

STAFF REPORT

July 9, 2010

File No.: HO-OCP-2009.2 (Accessory
Vacation Rentals)

To: Hornby Island Local Trust Committee

From: Miles Drew, Bylaw Enforcement Officer

Date: For the Hornby Island Local Trust Committee meeting of July 19, 2010

**Re: Hornby Island Bylaw Enforcement Policy for Short Term Vacation Rentals in
Residential Zones**

THE PROPOSAL:

This report will propose that an enforcement policy be adopted which outlines a priority for enforcement for Short Term Vacation Rentals.

ISSUES SUMMARY:

The Hornby Island Local Trust Committee has been trying to find a way to accommodate short term vacation rentals but also prevent the destruction of residential neighbourhoods and over use of scarce resources such as ground water. Traditionally property owners on residentially zoned lots have rented their homes during part of each summer to friends and acquaintances. This activity has presented few problems to the neighbours and has had almost no impact on the residential character of neighbourhoods because the main purpose of owning the property is for the owners' personal use. Therefore, owners are likely to be concerned with the quality of the neighbourhoods, relations with neighbours, and issues such as water use and fire safety are ones they are personally affected by and are concerned about mitigating. However, some STVRs are now operated to provide a means of Hornby residents to make a living. This type of STVR activity is perceived to not be in character with the residential character of neighbourhoods as the nature of its operation is commercial. Aspects of this type of STVR which is overtly commercial are: advertising, which attracts customers that are not personally known to the property owners, third party management of the property, which isolates the property owner from personal knowledge of who is renting the property and limits their ability to monitor the over use of water, and other negative affects on the neighbourhoods; and high rents, which increase the desire of vacationers to invite additional families to share the rental. These aspects all contribute to increasing the characterization of the property as a typical tourist accommodation which is properly found in commercial zones.

The current Hornby Island Land Use Bylaw does not permit the use of residentially zoned lots for Short Term Vacation Rental uses of any type. However, it is very difficult to craft an enforceable land use bylaw which permits the traditional STVR and prohibits the STVR with overtly commercial characteristics.

The current Islands Trust policy says that any advertised activity that is not permitted in the local land use bylaw may be subject to enforcement without complaint. Therefore, any STVR that advertises on Hornby is potentially subject to immediate enforcement action. However, because the Hornby LTC is reviewing the Land Use Bylaw regulations concerning STVRs potential enforcement actions are suspended.

Currently there is no way to differentiate enforcement efforts on these issues. Therefore, a STVR that is only occasionally rented and for which there are no nuisance issues identified would be subject to the same enforcement efforts as a STVR which is overtly commercial in nature or for which there are related nuisance problems such as party noise, parking problems etc.

An effective option is for the Hornby Island LTC to adopt an enforcement policy directing the bylaw enforcement officers on which STVRs to enforce upon and which to not. This option has been adopted by the North Pender, Mayne, Saturna and Salt Spring Island Local Trust Committees.

Enforcement policies are a common method of refining the affect of a land use bylaw without jeopardizing its ability to be enforced by introducing too many elements that are difficult to prove. Bylaw enforcement officers are required to bring bylaw violations that can not be resolved by voluntary compliance to the LTC with recommendations about taking legal action. Local Trust Committees, as do all municipal councils, are not compelled to take legal action over every bylaw violation. Thus Bylaw Enforcement policies, in effect, give instructions about what type of violations it will not be willing to take legal action to gain compliance

STAFF COMMENTS:

The proposal outlined in this report is to establish a method of prioritizing enforcement activities against STVRs on Hornby Island which will preserve the traditional STVR uses. The proposed enforcement policy will insure that enforcement activities are directed against overtly commercial STVRs operating in the wrong zone and those that create health and safety or serious nuisances. Examples of health, safety, and nuisance issues may be building or health regulation violations, septic field problems, ongoing noise disturbances and traffic congestion cause by too many vacationers. It would also direct that enforcement be undertaken on lots with more than one dwelling used as an STVR or where camping is occurring. Thus it would address circumstances where the scale, density and intensity of vacation rental use on a lot have created a de facto resort or hotel or resulted in a loss of enjoyment to neighbouring residents.

Adoption of this policy will ensure that the most effective use of bylaw enforcement resources and preserve the residential character of neighbourhoods without affecting traditional STVRs on Hornby Island. Persons who do operate STVRs that would be affected by the enforcement policy would have several options. These are: 1. stop operating an STVR; 2. change the STVR operation so that it falls out of the enforcement criteria; 3. apply for a rezoning or temporary use permit. In order to ensure that only STVR operations that are problematic are subject to enforcement the policy could require that written complaints from a neighbour be received and that one of the following criteria also exist before a STVR is subject to enforcement.

RECOMMENDATIONS:

The Hornby Island Local Trust Committee resolves:

1. THAT given finite resources available for enforcement activities and in order to ensure the most effective results for enforcement activities STVRs that have one or more of the following characteristics will be subject to enforcement:

1. They are advertised on the internet, newspapers or other media;
2. They are not managed by the property owner;
3. More than one dwelling on the lot is simultaneously made available for STVR;

4. While the property is rented persons are permitted to stay in tents or trailers;
5. There are issues related to health and safety;
6. There is a written complaint by owners or residents of two properties about bona fide serious nuisance issues such as noise or parking congestion related to the STVR;
7. The owner of the property uses more than one property on Hornby Island as a STVR.

2. THAT nothing in this enforcement policy should be interpreted as giving permission to violate the Land Use Bylaw and the Hornby Island Trust Committee may change this policy at any time and may give direction to expand enforcement activities at any time;

Miles Drew
Bylaw Enforcement Coordinator
