



STAFF REPORT

File No.:

To: Lasqueti Island Local Trust Committee

From: Miles Drew, Bylaw Enforcement coordinator

Date: For the Lasqueti Island Local Trust Committee meeting of September 2, 2010

Re: Understanding “guest cabin” term and use in the Lasqueti Island Land Use Bylaw No. 78

THE PROPOSAL:

This report address the questions the Lasqueti Island LTC posed at the July 15, 2010 meeting about issues related to “guest cabins’ in the Lasqueti Island No. 78.

ISSUES SUMMARY:

Specifically the Lasqueti Island LTC asked:

- 1 What determines a “guest cabin”?
2. How is a guest cabin different than a dwelling?
3. Can a guest cabin have a kitchen?
4. If a guest cabin cannot be used for long term residential purposes, how do you define “long term”?
5. If a bylaw infraction occurred, would the bylaw be enforceable given the definition of “guest cabin” and sections in the bylaw that reference guest cabins?

Background:

In order to answer this question several sections of the Bylaw must be understood.

Definitions:

"dwelling" means a building containing one kitchen, sleeping and living areas, in either a self-contained room or set of habitable rooms, used or intended for use as one (1) residence; for clarity a travel trailer, mobile home, bus, vessel or other recreational vehicle actively used for long term habitation is considered a dwelling

“guest cabin” means a stand alone, detached, building used for the accommodation of non-paying

guests of the occupants of a dwelling on the same parcel;

"residence" means occupancy or use of a building or structure or part thereof as a place where an individual or group of individuals live together in common occupancy sharing kitchen and living areas

"sleeping unit" means a building intended for sleeping, which contains not more than one bedroom and does not contain a kitchen or living area;

(not found in bylaw comes from dictionary)

Cabin: small, often roughly built house.

House: a building designed for people to live in, especially for one single family.

There are also several specific sections of the Bylaw which must be considered. These are:

Section 3.8 Guest Cabins and Temporary Use of Recreational Vehicles

(3) Where permitted, a travel trailer, mobile home, bus, vessel or other recreation vehicle may be used in place of a guest cabin on a lot for non-commercial accommodation provided that the floor area does not exceed 56 square metres (602.7 square feet).

(4) A guest cabin shall not exceed 56 square metres (602.7 square feet) in floor area.

(5) A guest cabin is not a dwelling and not to be actively used for long term rental accommodation purposes.

(6) A guest cabin may only be used as a commercial short-term rental of less than 30 days provided the appropriate Commercial 3 zoning is in place.

Section 3.9. Dwellings and Guest Cabins Per Lot

(1) Unless otherwise regulated in this Bylaw, any upland lot is permitted to have one dwelling.

(2) Unless otherwise regulated in this Bylaw, the following number of dwellings are permitted per lot:

(a) Subdivision District A: one (1) dwelling per four (4) hectares (9.88 acres) of lot area.

(b) Subdivision District B: one (1) dwelling per eight (8) hectares (19.76 acres) of lot area.

(c) Subdivision District C: one (1) dwelling per 65 hectares (160.61 acres) of lot area.

(3) For each permitted dwelling, a guest cabin not exceeding 56 square metres (602.7 square feet) in floor area is permitted.

STAFF COMMENTS:

Each of the LTC's queries will discussed below:

1. **What determines a "guest cabin"?** Simply put a "guest cabin" is determined by 1.type of structure, i.e. a dwelling, 2. size of dwelling i.e. not more than 56 sq metres 3. use, i.e. temporary use by non paying guests and 4. its association with an already existing permitted dwelling on the same lot. All four factors must be present before a structure can be considered a "guest cabin".

A “guest cabin” is a dwelling and not merely a detached building used for sleeping as there is a separate definition for “sleeping unit” in the Bylaw which says that there must be no kitchen or living area in a sleeping unit. Therefore, the Bylaw must intend that “guest cabins” are to be distinct from “sleeping units”. Because the term “guest cabin” is not specifically defined one must look to dictionaries for further clarity. The dictionary definition of “cabin” says it is “a small, often roughly built house”. The definition of “house” says it is a “building designed for people to live in, especially one family.” The bylaw definition of residence says “**“residence”** means occupancy or use of a building or structure or part thereof as a place where an individual or group of individuals ***live together in common occupancy sharing kitchen and living areas.*** And the definition of “dwelling” means a building containing one kitchen, sleeping and living areas, in either a self-contained room or set of habitable rooms, ***used or intended for use as one (1) residence.*** This trail of definitions leads one to the conclusion that a guest cabin is a dwelling.

Section 3.9 of the Bylaw says that there can be one “guest cabin” per permitted dwelling.

The Bylaw specifically says that in order for a dwelling to be considered a “guest cabin” it must be less than 56 sq. m and only be occupied by non-paying guests of its associated dwelling.

When Section 3.8 (5) of the Bylaw says “A guest cabin is not a dwelling and is not to be actively used for long term rental accommodation purposes it means not a dwelling in the sense that it is not to be ***used or intended for use as one (1) residence.***”

2. How is a “guest cabin” different than a dwelling?

A guest cabin is different than a dwelling because it cannot be larger than 56 sq m, it must be associated with an already existing dwelling on the same lot, and it must be occupied by non-paying guests.

3. Can a “guest cabin” have a kitchen?

Yes it can. This is explained in the above sections that explain how a guest cabin is a dwelling. However, as Section 3.8(3) permits the use of RVs, which all have kitchens, as guest cabins it would be nonsensical to believe otherwise.

4. If a “guest cabin” cannot be used for long term residential purposes, how do you define long term?

Section 3.8(6) of the Bylaw says that “a guest cabin may only be used as a commercial short-term rental of less than 30 days provided the appropriate Commercial 3 zoning is in place”. If “short term” is less than 30 days, “long term” must be more than 30 days. This is the normal interpretation of such terms in BC as the normal residential tenancy is for 30 days or more.

5. If a bylaw infraction occurred, would the bylaw be enforceable given the definition of “guest cabin” and sections in the bylaw that reference guest cabins?

Enforcement of the guest cabin provisions of the Bylaw would not be impossible but it would not be very easy either. Principally, all the factors that must be proved such as size, association with an existing dwelling etc. are very simply established. However, elements such as non-paying and length of stay are much more difficult. To establish these elements the bylaw enforcement officer would essentially have to get an admission that rent was being

paid. Establishing length of stay would require admissions, witness colaberation, or constant checking by the bylaw enforcement officer.

Bylaws which permit dwellings to be occupied only part of a year invite violations to take place as the temptation to occupy them and earn revenue from rent is very high. The low risk of getting caught and the low probability that evidence will be successfully gathered increases the likely hood that the bylaw will be violated. From a practical point of view it is preferable to not write such bylaws. Perhaps it is best, when considering density issues to acknowledge that every dwelling will be occupied full time and to construct bylaws with this in mind.

RECOMENDATONS:

That this report be received for information.

Miles Drew
Bylaw Enforcement Coordinator
