CV 05158

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of the *Planning Act*, being Chapter P-7 of the Revised Statutes of the Northwest Territories;

AND IN THE MATTER of a decision of the Development Appeal Board entered the 10th day of March, A.D. 1994

BETWEEN:

NIKOLAJ GAWRILOWICH TREESHIN

Appellant

- and -

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE and THE DEVELOPMENT APPEAL BOARD established pursuant to s.4(4) of the City of Yellowknife zoning By-Law No. 3424

Respondents

Appeal of decision of the City of Yellowknife Development Appeal Board. Dismissed.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J. Z. VERTES

Heard at Yellowknife, Northwest Territories
on February 13, 1996

Reasons filed: February 20, 1996

Counsel for the Appellant:	Michael D. Triggs
Counsel for the Respondent, Municipal Corporation of the City of Yellowknife:	Earl D. Johnson, Q.C.
Counsel for the Respondent, the Development Appeal Board:	Katherine R. Peterson, Q.C.

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REASONS FOR JUDGMENT

1 The appellant appeals a decision of the Development Appeal Board whereby a development permit, issued to him by the City of Yellowknife development officer, was rescinded. This appeal is limited, by virtue of s.51 of the*Planning Act*, R.S.N.W.T. 1988, c.P-7, to questions of law or jurisdiction. I granted leave to appeal in reasons delivered on May 24, 1994 (reported at [1994] N.W.T.R. 237).

Facts:

2 On February 3, 1994, the municipality issued a development permit to the appellant for a proposed change of use for a property owned by him. On February 18, 1994, the Secretary to the respondent Board wrote to the appellant advising him that (a) the issuance of the permit

had been appealed to the Board; (b) a public hearing will be held on March 10, 1994, to consider the appeal; and (c) all material in support of his position on the appeal must be filed by February 28, 1994. The appeal was taken by an adjoining landowner, Gorf Holdings Ltd.

3 The appellant says that the first he learned of the appeal was in a telephone call from the Board's secretary on March 9, 1994. He claims that he did not receive the letter of February 18th until sometime after March 10th. This is contradicted by the Board's secretary who stated in an affidavit that she spoke by telephone to the appellant prior to the hearing and he confirmed to her that he received the letter. In addition, notices of the hearing were publicly posted and published in a local newspaper. The appellant says that he did not know he could submit further information at the appeal hearing although he did appear and made representations. He also says that representatives of Gorf Holdings, however, were allowed to submit further materials at the hearing, materials which he claims raise issues that he had no opportunity to respond to at the hearing.

4 By a letter dated March 11, 1994, the Board informed the appellant of its decision to rescind the development permit. The entire decision reads:

> Decision:
>
> After reviewing the submissions of the Appellant and hearing the evidence of other parties present at the Hearing, and after reviewing the written submissions filed with the Board; the Board, having due regard to the facts and circumstances, the merits of the Appellant's case and to the purpose, scope, and intent of the General Plan and the Zoning By-law, determined that the decision of the Development Officer of February 7, 1994 to issue Development Permit No. 94-032, be reversed.

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

1. Section G.4.3.1. of the City of Yellowknife General Plan states that the policy of Council is "to continue to encourage the development of higher density housing (mixed use developments) within the immediately adjacent to the downtown."

2. The Board determined that Lot 26, Block 67 is immediately adjacent to the downtown.

3. Section G.5.1. of the City of Yellowknife General Plan states the following objective for the downtown (C.B.D. and C.B.D. Fringe):

   "To focus commercial development on the downtown area."

4. Further, the Board determined that incorrect information was contained in the application and Section 6(4) of the Zoning By-law states that "any Development Permit issued on the basis of incorrect information contained in the application shall be invalid."

Signed this 11th day of March, A.D. 1994.

5 The appellant applied for leave to appeal and in my earlier ruling I granted leave on the following specific grounds:

1. Did the Development Appeal Board err in law or in jurisdiction in rendering a decision which failed to comply with Section 7(2)(i) of City of Yellowknife Zoning By-Law 3424, by:
   (a) failing to include all representations made at the hearing; and
   (b) failing to set forth full or sufficient reasons for the decision reached?

2. Did the Development Appeal Board err in law or in jurisdiction in denying the applicant his rights of natural justice and a fair hearing by:
   (a) failing to give the applicant an opportunity to correct any information deemed to be "incorrect";
   (b) accepting and/or considering written materials which materials were not filed in a timely manner as required by section 7(2)(a) of the City of Yellowknife By-Law 3424 or at all, thereby depriving the applicant of due process and the opportunity to make full answer; and
   (c) failing to ensure that the applicant received, or was fully aware of his right to receive, full disclosure of the particulars of the appeal made by Gorf Holdings Ltd. and of any materials filed in support

> of the appeal by Gorf Holdings Ltd., thereby depriving the applicant of due process and the opportunity to make a full answer?

6 The Board is a party to these proceedings because of the status accorded to it by the *Planning Act*. Its counsel limited her submissions, however, to points of explanation related to jurisdictional issues. Gorf Holdings Ltd., the party that initiated the proceedings before the Board, was given notice of this appeal but chose not to participate.

Ground No. 1 — Sufficiency of Reasons:

7 The City of Yellowknife Zoning By-Law, section 7(2)(i), states that a "decision of the Board shall be based on the facts and merits of the case and shall be in the form of a written report, including all representations made at the hearing and setting forth the reasons for the decision". There is no similar requirement stipulated in the *Planning Act* although the Board is required to "make and keep a written record of its proceedings, which may be in the form of a summary of the evidence presented to it at hearings" (s.50(c) of the Act). In this case, in addition to the formal decision reprinted above, I was provided with the minutes of the Board's hearing which summarized all of the representations made and includes the decision itself.

8 The appellant submits that the Board, while it quoted sections of certain by-laws in its decision, gave no reasons per se, merely conclusions. By failing to give sufficient reasons, it is argued, the Board committed an error of law.

9 Canadian jurisprudence has not gone so far as to impose mandatory requirements for the form and substance of reasons delivered by administrative tribunals. Where, however, as

in this case, there is a statutory obligation to state reasons, failure to do so is viewed as an error of law on the face of the record: Hannley v. City of Edmonton (1979), 91 D.L.R. (3d) 758 (Alta. C.A.). And where reasons are mandated, the standards to be met are that "the reasons must be proper, adequate and intelligible, and must enable the person concerned to assess whether he has grounds of appeal": per Estey J. in Northwestern Utilities v. Edmonton, [1979] 1 S.C.R. 684 (at page 707).

10 Taking the decision under appeal, the reference to the Board "having due regard to the facts and circumstances, the merits of the Appellant's case and to the purpose, scope and intent of the General Plan and the Zoning By-Law" is no more than a recitation of what the Board is required to do by statute. The *Planning Act*, in subsection 23(3)(c), requires that the Board "consider each appeal having due regard to the circumstances and merits of the case and to the purpose, scope and intent of a general plan...and to the zoning by-law that is in force." Hence this recital does not constitute reasons.

11 The reasons, however, are particularized in paragraphs 1, 2 and 3 of the Board's decision. There are references to specific sections of the general plan and a finding of fact that the subject property is within the scope of those sections. These reasons, while admittedly terse, are intelligible and should enable the parties to assess their positions.

12 The by-law requires the Board to render its decision in the form of a written report including all representations. In my opinion, the requirements of the by-law must be read in conjunction with subsection 50(c) of the *Planning Act* which provides that the Board, in making a written record of its proceedings, may make a summary of the evidence. This was done in the

form of minutes. I see no reason why this summary needs to be reproduced as part of the formal decision in every case. The decision itself is part of the written record of the proceedings so the minutes can be considered as one complete record.

13 The appellant argues, however, that paragraph 4 of the decision shows that the Board concluded that "incorrect information" was contained in the permit application and he was not given an opportunity to correct that information. On this point I agree with the submissions of counsel for the City to the effect that paragraph 4 is clearly meant to be an alternative and secondary reason for the decision. It does not in any way diminish or affect the validity of the reasons recited in the other paragraphs. In any event, the issue of "incorrect information" was raised at the hearing, as revealed in the minutes, and the appellant had an opportunity to respond at that time.

14 I think it is important to keep in mind that the Board is composed of community members who have no specialized training and certainly no legal training. There was no counsel appointed for the Board at its hearing in this case. Hence one cannot hold the Board in this case to the same standard as one would hold a judge or a specialized tribunal, working with the assistance of counsel, in formulating reasons for its decision.

15 This ground of appeal therefore fails.

Ground No. 2 — Consideration of New Materials:

16 The appellant submits that the Board failed in its duty to uphold natural justice by (a) not satisfying itself that the appellant was aware of the materials filed by Gorf Holdings Ltd., the

appellant before the Board; and, (b) accepting and relying on a further written submission from Gorf Holdings Ltd. which was delivered at the hearing.

17 The by-laws governing the Board's procedure provide that all written materials to be relied on by any party to a hearing be filed with the Board no later than 10 days before the date of the hearing. These filings are made available for review by other parties prior to the hearing. It is alleged that the Board erred by failing to satisfy itself that the appellant was aware of these provisions and by accepting the written submission at the hearing.

18 I have already noted the conflict in the evidence between the appellant and the Board's secretary as to when he received notice of the hearing. Without ruling on credibility, I find nevertheless that the Board took all reasonable and necessary steps to inform the appellant of his rights. I have also reviewed the minutes of the hearing, the material filed prior to the hearing, and the written submission delivered at the hearing. In my opinion, there is nothing in the written material that was not canvassed in the oral presentations at the hearing. The written submission delivered at the hearing was nothing more than the text of the oral presentation made by the representative of Gorf Holdings Ltd. The appellant had an opportunity to respond to all of this and there was, in my opinion, no breach of natural justice.

19 This ground of appeal also fails.

Conclusion:

20 The appeal is dismissed with costs, if demanded, on the basis of double Column 2 of the tariff of costs.

J. Z. Vertes

J.S.C.

Dated at Yellowknife, Northwest Territories
this 20th day of February, 1996

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