourvoi, les réclamations ont été rejetées parce que le syndic était d'avis que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*.

5 The Ministry appealed the Trustee's decision to the Ontario Court (General Division) which reversed the Trustee's disallowance and allowed the claims as unsecured claims provable in bankruptcy. On appeal, the Ontario Court of Appeal overturned the trial court's ruling and restored the decision of the Trustee. The Ministry sought leave

Le ministère a interjeté appel de la décision du syndic devant la Cour de l'Ontario (Division générale) laquelle a infirmé la décision du syndic et a admis les réclamations en tant que réclamations non garanties prouvables en matière de faillite. En appel, la Cour d'appel de l'Ontario a cassé le jugement de la cour de première instance et rétabli la

to appeal from the Court of Appeal judgment, but discontinued its application on August 30, 1993. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested an order granting them leave to appeal. This Court's order granting those applications was issued on December 5, 1996.

décision du syndic. Le ministère a demandé l'autorisation d'en appeler de l'arrêt de la Cour d'appel, mais il s'est désisté le 30 août 1993. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. L'ordonnance de notre Cour faisant droit à ces demandes a été rendue le 5 décembre 1996.

2. Relevant Statutory Provisions

The relevant versions of the *Bankruptcy Act* (now the *Bankruptcy and Insolvency Act*) and the *Employment Standards Act* for the purposes of this appeal are R.S.C., 1985, c. B-3 (the "*BA*"), and R.S.O. 1980, c. 137, as amended to April 14, 1989 (the "*ESA*") respectively.

2. Les dispositions législatives pertinentes

Aux fins du présent pourvoi, les versions pertinentes de la *Loi sur la faillite* (maintenant la *Loi sur la faillite et l'insolvabilité*) et de la *Loi sur les normes d'emploi* sont respectivement les suivantes: L.R.C. (1985), ch. B-3 (la *«LF»*) et L.R.O. 1980, ch. 137 et ses modifications au 14 avril 1989 (la *«LNE»*). 6

Employment Standards Act, R.S.O. 1980, c. 137, as amended:

7. —

(5) Every contract of employment shall be deemed to include the following provision:

> All severance pay and termination pay become payable and shall be paid by the employer to the employee in two weekly instalments beginning with the first full week following termination of employment and shall be allocated to such weeks accordingly. This provision does not apply to severance pay if the employee has elected to maintain a right of recall as provided in subsection 40a (7) of the *Employment Standards Act.*

40. — (1) No employer shall terminate the employment of an employee who has been employed for three months or more unless the employee gives,

(a) one weeks notice in writing to the employee if his or her period of employment is less than one year;

(b) two weeks notice in writing to the employee if his or her period of employment is one year or more but less than three years;

Loi sur les normes d'emploi, L.R.O. 1980, ch. 137 et ses modifications:

7 . . .

(5) Tout contrat de travail est réputé comprendre la disposition suivante:

> L'indemnité de cessation d'emploi et l'indemnité de licenciement deviennent exigibles et sont payées par l'employeur à l'employé en deux versements hebdomadaires à compter de la première semaine complète suivant la cessation d'emploi, et sont réparties sur ces semaines en conséquence. La présente disposition ne s'applique pas à l'indemnité de cessation d'emploi si l'employé a choisi de maintenir son droit d'être rappelé, comme le prévoit le paragraphe 40a (7) de la *Loi sur les normes d'emploi.*

40 (1) Aucun employeur ne doit licencier un employé qui travaille pour lui depuis trois mois ou plus à moins de lui donner:

a) un préavis écrit d'une semaine si sa période d'emploi est inférieure à un an;

b) un préavis écrit de deux semaines si sa période d'emploi est d'un an ou plus mais de moins de trois ans;

(c) three weeks notice in writing to the employee if his or her period of employment is three years or more but less than four years;

(d) four weeks notice in writing to the employee if his or her period of employment is four years or more but less than five years;

(e) five weeks notice in writing to the employee if his or her period of employment is five years or more but less than six years;

(f) six weeks notice in writing to the employee if his or her period of employment is six years or more but less than seven years;

(g) seven weeks notice in writing to the employee if his or her period of employment is seven years or more but less than eight years;

(h) eight weeks notice in writing to the employee if his or her period of employment is eight years or more,

and such notice has expired.

. . .

(7) Where the employment of an employee is terminated contrary to this section,

(a) the employer shall pay termination pay in an amount equal to the wages that the employee would have been entitled to receive at his regular rate for a regular non-overtime work week for the period of notice prescribed by subsection (1) or (2), and any wages to which he is entitled;

. . .

40*a* . . .

(1a) Where**,**

(a) fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment; or

(b) one or more employees have their employment terminated by an employer with a payroll of $2.5 million or more,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years.

c) un préavis écrit de trois semaines si sa période d'emploi est de trois ans ou plus mais de moins de quatre ans;

d) un préavis écrit de quatre semaines si sa période d'emploi est de quatre ans ou plus mais de moins de cinq ans;

e) un préavis écrit de cinq semaines si sa période d'emploi est de cinq ans ou plus mais de moins de six ans;

f) un préavis écrit de six semaines si sa période d'emploi est de six ans ou plus mais de moins de sept ans;

g) un préavis écrit de sept semaines si sa période d'emploi est de sept ans ou plus mais de moins de huit ans;

h) un préavis écrit de huit semaines si sa période d'emploi est de huit ans ou plus,

et avant le terme de la période de ce préavis.

. . .

(7) Si un employé est licencié contrairement au présent article:

a) l'employeur lui verse une indemnité de licenciement égale au salaire que l'employé aurait eu le droit de recevoir à son taux normal pour une semaine normale de travail sans heures supplémentaires pendant la période de préavis fixée par le paragraphe (1) ou (2), de même que tout salaire auquel il a droit;

. . .

40*a* . . .

[TRADUCTION] (1a) L'employeur verse une indemnité de cessation d'emploi à chaque employé licencié qui a travaillé pour lui pendant cinq ans ou plus si, selon le cas:

a) l'employeur licencie cinquante employés ou plus au cours d'une période de six mois ou moins et que les licenciements résultent de l'interruption permanente de l'ensemble ou d'une partie des activités de l'employeur à un établissement;

b) l'employeur dont la masse salariale est de 2,5 millions de dollars ou plus licencie un ou plusieurs employés.

Employment Standards Amendment Act, 1981, S.O. 1981, c. 22

2. — (1) Part XII of the said Act is amended by adding thereto the following section:

. . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

Bankruptcy Act, R.S.C., 1985, c. B-3

121. (1) All debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy shall be deemed to be claims provable in proceedings under this Act.

Interpretation Act, R.S.O. 1990, c. I.11

10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

. . .

17. The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law.

3. Judicial History

A. *Ontario Court (General Division)* (1991), 6 O.R. (3d) 441

Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22

[TRADUCTION]

2. (1) La partie XII de la loi est modifiée par adjonction de l'article suivant:

. . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

Loi sur la faillite, L.R.C. (1985), ch. B-3

121. (1) Toutes créances et tous engagements, présents ou futurs, auxquels le failli est assujetti à la date de la faillite, ou auxquels il peut devenir assujetti avant sa libération, en raison d'une obligation contractée antérieurement à la date de la faillite, sont réputés des réclamations prouvables dans des procédures entamées en vertu de la présente loi.

Loi d'interprétation, L.R.O. 1990, ch. I.11

10 Les lois sont réputées apporter une solution de droit, qu'elles aient pour objet immédiat d'ordonner l'accomplissement d'un acte que la Législature estime être dans l'intérêt public ou d'empêcher ou de punir l'accomplissement d'un acte qui lui paraît contraire à l'intérêt public. Elles doivent par conséquent s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables.

. . .

17 L'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit.

3. L'historique judiciaire

A. *La Cour de l'Ontario (Division générale)* (1991), 6 O.R. (3d) 441

7 Having disposed of several issues which do not arise on this appeal, Farley J. turned to the question of whether termination pay and severance pay are provable claims under the *BA*. Relying on *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (Ont. S.C. in Bankruptcy), he found that it is clear that claims for termination and severance pay are provable in bankruptcy where the statutory obligation to provide such payments arose prior to the bankruptcy. Accordingly, he reasoned that the essential matter to be resolved in the case at bar was whether bankruptcy acted as a termination of employment thereby triggering the termination and severance pay provisions of the *ESA* such that liability for such payments would arise on bankruptcy as well.

Après avoir tranché plusieurs points non soulevés dans le présent pourvoi, le juge Farley est passé à la question de savoir si l'indemnité de licenciement et l'indemnité de cessation d'emploi sont des réclamations prouvables en application de la *LF*. S'appuyant sur la décision *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (C.S. Ont. en matière de faillite), il a conclu que manifestement, l'indemnité de licenciement et l'indemnité de cessation d'emploi sont prouvables en matière de faillite lorsque l'obligation légale d'effectuer ces versements a pris naissance avant la faillite. Par conséquent, il a estimé que le point essentiel à résoudre en l'espèce était de savoir si la faillite était assimilable au licenciement et entraînait l'application des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* de manière que l'obligation de verser ces indemnités prenne naissance également au moment de la faillite.

8 In addressing this question, Farley J. began by noting that the object and intent of the *ESA* is to provide minimum employment standards and to benefit and protect the interests of employees. Thus, he concluded that the *ESA* is remedial legislation and as such it should be interpreted in a fair, large and liberal manner to ensure that its object is attained according to its true meaning, spirit and intent.

Le juge Farley a abordé cette question en faisant remarquer que l'objet et l'intention de la *LNE* étaient d'établir des normes minimales d'emploi et de favoriser et protéger les intérêts des employés. Il a donc conclu que la *LNE* visait à apporter une solution de droit et devait dès lors être interprétée de manière équitable et large afin de garantir la réalisation de son objet selon ses sens, intention et esprit véritables.

9 Farley J. then held that denying employees in this case the right to claim termination and severance pay would lead to the arbitrary and unfair result that an employee whose employment is terminated just prior to a bankruptcy would be entitled to termination and severance pay, whereas one whose employment is terminated by the bankruptcy itself would not have that right. This result, he stated, would defeat the intended working of the *ESA*.

Le juge Farley a ensuite décidé que priver les employés en l'espèce du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi aurait pour conséquence injuste et arbitraire que l'employé licencié juste avant la faillite aurait droit à une indemnité de licenciement et à une indemnité de cessation d'emploi, alors que celui qui a perdu son emploi en raison de la faillite elle-même n'y aurait pas droit. Ce résultat, a-t-il dit, irait à l'encontre du but visé par la loi.

10 Farley J. saw no reason why the claims of the employees in the present case would not generally be contemplated as wages or other claims under the *BA*. He emphasized that the former employees in the case at bar had not alleged that termination pay and severance pay should receive a priority in

Le juge Farley ne voyait pas pourquoi les réclamations des employés en l'espèce ne seraient pas généralement considérées comme des réclamations concernant les salaires ou comme d'autres réclamations présentées en application de la *LF*. Il a souligné que les anciens employés en l'espèce

the distribution of the estate, but merely that they are provable (unsecured and unpreferred) claims in a bankruptcy. For this reason, he found it inappropriate to make reference to authorities whose focus was the interpretation of priority provisions in the *BA*.

n'avaient pas soutenu que les indemnités de licenciement et de cessation d'emploi devaient être prioritaires dans la distribution de l'actif, mais tout simplement qu'elles étaient des réclamations prouvables en matière de faillite (non garanties et non privilégiées). Pour ce motif, il a conclu qu'il ne convenait pas d'invoquer la jurisprudence et la doctrine portant sur l'interprétation des dispositions relatives à la priorité de la *LF*.

Even if bankruptcy does not terminate the employment relationship so as to trigger the *ESA* termination and severance pay provisions, Farley J. was of the view that the employees in the instant case would nevertheless be entitled to such payments as these were liabilities incurred prior to the date of the bankruptcy by virtue of s. 7(5) of the *ESA*. He found that s. 7(5) deems every employment contract to include a provision to provide termination and severance pay following the termination of employment and concluded that a contingent obligation is thereby created for a bankrupt employer to make such payments from the outset of the relationship, long before the bankruptcy.

11 Même si la faillite ne met pas fin à la relation entre l'employeur et l'employé de façon à faire jouer les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNF*, le juge Farley était d'avis que les employés en l'espèce avaient néanmoins droit à ces indemnités, car il s'agissait d'engagements contractés avant la date de la faillite conformément au par. 7(5) de la *LNE*. Il a conclu d'une part qu'aux termes du par. 7(5), tout contrat de travail est réputé comprendre une disposition prévoyant le versement d'une indemnité de licenciement et d'une indemnité de cessation d'emploi au moment de la cessation d'emploi et d'autre part que l'employeur en faillite est assujetti à l'obligation conditionnelle de verser ces indemnités depuis le début de la relation entre l'employeur et l'employé, soit bien avant la faillite.

Farley J. also considered s. 2(3) of the *Employment Standards Amendment Act, 1981*, S.O. 1981, c. 22 (the "*ESAA*"), which is a transitional provision that exempted certain bankrupt employers from the newly introduced severance pay obligations until the amendments received royal assent. He was of the view that this provision would not have been necessary if the obligations of employers upon termination of employment had not been intended to apply to bankrupt employers under the *ESA*. Farley J. concluded that the claim by Rizzo's former employees for termination pay and severance pay could be provided as unsecured and unpreferred debts in a bankruptcy. Accordingly, he allowed the appeal from the decision of the Trustee.

12 Le juge Farley a également examiné le par. 2(3) de l'*Employment Standards Amendment Act, 1981*, L.O. 1981, ch. 22 («l'*ESAA*»), qui est une disposition transitoire exemptant certains employeurs en faillite des nouvelles obligations relatives au paiement de l'indemnité de cessation d'emploi jusqu'à ce que les modifications aient reçu la sanction royale. Il était d'avis que cette disposition n'aurait pas été nécessaire si le législateur n'avait pas voulu que les obligations auxquelles sont tenus les employeurs au moment d'un licenciement s'appliquent aux employeurs en faillite en vertu de la *LNE*. Le juge Farley a conclu que la réclamation présentée par les anciens employés de Rizzo en vue d'obtenir des indemnités de licenciement et de cessation d'emploi pouvait être traitée comme une créance non garantie et non privilégiée dans une faillite. Par conséquent, il a accueilli l'appel formé contre la décision du syndic.

B. *Ontario Court of Appeal* (1995), 22 O.R. (3d) 385

13 Austin J.A., writing for a unanimous court, began his analysis of the principal issue in this appeal by focussing upon the language of the termination pay and severance pay provisions of the *ESA*. He noted, at p. 390, that the termination pay provisions use phrases such as "[n]o employer shall terminate the employment of an employee" (s. 40(1)), "the notice required by an employer to terminate the employment" (s. 40(2)), and "[a]n employer who has terminated or who proposes to terminate the employment of employees" (s. 40(5)). Turning to severance pay, he quoted s. 40*a*(1)(*a*) (at p. 391) which includes the phrase "employees have their employment terminated by an employer". Austin J.A. concluded that this language limits the obligation to provide termination and severance pay to situations in which the employer terminates the employment. The operation of the *ESA*, he stated, is not triggered by the termination of employment resulting from an act of law such as bankruptcy.

14 In support of his conclusion, Austin J.A. reviewed the leading cases in this area of law. He cited *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (S.C. in bankruptcy), wherein Houlden J. (as he then was) concluded that the *ESA* termination pay provisions were not designed to apply to a bankrupt employer. He also relied upon *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (Ont. S.C. in bankruptcy), for the proposition that the bankruptcy of a company at the instance of a creditor does not constitute dismissal. He concluded as follows at p. 395:

> The plain language of ss. 40 and 40*a* does not give rise to any liability to pay termination or severance pay except where the employment is terminated by the employer. In our case, the employment was terminated, not by the employer, but by the making of a receiving order against Rizzo on April 14, 1989, following a peti-

B. *La Cour d'appel de l'Ontario* (1995), 22 O.R. (3d) 385

Au nom d'une cour unanime, le juge Austin a commencé son analyse de la question principale du présent pourvoi en s'arrêtant sur le libellé des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE*. Il a noté, à la p. 390, que les dispositions relatives à l'indemnité de licenciement utilisent des expressions comme «[a]ucun employeur ne doit licencier un employé» (par. 40(1)), «le préavis qu'un employeur donne pour licencier» (par. 40(2)) et les «employés qu'un employeur a licenciés ou se propose de licencier» (par. 40(5)). Passant à l'indemnité de cessation d'emploi, il a cité l'al. 40*a*(1)*a*), à la p. 391, lequel contient l'expression «l'employeur licencie cinquante employés». Le juge Austin a conclu que ce libellé limite l'obligation d'accorder une indemnité de licenciement et une indemnité de cessation d'emploi aux cas où l'employeur licencie des employés. Selon lui, la cessation d'emploi résultant de l'effet de la loi, notamment de la faillite, n'entraîne pas l'application de la *LNE*.

À l'appui de sa conclusion, le juge Austin a examiné les arrêts de principe dans ce domaine du droit. Il a cité *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (C.S. en matière de faillite), dans lequel le juge Houlden (maintenant juge de la Cour d'appel) a statué que les dispositions relatives à l'indemnité de licenciement de la *LNE* n'étaient pas conçues pour s'appliquer à l'employeur en faillite. Il a également invoqué *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (C.S. Ont. en matière de faillite), à l'appui de la proposition selon laquelle la faillite d'une compagnie à la demande d'un créancier ne constitue pas un congédiement. Il a conclu ainsi, à la p. 395:

> [TRADUCTION] Le libellé clair des art. 40 et 40*a* ne crée une obligation de verser une indemnité de licenciement ou une indemnité de cessation d'emploi que si l'employeur licencie l'employé. En l'espèce, la cessation d'emploi n'est pas le fait de l'employeur, elle résulte d'une ordonnance de séquestre rendue à l'encontre de Rizzo le 14 avril 1989, à la suite d'une pétition présentée par l'un de ses créanciers. Le droit à une indemnité

tion by one of its creditors. No entitlement to either termination or severance pay ever arose.

Regarding s. 7(5) of the *ESA*, Austin J.A. rejected the trial judge's interpretation and found that the section does not create a liability. Rather, in his opinion, it merely states when a liability otherwise created is to be paid and therefore it was not considered relevant to the issue before the court. Similarly, Austin J.A. did not accept the lower court's view of s. 2(3), the transitional provision in the *ESAA*. He found that that section had no effect upon the intention of the Legislature as evidenced by the terminology used in ss. 40 and 40*a*.

Austin J.A. concluded that, because the employment of Rizzo's former employees was terminated by the order of bankruptcy and not by the act of the employer, no liability arose with respect to termination, severance or vacation pay. The order of the trial judge was set aside and the Trustee's disallowance of the claims was restored.

4. Issues

This appeal raises one issue: does the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*?

5. Analysis

The statutory obligation upon employers to provide both termination pay and severance pay is governed by ss. 40 and 40*a* of the *ESA*, respectively. The Court of Appeal noted that the plain language of those provisions suggests that termination pay and severance pay are payable only when the employer terminates the employment. For example, the opening words of s. 40(1) are: "No employer shall terminate the employment of an employee. . . ." Similarly, s. 40*a*(1a) begins with

de licenciement ou à une indemnité de cessation d'emploi n'a jamais pris naissance.

15 En ce qui concerne le par. 7(5) de la *LNE*, le juge Austin a rejeté l'interprétation du juge de première instance et a estimé que cette disposition ne créait pas d'engagement. Selon lui, elle ne faisait que préciser quand l'engagement contracté par ailleurs devait être acquitté et ne se rapportait donc pas à la question dont la cour était saisie. Le juge Austin n'a pas accepté non plus l'opinion exprimée par le tribunal inférieur au sujet du par. 2(3), la disposition transitoire de l'*ESAA*. Il a jugé que cette disposition n'avait aucun effet quant à l'intention du législateur, comme l'attestait la terminologie employée aux art. 40 et 40*a*.

16 Le juge Austin a conclu que, comme la cessation d'emploi subie par les anciens employés de Rizzo résultait d'une ordonnance de faillite et n'était pas le fait de l'employeur, il n'existait aucun engagement en ce qui concerne l'indemnité de licenciement, l'indemnité de cessation d'emploi ni la paie de vacances. L'ordonnance du juge de première instance a été annulée et la décision du syndic de rejeter les réclamations a été rétablie.

4. Les questions en litige

17 Le présent pourvoi soulève une question: la cessation d'emploi résultant de la faillite de l'employeur donne-t-elle naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*?

5. Analyse

18 L'obligation légale faite aux employeurs de verser une indemnité de licenciement ainsi qu'une indemnité de cessation d'emploi est régie respectivement par les art. 40 et 40*a* de la *LNE*. La Cour d'appel a fait observer que le libellé clair de ces dispositions donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé. Par exemple, le par. 40(1) commence par les mots suivants: «Aucun employeur ne doit

the words, "Where . . . fifty or more employees have their employment terminated by an employer. . . ." Therefore, the question on which this appeal turns is whether, when bankruptcy occurs, the employment can be said to be terminated "by an employer".

19 The Court of Appeal answered this question in the negative, holding that, where an employer is petitioned into bankruptcy by a creditor, the employment of its employees is not terminated "by an employer", but rather by operation of law. Thus, the Court of Appeal reasoned that, in the circumstances of the present case, the *ESA* termination pay and severance pay provisions were not applicable and no obligations arose. In answer, the appellants submit that the phrase "terminated by an employer" is best interpreted as reflecting a distinction between involuntary and voluntary termination of employment. It is their position that this language was intended to relieve employers of their obligation to pay termination and severance pay when employees leave their jobs voluntarily. However, the appellants maintain that where an employee's employment is involuntarily terminated by reason of their employer's bankruptcy, this constitutes termination "by an employer" for the purpose of triggering entitlement to termination and severance pay under the *ESA*.

20 At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.

21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legisla-*

licencier un employé . . .» Le paragraphe 40*a*(1a) contient également les mots: «si [. . .] l'employeur licencie cinquante employés ou plus . . .» Par conséquent, la question dans le présent pourvoi est de savoir si l'on peut dire que l'employeur qui fait faillite a licencié ses employés.

La Cour d'appel a répondu à cette question par la négative, statuant que, lorsqu'un créancier présente une pétition en faillite contre un employeur, les employés ne sont pas licenciés par l'employeur mais par l'effet de la loi. La Cour d'appel a donc estimé que, dans les circonstances de l'espèce, les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNE* n'étaient pas applicables et qu'aucune obligation n'avait pris naissance. Les appelants répliquent que les mots «l'employeur licencie» doivent être interprétés comme établissant une distinction entre la cessation d'emploi volontaire et la cessation d'emploi forcée. Ils soutiennent que ce libellé visait à dégager l'employeur de son obligation de verser des indemnités de licenciement et de cessation d'emploi lorsque l'employé quittait son emploi volontairement. Cependant, les appelants prétendent que la cessation d'emploi forcée résultant de la faillite de l'employeur est assimilable au licenciement effectué par l'employeur pour l'exercice du droit à une indemnité de licenciement et à une indemnité de cessation d'emploi prévu par la *LNE*.

Une question d'interprétation législative est au centre du présent litige. Selon les conclusions de la Cour d'appel, le sens ordinaire des mots utilisés dans les dispositions en cause paraît limiter l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi aux employeurs qui ont effectivement licencié leurs employés. À première vue, la faillite ne semble pas cadrer très bien avec cette interprétation. Toutefois, en toute déférence, je crois que cette analyse est incomplète.

Bien que l'interprétation législative ait fait couler beaucoup d'encre (voir par ex. Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3e éd. 1994) (ci-après «*Construction of Statutes*»); Pierre-André Côté, *Interprétation des lois* (2e éd.

tion in Canada (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.

In *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002, the majority of this Court recognized the importance that our society accords to employment and the fundamental role that it has assumed in the life of the individual. The manner in which employment can be terminated was said to be equally important (see also *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701). It was in this context that the majority in *Machtinger* described, at p. 1003, the object of the *ESA* as being the protection of "... the interests of employees by requiring employers to comply with

1990)), Elmer Driedger dans son ouvrage intitulé *Construction of Statutes* (2e éd. 1983) résume le mieux la méthode que je privilégie. Il reconnaît que l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. À la p. 87, il dit:

> [TRADUCTION] Aujourd'hui il n'y a qu'un seul principe ou solution: il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur.

Parmi les arrêts récents qui ont cité le passage ci-dessus en l'approuvant, mentionnons: *R. c. Hydro-Québec*, [1997] 1 R.C.S. 213; *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411; *Verdun c. Banque Toronto-Dominion*, [1996] 3 R.C.S. 550; *Friesen c. Canada*, [1995] 3 R.C.S. 103.

22 Je m'appuie également sur l'art. 10 de la *Loi d'interprétation*, L.R.O. 1980, ch. 219, qui prévoit que les lois «sont réputées apporter une solution de droit» et doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

23 Bien que la Cour d'appel ait examiné le sens ordinaire des dispositions en question dans le présent pourvoi, en toute déférence, je crois que la cour n'a pas accordé suffisamment d'attention à l'économie de la *LNE*, à son objet ni à l'intention du législateur; le contexte des mots en cause n'a pas non plus été pris en compte adéquatement. Je passe maintenant à l'analyse de ces questions.

24 Dans l'arrêt *Machtinger c. HOJ Industries Ltd.*, [1992] 1 R.C.S. 986, à la p. 1002, notre Cour, à la majorité, a reconnu l'importance que notre société accorde à l'emploi et le rôle fondamental qu'il joue dans la vie de chaque individu. La manière de mettre fin à un emploi a été considérée comme étant tout aussi importante (voir également *Wallace c. United Grain Growers Ltd.*, [1997] 3 R.C.S. 701). C'est dans ce contexte que les juges majoritaires dans l'arrêt *Machtinger* ont défini, à la p. 1003, l'objet de la *LNE* comme étant la protection «. . . [d]es intérêts des employés en exigeant que

certain minimum standards, including minimum periods of notice of termination". Accordingly, the majority concluded, at p. 1003, that, ". . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not".

les employeurs respectent certaines normes minimales, notamment en ce qui concerne les périodes minimales de préavis de licenciement». Par conséquent, les juges majoritaires ont conclu, à la p. 1003, qu'«. . . une interprétation de la Loi qui encouragerait les employeurs à se conformer aux exigences minimales de celle-ci et qui ferait ainsi bénéficier de sa protection le plus grand nombre d'employés possible est à préférer à une interprétation qui n'a pas un tel effet».

25 The objects of the termination and severance pay provisions themselves are also broadly premised upon the need to protect employees. Section 40 of the *ESA* requires employers to give their employees reasonable notice of termination based upon length of service. One of the primary purposes of this notice period is to provide employees with an opportunity to take preparatory measures and seek alternative employment. It follows that s. 40(7)(a), which provides for termination pay in lieu of notice when an employer has failed to give the required statutory notice, is intended to "cushion" employees against the adverse effects of economic dislocation likely to follow from the absence of an opportunity to search for alternative employment. (Innis Christie, Geoffrey England and Brent Cotter, *Employment Law in Canada* (2nd ed. 1993), at pp. 572-81.)

L'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. L'article 40 de la *LNE* oblige les employeurs à donner à leurs employés un préavis de licenciement raisonnable en fonction des années de service. L'une des fins principales de ce préavis est de donner aux employés la possibilité de se préparer en cherchant un autre emploi. Il s'ensuit que l'al. 40(7)a), qui prévoit une indemnité de licenciement tenant lieu de préavis lorsqu'un employeur n'a pas donné le préavis requis par la loi, vise à protéger les employés des effets néfastes du bouleversement économique que l'absence d'une possibilité de chercher un autre emploi peut entraîner. (Innis Christie, Geoffrey England et Brent Cotter, *Employment Law in Canada* (2e éd. 1993), aux pp. 572 à 581.)

26 Similarly, s. 40*a*, which provides for severance pay, acts to compensate long-serving employees for their years of service and investment in the employer's business and for the special losses they suffer when their employment terminates. In *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, Robins J.A. quoted with approval at pp. 556-57 from the words of D. D. Carter in the course of an employment standards determination in *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), at p. 19, wherein he described the role of severance pay as follows:

De même, l'art. 40*a*, qui prévoit l'indemnité de cessation d'emploi, vient indemniser les employés ayant beaucoup d'années de service pour ces années investies dans l'entreprise de l'employeur et pour les pertes spéciales qu'ils subissent lorsqu'ils sont licenciés. Dans l'arrêt *R. c. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, le juge Robins a cité en les approuvant, aux pp. 556 et 557, les propos tenus par D. D. Carter dans le cadre d'une décision rendue en matière de normes d'emploi dans *Re Telegram Publishing Co. c. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), à la p. 19, où il a décrit ainsi le rôle de l'indemnité de cessation d'emploi:

Severance pay recognizes that an employee does make an investment in his employer's business — the extent of this investment being directly related to the length of

[TRADUCTION] L'indemnité de cessation d'emploi reconnaît qu'un employé fait un investissement dans l'entreprise de son employeur — l'importance de cet investis-

the employee's service. This investment is the seniority that the employee builds up during his years of service. . . . Upon termination of the employment relationship, this investment of years of service is lost, and the employee must start to rebuild seniority at another place of work. The severance pay, based on length of service, is some compensation for this loss of investment.

sement étant liée directement à la durée du service de l'employé. Cet investissement est l'ancienneté que l'employé acquiert durant ses années de service [. . .] À la fin de la relation entre l'employeur et l'employé, cet investissement est perdu et l'employé doit recommencer à acquérir de l'ancienneté dans un autre lieu de travail. L'indemnité de cessation d'emploi, fondée sur les années de service, compense en quelque sorte cet investissement perdu.

In my opinion, the consequences or effects which result from the Court of Appeal's interpretation of ss. 40 and 40*a* of the *ESA* are incompatible with both the object of the Act and with the object of the termination and severance pay provisions themselves. It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra*, at p. 88).

27 À mon avis, les conséquences ou effets qui résultent de l'interprétation que la Cour d'appel a donnée des art. 40 et 40*a* de la *LNE* ne sont compatibles ni avec l'objet de la Loi ni avec l'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes. Selon un principe bien établi en matière d'interprétation législative, le législateur ne peut avoir voulu des conséquences absurdes. D'après Côté, *op. cit.*, on qualifiera d'absurde une interprétation qui mène à des conséquences ridicules ou futiles, si elle est extrêmement déraisonnable ou inéquitable, si elle est illogique ou incohérente, ou si elle est incompatible avec d'autres dispositions ou avec l'objet du texte législatif (aux pp. 430 à 432). Sullivan partage cet avis en faisant remarquer qu'on peut qualifier d'absurdes les interprétations qui vont à l'encontre de la fin d'une loi ou en rendent un aspect inutile ou futile (Sullivan, *Construction of Statutes*, *op. cit.*, à la p. 88).

The trial judge properly noted that, if the *ESA* termination and severance pay provisions do not apply in circumstances of bankruptcy, those employees "fortunate" enough to have been dismissed the day before a bankruptcy would be entitled to such payments, but those terminated on the day the bankruptcy becomes final would not be so entitled. In my view, the absurdity of this consequence is particularly evident in a unionized workplace where seniority is a factor in determining the order of lay-off. The more senior the employee, the larger the investment he or she has made in the employer and the greater the entitlement to termination and severance pay. However, it is the more senior personnel who are likely to be employed up

28 Le juge de première instance a noté à juste titre que, si les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* ne s'appliquent pas en cas de faillite, les employés qui auraient eu la «chance» d'être congédiés la veille de la faillite auraient droit à ces indemnités, alors que ceux qui perdraient leur emploi le jour où la faillite devient définitive n'y auraient pas droit. À mon avis, l'absurdité de cette conséquence est particulièrement évidente dans les milieux syndiqués où les mises à pied se font selon l'ancienneté. Plus un employé a de l'ancienneté, plus il a investi dans l'entreprise de l'employeur et plus son droit à une indemnité de licenciement et à une indemnité de cessation d'emploi est fondé. Pourtant, c'est le personnel ayant le plus d'ancienneté qui risque de travailler

until the time of the bankruptcy and who would thereby lose their entitlements to these payments.

29 If the Court of Appeal's interpretation of the termination and severance pay provisions is correct, it would be acceptable to distinguish between employees merely on the basis of the timing of their dismissal. It seems to me that such a result would arbitrarily deprive some employees of a means to cope with the economic dislocation caused by unemployment. In this way the protections of the *ESA* would be limited rather than extended, thereby defeating the intended working of the legislation. In my opinion, this is an unreasonable result.

30 In addition to the termination and severance pay provisions, both the appellants and the respondent relied upon various other sections of the *ESA* to advance their arguments regarding the intention of the legislature. In my view, although the majority of these sections offer little interpretive assistance, one transitional provision is particularly instructive. In 1981, s. 2(1) of the *ESAA* introduced s. 40*a*, the severance pay provision, to the *ESA*. Section 2(2) deemed that provision to come into force on January 1, 1981. Section 2(3), the transitional provision in question provided as follows:

2. . . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

31 The Court of Appeal found that it was neither necessary nor appropriate to determine the intention of the legislature in enacting this provisional

jusqu'au moment de la faillite et de perdre ainsi le droit d'obtenir ces indemnités.

Si l'interprétation que la Cour d'appel a donnée des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi est correcte, il serait acceptable d'établir une distinction entre les employés en se fondant simplement sur la date de leur congédiement. Il me semble qu'un tel résultat priverait arbitrairement certains employés d'un moyen de faire face au bouleversement économique causé par le chômage. De cette façon, les protections de la *LNE* seraient limitées plutôt que d'être étendues, ce qui irait à l'encontre de l'objectif que voulait atteindre le législateur. À mon avis, c'est un résultat déraisonnable.

En plus des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi, tant les appelants que l'intimée ont invoqué divers autres articles de la *LNE* pour appuyer les arguments avancés au sujet de l'intention du législateur. Selon moi, bien que la plupart de ces dispositions ne soient d'aucune utilité en ce qui concerne l'interprétation, il est une disposition transitoire particulièrement révélatrice. En 1981, le par. 2(1) de l'*ESAA* a introduit l'art. 40*a*, la disposition relative à l'indemnité de cessation d'emploi. En application du par. 2(2), cette disposition entrait en vigueur le 1er janvier 1981. Le paragraphe 2(3), la disposition transitoire en question, était ainsi conçue:

[TRADUCTION]

2. . . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

La Cour d'appel a conclu qu'il n'était ni nécessaire ni approprié de déterminer l'intention qu'avait le législateur en adoptant ce paragraphe

subsection. Nevertheless, the court took the position that the intention of the legislature as evidenced by the introductory words of ss. 40 and 40*a* was clear, namely, that termination by reason of a bankruptcy will not trigger the severance and termination pay obligations of the *ESA*. The court held that this intention remained unchanged by the introduction of the transitional provision. With respect, I do not agree with either of these findings. Firstly, in my opinion, the use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise and one which has often been employed by this Court (see, e.g., *R. v. Vasil*, [1981] 1 S.C.R. 469, at p. 487; *Paul v. The Queen*, [1982] 1 S.C.R. 621, at pp. 635, 653 and 660). Secondly, I believe that the transitional provision indicates that the Legislature intended that termination and severance pay obligations should arise upon an employers' bankruptcy.

In my view, by extending an exemption to employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent, s. 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. It seems to me that, if this were not the case, no readily apparent purpose would be served by this transitional provision.

I find support for my conclusion in the decision of Saunders J. in *Royal Dressed Meats Inc.*, *supra*. Having reviewed s. 2(3) of the *ESAA*, he commented as follows (at p. 89):

> . . . any doubt about the intention of the Ontario Legislature has been put to rest, in my opinion, by the transitional provision which introduced severance payments into the E.S.A. . . . it seems to me an inescapable inference that the legislature intended liability for severance payments to arise on a bankruptcy. That intention would, in my opinion, extend to termination payments which are similar in character.

This interpretation is also consistent with statements made by the Minister of Labour at the time

provisoire. Néanmoins, la cour a estimé que l'intention du législateur, telle qu'elle ressort des premiers mots des art. 40 et 40*a*, était claire, à savoir que la cessation d'emploi résultant de la faillite ne fera pas naître l'obligation de verser l'indemnité de cessation d'emploi et l'indemnité de licenciement qui est prévue par la *LNE*. La cour a jugé que cette intention restait inchangée à la suite de l'adoption de la disposition transitoire. Je ne puis souscrire ni à l'une ni à l'autre de ces conclusions. En premier lieu, à mon avis, l'examen de l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié et notre Cour y a eu souvent recours (voir, par ex., *R. c. Vasil*, [1981] 1 R.C.S. 469, à la p. 487; *Paul c. La Reine*, [1982] 1 R.C.S. 621, aux pp. 635, 653 et 660). En second lieu, je crois que la disposition transitoire indique que le législateur voulait que l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi prenne naissance lorsque l'employeur fait faillite.

32 À mon avis, en raison de l'exemption accordée au par. 2(3) aux employeurs qui ont fait faillite et ont perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale, il faut nécessairement que les employeurs faisant faillite soient de fait assujettis à l'obligation de verser une indemnité de cessation d'emploi. Selon moi, si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin.

33 Je m'appuie sur la décision rendue par le juge Saunders dans l'affaire *Royal Dressed Meats Inc.*, précitée. Après avoir examiné le par. 2(3) de l'*ESAA*, il fait l'observation suivante (à la p. 89):

> [TRADUCTION] . . . tout doute au sujet de l'intention du législateur ontarien est dissipé, à mon avis, par la disposition transitoire qui introduit les indemnités de cessation d'emploi dans la L.N.E. [. . .] Il me semble qu'il faut conclure que le législateur voulait que l'obligation de verser des indemnités de cessation d'emploi prenne naissance au moment de la faillite. Selon moi, cette intention s'étend aux indemnités de licenciement qui sont de nature analogue.

34 Cette interprétation est également compatible avec les déclarations faites par le ministre du

he introduced the 1981 amendments to the *ESA*. With regard to the new severance pay provision he stated:

> The circumstances surrounding a closure will govern the applicability of the severance pay legislation in some defined situations. For example, a bankrupt or insolvent firm will still be required to pay severance pay to employees to the extent that assets are available to satisfy their claims.
>
> . . .
>
> . . . the proposed severance pay measures will, as I indicated earlier, be retroactive to January 1 of this year. That retroactive provision, however, will not apply in those cases of bankruptcy and insolvency where the assets have already been distributed or where an agreement on a proposal to creditors has already been reached.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 4, 1981, at pp. 1236-37.)

Moreover, in the legislative debates regarding the proposed amendments the Minister stated:

> For purposes of retroactivity, severance pay will not apply to bankruptcies under the Bankruptcy Act where assets have been distributed. However, once this act receives royal assent, employees in bankruptcy closures will be covered by the severance pay provisions.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 16, 1981, at p. 1699.)

35 Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation. Writing for the Court in *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484, Sopinka J. stated:

> . . . until recently the courts have balked at admitting evidence of legislative debates and speeches. . . . The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legisla-

Travail au moment de l'introduction des modifications apportées à la *LNE* en 1981. Au sujet de la nouvelle disposition relative à l'indemnité de cessation d'emploi, il a dit ce qui suit:

> [TRADUCTION] Les circonstances entourant une fermeture régissent l'applicabilité de la législation en matière d'indemnité de cessation d'emploi dans certains cas précis. Par exemple, une société insolvable ou en faillite sera encore tenue de verser l'indemnité de cessation d'emploi aux employés dans la mesure où il y a des biens pour acquitter leurs réclamations.
>
> . . .
>
> . . . les mesures proposées en matière d'indemnité de cessation d'emploi seront, comme je l'ai mentionné précédemment, rétroactives au 1er janvier de cette année. Cette disposition rétroactive, toutefois, ne s'appliquera pas en matière de faillite et d'insolvabilité dans les cas où les biens ont déjà été distribués ou lorsqu'une entente est déjà intervenue au sujet de la proposition des créanciers.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 4 juin 1981, aux pp. 1236 et 1237.)

De plus, au cours des débats parlementaires sur les modifications proposées, le ministre a déclaré:

> [TRADUCTION] En ce qui a trait à la rétroactivité, l'indemnité de cessation d'emploi ne s'appliquera pas aux faillites régies par la Loi sur la faillite lorsque les biens ont été distribués. Cependant, lorsque la présente loi aura reçu la sanction royale, les employés visés par des fermetures entraînées par des faillites seront visés par les dispositions relatives à l'indemnité de cessation d'emploi.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 16 juin 1981, à la p. 1699.)

Malgré les nombreuses lacunes de la preuve des débats parlementaires, notre Cour a reconnu qu'elle peut jouer un rôle limité en matière d'interprétation législative. S'exprimant au nom de la Cour dans l'arrêt *R. c. Morgentaler*, [1993] 3 R.C.S. 463, à la p. 484, le juge Sopinka a dit:

> . . . jusqu'à récemment, les tribunaux ont hésité à admettre la preuve des débats et des discours devant le corps législatif. [. . .] La principale critique dont a été l'objet ce type de preuve a été qu'elle ne saurait représenter «l'intention» de la législature, personne morale, mais

tive history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.

c'est aussi vrai pour d'autres formes de contexte d'adoption d'une loi. À la condition que le tribunal n'oublie pas que la fiabilité et le poids des débats parlementaires sont limités, il devrait les admettre comme étant pertinents quant au contexte et quant à l'objet du texte législatif.

Finally, with regard to the scheme of the legislation, since the *ESA* is a mechanism for providing minimum benefits and standards to protect the interests of employees, it can be characterized as benefits-conferring legislation. As such, according to several decisions of this Court, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant (see, e.g., *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2, at p. 10; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at p. 537). It seems to me that, by limiting its analysis to the plain meaning of ss. 40 and 40*a* of the *ESA*, the Court of Appeal adopted an overly restrictive approach that is inconsistent with the scheme of the Act.

36 Enfin, en ce qui concerne l'économie de la loi, puisque la *LNE* constitue un mécanisme prévoyant des normes et des avantages minimaux pour protéger les intérêts des employés, on peut la qualifier de loi conférant des avantages. À ce titre, conformément à plusieurs arrêts de notre Cour, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur (voir, par ex., *Abrahams c. Procureur général du Canada*, [1983] 1 R.C.S. 2, à la p. 10; *Hills c. Canada (Procureur général)*, [1988] 1 R.C.S. 513, à la p. 537). Il me semble que, en limitant cette analyse au sens ordinaire des art. 40 et 40*a* de la *LNE*, la Cour d'appel a adopté une méthode trop restrictive qui n'est pas compatible avec l'économie de la Loi.

The Court of Appeal's reasons relied heavily upon the decision in *Malone Lynch*, *supra*. In *Malone Lynch*, Houlden J. held that s. 13, the group termination provision of the former *ESA*, R.S.O. 1970, c. 147, and the predecessor to s. 40 at issue in the present case, was not applicable where termination resulted from the bankruptcy of the employer. Section 13(2) of the *ESA* then in force provided that, if an employer wishes to terminate the employment of 50 or more employees, the employer must give notice of termination for the period prescribed in the regulations, "and until the expiry of such notice the terminations shall not take effect". Houlden J. reasoned that termination of employment through bankruptcy could not trigger the termination payment provision, as employees in this situation had not received the written notice required by the statute, and therefore could not be said to have been terminated in accordance with the Act.

37 La Cour d'appel s'est fortement appuyée sur la décision rendue dans *Malone Lynch*, précité. Dans cette affaire, le juge Houlden a conclu que l'art. 13, la disposition relative aux mesures de licenciement collectif de l'ancienne *ESA*, R.S.O. 1970, ch. 147, qui a été remplacée par l'art. 40 en cause dans le présent pourvoi, n'était pas applicable lorsque la cessation d'emploi résultait de la faillite de l'employeur. Le paragraphe 13(2) de l'*ESA* alors en vigueur prévoyait que, si un employeur voulait licencier 50 employés ou plus, il devait donner un préavis de licenciement dont la durée était prévue par règlement [TRADUCTION] «et les licenciements ne prenaient effet qu'à l'expiration de ce délai». Le juge Houlden a conclu que la cessation d'emploi résultant de la faillite ne pouvait entraîner l'application de la disposition relative à l'indemnité de licenciement car les employés placés dans cette situation n'avaient pas reçu le préavis écrit requis par la loi et ne pouvaient donc pas être considérés comme ayant été licenciés conformément à la Loi.

Two years after *Malone Lynch* was decided, the 1970 *ESA* termination pay provisions were

38 Deux ans après que la décision *Malone Lynch* eut été prononcée, les dispositions relatives à l'in-

amended by *The Employment Standards Act, 1974*, S.O. 1974, c. 112. As amended, s. 40(7) of the 1974 *ESA* eliminated the requirement that notice be given before termination can take effect. This provision makes it clear that termination pay is owing where an employer fails to give notice of termination and that employment terminates irrespective of whether or not proper notice has been given. Therefore, in my opinion it is clear that the *Malone Lynch* decision turned on statutory provisions which are materially different from those applicable in the instant case. It seems to me that Houlden J.'s holding goes no further than to say that the provisions of the 1970 *ESA* have no application to a bankrupt employer. For this reason, I do not accept the *Malone Lynch* decision as persuasive authority for the Court of Appeal's findings. I note that the courts in *Royal Dressed Meats*, *supra*, and *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (B.C.S.C.), declined to rely upon *Malone Lynch* based upon similar reasoning.

demnité de licenciement de l'*ESA* de 1970 ont été modifiées par *The Employment Standards Act, 1974*, S.O. 1974, ch. 112. Dans la version modifiée du par. 40(7) de l'*ESA* de 1974, il n'était plus nécessaire qu'un préavis soit donné avant que le licenciement puisse produire ses effets. Cette disposition vient préciser que l'indemnité de licenciement doit être versée lorsqu'un employeur omet de donner un préavis de licenciement et qu'il y a cessation d'emploi, indépendamment du fait qu'un préavis régulier ait été donné ou non. Il ne fait aucun doute selon moi que la décision *Malone Lynch* portait sur des dispositions législatives très différentes de celles qui sont applicables en l'espèce. Il me semble que la décision du juge Houlden a une portée limitée, soit que les dispositions de l'*ESA* de 1970 ne s'appliquent pas à un employeur en faillite. Pour cette raison, je ne reconnais à la décision *Malone Lynch* aucune valeur persuasive qui puisse étayer les conclusions de la Cour d'appel. Je souligne que les tribunaux dans *Royal Dressed Meats*, précité, et *British Columbia (Director of Employment Standards) c. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (C.S.C.-B.), ont refusé de se fonder sur *Malone Lynch* en invoquant des raisons similaires.

39 The Court of Appeal also relied upon *Re Kemp Products Ltd.*, *supra*, for the proposition that although the employment relationship will terminate upon an employer's bankruptcy, this does not constitute a "dismissal". I note that this case did not arise under the provisions of the *ESA*. Rather, it turned on the interpretation of the term "dismissal" in what the complainant alleged to be an employment contract. As such, I do not accept it as authoritative jurisprudence in the circumstances of this case. For the reasons discussed above, I also disagree with the Court of Appeal's reliance on *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), which cited the decision in *Malone Lynch*, *supra*, with approval.

La Cour d'appel a également invoqué *Re Kemp Products Ltd.*, précité, à l'appui de la proposition selon laquelle, bien que la relation entre l'employeur et l'employé se termine à la faillite de l'employeur, cela ne constitue pas un «congédiement». Je note que ce litige n'est pas fondé sur les dispositions de la *LNE*. Il portait plutôt sur l'interprétation du terme «congédiement» dans le cadre de ce que le plaignant alléguait être un contrat de travail. J'estime donc que cette décision ne fait pas autorité dans les circonstances de l'espèce. Pour les raisons exposées ci-dessus, je ne puis accepter non plus que la Cour d'appel se fonde sur l'arrêt *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), qui citait la décision *Malone Lynch*, précitée, et l'approuvait.

40 As I see the matter, when the express words of ss. 40 and 40*a* of the *ESA* are examined in their entire context, there is ample support for the con-

Selon moi, l'examen des termes exprès des art. 40 et 40*a* de la *LNE*, replacés dans leur contexte global, permet largement de conclure que les

clusion that the words "terminated by the employer" must be interpreted to include termination resulting from the bankruptcy of the employer. Using the broad and generous approach to interpretation appropriate for benefits-conferring legislation, I believe that these words can reasonably bear that construction (see *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025). I also note that the intention of the Legislature as evidenced in s. 2(3) of the *ESAA*, clearly favours this interpretation. Further, in my opinion, to deny employees the right to claim *ESA* termination and severance pay where their termination has resulted from their employer's bankruptcy, would be inconsistent with the purpose of the termination and severance pay provisions and would undermine the object of the *ESA*, namely, to protect the interests of as many employees as possible.

mots «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Adoptant l'interprétation libérale et généreuse qui convient aux lois conférant des avantages, j'estime que ces mots peuvent raisonnablement recevoir cette interprétation (voir *R. c. Z. (D.A.)*, [1992] 2 R.C.S. 1025). Je note également que l'intention du législateur, qui ressort du par. 2(3) de l'*ESAA*, favorise clairement cette interprétation. Au surplus, à mon avis, priver des employés du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi en application de la *LNE* lorsque la cessation d'emploi résulte de la faillite de leur employeur serait aller à l'encontre des fins visées par les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi et minerait l'objet de la *LNE*, à savoir protéger les intérêts du plus grand nombre d'employés possible.

In my view, the impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Further, I believe that such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Therefore, I conclude that termination as a result of an employer's bankruptcy does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *BA* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. Because of this conclusion, I do not find it necessary to address the alternative finding of the trial judge as to the applicability of s. 7(5) of the *ESA*.

41 À mon avis, les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui ont été licenciés pour quelque autre raison serait arbitraire et inéquitable. De plus, je pense qu'une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. Je conclus donc que la cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. En raison de cette conclusion, j'estime inutile d'examiner l'autre conclusion tirée par le juge de première instance quant à l'applicabilité du par. 7(5) de la *LNE*.

I note that subsequent to the Rizzo bankruptcy, the termination and severance pay provisions of the *ESA* underwent another amendment. Sections

42 Je fais remarquer qu'après la faillite de Rizzo, les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la

74(1) and 75(1) of the *Labour Relations and Employment Statute Law Amendment Act, 1995*, S.O. 1995, c. 1, amend those provisions so that they now expressly provide that where employment is terminated by operation of law as a result of the bankruptcy of the employer, the employer will be deemed to have terminated the employment. However, s. 17 of the *Interpretation Act* directs that, "[t]he repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law". As a result, I note that the subsequent change in the legislation has played no role in determining the present appeal.

LNE ont été modifiées à nouveau. Les paragraphes 74(1) et 75(1) de la *Loi de 1995 modifiant des lois en ce qui concerne les relations de travail et l'emploi*, L.O. 1995, ch. 1, ont apporté des modifications à ces dispositions qui prévoient maintenant expressément que, lorsque la cessation d'emploi résulte de l'effet de la loi à la suite de la faillite de l'employeur, ce dernier est réputé avoir licencié ses employés. Cependant, comme l'art. 17 de la *Loi d'interprétation* dispose que «[l]'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit», je précise que la modification apportée subséquemment à la loi n'a eu aucune incidence sur la solution apportée au présent pourvoi.

6. Disposition and Costs

43 I would allow the appeal and set aside paragraph 1 of the order of the Court of Appeal. In lieu thereof, I would substitute an order declaring that Rizzo's former employees are entitled to make claims for termination pay (including vacation pay due thereon) and severance pay as unsecured creditors. As to costs, the Ministry of Labour led no evidence regarding what effort it made in notifying or securing the consent of the Rizzo employees before it discontinued its application for leave to appeal to this Court on their behalf. In light of these circumstances, I would order that the costs in this Court be paid to the appellant by the Ministry on a party-and-party basis. I would not disturb the orders of the courts below with respect to costs.

6. Dispositif et dépens

Je suis d'avis d'accueillir le pourvoi et d'annuler le premier paragraphe de l'ordonnance de la Cour d'appel. Je suis d'avis d'y substituer une ordonnance déclarant que les anciens employés de Rizzo ont le droit de présenter des demandes d'indemnité de licenciement (y compris la paie de vacances due) et d'indemnité de cessation d'emploi en tant que créanciers ordinaires. Quant aux dépens, le ministère du Travail n'ayant produit aucun élément de preuve concernant les efforts qu'il a faits pour informer les employés de Rizzo ou obtenir leur consentement avant de se désister de sa demande d'autorisation de pourvoi auprès de notre Cour en leur nom, je suis d'avis d'ordonner que les dépens devant notre Cour soient payés aux appelants par le ministère sur la base des frais entre parties. Je suis d'avis de ne pas modifier les ordonnances des juridictions inférieures à l'égard des dépens.

Appeal allowed with costs.

Pourvoi accueilli avec dépens.

Solicitors for the appellants: Sack, Goldblatt, Mitchell, Toronto.

Procureurs des appelants: Sack, Goldblatt, Mitchell, Toronto.

Solicitors for the respondent: Minden, Gross, Grafstein & Greenstein, Toronto.

Procureurs de l'intimée: Minden, Gross, Grafstein & Greenstein, Toronto.

Solicitor for the Ministry of Labour for the Province of Ontario, Employment Standards Branch: The Attorney General for Ontario, Toronto.

Procureur du ministère du Travail de la province d'Ontario, Direction des normes d'emploi: Le procureur général de l'Ontario, Toronto.

DEVELOPMENT APPEAL BOARD

June 4, 2024

Development Permit: PL-2023-0070

Lots 33 & 34, Block 307, Plan 4809

(110 Hagel Drive, Yellowknife, NT)

Presented By: Bassel Sleem

Planner

SUBJECT PROPERTIES

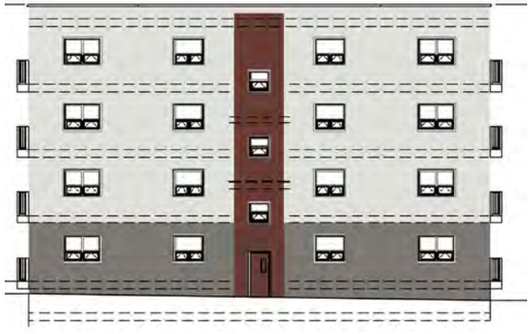
THE DEVELOPMENT PROPOSAL

Multi-Unit Dwelling

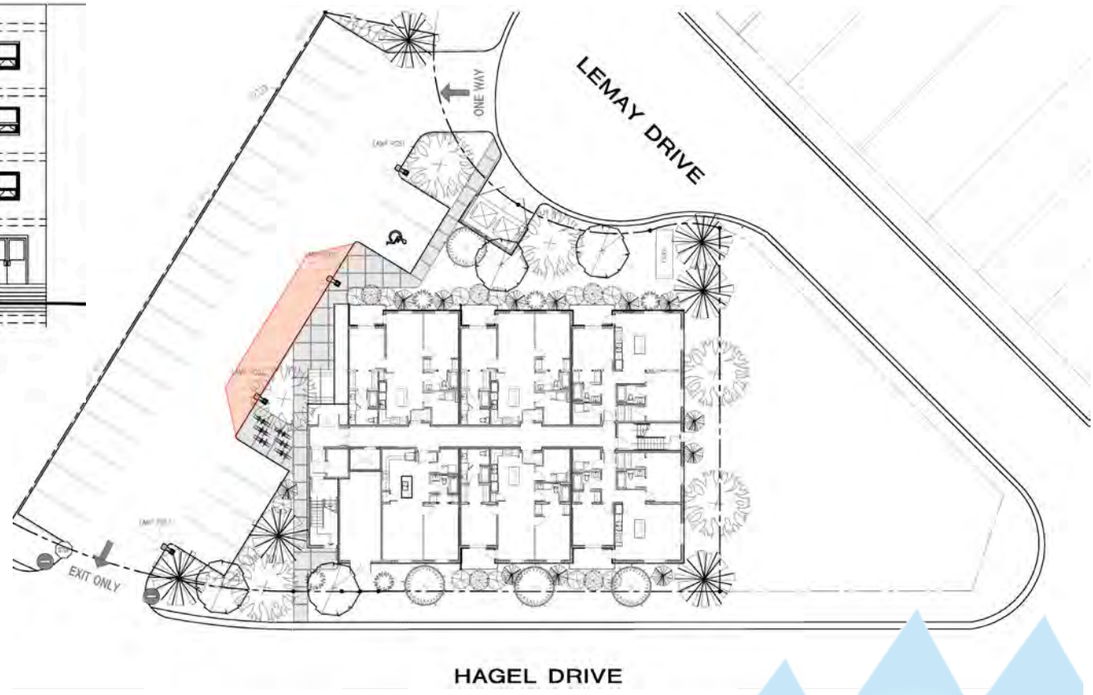
(24 Units)

Complies to all applicable regulations of Zoning By-law No. 5045 without the need for variances.

NORTH ELEVATION



EAST ELEVATION



THE DEVELOPMENT PROPOSAL

- *Community Planning and Development Act*, s.25 (i):

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

DEVELOPMENT AUTHORITY DECISION

- April 22, 2024 Council Motion #0075-24 carried unanimously, that a Development Permit application PL-2023-0070 for a 24-unit Multi-Unit Dwelling proposed on properties legally described Lot 33 & 34, Block 307, Plan 4809 (110 Hagel Drive) be approved, with conditions.

BACKGROUND OF NIVEN DEVELOPMENT

- In 1995, first Niven Lake Development Scheme By-law No. 3794 was adopted.
- In 2002, Niven Lake Development Scheme 2002 By-law No. 4181 was adopted.
- In 2003, Niven Lake Development Scheme 2003 By-law No. 4269 was adopted.
- In 2004, Niven Lake Development Scheme 2004 By-law No. 4339 was adopted. Niven Phase 5 and Phase 6 were proposed.
- In 2007, Niven Lake Development Scheme 2007 By-law No. 4438 was adopted. Niven Phase 7 and Phase 8 were proposed.
- In 2020, City of Yellowknife Community Plan was approved.
- In 2022, City of Yellowknife Zoning By-law No. 5045 was adopted.

APPELLANT CONCERNS

1. Niven Lake Development Scheme (NLDS)
2. Density
3. Missing Schedule of Development
4. Provision of Recreation Space
5. Traffic
6. Streetscape

CONCLUSION

- The Decision of Council conforms to the 2020 Community Plan;
- The Decision of Council followed the regulations of Zoning By-law No. 5045;

The City respectfully requests that the Development Appeal Board confirm the Council decision to approve the Development Permit application PL-2023-0070

DEVELOPMENT APPEAL PL-2023-0070
DEVELOPMENT OFFICER'S REPORT
JUNE 4, 2024

ISSUE

An appeal of the decision of Council to approve Development Permit PL-2023-0070 (see Council Motion #0075-24).

SUBJECT PROPERTIES

Figure 1 – Location Map

DEVELOPMENT PROPOSAL

Application PL-2023-0070 is for the development of a multi-unit residential dwelling (24 units) at 110 Hagel Drive (Lots 33 & 34 Block 307 Plan 4809). The application was approved, with landscaping, traffic, and on-site improvement conditions.

Stamped and approved drawings include a site plan, grading and landscaping plan, typical floor plan, and elevations; and can be found under Attachment A.

BACKGROUND OF NIVEN DEVELOPMENT

The first Niven Lake Development Scheme, By-law No. 3794, was adopted in 1995 and has since went through several revisions and amendments. In 2004, Niven Lake Development Scheme 2004 By-law No. 4339 was adopted, and phase 5 and 6 were proposed. In 2007, Niven Lake Development Scheme 2007 By-law No. 4438 was adopted, and phases 7 and 8 were proposed. Phase 8 has not been developed.

Phase 5 has been in development for almost twenty years, which prompted the City to create a new subdivision concept in November 2021 for the remaining lands. The subdivision included two new municipal Lots, one for utility services and the other for parks and recreation. Today, the development of Niven phase 5 Lots is based on the policies of the 2020 Community Plan, framework of the area development plan (in this case the Niven Lake Development Scheme), and regulations of Zoning By-law No. 5045.

CHRONOLOGY OF THE DEVELOPMENT PERMIT APPLICATION (PL-2023-0070)

Timeline:

07-06-23	Development Permit application PL-2023-0070 submitted for a 24 unit building.
09-14-23	Applicant submitted a new set of drawings for a 17 unit building.
10-27-23	Letter of Incomplete Application emailed to applicant.
11-09-24	Applicant submitted a new set of drawings for a 24 unit building, and was directed to submit a Planning Justification Report for the development.
01-09-24	Incomplete Planning Justification Report was submitted to the City.
02-02-24	Complete Planning Justification Report was submitted to the City.
02-19-24	Letter of Complete Application emailed to applicant.
02-20-24	Notice of Application circulated to neighbours, City Departments, and external agencies.
04-12-24	Notice of Governance of Priority Committee Meeting circulated to neighbours.
04-15-24	Governance and Priority Committee Meeting.*
04-22-24	Council Motion #0075-24 carried unanimously to approve Development Permit application PL-2023-0070 for a 24 unit multi-unit dwelling.
04-23-24	Notice of Decision circulated to neighbours.
05-07-24	Appeal of the approval of development permit PL-2023-0070.

*The proposed 24 unit development conforms with policies of the 2020 Community Plan and complies to all applicable regulations of Zoning By-law No. 5045 without the need for variances. The development also conforms to the housing intent of the Niven Lake Development Scheme by proposing a medium density multi-family dwelling (referred to as multi-unit dwelling under Zoning By-law No. 5045). The Development Officer referred the application to Council for decision under section 3.2 of the Zoning By-law.

DECISION MAKING PROCESS FOR DEVELOPMENT PERMIT PL-2023-0070

The proposed development conforms to policies of the 2020 Community Plan and complies with all applicable regulations for the permitted use in the Zoning By-law without any variance requirements. Rationale and justification can be found in the development officer's Planning Report under Attachment B.

RESPONSE TO APPELLANT'S APPEAL LETTER DATED MAY 07, 2024

Re: Development Permit Application No. PL-2023-0070

This letter serves as an appeal to the above noted Development Permit Application No. PL-2023-0070 (the Development) by Elizabeth Doyle/ resident of 172B Niven Drive, Yellowknife NT, X1A 3Y3.

As per Government of the Northwest Territories Community Planning and Development Act (2013), Division B –Appeals, 62 (1), this appeal is submitted on the grounds that I am adversely affected by the development, 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; or (e) the application for the development permit had been approved under circumstances where the proposed development did not fully conform with a zoning bylaw.

The *Community Planning and Development Act* places the following restriction on development permit appeals:

"62 (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 if the bylaw in the approval of the application".

Section 62(2) the *Act* offers restrictions to appealing development whose use is permitted in the respective zone, and limits those appeals to misapplications of the bylaw in the approval of the application, only. The multi-unit dwelling proposed through PL-2023-0070 is a permitted use in the R2 zone.

I submit that the appeal must be heard because the Development is a misapplication of the city's zoning bylaws, does not fully conform with a zoning bylaw or contravenes the zoning bylaws, the community plan/ or an area development plan.

1) Niven Lake Development Scheme (appeal under s. 62(1)(b))

As per Section 62(l)(b) of the Municipal Planning and Development Act, The Development contravenes the Area Development Plan, which is the Niven Lake Development Scheme Bylaw No. 4339 (NLDS).

As Per the City of Yellowknife's (the City) Governance and Priorities Committee Report, dated April 15, 2024, "the developer is also required to meet a particular density requirement established in the Niven Lake Development Scheme (NLDS). The City s Report clarifies as follows:

"Under previous legislation an Area Development Plan was called a Development Scheme, which is addressed in the new Act, section 80(2)(c), where it states: "a development scheme adopted in accordance with the former Act remains in force and is deemed to be an area development plan adopted in accordance with this Act, to the extent that it is not expressly inconsistent with this Act, until it is repealed or another is made in its stead". Therefore, the NLDS shall continue, and this subsection of the Act has been appropriately applied. The subject lots was zoned R-3 Residential - Medium Density under the Zoning By-law No. 4404, as amended. In R-3 zone, the allowable density was set to one unit per 125m2".

While the city suggests that these zoning requirements form the basis for the NLDS, they also dismiss them and rely on Bylaw 5045. My submission is that the NLDS remains in effect, and the Development contravenes its zoning requirements under the NLDS. The Development lot sizes are approximately 2042 square metres, at 24 units which is approximately 85 square metres per unit/ a significant variation, that is inconsistent with the NLDS's requirement of 125 square metres per unit.

When citing the April 15 Governance and Committee Report, the appellant omitted part of the statement. The full statement is as follows: "… In R-3 zone, the allowable density was set to one unit per 125m^2 of land, which equates a total of 16 units on the subject lots. In addition, Council motion (#0103-16) that allowed slight density increase, up to twenty (20) units, was adopted at the Council meeting held on May 2, 2016, when the City addressed the sale of the unsold lots in Niven Phase V".

This clarifies that the proposed 24 unit building is 4 additional units from what was recommended and deemed acceptable by council on May 2, 2016. The City did not dismiss the NLDS requirements. The development officer verified that the proposed development conforms to the housing intent of the NLDS for phase 5, being a MD – Medium Density Residential development consisting of multi-family dwelling, which aligns with the current Zoning By-law without the need for variance.

The Development Officer referred the application to Council for decision under section 3.2 of the Zoning By-law to ensure that steps taken are consistent and that the effect of the changes is appropriately and transparently considered.

Furthermore, relying on the NLDS, the former "General Plan", bylaw 4656, which similarly to Bylaw 4044, underpinned the NLDS prior to Bylaw 5077, the current Community Plan, can provide vital information on the Niven Phase V development scheme. Table 5, page 16, of bylaw 4656 proposes 90 units on Niven Phase V total. Not only does bylaw 4656 suggest 90 units, it further says in a footnote regarding "Grace Lake", "An analysis of land suitable for development has not yet been undertaken and therefore this number is subject to change" regarding Grace Lake ONLY, indicating that the figures for Niven Lake were based on an analysis of the land suitable for development and that the number is not subject to change. The new Community Plan, bylaw 5077, does not vary these figures at all; it omits them.

The General Plan By-law No. 4656 is not in effect and has been repealed and replaced by the Community Plan By-law No. 5007.

Niven Phase V is currently at 156 units, without the Development's 24 units, and developments on the remaining lots of land. Furthermore, the NLDS was based on community plan projections of Yellowknife s population increasing to 23,500 in 2021.The population of Yellowknife was 20,340 in 2021, according to Statistics Canada, and no information indicates that in 2024, the population has reached 23,500. Therefore in this regard, the Development doesn't comply with the NLDS and the information upon which the Development was permitted.

The above statements are taken from the General Plan, which is not in effect. Community Plan By-law No. 5007 states that the City of Yellowknife's population is projected to continue growing at a modest annual rate of 0.5% to 0.7%, reaching 22,814 by 2035.

The relief sought is that the Development be halted until the city aligns the NLDS with the Zoning Bylaw and the Community Plan so that zoning and community plan requirements underpinning the Development are clearly provided.

2) "Density" (appeal under s. 62(1)(b), 62(1)(e) or 62(1)(a))

The City relied on its new Zoning Bylaw, 5045, which, defines density as "the maximum number of dwelling units permitted by this By-law based on lot area;" but fails to provide any actual numbers of units based on lot area anywhere in the bylaw. By omitting the information required by Its own definition, the City has approved the Development based on density requirements that it has failed to provide. The City uses the terms R2 and R1 zoning for residential zoning, but does not provide the information to conform to its definition of "density" so that residents can figure out what number of units the zoning allows. The City should provide the information its density definition requires before any further development of Niven Phase V is allowed to proceed,.

In its Governance and Priorities Committee Report, dated April 15, 2024, it states that "there is no density limit set out in the current Zoning By-law. This is to align with the planning objective and policy of the Community Plan."

Limitless units is not provided for either in the Community Plan. In fact, section 1.2 calls for "regulation and control" in a balanced and responsible manner". Allowing arbitrary zoning arguably contradicts section 1.2 of Zoning Bylaw 5045 because in the case of the Development, its not based on regulation or control, it s based on subjective, arbitrary factors, like in this case, the mayor being worried that the developer will walk away/ as she said in a Cabin Radio article dated April 16, 2024, "We can deny the extra four units and it might kill the project for the developer. . Yes. It might. And it is arguably "balanced and responsible to deny a permit where a development decision is not based on regulation and control" rather fears that the developer will walk away, as this Developer has threatened to do in the recent past (https://cabinradio.ca/100409/news/vellowknife/maior-veltowknife-housine-develoDer-savs-forRet-it-i-auit/).

Since there is no information provided based on the definition of "density" set out in the current Zoning By-law, but because the NLDS is still in effect according to the City of Yellowknife, 125m2 per unit Is the most recent information we have on how to apply the definition of "density". I submit that if the city wanted to changed the meaning of density to remove the number of units as the way to define density", it should have changed the definition of density but it did not do so. The Development is in contravention because the City has failed to provide the information required by its definition of "density" leaving a gap that needs to be addressed before the Development can proceed.

Zoning By-law No. 5045 does not have a specific formula to regulate density. The maximum number of dwelling units (maximum density) allowed on a lot is restricted by multiple zoning regulations pre-established for each zone within municipal boundaries. These regulations relate to building height, lot coverage, setback distances, landscaping, parking requirements, and others. A development that complies with these regulations without the need for site density variances implies that the maximum density intended for its respective lot has not been exceeded. Such is the case for PL-2023-0070.

3} Missing Schedule of Development ((appeal under s. 62(1)(b))

The City s current Community Plan is incomplete and Is missing vital information/ in particular the required elements of section 4.(e) of the Municipal Planning and Development Act.

This information is not provided for Niven. In fact the Community Plan is vague on specifics about Niven and does not provide the detailed information required by the legislation. There is no schedule of the sequence In which Niven may be developed and the manner in which the city intents to provide the services outlined in subsection (d), rather the city provides a "Policy framework" in 5.4.1 of the Community Plan which says that Niven will be developed in 2021 and 2022, and that's it. There is no "schedule of the sequence in which specified areas of land may be developed". This makes it difficult for affected residents

in Niven Phase V to figure out why the City is adding so many units to the development/ especially since the previous General Plan, bylaw 4656, anticipated that by 2021, the population of Yellowknife would be 23,500, but according to Statistics Canada/ only reached around 20,500 in 2021.

The 2020 Community Plan, section 5.4 satisfies the requirement of the *Community Planning and Development Act* section 4(e). Niven phase 5 is identified in the Community Plan as a priority residential development and infill opportunity. The Plan also provides a Land Development Sequence Map (Map 24).

4) Recreational Space (appeal under s. 62(1)(b) or 62(1)(e))

The development contravenes zoning bylaw for recreational space under section under section 8.1.3 of the Zoning bylaw, "c) In addition, for Multi-Use Dwelling Development without individual Street Access, an outdoor space, suitable for intended occupants, shall be provided to the satisfaction of the Development Officer. Developments with more than 15 units shall have outdoor common areas, d) Outdoor Parks and Recreation areas within 250 m proximity of the residential Development will be considered fulfillment of the outdoor Recreation Space.

No provisions in the permit drawing provide for this. The City has mentioned a park next to the Development, but this is not provided for in the Permit, and it remains unclear what "recreation area" will be provided. The open land next to the Development is not suitable for children since the Development will increase 2-way traffic on either side of the area the City has suggested as a park, and the City has declined to research traffic impacts to Niven Phase V, so it's impossible to know whether the piece of land that could fulfill this requirement is suitable. The City should provide updated information on the recreational space that twill be provided prior to allowing the Development to move forward.

As stated in the development officer's Planning Report, the development satisfies the provision of recreation space of section 8.1.3 of Zoning By-law No. 5045. Rationale follows:

'Indoor Recreation Space' is required for multi-unit dwellings with more than 15 units. These spaces can be either balconies or an equivalent like communal indoor lounges or private gyms.

'Outdoor Recreation Space' is required for multi-unit dwellings without individual street access. These can be community gardens, patios, or equivalent like spaces. If the multi-unit dwellings has more than 15 units, then this 'Outdoor Recreation Space' must be communal and shared by the building's residents. An outdoor park and recreation area within 250m of the proposed residential development can fulfill this requirement.

The proposed development, being a 24-unit dwelling without individual street access requires both an 'Indoor Recreation Space', as well as a communal 'Outdoor Recreation Space'. An individual balcony to each of the proposed units satisfies the former requirement. To satisfy the latter, the development proposed around 140m^2 of outdoor space to be used by residents.

Furthermore, the adjacent Lot 35 Block 307 will, at a future date, be developed into a municipal park. There are design standards and classes for parks established within municipal boundaries. Moreover, approximately 150 metres north of the proposed development is the Niven Ravine Trail, zoned PR – Parks and Recreation.

5) Traffic (appeal under (62(1)(a))

Traffic remains an issue. As Per Zoning bylaw 5045, section 4.4.4, "when considering a development application "The Development Officer may also require any of the following..." "d) a traffic Impact analysis prepared by a qualified professional which shall address, but not be limited to, Impact on adjacent public roadways, pedestrian circulation on and off-Site, vehicular movement circulation on and off-Site, turning radius diagrams for large truck movement on and off-Site, and any other similar information required by the Development Officer;".

The hearing for the previous Niven Lake Phase V development, decision Yellowknife Condominium Corporation #61 v Yellowknife (Development Officer), 2022 CanLII 143517 (NT YDAB) also addressed traffic. In its decision, the Appeal Board said "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 in additional 70 dwelling units, totaling 156 residential dwelling units for this area."

Niven Phase V is currently at 156 units, and will be at 180 Units with the Development and at least 2 more lots left, with no limits on the number of units the city will allow on those lots. I would like to request that the city perform its traffic study, and not only on Niven Gate at Highway 4, or Franklin avenue and 43rd street, but once the 70 Unit building is complete, the City should do a traffic study of Niven at Lemay/Hagel/Ballantyne and delay the Development until a proper traffic assessment is completed, especially in light of the increased density over the 156 units anticipated by the 2012 traffic study.

As per section 4.5.1 of Zoning By-law No, 5045, a request for comments was circulated to Department of Public Works and Engineering. It was recommended by qualified engineering staff that the intersection of Niven Drive, Lemay Drive, Hagel Drive, and Ballantyne Court become a four-way stop intersection. This was noted in the conditions of approval of PL-2023-0070.

5) Street Scape (Appeal under s.

Finally, section 3 of the NLDS requires that Within road rights-of-way, streets shall be developed at the minimum width prescribed by the Public Works Department to accommodate two way traffic/ parking on one or both sides as required/ sidewalks on both sides/ and landscaped boulevards". Lemay Drive already doesn't meet these requirements/ but now it will have heavier 2-way traffic but no sidewalks. It is also

unclear what the city plans for Hagel Drive, and whether they have left enough space. The Permit has not provided information to show that with the current Development, there will be space for all of the required streetscaping, and this was not addressed in the permit documents. The Development should not continue until the city addresses this requirement.

Streetscape is not regulated by Zoning By-law No. 5045.

Conclusion

I seek the relief of variation or reversal of the Development decision until the City of Yellowknife addresses the above concerns through this appeal. – Elizabeth Doyle

The City respectfully requests that the Development Appeal Board confirm the Council decision to approve the Development Permit application PL-2023-0070, knowing that the decision of Council conforms to the 2020 Community Plan and follows regulations of Zoning By-law No. 5045.

Bassel Sleem
Planner
City of Yellowknife

Attachments

Attachment A: Stamped Drawings PL-2023-0070

Attachment B: Planning Report

Attachment C: Adopted Council Minutes of April 22, 2024

Attachment D: Excerpts of the *Community Planning and Development Act*, 2020 Community Plan, and Zoning By-law No. 5045

Property Information/Details

Location Description	Lots 33, 34 Block 307 Plan 4809
City of Yellowknife Community Plan No. 5007	Section 2.3.2 Housing Section 3.1.2 General Development Goals Section 3.2.2 Contemporary Land Use Section 4.5 Niven Residential Section 5.1.1 Climate Change Section 5.2.1 Roads and Motorized Vehicle Trails Section 5.3 Municipal Infrastructure Section 6.7 Public Engagement and Notice
City of Yellowknife Zoning By-law No. 5045, as amended	Chapter 3 Roles and Responsibilities Chapter 4 Development Permit Process Section 7.1 Site Planning Considerations Section 7.3 Grade Section 7.4 Vehicular Access and On-Site Traffic Section 7.5 General Landscaping Regulations Section 7.8 Parking Section 8.1.3 Provision of Recreation Space Section 8.2.6 Multi-Unit Dwelling Section 10.2 R2 – Medium Density Residential
Civic Address:	110 Hagel Drive
Access:	Hagel Drive (Lot R23 Plan 3953); and Lemay Drive (Lot ROW Block 307 Plan 4441)
Municipal Services	Piped water and sewage service; garbage pickup

Recommendation:

Planning and Development Department recommends approval of Development Permit application PL-2023-0070 for a 'Multi-Unit Dwelling' with the following conditions:

CONDITIONS OF APPROVAL

1. The Developer shall enter into a Development Agreement with the City with respect to on-site improvements, landscaping, traffic improvements, and site servicing requirements; and
2. The development shall comply with the approved stamped drawings for PL-2023-0070 and with all By-laws in effect for the City of Yellowknife.

Proposal:

Development Permit application PL-2023-0070 is a proposal for a 24 unit building at 110 Hagel Drive; Lots 33 & 34 Block 307 Plan 4809. While it is planned over two lots, these lots will be consolidated prior to construction to meet the requirements of the Zoning By-law. Vehicular access in and out of the development will be one-way only entering from Lemay Drive and exiting on to Hagel Drive. The development will connect to the City's municipal piped water and sewage service, and will rely on external provisions for other site services.

Background:

GENERAL STATEMENT

Lots 33 & 34 Block 307 "subject site" are part of the Niven Lake Phase V development that was initially purchased by Bond Street Properties Ltd. for a 92-unit development. This density goal was set within the sale agreement to address neighbourhood concerns of over-densification; however, the Niven Lake Phase V could have permitted a total of 230 units as per the density regulation of 1 unit/125m^2 established under the zoning bylaw at the time, Zoning By-law No. 4404, tied to the Niven Lake Development Scheme (NLDS). This would have implied a maximum density of 16 units at the subject site; however, in 2016, Council Motion #0103-16 allowed a slight density increase for up to 20 units.

As per section 80 (2) of the *Community Planning and Development Act*, the Niven Lake Development Scheme (NLDS) is still in full effect today. Even though the proposed 24-unit development meets all regulations under Zoning By-law No. 5045 and conforms to policies under the Community Plan, it does not meet the density requirement of the NLDS.

Today, both the Community Plan and Zoning By-law No. 5045 do not offer any prescriptive regulations regarding density. Knowing that the NLDS was adopted more than ten years ago, that the density requirements set within it are outdated, and that there are no additional directions regarding maximum allowable density, Council will be directed to make a decision and recommendations on the matter, as per section 3.2.1 (d) of Zoning Bylaw No. 5045.

SUPPORTING STUDIES AND REPORTS

In support of application PL-2023-0070, the following documents/studies were referenced:

- Niven Lake Phase V Traffic Impact Study, prepared by Creative Transportation Solutions in September, 2012
- Niven Phase V General Subdivision Grading Plan, prepared by Stantec in April, 2022
- Planning Justification Report and Addendum, prepared by Dillon Consulting on February 2, 2024, DM# 753663 and DM# 757094

Legal Agreements referenced:

- Executed Purchase Agreement 507726 N.W.T. LTD., April 21, 2023, DM# 728777
- Executed Drainage Easement Agreement, November 14, 2022, DM# 715183

Assessment of the Application:

JUSTIFICATION

To satisfy section 8.3 of the executed Purchase Agreement, an approved Development Permit is required within 12 months from the possession date. Furthermore, a Development Permit is required as per section 4 of Zoning By-law No. 5045.

LEGISLATION

Community Planning and Development Act

The *Community Planning and Development Act* establishes the framework for the City to regulate development within its boundaries. As stated in section 16. (1) and 25. (2) of the *Act*, a development authority, being either council or a development officer appointed under section 52, or both, shall, subject to any applicable conditions, approve an application for a development permit for a use specified in a zoning bylaw as a use that may be permitted at the discretion of the development authority, if the development authority is satisfied that the applicant meets all the requirements of the bylaw.

Under section 20. (1), "A zoning bylaw may authorize a development authority to require, as a condition of the approval of an application for a development permit that a person enter into a development agreement with the municipal corporation."

Community Plan By-law No. 5007

"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". (*Community Planning and Development Act,* Section 3 (1)).

This 2019 Community Plan is a comprehensive outline of the goals and objectives for the City with directive policies to accomplish the objectives. All applicable policies of the Community Plan are to be considered and applied at the time of development.

Zoning By-law No. 5045

The general purpose of a zoning bylaw is to guide the physical development of a municipality by offering regulations to the use and development of land and buildings within the municipal boundary of the City.

The Development Officer is directed to receive and process development permit applications as referred to in sections 3.1.1 (a), (d), (f), and (g) of the By-law, and shall approve, with or without conditions, the application for a development permit for a permitted use, as per section 4.6.2 (a).

Council is directed to make a decision and recommend any terms and conditions on any other planning, or Development matter referred to it by the Development Officer, as per section 3.2.1 (d).

A Development Permit is required as per Section 4.1 of Zoning By-law No. 5045. All development permit applications for uses that are permitted and not requiring a variance are processed as per sections 4.1, 4.4, 4.5, 4.6, 4.7, 4.10, 4.11, 4.12 and 4.13 of Zoning By-law No. 5045.

PLANNING ANALYSIS

City of Yellowknife Community Plan By-law No. 5007

The Plan identifies Niven as a: "residential area that is located adjacent to the downtown core and provides easy access to the core of the City by vehicle and alternative transportation modes. Much of the residential development in the area is recent and new residential lots continue to be developed on vacant parcels".

The City's development goals support active transportation like walking, cycling, and the use of public transit; as well as land use flexibility and intensification of existing developed areas. These goals can be achieved by prioritizing compact urban growth. The concept of compact urban growth creates many benefits that attract a diverse range of users, such as shorter commute times, more accessible amenities, and reduced environmental impacts of the community. The location of 110 Hagel Drive, being walkable to a transit stop and close to the downtown, is an advantage to future residents who are attracted to these compact and short-distance ways of living. By achieving the objectives and policies listed in sections 5.1.1 and 5.3 of the Community Plan, the proposed development aligns with the general goals set by the City of Yellowknife to maximize the potential of infill development.

4.5 Niven Residential Objectives and Policies	
Planning and Development Objectives:	Policies:
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.
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 Mitigation Objectives and Policies	
Planning and Development Objectives:	Policies:
3. To better utilize existing municipal infrastructure.	3-a: The City will prioritize development in the existing built footprint of the City before developing new greenfield areas.
	3-b: The City will encourage compatible mixed land uses where appropriate to support compact urban development and to reduce travel distances for residents.

	3-c: Higher density development will be encourage near employment centres and major activity nodes.

5.3 Municipal Infrastructure Objectives and Policies	
Planning and Development Objectives:	Policies:
3. To concentrate commercial and residential development in areas serviced by piped water and sewer services.	3-a: Commercial and residential development will be prioritized in areas with piped water and sewer services.

Zoning

City of Yellowknife Zoning By-law No. 5045

As demonstrated in the Technical Review Report for development permit application PL-2023-0070, the proposed development meets the applicable regulations for the permitted Use set out in the By-law without any variance requirements. A summary follows:

Site Planning Considerations (Section 7.1):

The proposed development provides future residents of the multi-unit dwelling with direct pedestrian access to the adjacent streets, the walking trail at the end of Hagel Drive, the transit stop along Niven Drive, as well as an abundance of natural area east of the site. The Public Safety Department, including the Yellowknife Fire Division, expressed no concerns with their vehicles and personnel reaching the proposed development; furthermore, the provision of outdoor lights and apt snow clearing methods have been noted as conditions of development. By meeting the general site planning considerations listed in section 7.1 of the By-law, the proposed development demonstrates good land use planning practices.

Grading (Section 7.3):

The lots' proposed finished grade follows the Niven Phase V General Subdivision Grading Plan, with 3% positive drainage proposed to be directed towards both Hagel Drive and Lemay. The development will maintain the natural contour of the land, with the southwest corner being the highest point and gradually sloping down towards the north corners. Curbing along the rock wall proposed at the edge of the parking lot will ensure that surface water does not drain towards the parking lot at 122 Hagel Drive.

Vehicular Access and On-Site Traffic (Section 7.4):

The development proposes one-way vehicular access on-site. Entrance to the development will only be through Lemay Drive, where a "No Exit" sign shall be installed. Exit out of the development will only be through Hagel Drive, where a "No Entry" sign shall be installed. Both of Lemay Drive and Hagel Drive will remain two-directional roadways. Both of the proposed driveways are adequately setback from property lines and will not negatively affect vehicular and pedestrian safety within Niven Phase V neighbourhood.

Furthermore, the Public Works and Engineering Department is recommending traffic calming measures. Due to the developments underway and proposed for this neighbourhood, the Department anticipates that the intersection of Niven Drive/ Hagel Drive/ Ballantyne Court will require signage to turn in into a 4-way stop intersection. The City will commit to this once the development at 122 Hagel Drive is complete.

Landscaping (Section 7.5):

A minimum of 100% of the residual area shall be landscaped. This makes up a minimum area of 476m^2, which matches the development's proposed area of 476m^2 to be landscaped. The development exceeds the landscaping requirement by proposing 20 trees and 39 shrubs to be planted on the ground floor. As recommended by the Public Works and Engineering Department, trees proposed nearest to the driveways shall be replaced with shrubs in order to maximize site visibility. The planted vegetation shall be grown from a northern stock and be capable of healthy growth in Yellowknife. Since the required landscaped area is less than 500m^2, it was incorporated as part of the site plan drawing. Furthermore, requiring a security to ensure full completion of landscaping shall be covered in the Development Agreement.

Parking (Section 7.8):

As per Table 7-3 of the By-law, the on-site parking requirement for such a development is a minimum of 19 Type "B" parking spaces. The development exceeds this requirement by proposing 24 Type "B" parking spaces and one Type "A" accessible parking space near the building's main entrance. The development meets the on-site bicycle parking and loading requirements by accommodating 12 bicycle parking spaces and 1 off-street loading space, as illustrated on the Approved Drawings.

Provision of Recreation Space (Section 8.1.3):

The development proposes that all dwelling units have individual balconies. Furthermore, the landscaped area and the development's proximity to a future municipal park satisfy the requirement of outdoor recreation space.

Multi-Unit Dwelling (Section 8.2.6):

To satisfy general regulations applicable to all multi-unit dwellings within the city, the proposed development provides direct pedestrian access between the building's entrances and both Hagel Drive and Lemay Drive. Access to the enclosed garbage and compost storage will be through Lemay Drive. With regard to emergency vehicle access, the Public Safety Department, including the Yellowknife Fire Division, expressed no concerns with their vehicles and personnel reaching the proposed development; however, following the recommendation of the Fire Division, the parking area will be appropriately signed for loading and no parking zones as illustrated on the Approved Drawings.

Land Use (Section 10.2):

The general purpose of the R2- Medium Density Residential zone is *"to provide an area for medium to higher density residential Development that encourages a mix of Dwelling types and compatible Uses"*.

Regulations relating to lot width, lot coverage, building height, and yard setbacks have been met without any variance requirements. These regulations were reviewed against the drawings submitted by the applicant on January 12, 2024. To satisfy 10.2.2 (c), all mechanical equipment is incorporated within the building's footprint at ground-level, in the space next to the one-bedroom unit.

Servicing/Safety/Park&Rec/Community/Reconciliation

The proposed development lies within the City's water and sewer piped serviceable area, and will be tied to the City's water main, storm main, and sewer main at the applicant's (purchaser) expense, as per the Purchase Agreement. The applicant is also responsible for any arrangements for electric power, gas, telephone, garbage pickup and cable services required to complete the development.

The vacant lot south of the proposed development is municipally owned. Other than becoming a communal amenity for the neighbourhood, the park will act as a traffic calming device for vehicles driving along the Hagel-Lemay intersection due to speed limit regulations.

Public Consultation

LEGISLATIVE AND POLICY REQUIREMENTS

A Notice of Application was circulated to neighbouring residents and property owners within 30m radius of the subject property on February 20, 2024, per Sections 4.5.1, 4.5.2, 4.5.4, and 4.5.5 of Zoning By-law No. 5045, Section 6.7 of Community Plan By-law No. 5007, and section 14 (2) of the *Community Planning and Development Act*.

As a result of the Notice of Application, the Planning and Development Department received nine comments from concerned neighbours, mostly related to traffic congestion and impact on the neighbourhood, construction noise impact. Other comments received, which are beyond the Development Officer's authority, related to the non-permitted blasting of the site, increased crime, and the completion of the Niven trail network. A table listing all public comments received and how they were considered in the decision process can be found at the end of the Report under **APPENDIX A**.

Following section 3.2.1 (d) of Zoning By-law No. 5045, this application will be referred to Council for their decision and recommendation. A Notice of Decision will be posted at the subject property, in the City's "Capital Update", and will be circulated to the same neighbouring residents and property owners within 30m radius of the subject property. This Planning Report as well as all other submitted application materialswill be available to the public for review upon request. The application will be subject to a 14-day appeal period, commencing on the date of the decision. If not appealed within this period, the decision will be considered effective starting on the 15th day.

City Departments / External Agency Consultation

As directed in section 4.5.1 of Zoning By-law No. 5045, a request for comments was circulated to City Departments and to an external agency on February 20, 2024. Comments were reviewed and considered, and are summarized in the table below:

No.	City Department	Comments	Consideration
1.	Fire Division	I have reviewed the provided plans, I see no issues with access or traffic. I did not identify the hydrant and the fire department connections for the sprinkler systems. My comments are that; access and parking must be **signed** as required and maintained for fire safety. The lot should have signs , if required, it is a one way, the fire code states: National Fire Code 2015 2.5.1.5. Maintenance of Fire Department Access. 1) Streets, yards and roadways provided for fire department access shall be maintained so as to be ready for use at all times by fire department vehicles. 2) Vehicles shall not be parked to **obstruct access** by fire department vehicles and **signs shall be posted prohibiting such parking.** This covers fire lanes, entrances, fire hydrants, fire department connections, one way, parking signage and the such, as this plan is not detailed with all of the items and signage, I make this comment so that I can enforce signage later if needed. **Fire Sprinklers Protect Residents and First Responders, it is easier to dry something out, than to unburn it.** The YKFD recommends fire sprinkler systems in all properties and new construction. Sprinklered	Fire Department connection has been added to drawings. Development shall follow FireSmart practices, as recommended in the 'Climate Change Adaptation Policies' in section 5.1.1 of the Community Plan. Appropriate signage regarding Fire Department access shall be installed on-site at the developer's cost. Applicant shall submit Construction Fire Safety Plans (CFSP) prior to the issuance of a building permit.

		developments support Community Risk Reduction (CRR) as fire sprinklers provide superior protection for responders and residents, benefitting the entire community for decades. Unsprinklered buildings puts responders at risk from fire, collapse, and health hazards. Each new home built without sprinklers makes the community less safe for all. By protecting new housing stock, existing resources can be directed at high-risk populations and existing unsprinklered structures. **Construction Fire Safety Plans (CFSP**) Construction Fire Safety Plans (CFSP) are required to ensure construction sites are safe for the workers and provide required fire department access. Prior to the issuance of a building permit, YKFD requires submission of a Construction Fire Safety Plan for review and approval. **Rapid Entry System** Developers and owners of new and existing buildings are encouraged to participate in YKFD's Rapid Entry System Program. In an emergency, lock boxes provide a rapid entry system that is critical to the response of the fire department. The YKFD can be contacted for approved lock boxes. **NBC and NFC** All structures in the NWT shall be constructed, altered and repaired in accordance with the applicable codes and standards adopted under the	

		Fire Prevention Act (FPA) and Fire Prevention Regulations (the Regulations) and shall be built to the requirements of the National Building Code (NBC) and meet the National Fire Code (NFC). The YKFD is authorized under the FPA to inspect any property to ensure precautions against fire and the spread of fire. Once a structure is built and occupied, the YKFD may inspect and enforce the requirements of the NFC.	
2.	Public Works and Engineering	PW has the following comments on the proposed development: 1. Landscaping: There are trees shown at the exit of the property. Ensure the location of the trees does not interfere with roadway sightlines. Shrubs are more appropriate plantings for this area. 2. Drainage Easement Caveat: The drainage easement caveat can be discharged provided that the drainage of the properties is directed to the adjacent roadways and not the adjacent properties. 3. Traffic – General: PW anticipates the intersection of Niven Drive/Hagel Drive/Ballantyne Court will require signage to turn it into a 4-way stop intersection. This is due to both this development and the multi-family development currently underway on Hagel (70 unit). Overall, PW is ok with this development.	It will be noted on the approved drawings that the trees proposed at the intersection of Hagel Drive and the parking entrance shall be relocated elsewhere and replaced with shrubs instead. As per the proposed drawings and Planning Justification Report, drainage is being directed towards Hagel Drive and Lemay Drive. Traffic recommendation has been taken into consideration.

3.	Lands and Building Services	No concerns identified.	No consideration needed.
4.	Public Safety	From an emergency response perspective, the only Fire Division Access (FDA) information source Public Safety would formally reference would be identified in the National Building Code (NBC Access Route Design (3.2.5.6)). For YK, the preferred route design should contemplate use of turning bulbs/circles vs. hammerhead turning points, main entrance to the site for FDA be off a public street not access off an alley/lane, unobstructed path from emergency vehicle to principle entrance no greater than 45m, FDC location at/near principle entrance location, and ease of access from hydrant location to principle entrance/FDC.	Main FDA access will be off of Hagel Drive with the nearest fire hydrant 85m away, easily accessible to the proposed driveway. A Fire Department connection is also proposed near the proposed driveway, as illustrated on the approved drawings. Unobstructed path from emergency vehicle to both entrances is less than 45m.
5.	Northland Utilities (External Agency)	Overall, I don't have any concerns with the shown design. But I would like to highlight a few potential issues. 1. Road access from Lemay Drive will cross over the Streetlight feed, and we might run in to depth issues if the grade is lowered. 2. Power supply, the main line is located along Hagel, and will need to be tied into to supply power to the building.	These comments have been shared with the applicant. It is the applicant's responsibility to fulfill the provision of electrical services.

CAVEATS/OTHER LEGAL AGREEMENTS

An executed Development Agreement, which shall be registered as a caveat against both lots 33 and 34 and signed by both property owner and the City, is a condition of development permit approval. The Development Agreement will cover matters relating to on-site and traffic improvements as well as

provision of site services. Proof of an application to consolidate Lots 33 & 34 will be required in order for the City to discharge the grant of easement Agreement for Lots 33(D) and 34(D) Block 307 Plan 4814, prior to Building Permit issuance, which will be required prior to any planned construction. A Construction Fire Safety Plan (CFSP) shall be submitted to the Yellowknife Fire Division, per the request of the City's Fire Chief. It is also the applicant's responsibility to apply for and acquire any other permits required from other departments or agencies.

Conclusion:

Based on the planning technical review and analysis, it is identified that Development Permit application PL-2023-0070 for a proposed 'Multi-Unit Dwelling' at 110 Hagel Drive, following the development conditions, would not negatively impact the existing area or unreasonably affect neighbouring properties. Furthermore, the proposal conforms to policies and regulations in Community Plan By-law No. 5007, meets Zoning By-law No. 5045 requirements, and represents good land use planning practices.

Prepared by:

_____ _____
Bassel Sleem, MCP, BArch Date
Planner, Planning and Environment

Concurrence by:

_____ _____
Tatsuyuki Setta, RPP, MCIP, AICP Date
Manager, Planning and Environment

Appendixes:

- **Appendix A:** Public Comments

Attachments:

- Approved Drawings Development Permit PL-2023-0070

APPENDIX A

As a result of the Notice of application posted on-site on February 19, 2024, and circulated by mail on February 20, 2024, the following comments were received from neighbouring residents and considered by the City of Yellowknife. Text highlighted in black consists of personal information and was consequently redacted.

No.	Public Comments	Consideration
1.	One document missing that I'm specifically interested in reviewing is the City's analysis/approval document. For the previous Hagel development that document provided the true information - whether the City is proposing granting any bylaw variances and specifically what those are, and if the City has attached any timing conditions. By timing conditions what I mean is on the previous Hagel development approval from the City, the development requires that it be move-in ready for September 2024, which has resulted in the under-construction apartment building having that project continuing throughout the winter [redacted] I want to see if this new development also has a completion date stipulation or if the new development can linger forever, further making my street a construction zone indefinitely, never having paving realized on the road in a reasonable timeframe. Please send me that City evaluation document so I can properly see what the City has approved. Having read through what you've provided, as I understand it, the developer has requested a variance for site density, which presumably the City has approved where this small appeal window is the only opportunity for the public to present views on that. I look forward to receiving the document from you. (February 23, 2024)	This Planning Report is available for public view and will be shared with interested neighbours. There is no variance for site density. The Development Officer is requesting that Council make the final recommendation. Since this area, Niven Phase V, went through multiple density goals authorized under previous council, they will be the appropriate authority to make the decision regarding the proposed number of dwelling units.
2.	I am writing to you in regards to the development permit proposal located at 110 Hagel Drive. I noticed that there was a posting that an application was received for an additional 24 dwelling unit with a proposed one way	Traffic Impact is addressed in the above section “Vehicular Access and On-Site Traffic”.

	parking lot located in-front of the building. My main concern is the traffic that will be associated with this build along side the already approved build that is currently underway in that location. [redacted] Back to this proposal, the increased traffic alone from the construction crew in the past few years have increased risk to children and pets in the local area. Once the current build is complete the streets in-front will experience an increase in traffic attempting to turn into Lemay drive. The corner is slightly blind when approaching from old town and I have witnessed numerous occasions when a child was attempting to cross the road and almost struck by a vehicle (construction crew truck). There is a bus route on Niven drive and I have once again witnessed numerous vehicles that do not stop when the stop sign and lights are on. Prior to any approvals I urge the city to reassess traffic risk in this area as there are many families that walk around Niven. (February 28, 2024)	
3.	Trail: ▪ How will the City provide access to the trail at the end of Hagel Drive? Will it be through the Hagel cul de sac? ▪ Where will people park to access the trail? ▪ There is currently water running down to the lake, next to the trail. Is this part of the Niven grading plan, or will the City address this water runoff? Lemay Drive: ▪ Service trucks exiting Lemay Drive cannot U-turn efficiently and often have to do 3-point turns. This could cause increased traffic congestion if more vehicles are to be introduced to Lemay Drive through the development currently being proposed. ▪ Lemay Drive and Hagel Drive have different road widths so it does not fully make sense to treat them	Trail network is not regulated under the Zoning By-law; however, your comments regarding water runoff will be shared with the Department of Public Works and Engineering. Traffic Impact is addressed in the above section “Vehicular Access and On-Site Traffic”. Concerns regarding off-site parking can be addressed through the City of Yellowknife Parking By-law No. 5053.

	both the same in regard to number of vehicles using each. ▪ Was Lemay Drive designed for the traffic that will result from this development? ▪ Stop sign at Lemay Drive is not very efficient during winter as drivers often cannot see vehicles approaching from Hagel Drive because of the snow piled at this corner. Parking: ▪ Concern with cars, boats, and other accessory vehicles parking along Hagel Drive and Lemay Drive. As well as parking along the road in general, I am concerned about space for visitor parking. Construction Impact: ▪ Concern with how construction material trucks will be delivered to 110 Hagel Drive without excessively disrupting residents of the area. (February 28, 2024)	Construction noise cannot be avoided; however, there are conditions laid out in the City of Yellowknife Noise By-law No. 3537.
4.	Further to our telephone conversation of Friday, March 1, 2024 I am writing to set out my concerns of the construction as requested by the applicant above. I own a unit in Cavo Condominiums and am concerned about how this construction will effect our property located at [redacted] While they were building the apartment building located on the adjacent property in the summer of 2023 the construction company continued to drive through the Cavo Condo parking lot as a drive through with their heavy B-train trucks. One of our board members spoke with the construction manager and asked him to not drive through the parking lot. The manager advised that they did not realize it was private property and continued to drive through, they were spoken to again but continued to drive through. I telephoned the City of Yellowknife office and was advised that they could do nothing about as it was private property. We had put cones at the end of the parking lot to prevent them from driving through but the truck drivers just removed them. I am concerned about the damage of these heavy trucks to our building as it already shifts as well as any accidents that could happen to vehicles on the property. Speaking	Your comments have been noted.

	to both the construction manager and the City was of no help. Therefore I am asking the City to put something in place so that any further construction vehicles cannot drive through at the bottom of Hagel Drive up to the Cavo parking lot. The property at the end of the Cavo Condo building belongs to the City and therefore would ask that as property owners you prevent them driving up that hill. Two things could possible take place: write a letter to the applicant and advise them that they cannot drive there (and I would like to receive a copy of that letter) and/or put a blockade from driving onto that land. I have copied the Cavo Condo Board on this for their information. I am not writing to oppose the construction but to oppose the use of the Condo parking lot. If this matter cannot be resolved before construction then please take this as my notice that I oppose the applicants request for building on the site. (March 1, 2024)	
5.	Our comments on the proposed application are: - Parking lot should be multi directional, as the large building being constructed at the bottom of the road will also feed traffic onto Hagel Drive. - Building height would be better at 3 stories instead of 4 to keep the height in line with the neighbouring buildings. Was there a permit in place for the blasting that took place last summer? (March 1, 2024)	Your comments regarding the parking lot have been noted. The building is proposed to be 14.1m in height, which is within the maximum height of 15m for the R2 zone.
6.	[redacted] The City allowed illegal excavation of the site at issue, by the same developer, starting in June 2023 and lasting for months. The excavation included about 4 days of illegal blasting that caused damage to my house, [redacted]	Your comments have been noted.

	I spoke to the city several times during the un-permitted excavation and they apologized profusely for the illegal work being done, which was inescapable for weeks on end, with no space in my house safe from the noise, vibrations, and blasts. The City said they told the developer to stop, and he didn't, and that there was nothing they could do about it; the city told me that and it's just not true. The city has bylaws that say it's illegal to do construction work without a permit (and "excavation" is included in the definition of construction), and they just decided to ignore the law and let the developer continue unchecked for months, and will grant him his permit nonetheless. When it comes to the illegal blasting, the city said that it's sorry, and that it's the Territory's responsible for illegal blasting so it's not their fault, and they did nothing about it. I don't think that my house will be livable if he is awarded with another permit. The city has consistently ignored the developer's blatant violations of municipal and territorial law, and are now rewarding him with another permit for another profit-based endeavour on the backs of residents. [redacted] (March 4, 2024)	
7.	I am writing to address your recent notice regarding the development plans for lots 33 and 34, Block 307, Plan 4809, situated at 110 Hagel Drive. As an owner of the Niven townhomes located at [redacted] 100 Lemay Drive, I am	Construction noise cannot be avoided; however, there are conditions laid out in the City of Yellowknife Noise By-law No. 3537.

	expressing my concerns via this email and urging the City to reconsider and reject the permit application. I have been in this until for almost a year and shortly after I moved in the sounds of construction started from the large 70-unit building which is not yet complete and will be continuing on again this summer. While I understand the high demand for rental properties in Yellowknife, I believe that adding another 24-unit building to an already densely populated area is not the appropriate solution. Presently, the ongoing development behind the proposed site will result in 70 units upon completion. Coupled with the 16 townhomes and the 14 units adjacent to Hagel, the area is becoming overly congested. Moreover, there are additional CAVO units within 500 feet, further exacerbating the issue. This raises questions about the availability of green spaces and safe play areas for children, potentially leading to safety concerns on the streets. It is highly unlikely that these buildings will cater exclusively to adults. Furthermore, I have serious reservations regarding the increased traffic flow resulting from the addition of these 24 units. The anticipated traffic volume with the completion of the 70-unit building is already worrisome, and this new development would only compound the issue. Despite the proximity to downtown Yellowknife, I am skeptical that it will lead to a decrease in traffic; in fact, I anticipate the opposite effect. Considering that our 16 units typically have two vehicles each and some have vehicles parked on the street as well, I can see this being a challenge. As it is now, it can be difficult to get on the very busy Niven Drive from the one access. Also opening the end up the end of Lemay and making it a one way street will encourage increased traffic from others that do not even live in the area. I implore the City to reevaluate this request thoroughly. While I am not opposed to further development, it should not be at the expense of an already overcrowded area. [redacted]	The residual 476m^2 of the site will be landscaped with trees and shrubs. Furthermore, the municipally-owned vacant lot south of 110 Hagel Drive will become a neighbourhood green space. Traffic Impact is addressed in the above section “Vehicular Access and On-Site Traffic”. While vehicular access into the site is one-way from Lemay Drive on to Hagel Drive, both of these roads will remain two-way.

	(March 5, 2024)	
8.	1. Has a solar study been conducted to assess the impact of the proposed development on sunlight access to neighboring properties. 2. Are there any opportunities for collaboration or consultation between the developers and neighboring property owners to address concerns related to solar access and lighting. 3. Will the proposed Multi-Unit Dwelling (24 units) result in any significant shading of my property, particularly during peak sunlight hours or critical times for solar energy generation? 4. Are there any measures being proposed to mitigate potential shading impacts, such as setbacks, building height adjustments, or landscaping strategies? 5. How will the new development be managed and maintained once it is completed? 6. Will there be any green spaces provided as part the development? 7. Will there be any changes to zoning regulations or building codes as a result of the development? 8. What measures will be taken to mitigate any noise or disturbances during the construction phase of the new development? 9. Will there be sufficient parking spaces for residents **and** visitors, and will this impact on-street parking on Lemay Drive? 10. Will Lemay Drive continue to be a 2 way street? 11. Will there be sufficient related play areas for children in order to minimize on street playing? 12. Will consideration be giving to minimizing or strategically placing street lighting in such a way that the bright lights do not impact the quality of sleep for the surrounding neighbours. (March 5, 2024)	1. A sun shadow impact study was not required as part of this application. 2. These discussions can happen between the developers and neighbours. 3. The development will not unduly and negatively affect adjacent properties. 4. Yes, the proposal meets all zoning regulations for setbacks, height, and massing. These predetermined regulations already account for their mitigation of sun shadow impact. 5. Property management is not regulated under the Zoning By-law. 6. The residual 476m^2 of the site will be landscaped with trees and shrubs. Furthermore, the municipally-owned vacant lot south of 110 Hagel Drive will ultimately be zoned PR – Parks and Recreation, and will become a neighbourhood green space. 7. No 8. Construction noise cannot be avoided; however, there are conditions laid out in the City of Yellowknife Noise By-law No. 3537. 9. Reference “Parking and Driveway” section above. 10. Yes Lemay Drive will continue to be two-way. Reference “Vehicular Access and On-Site Traffic” section above.

		11. The future municipal park will function as a play area for children. 12. Proper outdoor lighting will be a condition of development.
9.	I just have a few questions. I understand that the city is in a housing crisis like the rest of Canada. These 24 units that are being built to my understanding are 1 and 2 bedrooms units [redacted] Was there any discussion on how these could be more family friendly units? Will there be a new traffic study conducted, as the one that is being used is over 10 years old and since then there has been a fair amount of development in the Niven area, including Cavo, Niven Heights condos, villas, and townhomes and other multi unit properties. I live directly adjacent to these units that are being built and the amount of traffic that is coming up and down Niven Drive is scary, with the potential of adding approximately 100 vehicles travelling in and out of this area in peak times is a little nerve wrecking. As a mom of two young children I do not feel that Niven is a safe area anymore. Will there be additional safety precautions put in place coming from Hagel/Lemay and Ballentyne onto Niven Drive. The potential for increase of crime is also there, will there be more patrol in the area. I understand with developments that there are requirements for green space and although there are some shown here. This space could have been better utilized as a green space for the community to utilize, that area was used by so many for dog play, children play and walking. I know that the city expanded the trail when using the firebreak but what happened to linking the Niven trail to Old Town? (March 7, 2024)	A traffic impact study was not required as part of this application. Neighbourhood patrol is not regulated under the Zoning By-law; however, outdoor and flood lighting required as a condition of this development will provide for an enhanced sense of safety and security. The Department of Public Works and Engineering is recommending that the Niven/ Hagel/ Ballantyne/ Lemay intersection become a four-way stop. The municipally-owned vacant lot south of 110 Hagel Drive will become a neighbourhood green space.

CITY OF YELLOWKNIFE

ADOPTED COUNCIL MINUTES

Monday, April 22, 2024 at 7:00 p.m.

Present: Deputy Mayor G. Cochrane,
Mayor R. Alty, (via teleconference)
Councillor S. Arden-Smith,
Councillor R. Fequet,
Councillor B. Hendriksen,
Councillor C. McGurk,
Councillor T. McLennan,
Councillor S. Payne, and
Councillor R. Warburton.

City Staff: J. Collin,
C. Greencorn,
P. MacKenzie,
C. MacLean,
K. Pandoo,
T. Setta,
K. Sulzer,
G. White, and
B. Ly.

1. Councillor Arden-Smith read the Opening Statement.

AWARDS, CEREMONIES AND PRESENTATIONS

2. A presentation to Denise McKee in recognition of her service on the Community Advisory Board on Homelessness.

ADOPTION OF MINUTES FROM PREVIOUS MEETING(S)

#0070-24 3. Councillor Arden-Smith moved,
Councillor Fequet seconded,

That the Minutes of Council for the special meeting of Monday, March 25, 2024 be adopted.

MOTION CARRIED UNANIMOUSLY

#0071-24 4. Councillor Arden-Smith moved,
Councillor McGurk seconded,

That the Minutes of Council for the regular meeting of Monday, March 25, 2024 be adopted.

MOTION CARRIED UNANIMOUSLY

#0072-24 5. Councillor Arden-Smith moved,
Councillor Hendriksen seconded,

That the Minutes of Council for the special meeting of Monday, April 2, 2024 be adopted.

MOTION CARRIED UNANIMOUSLY

#0073-24 6. Councillor Arden-Smith moved,
Councillor McLennan seconded,

That the Minutes of Council for the special meeting of Monday, April 8, 2024 be adopted.

MOTION CARRIED UNANIMOUSLY

DISCLOSURE OF CONFLICT OF INTEREST AND THE GENERAL NATURE THEREOF

7. There were no disclosures of conflict of interest.

CORRESPONDENCE AND PETITIONS

8. There was no correspondence nor were there any petitions.

STATUTORY PUBLIC HEARINGS

9. There were no Statutory Public Hearings.

DELEGATIONS PERTAINING TO ITEMS ON THE AGENDA

10. There were no delegations pertaining to items on the agenda.

MEMBER STATEMENTS

11. There were no member statements.

INTRODUCTION AND CONSIDERATION OF COMMITTEE REPORTS

Governance and Priorities Committee Report for March 25, 2024

12. Councillor Arden-Smith read a report of a meeting held on Monday, March 25, 2024 at 12:05 p.m. in the City Hall Council Chamber.

#0074-24 13. Councillor Arden-Smith moved,
Councillor Fequet seconded,

That Council appoint Mary Rose Sundberg, a representative of the Yellowknives Dene First Nation, to serve on the Yellowknife Heritage Committee for a two (2) year term commencing April 23, 2024 and ending April 22, 2026.

MOTION CARRIED UNANIMOUSLY

Governance and Priorities Committee Report for April 8, 2024

14. Councillor Arden-Smith read a report of a meeting held on Monday, April 8, 2024 at 12:05 p.m. in the City Hall Council Chamber.

15. There was no business arising from this meeting.

Governance and Priorities Committee Report for April 15, 2024

16. Councillor Arden-Smith read a report of a meeting held on Monday, April 15, 2024 at 12:05 p.m. in the City Hall Council Chamber.

#0075-24 17. Councillor Arden-Smith moved,
Councillor Warburton seconded,

That a Development Permit application PL-2023-0070 for a 24-unit Multi-Unit Dwelling proposed on properties legally described Lot 33 & 34, Block 307, Plan 4809 (110 Hagel Drive) be approved, with conditions.

MOTION CARRIED UNANIMOUSLY

#0076-24 18. Councillor Arden-Smith moved,
Councillor Hendriksen seconded,

That Council appoint the following members to serve on the Community Advisory Board on Homelessness (CAB) commencing April 23, 2024 and ending April 22, 2026:

Name	Representing
Johnelle Joseph	One (1) representative from an organization serving Persons with Disabilities
Hawa Dumbuya Sesay	One (1) representative from an organization serving Youth

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS

19. A memorandum regarding whether to acquire and dispose of fee simple interest in Lot 77, Block 308, Plan 4204 (2 Findlay Point).

ENACTMENT OF BY-LAWS

20. By-law No. 5084 - A by-law authorizing the City of Yellowknife to acquire fee simple Lot 77, Block 308, Plan 4204 (2 Findlay Point), was presented for First, Second and Third Reading.

#0077-24 21. Councillor Arden-Smith moved,
Councillor Fequet seconded,

First Reading of By-law No. 5084.

MOTION CARRIED UNANIMOUSLY

#0078-24 22. Councillor Arden-Smith moved,
Councillor McGurk seconded,

Second Reading of By-law No. 5084.

MOTION CARRIED UNANIMOUSLY

#0079-24 23. Councillor Arden-Smith moved,
Councillor McGurk seconded,

That By-law No. 5084 be presented for Third Reading.

MOTION CARRIED UNANIMOUSLY

#0080-24 24. Councillor Arden-Smith moved,
Councillor Fequet seconded,

Third Reading of By-law No. 5084.

MOTION CARRIED UNANIMOUSLY

25. By-law No. 5085 - A by-law authorizing the City of Yellowknife to dispose of fee simple interest in Lot 77, Block 308, Plan 4204 (2 Findlay Point), was presented for First, Second and Third Reading.

#0081-24 26. Councillor Arden-Smith moved,
Councillor McLennan seconded,

First Reading of By-law No. 5085.

MOTION CARRIED UNANIMOUSLY

#0082-24 27. Councillor Arden-Smith moved,
Councillor McGurk seconded,

Second Reading of By-law No. 5085.

MOTION CARRIED UNANIMOUSLY

#0083-24 28. Councillor Arden-Smith moved,
Councillor Payne seconded,

That By-law No. 5085 be presented for Third Reading.

MOTION CARRIED UNANIMOUSLY

#0084-24 29. Councillor Arden-Smith moved,
Councillor McLennan seconded,

Third Reading of By-law No.5085.

MOTION CARRIED UNANIMOUSLY

DEFERRED BUSINESS AND TABLED ITEMS

30. There was no deferred business and there were no tabled items.

OLD BUSINESS

31. There was no old business.

NOTICES OF MOTION

32. There were no notices of motion.

33. Mayor Alty left the meeting at 7:13 p.m.

DELEGATIONS PERTAINING TO ITEMS NOT ON THE AGENDA

34. Council heard a presentation from France Benoit regarding the Yellowknife Farmers Market. France Benoit provided a report for the 2023 season.

#0085-24 35. Councillor Warburton moved,
Councillor McLennan seconded,

That, pursuant to s.53(3) of Council Procedures By-law No. 4975, the time allowed for the presenter be extended by up to two minutes.

MOTION CARRIED UNANIMOUSLY

36. France. Benoit continued her presentation of the Yellowknife Farmers Market.

37. Council heard a presentation from Becca Denley a member of the NWT Recreation and Parks Association. Becca Denley noted the association is interested in working on three pilot projects; increasing bike storage, art crosswalks and traffic calming measures.

#0086-24 38. Councillor Hendriksen moved,
Councillor Arden-Smith seconded,

That, pursuant to s.53(3) of Council Procedures By-law No. 4975, the time allowed for the presenter be extended by up to two minutes.

MOTION CARRIED UNANIMOUSLY

39. Becca Denley continued her presentation from the NWT Recreation and Parks Association.

#0087-24 40. Councillor McGurk moved,
Councillor McLennan seconded,

That, pursuant to s.49 of Council Procedures By-law No. 4975, as amended, Council hear a delegation from Craig Scott.

MOTION CARRIED UNANIMOUSLY

41. Council heard a presentation from Craig Scott on behalf of Communities in Motion regarding Yellowknife cycling infrastructure.

#0088-24 42. Councillor Fequet moved,
Councillor Hendriksen seconded,

That, pursuant to s.53(3) of Council Procedures By-law No. 4975, the time allowed for the presenter be extended by up to two minutes.

43. Craig Scott continued his presentation regarding Yellowknife cycling infrastructure.

ADMINISTRATIVE ENQUIRIES

44. Councillor Warburton left the meeting at 7:54 p.m.

45. In response to a question from Council, Administration undertook to provide information about the replacement of the sand rink at the curling club. Administration noted it has not yet been replaced but a contract has been approved and is on time and on budget.

46. In response to a question from Council, Administration undertook to provide information about water breaks across the city and how these would be addressed.

ADJOURNMENT

#0089-24 47. Councillor Fequet moved,
Councillor Arden-Smith seconded,

That the Meeting be adjourned at 8:02 p.m.

MOTION CARRIED UNANIMOUSLY

Mayor

City Manager

Notice of Decision

City of Yellowknife
Planning & Environment

Application# **PL-2023-0070 - Approved with Conditions**

Development Information:

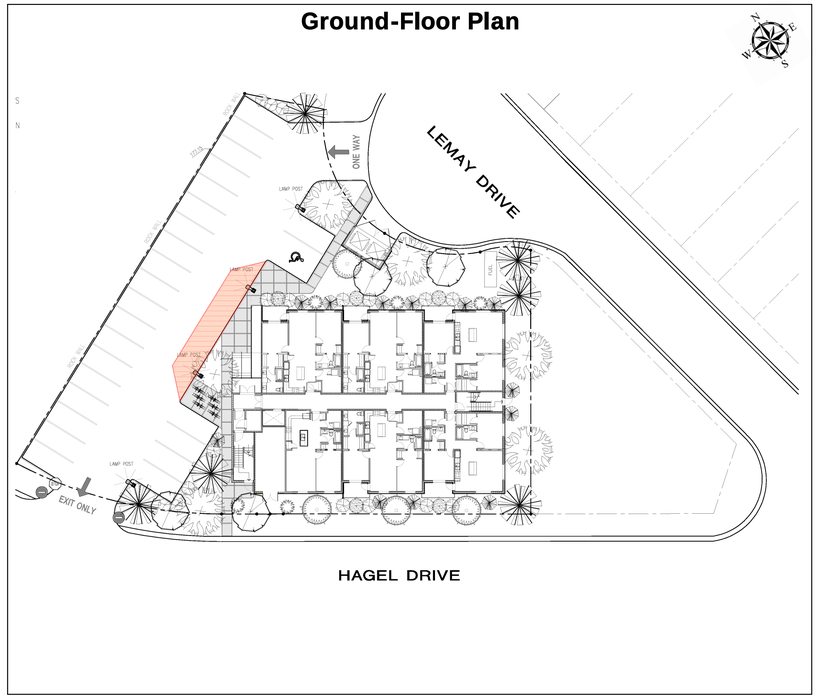
File #: PL-2023-0070

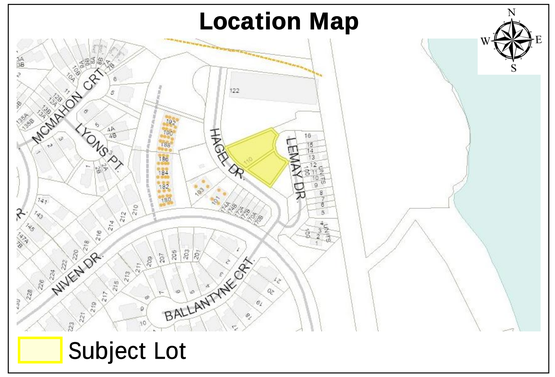
Civic Address: 110 HAGEL DRIVE
Roll: # 0307003300 & 0307003400
Legal Description: Lots 33 & 34 Block 307 Plan 4809

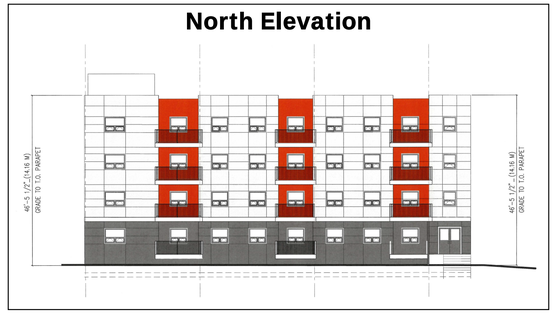
Intended Development:
Multi-Unit Dwelling (24 Units).

Additional material is available upon request by contacting bsleem@yellowknife.ca or 867-920-5611.

Notice issued on April 23, 2024 following Council Motion #0075-24
Development Officer: Bassel Sleem







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 7th day of May, 2024
If no appeal is received and considered, this decision is effective on May 8, 2024.

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

CITY OF YELLOWKNIFE

Development Permit Decision Letter

Zoning By-law No. 5045 - Section 4.6

Date April 23, 2024 File: Lots 33 & 34 Block 307 Plan 4809

507726 NWT Ltd
1000, 13920 Yellowhead Trail
Edmonton, AB T5L 3C2
Via: milan@mrdjenovich.ca

Dear Mr. Mrdjenovich,

Re: Approval of Development Permit Application for a proposed Multi-Unit Dwelling at 110 Hagel Drive: Application Number: PL-2023-0070

The City of Yellowknife Planning and Environment Division has approved your Development Permit application for a proposed Multi-Unit Dwelling at Lots 33 & 34 Block 307 Plan 4809 at 110 Hagel Drive [Roll: 0307003300 & 0307003400], following Council Motion #0075-24.

A Notice of Decision will be posted on the property with the permit effective on the date indicated. The 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. If required, you must apply for and receive a Building Permit before beginning construction. It is also your responsibility as 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. The Developer shall enter into a Development Agreement with the City with respect to on-site improvements, landscaping, traffic improvements, and site servicing requirements; and

2. The development shall comply with the approved stamped drawings for PL-2023-0070 and with all By-laws in effect for the City of Yellowknife.

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

CITY OF YELLOWKNIFE

Sincerely,

Bassel Sleem

Bassel Sleem, MCP, BArch
Planner
Planning and Environment
City of Yellowknife

DM# 763289

Enclosure: Approved Drawings Development Permit PL-2023-0070

CITY OF YELLOWKNIFE

By Mail

«AddressBlock»

NOTICE OF DEVELOPMENT PERMIT DECISION
Zoning By-law No. 5045
Section 4.11

To:	Landowners and Lessees within a 30m radius of the Subject Land
File No.:	PL-2023-0070
Subject Land:	Lots 33 & 34 Block 307 Plan 4809
Subject Land Address:	110 Hagel Drive
Applicant:	Milan Mrdjenovich

TAKE NOTICE: An application for a Development Permit under Zoning By-law No. 5045 has been approved by the City of Yellowknife Planning and Environment Division, following Council Motion #0075-24.

PURPOSE AND EFFECT: The purpose of the application is to develop a Multi-Unit Dwelling at the above noted location. The effect is a 24-Unit building (1 one-bedroom unit and 23 two-bedroom units); with 25 available parking spaces. Vehicular access to the development will be one-way. Entrance will be from Lemay Drive and exit will be out of Hagel Drive. However, both Lemay Drive and Hagel Drive will remain two-way streets.

GETTING ADDITIONAL INFORMATION: Additional information regarding the application is available for public inspection by appointment at the Planning and Development Office during regular business hours, Monday to Friday, from 8:30 a.m. to 4:30 p.m.

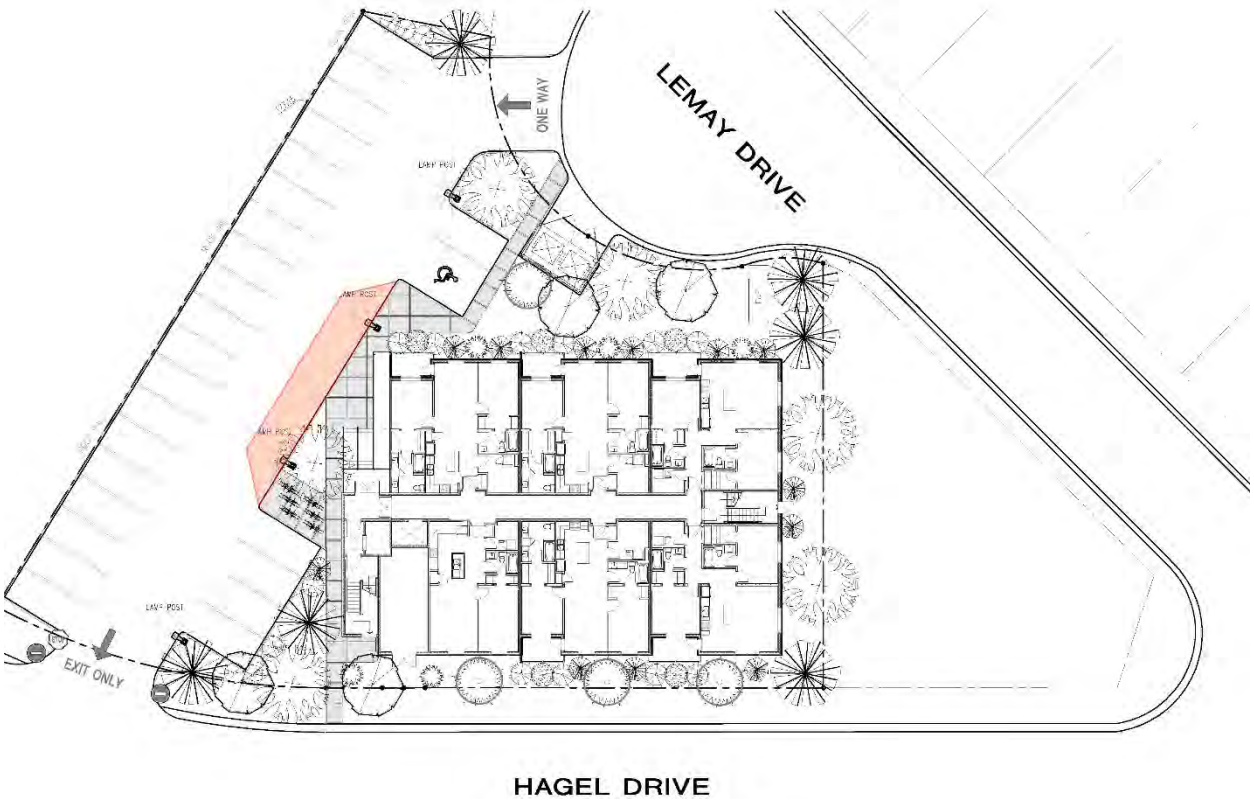
Dated at the City of Yellowknife this 23rd day of April, 2024.

Sincerely,

Bassel Sleem, MCP, BArch
Planner
Planning and Environment
City of Yellowknife
bsleem@yellowknife.ca
867-920-5611

Lots 33 & 34, Block 307, Plan 4809:

Proposed Development on Subject Land:
Multi-Unit Dwelling



Development Appeal Board
CITY OF YELLOWKNIFE

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

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

May 16, 2024 200-D1-H1-24

City of Yellowknife
P.O. Box 580
Yellowknife, NT
X1A 2N4

Attention: Charlsey White
Director of Planning and Development

Dear Ms. White:

Re: Development Appeal Board Hearing

This letter is to advise you that a Development Appeal Board hearing has been scheduled to consider the decision of the Development Officer to issue a Development Permit # PL-2023-0070 for a 24-unit Multi-Unit Dwelling on Lot 33 and 34, Block 307, Plan 4809 (110 Hagel Drive).The hearing has been scheduled for Tuesday, June 4, 2024 at 7:00 p.m. in the City Hall Council Chamber.

Please advise your Development Officer that his/her written report must be filed with my office by 8:30 a.m. on Monday, May 27, 2024.

Yours truly,

Cole Caljouw
Secretary,
Development Appeal Board

Docs #765471

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

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.

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.

Formation de l'appel en matière d'aménagement

(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.

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

Appel d'un permis d'aménagement

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;

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.

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.

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

Appel d'un ordre

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.

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.

Appel à la commission d'appel

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.

(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.

Formation de l'appel d'un ordre

Subdivision Appeals

Appels en matière de lotissement

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.

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 refus d'une demande

2.3 Demography and Land Use

2.3.1 Historical populations and population projections

The City of Yellowknife's population, as estimated on July 1, 2018 (by the NWT Bureau of Statistics) is 20,607, increasing from the 2016 federal census. In review of past census data, the population has continued to increase, however the rate of population growth has slowed in comparison to the early 2000s.

Table 1: Population Change 2006 to 2016

	2006	2011	2016
Yellowknife Population	18,700	19,234	19,569
Percentage Change from Previous Census	13.1%	2.9%	1.7%
NWT Population Count	41,464	41,462	41,786
Percentage Change from Previous Census	11%	-0.01%	0.8%

According to the NWT Bureau of Statistics, the City of Yellowknife's population is projected to continue growing at a modest annual rate of 0.5 to 0.7%, reaching 22,814 by 2035.

Much of the population change in Yellowknife will be the result of inter-provincial migration from other provinces and territories and intra-territorial migration from other regions of the NWT. This change follows national trends of increasing urban populations and declining rural centres. The average age of the population is also increasing and is currently 34.6 years. The fastest growing population cohort in Yellowknife is 50+ years of age. This is the large 'baby boomer' age cohort. Many older citizens are choosing to stay in the north instead of retiring in southern provinces. The trend of an ageing population is consistent with other cities and towns across Canada, although Yellowknife has a younger population than the Canadian average of 41 years.

2.3.2 Housing

Housing starts in Yellowknife declined in 2017 and were projected to decline further in 2018. Factors influencing the decline in housing starts were declining investment in mining exploration, low rates of in-migration to Yellowknife, fewer employment prospects in the public and private sectors, and less land being made available for development.

The overall vacancy rate in the rental market was up to 4.9% in 2018: a 1.4% increase from 2017 (3.5%), while only 0.7% higher than 2016 (4.2%). This variability is expected due to changes in employment, out-migration and slowing construction activity in a small housing market. Average rental rates were not affected by increasing vacancy, as average rental rates are up 2.0% in 2018, with an average of $1,614 per month. Rental rates and vacancies are projected to remain stable through 2019.

In the home ownership market, residential transactions declined from 460 sales in 2016 to 454 sales in 2017, with a further decline of 11.4% in 2018 (approx. 402). The average MLS residential transaction price in 2018 was $440,068, up 5.3% from 2017 ($415,536).

4.5 Niven Residential

Total Area: 86 ha

Niven, as identified on the *Niven Residential Land Use Designation Map* (**Map 8**), is a residential area that is located adjacent to the downtown core and provides easy access to the core of the City by vehicle and alternative 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. It is not anticipated that the area will need to accommodate further institutional or commercial activities because of its proximity to downtown.

Much of the residential development in the area is recent and new residential lots continue to be developed on vacant parcels. There will be few redevelopment opportunities of existing properties over the next 20 years.

The fringe of Niven is a primary trail network, connecting Back Bay to the Capital Area and beyond. This trail is well used by walkers, skiers, snowmobilers and cyclists. The natural landscape and the rock cliff on the eastern portion of the designation is an important natural feature that will be preserved.

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.

Jackfish Lake

Yellowknife Bay (Great Slave Lake)

MOYLE DR.
McMAHON CRT.
STIRLING CRT.
HAGEL DR.
LEMAY DR.
NIVEN DR.
BALLANTYNE CRT.
HAENER DR.
DRISCOLL RD.
NIVEN GATE
de WEERDT DR.

Niven Lake

41 ST.
42 ST.
49A AVE.
49 AVE.
43 ST.
44 ST.
45 ST.
46 ST.
FRANKLIN AVE. (50 AVE.)
N.W.T. HIGHWAY NO. 4

Service Layer Credits:

CITY OF YELLOWKNIFE

COMMUNITY PLAN

LAND USE DESIGNATION

NIVEN

MAP 8

- Municipal Boundary
- Highway
- Road
- Parcel Fabric
- Lake
- Niven

DILLON CONSULTING

MAP DRAWING INFORMATION:
DATA PROVIDED BY CITY OF YELLOWKNIFE

MAP CREATED BY: LK
MAP CHECKED BY: MK
MAP PROJECTION: NAD 1983 UTM Zone 11N

SCALE 1:4,080

0 40 80 160 m

N W E S

PROJECT: 18-7267 STATUS: DRAFT DATE: 10/3/2019

FILE LOCATION: I:\GIS\187267 - Yellowknife Community Plan\MXDs\Final_Plan_Sept2019\Fig_LandUseDesignations_DD.mxd

5.4 Subdivision and Land Development Sequencing

Pursuant to the *Community Planning and Development Act* 4.(1)(e), this section provides a policy framework for the sequence in which specified areas of land may be developed or redeveloped to accommodate future land use needs in the short-term, medium-term, and long-term.

As part of the *Community Plan* update, land analysis and modeling was performed to determine how much land would be required for different uses for the next 20 years (see Section 2.3). The City considered existing inventory and available land development opportunities within the built area of the City as well as greenfield areas. Based on these considerations, a set of objectives and policies were developed to guide decisions about subdivision and land development sequencing to meet the future land development needs of the City in an environmentally, economically, and socially sustainable way, as identified on the *Land Development Sequence Map* (**Map 24**).

Area development plans are a tool that the City can use to create more detailed land use plans for a specific area of land. As per section 8 of the *Community Planning and Development Act* the purpose of an area development is to provide a framework for the subdivision or development of land within a municipality. Several area development plans are identified in the land development sequencing. The City may consider an area development plan any time an undeveloped parcel of land is being proposed for subdivision or five or more lots are being subdivided. Objectives and policies for subdivision and land development sequencing are outlined in the table below:

Planning and Development Objectives	Policies
1. To utilize existing infrastructure for land development.	1-a. Vacant lots, both City owned and private, within the built area of the City will be prioritized before greenfield development. 1-b. The City will consult with owners of private vacant land to incentivize development that aligns with the City's general development goals (**Section 3.1.2**).
2. To pursue greenfield redevelopment with consideration to market demand and economic, environmental, and social cost benefit analysis.	2-a. New greenfield development will be prioritized after development consideration is given to policy 1-a and 1-b. 2-b. Greenfield development will occur adjacent to developed areas in a phased approach in order to utilize existing infrastructure for land development. 2-c. A cost benefit analysis on the economic, environmental, and social aspects of new land subdivision will occur prior to greenfield development.

Planning and Development Objectives	Policies
	2-d. Costs and benefits of extending municipal infrastructure and services to new greenfield development will be evaluated before approval is given for new development.
3. To pursue greenfield residential development that aligns with the City's general development goals as described in **Section 3.1.2**.	3-a. Greenfield development will align with the City's general development goals (**Section 3.1.2**)
4. To utilize existing infrastructure for land development.	1-a. Vacant lots, both City owned and private, within the built area of the City will be prioritized before greenfield development. 1-b. The City will consult with owners of private vacant land to incentivize development that aligns with the City's general development goals (**Section 3.1.2**).
5. To pursue greenfield redevelopment with consideration to market demand and economic, environmental, and social cost benefit analysis.	2-a. New greenfield development will be prioritized after development consideration is given to policy 1-a and 1-b. 2-b. Greenfield development will occur adjacent to developed areas in a phased approach in order to utilize existing infrastructure for land development. 2-c. A cost benefit analysis on the economic, environmental, and social aspects of new land subdivision will occur prior to greenfield development. 2-d. Costs and benefits of extending municipal infrastructure and services to new greenfield development will be evaluated before approval is given for new development.
6. To pursue greenfield residential development that aligns with the City's general development goals as described in **Section 3.1.2**.	3-a. Greenfield development will align with the City's general development goals (**Section 3.1.2**)

5.4.1 Residential

The City currently has a variety of vacant lots available for residential development. There are residential lots in Niven, Grace Lake South, the City Core and the Central Residential areas. Some lots are currently for sale and some lots are being prepared to sell. The City will prioritize the sale of these lots for residential development.

In the medium to long-term, the City will pursue greenfield development in the Con Redevelopment Area. The timeline for this development will depend on: 1) the progress of remediation activities in the area; 2) Market conditions; and 3) Costs and benefits of extending municipal infrastructure and services.

Table 3: Residential Land Development Sequence

Priority	Timeline
Dispose of existing parcels in inventory	2020
Focus on infill opportunities in the City Core	2020-2021
Infill opportunities in Central Residential, Niven Residential	2021-2022
Con Redevelopment Area	As demand requires

5.4.2 Commercial

Commercial development will take place primarily in the Downtown and Old Airport Road Commercial designations. Currently there is vacant and under-utilized land in both of these areas. The City is currently working on a Downtown Retail Revitalization Strategy to better utilize vacant downtown commercial retail properties. The City will continue to work with private landowners of vacant and under-utilized commercial properties to incentivize commercial development.

There are also opportunities for smaller scale commercial development on under-utilized sites in Old Town, Central Residential, and West Residential areas.

Table 4: Commercial Land Development Sequence

Priority	Timeline
Old Airport Road – approach current land owners of vacant or underdeveloped parcels to encourage development	2020
Develop incentives for commercial development on under-utilized sites, specifically commercial retail development, in the City Core based on recommendations in from future or on-going *downtown revitalization studies* and the Theia Report	2020-2021
Develop Area Development Plan for Frame Lake West parcel	2021

RESIDENTIAL INFILL OPPORTUNITIES

Central Residential, and Niven Residential

2021 - 2025

OLD AIRPORT ROAD

Encourage Development

2020 - ongoing

FRAME LAKE WEST

AREA DEVELOPMENT PLAN

2021

ENGLE BUSINESS DISTRICT

Develop services for undeveloped phases

AS REQUIRED

DOWNTOWN CORE

Encourage Residential and Commercial Development

2020 - ongoing

KAM LAKE

AREA DEVELOPMENT PLAN

2020

KAM LAKE SOUTH

Subdivided Land

AS REQUIRED

Handle Lake
Fox Lake
Joe Lake
Long Lake
Jackfish Lake
Frame Lake
Range Lake
Niven Lake
Rat Lake
Kam Lake
Grace Lake
Keg Lake
Bay (Great Slave Lake)
N.W.T. HIGHWAY NO. 4
OLD AIRPORT RD.
BRISTOL AVE.
DICKINS ST.
BLACKBERG DR.
EAGLE DR.
FALCON RD.
OSPREY RD.
DEH CHO BLVD.
MAGRUM CRES.
ASTEEL DR.
JESKE CRES.
HERRIMAN RD.
RIVETT CRES.
BORDEN DR.
FINLAYSON DR. NORTH
BANKE CRES.
ARDEN AVE.
AGENAIS DR.
RANGE LAKE RD.
WOOLGAR AVE.
BYRNE RD.
BROMLEY DR.
BIG ELOW CRES.
FINLAYSON DR.
HORDAL RD.
DEMELT CRES.
UTSINGI DR.
CAMERON RD.
ENTERPRISE DR.
MELVILLE DR.
HALL CRES.
CORONATION DR.
CURRY DR.
GRACE LAKE BLVD.
BRADEN BLVD.
KAM LAKE RD.
MOYLE DR.
HAENER DR.
NIVEN DR.
FRANKLIN AVE. (SOUTH)
49 AVE.
48 ST.
47 ST.
46 ST.
45 ST.
50 ST.
51 AVE.
51 ST.
49 ST.
53 ST.
44 ST.
GITZEL ST.
54 ST.
52 AVE.
52 ST.
54 AVE.
SCHOOL DRAW AVE.
57 ST.
56 ST.
55 ST.
54A AVE.
FORREST DR.
RYCON DR.
RASMUSSEN RD.

CITY OF YELLOWKNIFE

COMMUNITY PLAN

LAND USE DESIGNATION

MAP 24

Municipal Boundary
Highway
Road
Parcel Fabric
Lake
Downtown Core
Engle Business District
Kam Lake
Kam Lake South
Old Airport Road
Frame Lake West
Residential Infill Opportunities

DILLON CONSULTING

MAP DRAWING INFORMATION:
DATA PROVIDED BY CITY OF YELLOWKNIFE, DILLON CONSULTING LIMITED

MAP CREATED BY: LK, RB
MAP CHECKED BY: MK
MAP PROJECTION: NAD 1983 UTM Zone 11N

SCALE 1:25,000

0 245 490 980 m

N W E S

PROJECT: 18-7267 STATUS: DRAFT DATE: 10/24/2019

FILE LOCATION: G:\GIS\187267 - Yellowknife Community Plan\MXDs\Final_Plan_Sept2019\Fig_Land_Development_Sequence_Boundary.mxd

Term	Definition
Public Park	means all land that is maintained or operated by the City of Yellowknife for community recreation activity;
Public Utility Uses and Structures	means a system, works, plant, equipment, or service, whether owned or operated by or for the City or by a corporation, which furnishes services and facilities available at approved rates to or for the use of the inhabitants of the City, including but not limited to communication systems, transportation, municipal services, and the supply of electricity;
Real Property Report	means a legal document that clearly illustrates the location of significant visible improvements relative to the property boundaries. It is produced by a Canada Lands Surveyor usually for determining compliance with municipal By-laws;
Recreation Facility	means all or any part of a building, buildings, or structure that is maintained or operated for community recreation activity;
Recreation Space	means indoor and outdoor recreation space provided with a multi-unit development without individual street access; “Indoor Recreation Space” includes but is not limited to: balconies, communal indoor lounges, private gyms, rooftop access; “Outdoor Recreation Space” includes but is not limited to: hard and soft-landscaped areas, roof lounges, and community gardens.
Recycling Facility	means a development for depositing, storing, separating, dismantling, salvaging, treating, renovating or redistributing non-toxic discarded materials and scrap goods for use as recycled materials, such as paper, glass, plastics, metals, waste concrete, waste asphalt, manufacturing off-cuts, and household goods; Does not include an Automobile Wrecker.
Rehabilitative and Corrective Facility	means a development to hold, confine or to provide regulated or temporary residential facilities for minors or adults either awaiting trial on criminal charges or as part of the disposition of criminal charges. Typical uses are a remand centre or jail;
Religious & Education Institutions	means development used by the public for assembly, instruction, education, culture, religion, or enlightenment for a communal activity;

3. Roles and Responsibilities

3.1. Development Officer

The office of the Development Officer is established in accordance with Section 52 of the *Act.*

3.1.1. The Development Officer shall:

a) receive and process all Development Permit applications;

b) keep and maintain for inspection by the public during Office hours, a copy of this By-law, as amended, and ensure that copies are available to the public at a reasonable charge and maintain an up to date electronic version accessible on the City's website;

c) keep a register of all Development Permit applications, decisions thereon and rationale;

d) make decisions on all Development Permit applications and all applications requesting a Variance pursuant to Sections 4.8.1 of this By-law;

e) refer all requests to Council for decision for those Uses listed as Discretionary Uses in the Zone, and all requests for a Variance pursuant to Section 4.8.2 of this By-law;

f) approve or refuse, pursuant to the *Act* and this By-law, all Development Permit applications and state the terms and conditions as authorized by this By-law; and

g) post a notice for all Development Permit applications and state terms and conditions as authorized by this By-law.

3.1.2. The Development Officer may:

a) refer any application for a Development Permit to Council; and

b) refer any other Development matter to Council for its review and/or decision.

3.2. Council

3.2.1. Council shall:

a) make decisions and recommend conditions on Discretionary Uses;

b) make decisions and recommend conditions for a requested Variance pursuant to Section 4.8.2 of this By-Law;

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.

c) a level one environmental Site assessment, a level two environmental Site assessment, or both, prepared by a qualified professional to determine potential contamination and mitigation;
d) a traffic Impact analysis prepared by a qualified professional which shall address, but not be limited to, Impact on adjacent public roadways, pedestrian circulation on and off-Site, vehicular movements circulation on and off-Site, turning radius diagrams for large truck movements on and off-Site, and any other similar information required by the Development Officer;
e) written confirmation from the power utility company that services can be provided to the proposed Development in accordance with the Canadian Electrical Code;
f) provision for the supply of water, sewer and Street Access, including payment or provision of security of the costs for installing such utility;
g) a Site plan indicating existing contours and natural features and specifying any proposed modification of the contours and natural features;
h) a report showing the Impact of sound, smoke or airborne emissions; and
i) a report showing the effect of wind and sun shadow produced by the proposed Development.

4.4.5. No Development Permit for infilling of a Water-Body shall be issued unless the application for a Development Permit is for an approved land Use. Application requesting permission to fill a Water-Body without an identified end Use will not be accepted by the City.

4.5. Development Permit Process

4.5.1. The Development Officer may refer an Application for a Development Permit to any City department, external agency or adjacent Landowner for comment and advice.

4.5.2. The Development Officer shall notify any adjacent Landowners that they deem may be impacted by any proposed Development.

8. General Development Regulations Applicable to Residential Zones

8.1. General Development

8.1.1. Planned Development

a) Notwithstanding any other regulations of this By-law, where a Planned Development involves the grouping of two or more residential Dwelling types on a shared Site, it shall be subject to the following regulations:

i the Lot coverage of the planned group of residential Dwellings shall not exceed the maximum Lot coverage of the applicable residential Zone; and

ii building setbacks shall be provided in accordance with the Development Regulation Table in each Zone.

8.1.2. Principal Building and Uses

a) Within the R1, R2, RC and RE Zones, there shall be one Principal Building and one Principal Use on a Lot, unless the Development is approved as a Planned Development in accordance with Section 8.1.1 of this By-law.

8.1.3. Provision of Recreation Space

a) For Multi-Unit Dwelling Developments with more than 15 units must have balconies or an equivalent. Equivalent spaces may include but are not limited to:

i communal indoor lounges;

ii private gyms; or

iii roof top access.

b) Any Recreation Space provided, is to be maintained for the life of the Development.

c) In addition, for Multi-Use Dwelling Development without individual Street Access, an outdoor space, suitable for intended occupants, shall be provided to the satisfaction of the Development Officer. Developments with more than 15 units shall have outdoor common areas.

d) Outdoor Parks and Recreation areas within 250 m proximity of the residential Development will be considered fulfillment of the outdoor Recreation Space.

e) Outdoor Recreation Space shall provide suitable Landscaping, fencing and surface treatment to the satisfaction of the Development Officer.

8.1.4. Communication Towers

a) The Development Officer may approve a Height Variance for a Communication Tower exceeding the maximum permitted Height of the Zone.

8.2. Specific Use Regulations Applicable to Residential Zones

8.2.1. Day Care Facility, Home

a) Day Care Facility, Home shall be approved with an application for Home Based Business, in all eligible Zones.

8.2.2. Day Care Facility in a Residential Zone

a) The design and exterior character of the Building shall be compatible with the surrounding neighbourhood.

b) The applicant shall submit the Floor Area and plans designated for the Day Care Facility with the submission of the Development Permit application.

c) Any associated vehicle or equipment shall be accommodated on-Site.

8.2.3. Community Resource Centres

a) The design and exterior character of the Building shall be compatible with the surrounding neighbourhood.

b) The applicant shall submit the Floor Area and plans designated for the Community Resource Centre with the submission of the Development Permit application.

c) The permit is valid only for the address stated on the application and is not transferable to a new address.

d) Any associated vehicle or equipment shall be accommodated on-Site.

8.2.4. Factory-Built Homes

a) All Factory-Built or manufactured Dwelling Units shall be skirted from the base of the unit to the ground with material similar to that of the siding material. Painted plywood shall not be permitted as skirting.

b) All Factory-Built or manufactured Dwelling units shall conform to the current National Building Code and shall be Canadian Standards Association Certified.

10.2. R2 – Medium Density Residential

10.2.1. Purpose

To provide an area for medium to higher Density residential Development that encourages a mix of Dwelling types and compatible Uses.

Table 10-3: R2 Permitted and Discretionary Uses

Permitted	Discretionary
Accessory Building	Convenience Store
Accessory Use	Similar Use
Community Resource Centre	
Day Care Facility	
Dwelling ● Single Detached ● Duplex ● In-Home Secondary ● Detached Secondary ● Factory-Built ● Townhouse ● Multi-Unit ● Special Care Residence	
Home Based Business	
Institutional ● Religious & Educational Institutions	
Planned Development	
Public Parks	
Public Utility Uses and Structures	
Short-Term Rental Accommodation	
Temporary Use	
Urban Agriculture, Community	

Table 10-4: R2 Medium Density Regulations

R2 - Regulations	Single Detached Dwelling	Single Detached Factory-Built Dwelling	Duplex Dwelling	Townhouse/ Multi-Unit Dwelling
Minimum Lot Width	15 m	11 m	15 m (7.5 m subdivided)	15 m (7.5 m subdivided)
Maximum Site Area	-	-		9,000 m^2
Maximum Lot Coverage				
Principal Building	40%	40%	55% combined	55% combined
Accessory Building	15%	15%		
Maximum Height				
Principal Dwelling	12 m	12 m	12 m	15 m
Accessory Building	Less than the Height of the Principal Dwelling	Less than the Height of the Principal Dwelling	Less than the Height of the Principal Dwelling	Less than the Height of the Principal Dwelling
Detached Secondary Dwelling Unit Above a Garage	No more than 3 m higher than the Principal Building to a maximum of 12 m	No more than 3 m higher than the Principal Building to a maximum of 12 m	No more than 3 m higher than the Principal Building to a maximum of 12 m	-
Detached Secondary Dwelling Unit	No higher than the Principal Building to a maximum of 12 m	No higher than the Principal Building to a maximum of 12 m	No higher than the Principal Building to a maximum of 12 m	-
Minimum Front Yard Setback (Principal Building)				
Front Street Access	6 m	1 m	1 m	1 m
Minimum Side Yard Setback				
Principal Building - Interior	1.5 m	1.5 m	1.5 m	3 m
Principal Building - Corner	2 m	2 m	2 m	3.5 m
Factory-Built Dwelling - Entrance Side	-	2 m	2 m	-

R2 - Regulations	Single Detached Dwelling	Single Detached Factory-Built Dwelling	Duplex Dwelling	Townhouse/ Multi-Unit Dwelling
Factory-Built Dwelling - Non Entrance Side	-	1.5 m	1.5 m	-
Factory-Built Dwelling – Front Entrance		1.5 m (both sides)	1.5 m (both sides)	
Accessory Building - Interior	1 m	1 m	1 m	1 m
Accessory Building - Corner	2 m	2 m	2 m	3.5 m
Minimum Rear Yard Setback				
Minimum for a Principal Building	6 m	6 m	6 m	6 m
Minimum for an Accessory Building	1 m	1 m	1 m	1 m
Minimum for an Outdoor Wood Pellet Boiler	Minimum 2 m for an Outdoor Wood Pellet Boiler	Minimum 2 m for an Outdoor Wood Pellet Boiler	Minimum 2 m for an Outdoor Wood Pellet Boiler	Minimum 2 m for an Outdoor Wood Pellet Boiler
Projections into Yard Setbacks				
Architectural Features for 3m or greater	1.2 m	1.2 m	1.2 m	1.2 m
Architectural Features 1.5m or less for Side Yard	0.6 m	0.6 m	0.6 m	0.6 m
Unenclosed Deck above 0.6m in Height Front and Rear Yard	40% reduced setback	40% reduced setback	40% reduced setback	40% reduced setback
Unenclosed Deck less than 0.6m in Height Front Yard	40% reduced setback	40% reduced setback	40% reduced setback	40% reduced setback
Unenclosed Deck less than 0.6m in Height Rear Yard	1 m from the Lot boundary	1 m from the Lot boundary	1 m from the Lot boundary	1 m from the Lot boundary
Unenclosed Steps	40% reduced setback	40% reduced setback	40% reduced setback	40% reduced setback

R2 - Regulations	Single Detached Dwelling	Single Detached Factory-Built Dwelling	Duplex Dwelling	Townhouse/ Multi-Unit Dwelling
Accessory Structures overhanging eaves	0.6 m	0.6 m	0.6 m	0.6 m
Minimum Distance				
Between Principal Building and Accessory Building/Structure or between Accessory Buildings/Structure	1 m	1 m	1 m	1 m
Exceptions	Minimum 3 m Between a Principal Building and Outdoor Wood Pellet Boiler	Minimum 3 m Between a Principal Building and Outdoor Wood Pellet Boiler	Minimum 3 m Between a Principal Building and Outdoor Wood Pellet Boiler	minimum 3 m Between a Principal Building and Outdoor Wood Pellet Boiler

10.2.2. Development Regulations

a) Site Development

i The Site plan, the relationship between Buildings, Structures and Open Spaces, the architectural treatment of Buildings, and vehicle circulation shall be subject to approval by the Development Officer.

ii A Site shall not be developed where significant portions of the Site cannot accommodate future residential Development and Access.

iii Parking

5) Single Detached Dwellings, driveways shall not exceed two car widths.

6) Duplex Dwellings, driveways shall not exceed two car widths without being separated by Landscaping features satisfactory to the Development Officer

b) The Front and Rear Yard minimum Setbacks shall be 3m for Lot sizes with less than 15 m width. These Lots include but are not limited to:
   i Block 163 Plan 4729 (Northlands Trailer Park); and
   ii Block 514 Plan 2194 (Bigelow Crescent and Williams Avenue)
   iii Block 515 Plan 2193 (Bigelow Crescent and Dusseault Court).

c) All mechanical equipment, including roof mechanical units, shall be concealed by Screening in a manner compatible with the architectural character of the Buildings, or concealed by incorporating it within the Building roof.

10.2.3. Other Regulations

a) See Section 7 – Development Regulations Applicable to All Zones.

b) See Section 8 – Development Regulations Applicable to Residential Zones.

Development Appeal Board
CITY OF YELLOWKNIFE

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

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

May 16, 2024

200-D1-H1-24

REGISTERED MAIL

Elizabeth Doyle

Dear Ms. Doyle:

Re: Appeal of Development Permit No. PL-2023-0070
Lot 33 and 34, Block 307, Plan 4809 (110 Hagel Drive)

Receipt is hereby acknowledged of your letter appealing the decision of the Development Officer to issue a Development Permit No. PL-2023-0070 for a 24-unit Multi-Unit Dwelling on Lot 33 and 34, Block 307, Plan 4809 (110 Hagel 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, June 4, 2024, 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, 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 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, May 27, 2024 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 #765409

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 : Usage et aménagement restreints

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.

(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

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.

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.

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.

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.

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.

Formation de l'appel en matière d'aménagement

(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.

Appel d'un permis d'aménagement

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.

Restriction

(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.

Formation de l'appel du permis

(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.

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

May 16, 2024

200-D1-H1-24

REGISTERED MAIL

Mr. Milan Mrdjenovich

Dear Mr. Mrdjenovich:

Re: Development Appeal Board Hearing - Permit No. PL-2023-0070
Lot 33 and 34, Block 307, Plan 4809 (110 Hagel Drive)

This letter is to formally notify you that Development Permit No. PL-2023-0070 for a 24-unit Multi-Unit Dwelling on Lot 33 and 34, Block 307, Plan 4809 (110 Hagel Drive), which the City issued to you on April 23, 2024 for a Multi-Unit Dwelling 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, June 4, 2024 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, May 27, 2024 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-H1-24
May 16, 2024

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

Yours truly,

Cole Caljouw
Secretary,
Development Appeal Board

CC/bl

Enclosure

DM#765401

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.

Formation de l'appel en matière d'aménagement

(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.

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.

Appel d'un permis d'aménagement

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.

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.

Restriction

(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.

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.

Formation de l'appel du permis

(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.

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