

SCRD STAFF REPORT

DATE: September 27, 2012
TO: Planning and Development Committee – October 18, 2012
FROM: Steven Olmstead, GM, Planning and Development
RE: **Nightly/Short Term Rentals in Residential and Rural Zones**

RECOMMENDATION

THAT the present approach of enforcing existing zoning and/or noise bylaws on a complaint driven basis for issues regarding nightly/short term rentals in residential and rural zones be continued.

BACKGROUND

At the its regular meeting on June 28, 2012, the Regional Board passed the following resolution with respect to short term/nightly rentals of residential properties:

THAT this report (with recommendations removed) be referred to APCs, Community / Electors Associations, Roberts Creek OCPC, Halfmoon Bay and Roberts Creek OCP review Committees for recommendations and comments. Include Board resolution that triggered report or purpose of the report.

A copy of the report circulated to the various groups is attached as Attachment 1. In accordance with the above resolution, the report was referred to the following:

Electoral Area A, B, D, E and F Advisory Planning Commissions
Halfmoon Bay OCP Review Committee
Roberts Creek OCP Review Committee
Roberts Creek OCPC
Elphinstone Electors Association
West Howe Sound Community Association
Roberts Creek Community Association
Egmont Residents Association
Halfmoon Bay Citizens Association
Sakinaw Lake Community Association
Welcome Beach Community Association

Comments have been received from each of the Electoral Area APCs (see Attachment 2). Staff have been advised that comments will be forthcoming from the Roberts Creek OCPC and the Halfmoon Bay OCP Review Committee. No replies have been received from any of the various community, electors and citizens associations.

DISCUSSION

A consistent and clear basic message has been received from the APCs – maintain the status quo with respect to zoning of nightly rentals. Issues such as noise should continue to be

addressed on a case by case complaint driven approach. The APCs had some suggestions have been made which warrant further consideration:

1. Communicate with property owners early in the main tourist season of the bylaws and penalties for infractions through a newspaper ad (eg. SCR D Bulletin Board) or mail-out
2. include specific measured noise levels in conjunction with noise bylaw complaints
3. fund weekend and evening bylaw enforcement
4. should be a requirement that the operator of a short term rental be a principal resident on the property and be present at the time the property is being occupied by short term renters

Staff agree with items 1, 2 and 4. Whether or not to implement measurable noise thresholds is the subject of considerable discussion in the bylaw enforcement community. There is general agreement that noise bylaws of any kind are difficult to enforce regardless of the systems in place and the resources. The use of decibel readers do not necessarily provide a suitable tool for enforcement, as the reader measures noise levels that may not translate into an accurate measure of real or perceived effects on people. Noise meters are not an effective means to assess **the effects** of the disturbance as they do not show the real impact on people, and so evidence must be provided by neighbour complaints.

Additionally, the *Handbook on Noise and Vibration Control*¹ indicates that to implement a “specific decibel level” approach would require some staff training on basic acoustics, sound radiation and propagation, and acoustical measurements. Bylaw enforcement staff would need at least a working knowledge of the existing measurement and calculation standards and of the measuring apparatus. The higher the quantitative nature of the bylaw, the higher is the technical requirement and the associated cost.

¹<http://www.quiet.org/documents/CommunityNoisesWorldwide.pdf>

Attachment 1: Referral report re Short term/Nightly Rentals

SCRD STAFF REPORT

DATE: July 12, 2012

TO: Electoral Area A, B, D, E and F Advisory Planning Commissions
Halfmoon Bay OCP review Committee
Roberts Creek OCP review Committee
Roberts Creek OCPC
Elphinstone Electors Association
West Howe Sound Community Association
Roberts Creek Community Association
Egmont Residents Association
Halfmoon Bay Citizens Association
Sakinaw Lake Community Association
Welcome Beach Community Association

FROM: Steven Olmstead, General Manager, Planning and Development

RE: **Nightly/Short Term Rentals in Residential and Rural Zones**

BACKGROUND

At its June 28, 2012 meeting, the SCRD Regional Board endorsed a Planning and Development Committee recommendation that:

this report (with recommendations removed) be referred to APCs, Community / Electors Associations, Roberts Creek OCPC, Halfmoon Bay and Roberts Creek OCP review Committees for recommendations and comments the following report be referred to Electoral Area Advisory Planning Commissions for comment.

A number of complaints have been received and responded to by SCRD staff regarding nightly and short term rentals of “vacation” houses in residential zones. The rental businesses differ from bed and breakfasts in that the operator of the business is generally not present on site during the duration of the rental. The general intent however, of residential zoning is typically for use of a building in a somewhat permanent manner whereas providing a residence for a fee to someone with a permanent residence elsewhere is generally considered commercial use.

Whether legal or not, short term rentals have proven contentious in many tourism oriented communities. While short-term rental accommodation potentially improves the availability and options for visitor accommodation, conflicts can arise with residents who don't necessarily support rentals within their neighbourhood. The Whistler Centre for Sustainability recently identified the most common identified challenges and benefits associated with short term rentals for the Resort Municipality of Sun Peaks, as follows:

COMMONLY IDENTIFIED CHALLENGES

- Noise and security
- Unfair tax advantage to owners operating as a business out of a residential tax class
- Increased cost of housing for some local residents due to inflated real estate.
- Loss of community feel (or challenge at building it)
- Parking overflow, traffic and snow clearing challenges
- Safety and fire hazards due to overcrowding
- Erosion of core commercial area and commercial tax base

COMMONLY IDENTIFIED BENEFITS

- Increased investment return for property owners
- More accommodation options and prices for visitors, improving their experience
- Increased development and job creation
- Positive intermingling of visitors and residents
- Offsets the cost of housing/expenses for local residents renting out a portion of their home
- Offsets the costs of the local property for some part-time residents renting their property

source: Sun Peaks Mountain Resort Municipality Short-Term Rentals: Ways Forward, <https://sunpeaks.civicweb.net/FileStorage/79B9A2EC5B794720859A3704B28AFA41-WorkspaceSun%20Peaks%20Short%20Term%20Chalet%20Rentals%20Final.pdf>

The key issue associated with short term rentals in SCRD Electoral Areas has been noise. Key questions to be addressed include: is the use of residential and rural zoned property for nightly and short term rentals is a permitted use under SCRD zoning bylaws? Are SCRD bylaws enforceable as written regarding short term rentals? On a policy level, should SCRD bylaws be amended to permit short term rentals as principal, accessory or temporary uses?

DISCUSSION

Zoning Analysis

As a basic provision in SCRD zoning, section 302 of Bylaws 310 and 337 states that: “Land shall not be used or subdivided and buildings and structures shall not be constructed, altered, located or used except as specifically permitted by this bylaw.” Stated another way, unless a use is specifically listed as a permitted use, it is prohibited and rezoning would be necessary. As the terms “nightly rental” and “short term rental” are neither defined nor used in SCRD Zoning Bylaws 310 or 337 they are considered to be “prohibited” uses which would require a zoning amendment to authorize.

The general intent of residential zoning is typically for use of a building as a principal residence whereas providing accommodation for a fee to someone with a permanent residence elsewhere is generally considered commercial use. The terms “short-term rental” or “nightly rental” are used in this report to mean the practice of renting a residentially zoned single-family dwelling or cottage on a commercial basis by the night or week for periods less than 28-days at a time for the purpose of providing short term accommodations. Occupants of the short term rental are “guests” as opposed to “tenants”. The provisions of the *Residential Tenancy Act* do not apply to guests of a short term rental. SCRD zoning bylaws permit “bed and breakfast” on a scale ranging from two to five bedrooms. The key parameter that differentiates a B&B from a nightly rental is that the B&B is operated by a resident manager while a nightly rental usually is not. This distinction can become significant when noise from short term rental disturbs the

neighbours' quiet enjoyment of their properties as there is no resident manager neighbours can contact to immediately rectify the situation.

Recent Judgment: Okanogan-Similkameen (Regional District) v. Leach

A recent court case in the Regional District of Okanogan-Similkameen deals with short term rental issues very similar to those being experienced on the Sunshine Coast. In the Okanogan-Similkameen case, the "Vacation Rentals" provided for weekly rental of a property with full use of the primary dwelling located on the property. The property was made available for rent to one family or group ranging from two to eight people at a time. The longest period of rental to any single group was three weeks. The Vacation Rental was not operated as a bed and breakfast and the operators were not present during periods the property was rented. The operators did occupy the dwelling themselves for about one to three months per year. In at least one of the SCR D bylaw complaints, we understand the operator rarely if ever occupies the property.

The RDOS position was that the operation of the tourist accommodation business contravened the zoning bylaw because the rental did not fit within the prescribed list of permitted uses under the residential zoning. The regional district asserted that the rental of the property contravened the use as a "single-family dwelling" (within the meaning of the applicable zoning bylaw) or as a "single detached dwelling".

The defendants submitted that their principal use of the property was as a single detached dwelling. In support of this position, they emphasize that their use of the property is not limited to the Vacation Rentals. They referred to a number of non-rental uses - such as using the property themselves, letting family and friends stay in it, or simply leaving the property vacant. They argued that the permissible primary use as a single detached dwelling is satisfied by all of them, regardless of whether the defendants are physically present at the property.

The judge in her analysis noted that the RDOS bylaw made no express provision that the dwelling unit must be put to a "residential" use. SCR D zoning bylaws, in comparison, do state that a dwelling is "...a self-contained unit within a building, used or intended as a residence...". The judge also accepted that "the rental of a detached dwelling to short-term paying guests is not a normal and customary residential use in the sense of being the principal use for this type of property" and concluded that "short-term vacation rentals are not permissible as a principal use in the RS1 Zone".

The RDOS zoning bylaws also provided for "private visitor accommodation" as a secondary use in the RS1 zone. The judgement hinged around this provision, with the judge determining that the use of the property was properly characterized as a private visitor accommodation consistent with the bylaw.

There are a number of insights to be gained from this case, the first being that there are likely sufficient distinguishing aspects regarding the particulars of the recent complaints and also of the SCR D's zoning to put the SCR D in a better position to enforce its bylaws if necessary. Second, if the SCR D decides to regulate short term rentals, there are some specific considerations and lessons to be learned from this case; for example, (1) to include an express requirement that an operator of a short term rental be a full time resident of the property and/or be present on site at times the property is being rented on a short term basis and (2) to specifically exclude short term rentals as a permitted use in some or all zones (if that is desired by the regional board).

OPTIONS FOR CONSIDERATION

1. create site specific zoning and zone existing operations.
2. permit short term rentals in residential and rural zones and seek authority to license short term rentals (and apply the 2 percent hotel tax)
3. consider “ongoing” temporary use permits as an alternative to licensing
4. maintain the *status quo* - enforce existing zoning and/or noise bylaws on a complaint driven basis

ANALYSIS OF OPTIONS

1. Site Specific Rezoning

Under this option a new “sub-zone” for nightly/short term rental businesses would be created and existing businesses included in the zone. This option would recognize that (a) the majority of short term rental businesses operate without incident. Existing businesses that have been problematic need not be included in the zone. Future businesses would require site specific zoning.

2. Licensing

Licensing is the approach the District of Sechelt has taken regarding nightly/short term rentals. “Short term residential rentals” are a permitted use and are regulated through business licenses. This approach acknowledges short term rentals as a permitted use and provides for a relatively simple and effective enforcement mechanism in situations where regulations are breached. In order to operate a short-term rental, a property owner must have a business license and make a refundable \$1,000 deposit as a bond to promote compliance with the regulations. They have a list of operating parameters outlined in their business bylaw. The enforcement procedure gives the Business License Inspector the authority to direct a business to cease. A copy of the Sechelt business license regulations for short term residential rentals is attached as Appendix 1.

Licensing may be an option worth pursuing; however, there has been a long standing reluctance at the Ministry of Community, Sport and Cultural Development to authorize the issuance of business licenses in unincorporated areas. Regional districts do not have express business licensing powers under the *Local Government Act*, so this means of ensuring compliance with zoning is not available unless the regional board has established a business regulation service. The Central Okanogan Regional District may be the only RD that has business licensing authority.

In terms of “leveling the playing field” somewhat with commercial accommodation businesses, it may also be worthwhile to investigate the feasibility of inclusion of short term rental properties in the two percent hotel tax program.

3. Temporary Use Permits

An alternative to business licensing could be the use of temporary use permits to regulate short term rentals. Under this option permits would need to be renewed and re-issued on an ongoing basis every year or two. The advantage of this approach is the degree of control over operational aspects of the business that are difficult to regulate through zoning – for example, if the Board wished to establish a maximum number of days in a year the business could operate; or the hours when “quiet times” would be in effect.

The regional district could, at the time of issuing a temporary use permit, require the posting of security to guarantee the performance of permit conditions (such as ceasing operations at expiry of the permit), the form of security and the amount of security that will forfeit to the regional district if there is a failure to conform with the conditions.

4. Bylaw Enforcement

For reasons noted below it is not considered advisable to initiate broad enforcement action against all nightly/short term rental businesses. Option 4 would involve no changes to zoning and bylaw enforcement would take place on a complaint driven basis per existing SCRD policy. The bylaw enforcement option could also involve use of the Bylaw Notice Enforcement (BEN) ticketing system to deal with bylaw contraventions. Under BEN, tickets would be issued to the property owner in conjunction with bylaw violations. The fine could be set sufficiently high to act as a deterrent to further unauthorized use. In the event that fines went unpaid and the problematic short term rentals continued, staff are aware of a possible remedy involving having the unpaid fine liability registered against the property title. An amendment to *Sunshine Coast Regional District Bylaw Notice Enforcement Bylaw No. 638, 2011* would be required to implement this option.

Economic Implications

During the course of researching the nightly/short term rental issue on the Sunshine Coast, it became apparent that the activity is one that likely makes a significant contribution to the economy of the Coast. A search of one vacation rentals website (www.vrbo.com) accessed June 6, 2012 revealed that there were 26 short term rentals being advertised in Halfmoon Bay, 25 in Egmont-Pender Harbour, 13 in Roberts Creek, 28 in Sechelt and 19 in Gibsons. Some of the listings are for commercial establishments such as Bonniebrook Lodge and the Painted Boat, and others are for B&Bs; but it appears a large majority are nightly rentals as described above. Prices range up to \$5,000 per week. Short term rentals, while under our "radar"; are a significant component of the Sunshine Coast tourism industry.

It is also acknowledged that, despite being not permitted uses under SCRD zoning, the vast majority of short term rentals in the Electoral Areas on the Sunshine Coast are operating without complaints. A response involving enforcement action to shut down short term rental businesses would thus seem to be entirely inappropriate.

Fiscal Implications

The four options presented all have some degree of fiscal implications for the SCRD. Establishing a new zoning category and rezoning existing short term rentals (Option 1) will require staff time plus some relatively minor costs. Future revenues would be generated from site specific rezoning applications. Option 3, temporary use permits, would have similar cost implications but would require more administrative effort on an ongoing basis to manage permit renewals. Business licensing under Option 2, if available to the SCRD, would be less administratively cumbersome than the TUP option, as the renewal process for business licences is comparatively simple in relation to that for temporary permits, but would still create additional workload. The ticketing alternative under Option 4 has relatively minimal fiscal impact once the BEN system is established, while injunctive action under zoning can be costly.

Appendix 1: District of Sechelt Short Term Residential Rental License Terms and Conditions

In order to lessen the impact of the short term rental of residential dwelling units in the community in general and residential neighbourhoods in particular the following terms and conditions must be met to obtain, continue to hold and renew a business license to operate a short term residential rental business. These terms and conditions are in addition to any other terms and conditions which may be imposed by the License Inspector.

1. Every applicant for and holder of a short term residential rental business license must provide the District of Sechelt with the name, address and telephone number of a person residing in the District on a permanent basis ("Local Contact"). The Local Contact must be available, and if not, the owner must be available, to respond to and deal with in a timely and appropriate manner any complaints or problems from short term residential rental tenants or neighbouring residents in respect of the property that is the subject of the business license. It shall be the obligation of the license holder to notify the District of Sechelt immediately if the name, address or telephone number of the Local Contact changes.

The owners of properties within 100 metres of the short term residential rental property shall be notified in writing of the name, address and telephone number of the Local Contact (or owner where local contact not applicable) within thirty (30) days of the granting or renewal of a short term residential rental business license or within thirty (30) days of notification of a change in the name, address or telephone number of the Local Contact.

2. Vehicle parking for short term residential rental tenants or guests of short term residential rental tenants shall be restricted to the property and, where permitted by law, that portion of the road immediately adjacent to the property.
3. Prior to the granting of a short term residential rental business license the applicant shall be required to deposit with the District of Sechelt, in addition to the business license fee, the amount of \$1000 (the "Deposit"). The Deposit shall be held by the District of Sechelt as security against any costs incurred by the District of Sechelt as a result of investigations, hearings, appeals or other enforcement actions undertaken by the License Inspector or the District of Sechelt, whether initiated by the License Inspector or the municipality or resulting from third party complaints, in respect of the operation of the short term residential rental business. If any deductions are made to the Deposit the holder of the business license will forthwith replenish the Deposit to the original amount. The Deposit or any portion remaining after deduction will be returned to the person who paid it within sixty (60) days of the cancellation or termination or failure to renew the business license.
4. The holder of a short term residential rental business license must display a copy of the business license and the name, address and telephone number of the Local Contact in a prominent location on the premises. Signage advertising the short term residential rental business is not permitted on the property except as follows:

- (i) one (1) unlit sign not exceeding one and a half feet by two feet (1 W x 2') in size containing only the address of the property, the name, address and telephone number of the Local Contact and, where applicable the name of the property, business or owner.
- 5. Transportation of short term residential rental tenants or guests of short term residential rental tenants to the short term residential rental property by vehicles with a capacity of sixteen (16) passengers or more is prohibited.
- 6. The holder of a short term residential rental business license must keep a written record of the names of all short term residential rental tenants.
- 7. Short term residential rental tenants or guests of short term residential rental tenants are prohibited from bringing pets onto a short term residential rental property.
- 8. The Local Contact shall attend at the property at the commencement of all short term residential rentals and meet the short term residential rental tenants.
- 9. A Local Contact, including any member of their immediate family, may not be a Local Contact for more than two (2) separate properties unless the Local Contact is the registered owner of such properties.

Attachment 2: APC Comments re Short term/Nightly Rentals

Area A APC comments of July 25, 2012:

Discussion on various issues that can arise from nightly/short term rentals ensued, including the following points:

- The bylaw enforcement notice ticketing system. The penalty fines involved are a significant deterrent.
- Traffic and noise levels have been a severe problem in some cases.
- Questions regarding how well the bylaws could be enforced arose, including whether it would compel neighbours to become complainers and made to attend court cases. The quality of life at their residence is impacted before a resolution can be accomplished.
- Reducing the likelihood of issues before they become a problem is preferred. For example, informing property owners of the bylaws and penalties for infractions in a public mail-out flyer, newspaper posting or licensing system, etc.
- The proposed options put forward by the planning department were discussed in detail.

Comment: there have been problems with this issue in Area A. This APC would like to express an appreciation for the clear and concise nature of the report by the SCRD.

Motion: moved by C. McEachern and seconded by L. Faulk

Motion by this APC that option 4 on page 48 is preferred, utilizing the bylaw enforcement notice ticketing system. We feel it would significantly help with these issues if the SCRD could draft a communication for property owners, and we would like to provide commentary on the draft prior to distribution or publication.

Area B APC comments of July 24, 2012

-There is overall support for Option 4 and agreement that problem resolution be complaint driven.
-Some members agree with Sechelt's idea about licencing as a good way to expedite solving problems that arise.

Motion: That the APC support option 4.

Area D APC comments of August 27, 2012

Motion: the APC is not in favour of attempting to legalize short-term rentals where the owners are not present on the property. The APC would like to see better enforcement of the existing noise by-law, to include specific measured noise levels that can be used as evidence. We ask the SCRD staff to investigate more effective enforcement, including best practices in other jurisdictions, and look at ways to fund weekend and evening by-law enforcement.

(ET/KG) M/S/Carried Unanimously

Roberts Creek OCPC October 2, 2012

Unfortunately, our discussion did not come up with a consensus on whether short term rentals are beneficial for Roberts Creek. While some OCPC members are against them, other OCPC members who are in favor of short term rentals disagree on what, if any, regulation should be required.

Attachment 2: APC Comments re Short term/Nightly Rentals

At the very least, those in favor of this type of accommodation recommend that an on-Coast contact person be available for dealing with noisy or unsatisfactory guests, the phone number to be posted on the property. Several members felt that some form of regulation, perhaps a variation of the Temporary Use Permit system, should be applied to regulate the numbers of guesthouses. Those not in favor of short term rentals felt that the status quo which does not allow for short term rentals but is regulated by complaint driven enforcement is adequate for Roberts Creek

Area E APC comments of July 25, 2012

Co-Chair Lynda Chamberlin announced that Patrick Fitzsimons and Alan Colleypriest had requested that their views be stated, and that both members were of the same opinion regarding short-term rentals: to maintain the status quo, enforcing existing zoning on a complaint-driven basis.

Points raised in discussion:

- I am against Temporary Use Permits. If you want a business that isn't already allowable in the bylaws of the area, maybe you should go elsewhere. There is no one controlling what happens. It ends up that the property isn't protected by the OCP... in effect, the OCP is like a contract with a land buyer. It seems like residential property is up for grabs.
- We do permit guest cottages. It is not too much of a stretch to have a paying guest. We endorse bed and breakfasts. Short-term rentals should be in conjunction with a permanent resident who is the principal operator and is responsible for it rather than someone long gone.... We provide for home occupation uses in most zones, but in conjunction with permanent residents. Why would it be any different from short-term rentals?
- Policing something like this creates a huge array of problems. All I can see are headaches for someone trying to police it. All you will do is end up in court trying to defend an action... don't see how you could create bylaws to make this use a nonconforming use on a residential property.
- People with hotels, who pay tax, (etc.) are competing with these people. The family renting a hotel is getting the short end of the stick.
- Now you have offshore investors coming in buying homes, who never live here, and they want to rent them out. Who will look after them? Concerns: rowdiness, noise, impact on neighbourhood.
- Would not support BEN system for option 4; it swings the pendulum way too much in favor of government instead of giving people a fair hearing.
- Could Planning come up with other options?
- Clarify the definition of short-term rentals. Should be in conjunction with a permanent resident who is the operator. It is the people off the coast who don't give a damn about what happens here and are just trying to make a buck.

MOTION (JG/GC): "THAT the APC supports option 4 (maintain the status quo) and requests that staff consider improving the wording of the bylaw to include an expressed requirement that the operator of a short-term rental be a full time resident of the property and/or be present at the time the property is being rented."

Carried (EN opposed)

Area F APC comments of August 21, 2012

APC comments included:

Attachment 2: APC Comments re Short term/Nightly Rentals

- Refers to home owners who are not present on their property during the rental period
- Overkill for the SCR D
- SCR D has better things to do than police short term rentals
- Business and tourism benefits
- Noise problem should be dealt with current bylaws
- No more regulations.

MOVED by Judith Kenly, SECONDED by Fred Gazeley

THAT "The Area F Advisory Planning Commission support maintaining the status quo by enforcing existing zoning and/or noise bylaws on a complaint driven basis for issues regarding nightly/short term rentals in residential and rural zones."

CARRIED UNANIMOUSLY

BOARD MEETING OF OCTOBER 25, 2012

406/12 **Recommendation No. 8** *Nightly/Short Term Rentals*

THAT the General Manager of Planning and Development's report, dated September 27, 2012, titled "Nightly/Short Term Rentals in Residential and Rural Zones" be received;

AND THAT the current approach of enforcing existing zoning and/or noise bylaws on a complaint driven basis for issues regarding nightly/short term rentals in residential and rural zones be continued.