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Reprint from Volume 25 Number 12

June 20, 2013

Special Report by Ken Hancock, Islands Trustee **North Pender Short Term Vacation Rentals**

It seems there may be a lingering lack of clarity about the legality of short term vacation rentals (STVR) on North Pender Island and the role of STVR in the local economy. This may be a result of ongoing claims that STVR were made legal by North Pender Trustees Wayne Wright and Em Round during the 1999-2002 term of office.

The truth is, that in order to legalize the short term (less than 30-days) rental of residential properties, the trustees would have needed to amend North Pender's Land Use Bylaw (LUB) and Official Community Plan (OCP).

In 2000, Trustees Wright and Round decided, without review or analysis from planning staff, to approve a 'Resolution Without Meeting' to remove a 30-day minimum rental requirement for dwellings and cottages from the interpretation section of the Land Use Bylaw.

Although they informed some members of the community that they had legalized vacation rentals, in reality they were leaving the needed amendments, to the zoning in the LUB and policies in the OCP, for another day.

Finally, in 2003, recognizing that their single LUB amendment was inadequate, they adopted an Enforcement Policy to hold enforcement on STVR in abeyance until an OCP review could be conducted.

The Past & The Courts' View

For many years, a small number of STVR had run quietly and stayed 'under the radar', often with the knowledge and approval of the neighbours. A major shift occurred when operators, rental agents (and some realtors) discovered the power of the internet.

Agents began actively recruiting absentee owners, advertising on the web and encouraging the tourist rental of unoccupied residential properties. Eventually, STVR appeared in almost every neighbourhood on the island, peaking at an estimated 135 properties in 2005. In some instances, a single owner might have several properties operating at once and as many as 81 of the properties were being professionally

marketed.

South Pender Island and Hornby Island are the only islands in the Trust Area where STVR use is legal. A look at the South Pender OCP and Land Use Bylaw would have shown Trustees Wright and Round what was needed to legalize use on North Pender.

However, having declared 'removed' the minimum rental period for dwellings and cottages, evidently the trustees summarily informed the Chair of Trust Council (who has no direct authority on North Pender) that they had legalized their use. This resulted in the 'Chair Letter' which is often referred to, but which has no effect.

Conclusively, four years ago, these claims, including sworn affidavits by the trustees and the 'Chair Letter', were dismissed by a BC Supreme Court Judge when presented as evidence. The judge's findings, later upheld by the BC Court of Appeal, confirmed that STVR were not—and are not—legal on North Pender.

OCP Review Debate

It is well documented that during the 2006/2007 North Pender OCP Review, there was an, often rancorous, community debate on whether the local trust committee should amend the OCP and the Land Use Bylaw in order to legalize STVR as a principal use.

All options were thoroughly examined, including Temporary Use Permits (TUP). TUP can be valid for up to three years, can be renewed once. They permit uses not normally allowed by the zoning. The pro-STVR lobby, including the Chamber of Commerce and Pender Island Vacation Rental Association, made it clear that they were unequivocally opposed to any kind of regulation, including TUP.

On the other side of the debate, many residents did not support this use for TUP seeing them as a 'spot rezoning'. Some worried that the TUP process represents negative option approval. (If the neighbours were away while the application was being processed, they would return to find, in the absence

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'This article was published (June 20, 2013 in 'Island Tides', an independent, regional newspaper distributing across the Southern Strait of Georgia from Tsawwassen to Victoria to Nanaimo.'

Island Tides Publishing Ltd, Box 55, Pender Island, BC V0N 2M0 • 250-629-3660 • islandtides@islandtides.com • www.islandtides.com

of their objections, an STVR next door.) For the taxpayer, there are also unrecoverable costs associated with administering the permits and enforcing the conditions.

Despite representations made by the Chamber of Commerce, there was also disagreement in the business community. One of the key issues was 'tax inequity'. There are several Tourist Commercial-zoned property owners who, as well as paying high tax rates, have to comply with water testing, health, fire inspections and other regulations that apply to their commercial property. These properties have a total stock of over 150 unbuilt visitor accommodation units. Some commercial owners felt that STVR represent unfair competition. They argued that, in addition to paying less property tax and having no regulatory requirements to meet, STVR provide comparatively little in the way of direct employment for locals, apart from seasonal cleaning and sporadic maintenance.

On North Pender, almost half of all residences are seasonal, which results in a doubling of the population during the tourist season. When trustees spoke with working people, STVR were often credited with contributing to evictions of local renters in May, as landlords prepared to change over from monthly to weekly rentals for the tourist season. This May to September housing instability was also identified by some employers in the service sector as creating difficulty housing the additional workforce needed during the busy season to respond to the already established demand.

The outcome of that Review is an OCP that clearly states that STVR are not permitted in the Rural Residential and Rural zones as a principal use. Amendments to the OCP provide that resort-zoned properties can apply to build larger units in order to accommodate families. Provisions for campgrounds were extensively reviewed and provide potential for establishing more affordable, low impact visitor accommodation.

Coming Round Again

Earlier this year, an ad hoc pro-STVR petition, conceived and promoted by a local realtor and subsequently supported by the Chamber of Commerce Executive, was presented to the North Pender LTC. The petition wrongly attributed enforcement

jurisdiction to the CRD and asked for a permitting regime to be established.

What the petition asked for, already exists for the most part. An owner of a residential property can apply for a Temporary Use Permit (TUP) to conduct short term vacation rentals. The decision whether to grant a TUP involves a community process, which can include consultation with the neighbours, stakeholders and the broader community.

The Local Trust Committee, if it approves the permit, can include specific conditions in an effort to mitigate potential impacts. To date, no applications have been received.

While proponents are eager to refer to the STVR issue as solely an economic matter, the issue is primarily about how a community chooses to use its residential neighbourhoods and whether there are neighbours that would welcome this type of use next door.

For future reference, it would be instructive for the LTC to know whether, despite their objections during the OCP review, any of the established neighbourhood associations or water districts would now like to be an area that welcomes vacation rentals.

In the meantime, the Southern Gulf Island Economic Development Commission is hard at work examining how to improve our year round economy and the LTC actively supports their efforts. For instance, the 'Experience the Gulf Islands' project has a clear commitment to improving the tourism economy without ignoring its social and environmental impacts. The project plans incorporate foresight and community engagement to see that any benefits realized will be shared with islanders in an equitable fashion.

The North Pender Local Trust Committee's top priorities include continuing with the Shoreline Stewardship Initiative and holding community workshops on Conservation Subdivision, leading to a review of the Subdivision Bylaw. The goal is to provide better stewardship for today and plan better neighbourhoods for tomorrow, to ensure that North Pender's special values are preserved and protected for residents and visitors alike. ☺