CITY OF YELLOWKNIFE DEVELOPMENT APPEAL BOARD

IN THE MATTER of a development appeal between:

Elizabeth Doyle

Appellant

- and -

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

Respondent

Issued: July 9, 2024 **File: 200-D1-H1-24**

This is the decision of the City of Yellowknife Development Appeal Board ("Board") with respect to an appeal submitted pursuant to s. 62 of the *Community Planning and Development Act,* SNWT 2011, c.22 ("*Act*").

Date of Board Hearing:	June 4, 2024
Board Members in Attendance:	Ms. Ann Peters, Chairperson Mr. Eric Cameron, Mr. Geoffrey Oldfield, and Mr. Chris Van Dyke. Mr. Cole Caljouw, Secretary
Appearances:	
Ms. Elizabeth Doyle	Appellant
Mr. Bassel Sleem	Development Officer, City of Yellowknife
Mr. Tatsuyuki Setta	Manager, Planning & Environment, City of Yellowknife
Ms. Kerry Thistle	Legal Counsel for the City of Yellowknife
Mr. Milan Mrdjenovich	Developer
Mr. James Murphy	Legal Counsel for the Developer
Ms. Amanda-Brea Watson	Planner, Dillon Consulting

Decision:

After reviewing the submissions of the Appellant and Development Officer, hearing the evidence of the parties present at the hearing, and having due regard to the facts and circumstances, the merits of the Appellant's case and to the purpose, scope, and intent of the Community Plan and the Zoning By-law, **it is the decision of the Development Appeal Board to CONFIRM the decision of Council to approve the issuance of Development Permit No. PL-2023-0070**.

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

BACKGROUND

1. The Board is established for the purpose of reviewing development decisions of the development authority made under a Zoning By-law. Under section 69 of the *Act*,

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

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

2. On July 6, 2023, the Developer submitted a development application to the City of Yellowknife's ("City") Development Officer to construct a 24-unit Multi-Dwelling ("Proposed Development") at Lots 33 and 34, Block 307, Plan 4809 YELLOWKNIFE (110 Hagel Drive) within the municipal boundaries of the City of Yellowknife.

3. The Development Officer subsequently referred the application to Council for decision under section 3.2 of Zoning By-law No. 5045, as amended ("Zoning By-law").

4. On April 23, 2024, Council unanimously approved Development Permit application PL-2023-0070 for a 24-unit multi-unit dwelling at 110 Hagel Drive, pursuant to council motion #0075-24.

5. On May 7, 2024, the Appellant submitted a notice of appeal respecting Council's decision. Subsequently, a hearing date of June 4, 2024 was scheduled.

6. At the hearing, the Appellant raised a preliminary issue regarding enforcement of the Zoning By-law. The Appellant stated her concern is the Developer is continuing development without an effective development permit.

7. The Board determined that it would reserve its decision on the preliminary issue and proceed to hear arguments with respect to the substance of the appeal.

GROUNDS OF APPEAL

8. The Appellant submits that the grounds for appeal include:

   i. the Proposed Development contravenes "medium density" zoning requirements of the Niven Lake Development Scheme ("NLDS");
   ii. the Zoning By-law definition of "density" fails to provide actual numbers of units based on lot area;
   iii. the Proposed Development contravenes the Community Plan because the Community Plan is incomplete and inadequate;
   iv. the Proposed Development does not provide for recreational space, as required by the Zoning By-law;
   v. the City did not perform a traffic study for the area; and
   vi. the Proposed Development does not include sidewalks or landscaping, as required by the NLDS.

9. The Appellant seeks the following relief:

   i. the decision respecting development permit PL-2023-0007 be reversed;
   ii. the Community Plan be revised before further development in the area is approved;
   iii. the City provide updated information on the recreational space prior to further development in the area;
   iv. the Proposed Development be delayed until the City completes a traffic study of Niven Phase V area;
   v. the Proposed Development be delayed until the requirement for sidewalks and landscaping is addressed; and
   vi. variation or reversal of the decision respecting development permit PL-2023-0007 until the above concerns are addressed.

PRELIMINARY ISSUE

10. The Board first considered the parties' submissions regarding the Appellant's allegation that the Developer continued to develop the site without an effective development permit and during the appeal period and process.

11. The Appellant argues the Developer is developing without a permit during the appeal process with impunity. She argues that while the development permit is under appeal, significant work on site must cease. She further questions what the purpose of a permit is if development is allowed to continue without the permit.

12. Counsel for the Developer submits that the law is clear that anything the Developer may or may not have done in violation of a permit is irrelevant to the Development Appeal Board hearing. Such issues, he argues, are a matter of enforcement and outside the purview of the Board.

13. Counsel for the City submits that the Board may only confirm, reverse, or vary a development permit that has been issued. Therefore, anything to do with development that may or may not be happening at the site is an enforcement matter outside the scope of decisions that may be made by the Board.

14. Section 77(2) of the *Act* states that "no person shall undertake or allow a development without a development permit required under a zoning bylaw." However, both section 57 of the *Act* and Part 6 of the Zoning By-law delegate responsibility for enforcement of development contraventions to development officers.

15. The *Act* does not permit an appeal based on non-compliance with a development permit. The Board hears appeals from persons other than the permit applicant on the basis that the appellant is adversely affected by approved development permit and certain criteria enumerated in the legislation are met (section 62(1)).

16. Therefore, while the Board empathizes with the Appellant's concern over the Developer's alleged failure to cease development during the appeal period, the Board finds that development enforcement matters are outside the scope of decisions that may be made by the Board and are the responsibility of the City's development officer(s).

17. The preliminary matter raised by the Appellant is dismissed.

ISSUE 1 - NIVEN LAKE DEVELOPMENT SCHEME

18. The Appellant alleges the Proposed Development contravenes "medium density" zoning requirements of the NLDS, under section 62(1)(b) of the *Act*. The Appellant argues the Developer must meet the density requirement established by section 1(a) of the NLDS, which states: "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."

19. The Appellant relies on the City's April 15, 2024 Governance and Priorities Committee ("GPC") report citing section 80(2)(c) of the *Act* wherein a development scheme adopted in accordance with the former Act[1] remains in force and is deemed to be an area development plan in accordance with the *Act*, to the extent that it is not inconsistent with the *Act*. The GPC report further states the subject lots were zoned R-3 Residential – Medium Density under Zoning By-law No. 4404 and, in that R-3 zone, the allowable density was set to one unit per $125m^2$.

20. The Appellant argues the permit plans identify the subject lots' size as approximately $2,042m^2$ which, with 24 units, is approximately $85m^2$ per unit, being considerably less than the NLDS requirement of $125m^2$. Therefore, according to the Appellant, the Proposed Development contravenes the NLDS (or area development plan). The Appellant provided no evidence as to how

1 *Planning Act*, RSNWT 1988, c.7

this alleged contravention of the area development plan adversely affects the Appellant.

21. Counsel for the City argues that the NLDS remains in force and is deemed to be an area development plan under the *Act*. The City further argues that the NLDS identifies the subject lots as MD – Medium Density and explicitly provides for multi-family dwellings. Furthermore, the specific calculations of units per square meter referenced by the Appellant from Zoning By-law No. 4404 are no longer in force upon adoption of Zoning By-law No. 5045, as it repealed and replaced By-law No. 4404. Thus, the City's position is that a multi-family dwelling in medium density zoning is precisely what the NLDS prescribes and Zoning By-law No. 4404 does not apply.

22. The Board also heard evidence from the Development Officer that on May 2, 2016, Council, by motion #0103-16, increased the density of Niven Phase V unsold lots from 16 units (or the 125m^2 permissible density) to 20 units. Therefore, the Proposed Development is four additional units from what Council adopted in 2016. Accordingly, the Development Officer argues, the Proposed Development conforms to the intent of the NLDS, being a MD - Medium Density residential development consisting of multi-family dwelling. As such, the Proposed Development also aligns with the Zoning By-law without the need for variance.

23. Counsel for the Developer argues that the appeal ought to be dismissed under section 62(2) of the *Act,* which seeks to protect a developer's right to develop if the developer complies with the Zoning By-law. Section 62(2) states:

> *(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.*

Since the Proposed Development is for a use permitted by the Zoning By-law, the Developer argues, an appeal may only be made if there is an alleged misapplication of the Zoning By-law.

24. Counsel for the Developer further argues that while the NLDS remains in effect, it must be read in the context of the new Zoning By-law. Under this By-law, the Proposed Development is medium density in an R2 zone and, as such, complies with the By-law. Furthermore, the Board's authority is limited to interpreting the Zoning By-law and the Board does not have the power to rewrite it, as the Appellant suggests.

25. The Board considered the evidence and submissions provided and is not persuaded that the Proposed Development contravenes the area development plan. The parties agree that the NLDS is an area development plan under the *Act* and remains in force. The parties also agree that the Proposed Development is zoned Medium Density. The Board finds that the Zoning By-law No. 5045 applies to the Proposed Development; therefore, the specific calculations of units per square meter referenced by the Appellant from Zoning By-law No. 4404 do not apply.

26. As a result, this ground of appeal is dismissed.

27. Furthermore, after hearing the evidence of the parties, there is no dispute that the Proposed Development, a multi-unit dwelling, is a permitted use specified in section 10.2 of the Zoning By-law regulating R2 – Medium Density Residential zones. Therefore, pursuant to section 62(2) of the *Act*, the only remaining ground of appeal the Board considered was whether there was a misapplication of the Zoning By-law under section 62(1)(a).

ISSUE 2 – ZONING BY-LAW DEFINITION OF DENSITY

28. The Appellant alleges the Zoning By-law definition of "density" fails to provide actual numbers of units based on lot area. According to the Appellant, such a lack of specificity in the Zoning By-law definition of density results in a misapplication of the Zoning By-law in the approval of the permit application, under section 62(1)(a) of the *Act*.

29. The Appellant argues that the Zoning By-law definition of density does not dictate how many units may be allowed in medium density or low density residential zones. As a result, the Appellant's position appears to be that there are no limits to the number of units in any given area and such unlimited density in residential zones runs contrary to the Zoning By-law defining density in the first place. In addition, the Appellant alleges that if there are no limits on density, the City has effectively removed any requirement for variances based on density. Thus, she argues, 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 detract from the use, enjoyment or value of the neighbouring parcels of land.

30. The Board heard evidence that the Appellant's main concern with density is the size of the building. Without a specific density number defined for medium density zoning, the Appellant alleges that the Proposed Development of 24 units becomes a high density apartment complex. The Appellant provided no evidence as to how this is a misapplication of the Zoning By-law or how such misapplication adversely affects the Appellant.

31. Council for the City and the Development Officer agree with the Appellant that the Zoning By-law does not have a specific formula to define density. However, the City argues, the maximum number of dwelling units is restricted by pre-established zoning regulations and restrictions, including building height, lot coverage, set back distances, landscaping, and parking. The Board heard evidence from the Development Officer that the Proposed Development meets all applicable zoning requirements.

32. The Board finds the Appellant has not demonstrated a misapplication of the Zoning By-law; therefore, this ground of appeal is dismissed.

ISSUE 3 – CONTRAVENTION OF COMMUNITY PLAN

33. Under section 62(1)(b) of the *Act*, the Appellant alleges the Proposed Development contravenes the Community Plan because the Community Plan is incomplete and inadequate.

34. As this ground of appeal does not allege a misapplication of the Zoning By-law, this ground of appeal is dismissed for the reasons stated above.

ISSUE 4 – RECREATIONAL SPACE

35. Under section 62(1)(b) and (e) of the *Act*, the Appellant alleges the Proposed Development contravenes the Zoning By-law because it does not provide for the requisite recreational space.

36. As this ground of appeal does not allege a misapplication of the Zoning By-law, this ground of appeal is dismissed for the reasons stated above.

ISSUE 5 – TRAFFIC

37. Under section 62(1)(a) of the *Act*, the Appellant alleges a misapplication of the Zoning By-law in that the City did not perform a traffic study for the area. For this ground of appeal, the Appellant relies on section 4.4.4 of the Zoning By-law respecting applications for development permits, which states in part:

> *4.4.4. 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 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.*

38. The Appellant also relies on a 2022 decision of this Board wherein the Board heard evidence that a 2012 Traffic Impact Study, reflecting a full build-out of 156 residential units in the Niven Phase V, recommended the City continue to monitor traffic at Niven Gate/Highway 4 and Franklin Avenue/43rd Street. The Appellant's position is that a further traffic study is necessary as the Proposed Development increases the Niven Phase V to 180 units, with at least two more lots remaining to be developed.

39. The Board heard evidence from the Development Officer that number of dwelling units is not a direct factor that triggers a need for a traffic study. Traffic studies are based on number of vehicles travelling per hour and, to date, according to the City's Department of Public Works and Engineering who continuously monitor traffic in the area, there has not been traffic figures significant enough to trigger the need for another traffic study.

40. Furthermore, the City's engineers reviewed the Proposed Development and recommended a four-way stop intersection at Niven Drive, Lemay Drive, Hagel Drive and Ballantyne Court. This four-way stop intersection recommendation is noted in the conditions of approval of development permit PL-2023-0070 and will be implemented on completion of the Proposed Development.

41. The Board considered the evidence provided and finds the Appellant has not demonstrated that the lack of a traffic impact study results in a misapplication of the Zoning By-law. As a result, this ground of appeal is dismissed.

ISSUE 6 – LACK OF SIDEWALKS AND LANDSCAPING

42. Under section 62(1)(b) of the *Act*, the Appellant alleges the Proposed Development does not include sidewalks or landscaping, as required by the NLDS.

43. As this ground of appeal does not allege a misapplication of the Zoning By-law, this ground of appeal is dismissed for the reasons stated above.

DISPOSITION

44. The Development Appeal Board hereby **confirms** the Decision of Council to approve the issuance of the Development Permit No. PL-2023-0070.

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

Dated this 9th day of July, 2024.

Ann Peters, Chairperson

Cole Caljouw, Secretary

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