

## **DENMAN WORKS:**

1470 Denman Island BC V0R 1T0  
Phone: 250-261-2222 Fax: 250-261-2223  
Email: [denmanworks@gmail.com](mailto:denmanworks@gmail.com)

CONFIDENTIAL

# Report to Denman Works Board of Directors

## Tourism Bylaw Review

**Morley McKeachie**

11/12/2011

At the Denman Works board meeting of September 30, 2011 a delegation appeared on behalf of the Denman Tourism Group , raising the issue of current land-use bylaws (Bylaw #186) placing restrictions on overnight tourist accommodation - short-term vacation rentals, secondary suites and cooking facilities - and thereby deterring tourism. The delegation requested that Denman Works apply for amendments to the impugned bylaws, so as to allow what is already, they say, a reality of overnight and longer rentals.

December 5, 2011

To: Board of Directors, Denman Works

From: Morley McKeachie, Director

Re: Tourism: Denman Tourism Group's request for DW to assist with bylaw review

### **BACKGROUND**

At the Denman Works board meeting of September 30, 2011 a delegation appeared on behalf of the Denman Tourism Group.

**The Issue:** This delegation raised the issue of current land-use bylaws (*Bylaw #186*) placing restrictions on overnight tourist accommodation - short-term vacation rentals, secondary suites and cooking facilities - and thereby deterring tourism.

The delegation requested that Denman Works apply to the Local Trust Committee for a review and amendments to the impugned bylaws, so as to allow what is already, they say, a reality of overnight and longer rentals. They put it thus:

*"Agriculture & tourism are one & two in economic activities on Denman Island. They are part of our lifeblood. Current Islands Trust bylaws concerning short term vacation rentals, secondary suites & cooking facilities do not address the reality of what transpires on our island."*

The delegation submitted that:

- 1) The current bylaws were a deterrent to tourism as they made a number of formats of overnight accommodations illegal;
- 2) there was paranoia among the people who operated (putatively) illegal accommodations of various formats, to the extent that such people were reluctant to sign a petition in support of bylaw amendments;
- 3) they did not want to approach the Islands Trust for fear of exposing themselves to legal sanctions for operating in violation of the bylaws;
- 4) in light of Denman Works mandate for economic enhancement they requested that Denman Works approach the Islands Trust with a request for a review and amendments to the relevant bylaws.

### **DENMAN ISLAND OFFICIAL COMMUNITY PLAN 2009, AMENDED 2010 - Excerpts (ATTACHMENT #1)**

Bylaws must be consistent with the Official Community Plan ("OCP"). Accordingly, I include excerpts from our OCP.

## LAND USE BYLAW #186, 2008 – Excerpts (ATTACHMENT #2)

### *Overview:*

Overnight fee-paying tourist accommodation (hereafter and in Bylaw 186 defined as “*guest accommodation*”) is a commercial activity. Therefore, it is prima facie prohibited in or on a residentially zoned property, subject to the “home occupations” exceptions set out in Section 2.4 of the bylaw.

Only one form of “**guest accommodation**” is permitted by the current bylaws – the Bed & Breakfast format, wherein the guests stay in the home of the host owner/regular occupant.

“*Home-based guest accommodation*” is listed in the permitted “*home occupations*”, along with other activities. For perspective on what types of activities are permitted, here is Regulation 2.4.2 with the list of permitted uses:

#### **Permitted Home Occupation Uses**

2 The following uses, and no other uses, are permitted as home occupations

- home-based guest accommodation
- artist or artisan studios, including sale of products produced on site
- general business offices
- professional offices, including health services
- personal services
- welding shops, including sale of products produced on site
- manufacture, repair and assembly of goods
- sale of agricultural products produced on-site
- trades-person offices including storage of tools of the trade
- daycare
- food processing
- automobile repair and maintenance on lots larger than 2.0 hectares

Guest accommodation is singled out and treated differently than other “home occupations” in that:

- **guest accommodation** is confined to the principal dwelling - No other home occupation is subject to this limitation; other “home occupations” may take place in accessory buildings where the lot size is sufficient. [*Regulation 2.4.11: On lots of 1.0 hectares or larger, home occupations may be in the principal dwelling unit and in accessory buildings.*]
- time limits are imposed on **guest accommodation**. No other home occupation is subject to such time limits. [*Definitions: guest accommodation means accommodation provided*

*for a fee to the travelling public, for a total length of stay of not more than 6 consecutive weeks and a total of 45 days in any one calendar year;]*

- size limits are different, and possibly more restrictive, for **guest accommodation** [60 per cent of the floor area permitted for other home occupations vs. maximum of 3 bedrooms x 2 beds per room regardless of building or lot size for guest accommodation).

### **Cooking Facilities:**

Cooking facilities are not defined. A single set of cooking facilities are permitted in - and largely define, under the definitions - a “**dwelling unit**”. Zoning limits the number of dwelling units allowed on a property. Because of this, there is a link between cooking facilities and dwelling units, with concomitant limits on cooking facilities. That is, where a property is zoned for only one (1) dwelling unit, only one (1) set of cooking facilities is permitted.

All other structures (cabins, studios, etc.) must be devoid of cooking facilities. Otherwise, they become “dwelling units” by definition.

“*Secondary suites*” within the main house (principal dwelling) with cooking facilities are also limited by this limit on the number of permissible “dwelling units”.

There are also limits on the floor area used for “*home occupations*”.

### **Provincial Health Regulations:**

Provincial health regulations prescribe stringent, and costly, requirements for cooking facilities where serving food to paying guests. This adds further impediment to the provision of guest accommodation on Denman Island.

### **Wording of Bylaw 186**

The bylaw is somewhat confusing (with all due respect to the draftsman) in that it uses various words and phrases, some of which are defined and others not so. For example, but not exhaustive:

- the very important term “*cooking facilities*” is not defined
- “*active residential use*” is used but not defined [“*General Regulations: 3 Home occupations must be accessory to an active residential use.*”]
- “*vacation rental*” is used but not defined [“*Principal Dwelling Units 2 Subject to Section 2.4, the use of a dwelling unit for vacation rental or for the accommodation of paying guests is not permitted.*”]
- Bylaw 2.1.2 omits use of the defined term “*guest accommodation*”, instead using the term “*the accommodation of paying guests*”

I also found it confusing to include “guest accommodation” under “Home Occupations” as there were a number of exceptions for “guest accommodation”. Perhaps this indicates the need for a separate category

of use created for “tourist accommodation”, “vacation rentals” and the like, with regulations specific to such uses and activities.

The relevant excerpts from Bylaw #186 and, for convenience my annotations, provide as follows:

#### **Principal Dwelling Units**

2 Subject to Section 2.4 (home occupations), the use of a dwelling unit for vacation rental or for the accommodation of paying guests is not permitted.

**DEFINITIONS: dwelling unit means one or more rooms in a building, containing a single set of cooking facilities, and used or intended to be used, as a residence by an individual or a group of individuals living together in common occupancy**

**NOTE: “vacation rental” not defined**

And

#### **Accessory Buildings and Structures**

4 Accessory buildings and structures are not to be used for overnight accommodation other than on an occasional basis, except as permitted elsewhere in this Bylaw.

**NOTE: “overnight accommodation” does not include paying guests, which are prohibited except as otherwise provided – “guest accommodation” is defined and used in reference to fee-paying guests;**

**Definitions: accessory in relation to a use, building or structure means ancillary, secondary and exclusively devoted to a principal use, building or structure expressly permitted by this Bylaw on the same lot or, where the accessory use, building or structure is located on common property in a bare land strata plan, on a strata lot in the same strata plan;**

**NOTE: while not entirely germane to the issue of fee-paying “guest accommodation”, it is of interest that this limits the time that one can host even family and friends (non-paying guests) in an accessory building, because the definitions provide: occasional: ...in relation to the use of an accessory building, a travel trailer or a vessel for non-commercial accommodation means a total length of stay by an individual of not more than 45 days per calendar year, of which no more than 30 may be consecutive – does the modifier “non-commercial” apply only to a vessel, or to all preceding uses**

And

#### **Permitted Home Occupation Uses**

2 The following uses, and no other uses, are permitted as home occupations

...home-based guest accommodation

**NOTE: This is the paid guest exception, and includes a time limit - Definitions: guest accommodation means accommodation provided for a fee to the travelling public, for a total length of stay of not more than 6 consecutive weeks and a total of 45 days in any one calendar year**

#### **General Regulations**

3 Home occupations must be accessory to an active residential use.

**NOTE: the word “active” is not included in the Definitions where: residence means: the occupancy or use of a dwelling unit for the permanent domicile or home life of a person or persons; or**

*the occasional or seasonal occupancy of a dwelling unit as a dwelling by an owner who has a permanent domicile elsewhere or by non-paying guests of such an owner, and for these purposes, owner includes a tenant under a residential tenancy agreement;*

*and residence does not include guest accommodation use, commercial vacation rental or any occupancy of a dwelling unit by persons entitled to such occupancy under a time share plan as defined in the Real Estate Act or successor legislation*

And

5 The maximum combined floor area used for home occupations:

on lots less than 1.0 hectare is 60 per cent of the floor area of the dwelling unit in which the home occupations are located; and

on lots of 1.0 hectares or larger is 60 per cent of the combined floor area of the dwelling unit and accessory buildings in which the home occupations are located.

And

#### **Location of Uses**

10 On lots that are less than 1.0 hectares, the use shall be conducted entirely within a building containing a dwelling unit.

11 On lots of 1.0 hectares or larger, home occupations may be in the principal dwelling unit and in accessory buildings.

**NOTE: Guest accommodation is excepted, so that paying guests are not permitted to stay in accessory buildings – S. 15**

And

#### **Home-based Guest Accommodation**

15 Despite Regulation 11 of this section, home-based guest accommodation must be contained within the principal dwelling unit.

16 Unless otherwise permitted in Part 3 of this Bylaw, a home occupation providing home-based guest accommodation shall have no more than three bedrooms, with a maximum of two beds each, which may be rented to transient paying guests.

17 Meals may be served to transient paying guests in a home occupation providing home-based guest accommodation.

**Information Note:** The provisions of meals, other than breakfast as part of a Bed and Breakfast operation, must comply with the British Columbia Food Premises Regulation under the *Health Act*.

[End Bylaw excerpts]

## **KEY ISSUES:**

### **1. Cooking Facilities**

- 1) Why are “cooking facilities” an issue?
  - a) Cooking facilities are the term used within the definition of “dwelling unit”. Zoning restricts the number of dwelling units on a given property. A building that meets the

definition of dwelling unit may be illegal, no matter the use – ie. Whether rented or just used as a guesthouse for family and friends.

- b) The definition of “dwelling unit” refers to “a single set of cooking facilities”.
- c) Home occupations generally are permitted only within the main “dwelling unit” (a building containing a single set of cooking facilities) where the lot size is less than 1.0 hectares
  - i. Bylaw 2.4.10 provides that on lots of less than 1.0 hectares the home occupation use must be entirely within a building containing a dwelling unit (“....containing a single set of cooking facilities...”)
  - ii. Bylaw 2.4.11 provides that on lots of 1.0 hectares or larger the home occupation may be in the principal dwelling unit or accessory buildings. **[ Guest accommodation excepted]**
- d) Provincial health regulations require elaborate and expensive kitchen facilities where food is served to paying guests. These regulations do not apply where guests cook their own food – have “cooking facilities”.

2) What are “cooking facilities”? What criteria does the Islands Trust use to determine this?

- a) The term “cooking facilities” is used in the bylaws but not defined. This ambiguity creates confusion – even within the Islands Trust office:
  - My interviews rendered 2 discrepant interpretations of this terminology:
    - one person reported that he/she was informed by a bylaw enforcement officer that the policy is to look for 220 volt wiring for stoves/ovens as the indicia of “*cooking facilities*”, and that microwaves, toaster ovens, kettles, hotplates are *not*
    - another interviewee reported that Trust planner Courtenay Simpson advised that *two-burner cooktops, hot plates, microwaves, convection ovens, toaster ovens are considered cooking facilities; and that a barbeque that is outdoors would not make a building a dwelling if that was the only cooking facility present.*
  - The uncertainty results in tourist accommodation providers being driven underground, and not comfortable to openly advertise, out of fear of prosecution, not knowing whether their providing a toaster and kettle to overnight guests is in breach of the bylaws.

3) Are detached structures with “cooking facilities” legal?

- Not unless the property is zoned for two dwelling units. Generally speaking, if a building has “cooking facilities”, it may be (and likely is, by definition) a “dwelling unit”. Some zoning permits more than one “dwelling unit” on a property while other zoning restricts properties to one dwelling unit. If restricted to one “dwelling unit”, the 2<sup>nd</sup> building with cooking facilities is illegal. For example, a cabin with kitchen;
- If the detached structure is in breach of the zoning bylaw, then that in itself can be the subject of bylaw enforcement sanction;

4) Are suites with “cooking facilities” permitted within the main dwelling unit?

- o Not unless the property is zoned for two dwelling units. The same analysis applies here as to detached structures with cooking facilities.

## 2. Time Limits on “guest accommodation”

- 1) The term “guest accommodation” is used to describe overnight paying guests who stay for “not more than 6 consecutive weeks and a total of 45 days in any one calendar year.”
  - a. Why place time limits on tourist accommodation?
  - b. What does this mean? If the same person pays and stays for 7 consecutive weeks is it no longer “guest accommodation”?
  - c. If a person hosts paying guests for an aggregate annual 56 days (shouldn’t it be nights?) is this still “guest accommodation”?
  - d. Why isn’t it called “overnight accommodation”?
  - e. Why not put the time restrictions in the substantive section of the bylaw that apply to the particular property?
  - f. For accessory buildings the time limits appear to be different. Regulation 2.4.4 uses the term “occasional” which is defined with slightly different time limitations.

## 3. Different physical configurations:

### 1) Paying guests staying in detached (from the main dwelling) structures

#### i. *Detached buildings with cooking facilities:*

- If the building has cooking facilities, then it is probably a “dwelling unit” and not an accessory building. Only if it is the “principal dwelling unit” on the property can one accommodate fee-paying guests. (Regulation 2.4.15)

#### ii. *Detached buildings without cooking facilities – “accessory buildings”*

- A building without cooking facilities is not a “dwelling unit” according to the definition. Presumably it is an accessory building.
- Home-based guest accommodation (fee-paying guest) is **not permitted** in accessory buildings. (Regulation 2.4.15).
- Regulation 2.1.4 permits “occasional” “overnight accommodation”, in accessory buildings, but does not appear to extend to fee paying guests (“guest accommodation”).



2. Paying guests staying in the main dwelling and sharing meals served by the owner/operator – ie. Bed & Breakfast

- Where an owner provides meals to paying guests, provincial health regulations impose high standards requiring elaborate kitchen facilities that make this (provision of meals by the owner/operator) economically unfeasible.
- According to one report, the provincial authorities turn a blind eye to owner-prepared/served breakfasts, but not to lunches and dinners. Accordingly, this format is not an issue for those who wish to run a true “B & B” within the main dwelling, as long as provincial authorities continue to turn a blind eye regarding breakfast service.
- What do tourists do then for lunch and dinner?
  - Denman Island has limited restaurants (two at the time of writing) and no hotels. Restaurants have limited hours even in summer, more so during winter season (“off-season”). This discourages tourism generally, and more so during off-season.

3. Paying guests staying in suites (with “cooking facilities”) within a principal dwelling.

- An issue arises where the owner is unable or undesirous of having guests in the main area of their home
- The (illegal) options are to put guests in a “secondary suite” within the main dwelling, or to provide detached accommodation with cooking facilities

4. Renting the entire “principal dwelling”

- Regulation 2.4.2 permits “home-based guest accommodation”. (“**accommodation provided for a fee to the travelling public, for a total length of stay of not more than 6 consecutive weeks and a total of 45 days in any one calendar year**”).
- All home occupations “must be accessory to an active residential use.”
  - “active residential use” is not defined. However, residence is defined as “**the occupancy or use of a dwelling unit for the permanent domicile or home life of a person or persons; or the occasional or seasonal occupancy of a dwelling unit as a dwelling by an owner who has a permanent domicile elsewhere or by non-paying guests of such an owner, and for these purposes, owner includes a tenant under a residential tenancy agreement; and residence does not include guest accommodation use, commercial vacation rental or any occupancy of a dwelling unit by persons entitled to such occupancy under a time share plan as defined in the Real Estate Act or successor legislation**”
  - Occasional use appears to qualify the building as a “residence”. Arguably, therefore, it is an “active” residence if used only weekends, seasonally, or part-time by the owner. Arguably therefore, rental of the entire principal dwelling is, permitted.
  - Is a cottage used by an absentee owner for summer weekends an “active” residence?
  - Is a house that is used the entire summer by the owner an “active” residence?

- o If the owner spends 6 months in the house on Denman Island, and the rest of the year in Arizona, is the house an “active residence”?

## **HORNBY ISLAND**

Hornby Island has had this issue under review for the last few years. Their experience and process may be instructive. They have recently amended their bylaws with respect to Bed & Breakfasts and short-term vacation rentals. (ATTACHMENT #3)

The review process included much background work, including staff reports and surveys re: tourism and related issues. (ATTACHMENTS #4 & #5)

To give an idea of the complexity of the endeavour, the following is a list of the documents available at the Hornby Island section of the Islands Trust website:

## **Vacation Home Rentals**

- Summary and Proposed Bylaws 142 and 143 re Vacation Home Rentals for May 21 Community Information Meeting
- Discussion Document for April 2011 Community Information Meeting
- Staff Report - March 21, 2011
- Staff Report - December 15, 2010 STVR Enforcement Policy
- Staff Report - September 2010
- Staff Report - August 2010
- Staff Report - July 2010
- Draft Bylaws Permitting and Regulating Short Term Vacation Rentals on Hornby Island 2010
- Early Referral Letter to Agricultural Land Commission, April 2010
- Staff Report - March 2010
- Staff Report and Appendix - December 2009 (HO-OCP-2009.2)
- Staff Report - October 2009 (HO-OCP-2009.2)
- Staff Memo - September 2009
- Short-term Vacation Rental Staff Report - July 2009
- Short-term Vacation Rental Survey - Final Results
- For Discussion: A Proposal For Permitting and Regulating Vacation Rentals
- Short Term Vacation Rental Staff Report - July 2008

## **PROPOSED AMENDMENTS**

It is beyond the scope of this report, and premature pending further decision of the Denman Works board of directors, to attempt drafting new bylaws.

Should an application be submitted, and should the Denman Island Local Trust Committee decide to proceed with a review, Islands Trust staff would research the issue, and ultimately draft the wording of the amendments.

*Hornby Island's amended Bylaw #142 (Attachment #3) will provide some guidance.*

**PROCEDURE FOR AMENDING DENMAN ISLAND BYLAW #186**

The procedure for applying for changes to the bylaw are set out in the "Denman Island Trust Committee Development Procedure Bylaw No. 71, 1992", the provisions of which are too lengthy to recite here.

**APPLICATION FEE**

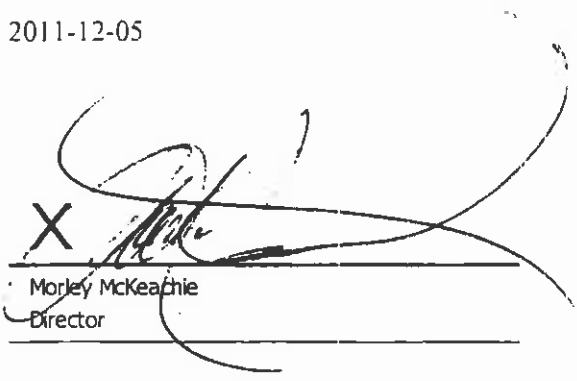
Assuming no amendment is required to the O.C.P., the applicable fee is \$4,400. (Denman Island Local Trust Committee Fees Bylaw No. 181). If an amendment is required to the O.C.P., the fee is \$4,950. I have reviewed the O.C.P. and do not believe the latter amendment would be required. The Local Trust Council may think otherwise, as is their prerogative.

**CONCLUSION**

*Bylaw #186 is very restrictive regarding tourist accommodation and vacation rentals, and somewhat confusing. I recommend that Denman Works support an application to the Local Trust Committee for review and amendment of the relevant portions of Bylaw 186.*

Respectfully submitted.

2011-12-05



X  
 \_\_\_\_\_  
 Morley McKeachie  
 Director  
 \_\_\_\_\_

