

Case Name:

Whitehorse Condominium Corp. No. 95 v. 37724 Yukon Inc.

Between

**Whitehorse Condominium Corporation No. 95, Plaintiff, and
37724 YUKON INC., Defendant**

[2014] Y.J. No. 30

2014 YKSC 23

S.C. No. 13-A0042

Registry: Whitehorse

Yukon Territory Supreme Court
Whitehorse, Yukon

R.S. Veale J.

April 11, 2014.

(16 paras.)

Counsel:

James Tucker and Kelly McGill: Counsel for the Plaintiff.

Daniel Bennett and Meagan Lang: Counsel for the Defendant.

REASONS FOR JUDGMENT

R.S. VEALE J.:--

INTRODUCTION

1 This is an application by 37724 Yukon Inc. (the "Condo Developer") for the approval of a development plan to construct four-plex units on Bare Land Unit A based on the 2005 Site Plan. The application is to complete the Falcon Ridge condominium project (the "Falcon Ridge property"). Bare Land Unit A has been the subject of considerable dispute between the Condo Developer and Whitehorse Condominium Corporation No. 95 (the "Condo Corp.") consisting of some 86-unit owners.

2 In *Whitehorse Condo Corp. No. 95 v. 37724 Yukon Inc.*, 2014 YKSC 2 (the "four-plex decision"), I invited the Condo Developer to make this development proposal. The Condo Developer proposes Option A and Option B.

3 Option A consists of seven four-plexes with two blocks of three attached four-plexes and one detached four-plex in between. Option A provides for 28 units.

4 Option B consists of three attached four-plexes, three detached four-plexes and one single family unit for a total of 25 units.

5 The Condo Corp. opposes both Options A and B.

BACKGROUND

6 The Falcon Ridge property has been the subject of a considerable amount of litigation. As it stands now, the Condo Developer has been prohibited from constructing a 24-unit apartment building plus two 16-unit apartment buildings on Bare Land Unit A and a subsequent proposal consisting of 18 stacked apartment-style condominium units.

7 I am generally of the view that, subject to the issues discussed below, Options A and B meet the requirements of my order of January 13, 2014, that the Condo Developer proceed with a proposal for the construction of four-plex units that were included in the 2005 Site Plan. Either of Option A or B is appropriate to be approved subject to addressing the issues raised by the Condo Corp. The Court is not reviewing Options A and B to determine whether an amendment should be granted under s. 23(2) of the *Condominium Act*. That determination has been made in the four-plex decision and the only purpose of this application is to ensure that the Condo Developer develops four-plexes and not stacked apartments. There is no requirement to review Option A or B to ensure compliance with s. 23(2).

8 There is also no requirement to have a significant number of unit owners approve or consent although I welcome their input to ensure the four-plex development will fit into the Falcon Ridge property as much as possible.

9 The first issue relates to the hard-surfacing and landscaping requirements for the new part of the Falcon Ridge property to the west of the main access road. Bare Land Unit A is on the western side of the new part, abutting Falcon Drive. The units to the east of the main access road have been hard-surfaced and landscaped but the units on the west side have not been hard-surfaced and landscaped.

10 The units on the east side have two outdoor parking spaces per unit. The proposed Options A and B indicate that additional hard-surface parking spaces have been added so that there will be 48 additional parking spaces. The Condo Developer understood that he was meeting a request of the Condo Corp. in 2010. The point is that the Condo Corp. wants the same two parking space allocation in front of each unit which will provide more green landscaping and be consistent with the completed condominium units. The Condo Developer can accommodate this and the requirement that all parking spaces for Bare Land Unit A be provided on Bare Land Unit A. I leave the number of parking spaces on Bare Land Unit A to the City of Whitehorse.

11 The second issue relates to the fact that the Condo Developer has not completed the hard-surfacing and landscaping requirements for the new part. The Condo Corp. indicates that this failure is a breach of obligation as well as a great inconvenience and applies for an order from this Court so that the obligation can be enforced. The Condo Developer says that it will be included in any Development Permit. I note that the City of Whitehorse takes the position that prior to approval and commencement of any further development of Bare Land Unit A, all outstanding hard-surfacing and landscaping requirements relating to existing occupied units must be completed.

12 The third issue relates to the requirement for a retaining wall and drainage concern for the west side of Bare Land Unit A that runs along Falcon Drive. Bare Land Unit A rises sharply to the street with the accompanying drainage and geotechnical concerns that have been raised by the Condo Corp. consultants. The Condo Developer acknowledges that this needs to be addressed as well in the City Development Permit.

DISPOSITION

13 While most unit owners did not provide feedback to the options, there is a preference for Option B as it provides adjacent Unit 168 with a single-family unit between it and the four-plexes.

14 I therefore order that Option B is approved as a Plan to be submitted to the City of Whitehorse for a Development Permit. I do not intend to constrain or direct the City of Whitehorse, but I place the following conditions for the parties to this court action:

1. That parking spaces for the four-plex units must be on Bare Land Unit A;
2. That hard-surfacing and landscaping requirements that are outstanding for the units west of the access road shall contain the same parking spaces and green spaces that have been completed on the east side of the access road;

3. That the hard-surfacing and landscaping requirements that are outstanding, including the requirement to address existing surface/storm drainage deficiencies and geotechnical concerns relating to the slope of Bare Land Unit A adjacent to Falcon Drive, shall be commenced no later than May 30, 2014, and be completed no later than September 30, 2014. This should not be interpreted to prevent the City of Whitehorse from having a more stringent requirement as indicated in the correspondence from the Manager of Planning Services, but rather as a court order that may be subject to further application.

15 The Condo Developer should make its best efforts to follow the Timeline it submitted from conceptual plan to submission of plan to the Land Titles Office.

16 The parties may bring issues that may arise as a result of this order to case management.

R.S. VEALE J.