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To: Hornby Island Local Trust Committee

8 June 2022

Dear Hornby Island Local Trust Committee:

re: Vacation Home Rental Policies and Regulations

I would strongly support the Hornby Island Local Trust Committee immediately initiating amending bylaws to implement the policy and regulatory changes recommended by the Advisory Planning Commission with respect to vacation rentals.

The current APC's recommendation to use Temporary Use Permits affirms the same recommendation made by a previous APC in 2008.

In retrospect, it is unfortunate that the then Local Trust Committee did not follow the advice. I was a member of that LTC. We faced considerable challenges in trying to find a community-supported way to legalize vacation rentals, which had been a long-standing illegal use on the Island (with over one hundred operations in place).

More than a decade later, the present local trust committee is in a better position to consider this as you now have more information about how the regulation of vacation rentals has played out in this and other communities. You can look at what has worked and what has not worked.

I would like to share with you my understanding of:

- the challenges we faced back **then** (2004-2011),
 - what has evolved **since**, and
 - where things are **now** (and why a different approach is required).

1. Vacation rental governance models

Then...

There was a dearth of models of how other jurisdictions in BC had addressed the use of residential-zoned dwellings for commercial visitor accommodation.

- The popular resort communities of Whistler and Tofino were starting to address it, but they are municipalities with the ability to use business licensing, an option not available on Hornby Island.
- In the Islands Trust Area' only two jurisdictions allowed vacation rental use: Gabriola Island, through Temporary Use Permits and South Pender Island, through zoning regulations (but only where there are

two permitted dwellings on a lot with the principal one being occupied for residential use).

But neither island is a “destination” community to the same extent as Hornby Island. On Gabriola, there had been only 6 TUP applications. On South Pender, despite the use long being “legal”, there were less than a half-dozen vacation rentals operating, while on Hornby there were over 100 advertised despite it being “illegal”.

There was no suitable model to follow.

Since...

There are models of multiple jurisdictions permitting vacation home rentals, using business license in the case of municipalities (eg Tofino, Ucluelet, Metchosin, Cumberland, Victoria, Kelowna), or using temporary use permits in the case of regional districts and local trust committees (eg Okanagan-Similkameen, Nanaimo and Alberni-Clayoquot RDs and North Pender, Mayne and Gabriola LTCs). Other jurisdictions continue to not permit the use.

Now...

Hornby Island is out of step with other local governments that are able to more effectively manage vacation rentals in their jurisdiction by using a licensing or a permitting process.

Also: there are now three useful reports available

- *A Home for Everyone: A Housing Strategy for British Columbians, 2018*
(Union of BC Municipalities)

“Options for regulating short-term rentals

- requiring that all hosts have a license or permit and only allow websites like Airbnb to list and advertise properties that have a permit number

- Placing a cap on the number of days per year a property is rented as a short-term rental (e.g. 60 as in Amsterdam).”

- *Regulating Short-Term Rentals*

A Toolkit for Canadian Local Governments, June 2021

(Third Place Planning, supported by the Federation of Canadian Municipalities)

“Business licensing* is the most commonly used regulatory tool for STR and has been proven effective at achieving multiple goals.”

(*Business licensing is not available in non-incorporated communities in BC, but TUPs can be used instead)

“If a community wants to prioritize residents’ right to adequate housing, the most effective approach is likely the restriction of STRs in residential zones to principal dwelling units”

*- Priorities for Action on Short-Term Rentals, June 2021
(Union of BC Municipalities and Province of BC Advisory Group)*

“The use of housing units for travellers has reduced long-term rental housing capacity at a time when housing availability and costs are already under pressure.”

“The potential for earning revenue from short-term rental use of properties (whole or in part) often supports higher property prices than local incomes can support.”

“One of the most effective tools for addressing the impact of short-term rentals on housing availability and affordability is to prohibit listings that aren’t within a host’s principal residence.”

2. Growth in the number of residential dwellings used for visitor accommodation

Then...

The experience of places in other parts of the world showed how growth in vacation rentals can negatively impact residential neighbourhoods and communities.

The possibility of this happening on Hornby Island was not given much serious discussion in the process of developing a regulatory framework for vacation rentals here. There seemed to be an understanding that vacation rentals were a marginal economic activity that provided just a little income that enabled residents to cling to ownership of their homes rather than generating enough profit to lead to much growth in the activity.

The focus was mostly on how to legalize the existing vacation rentals rather than on where that might lead. Thus there was support for allowing vacation rentals through zoning regulations despite the fact that this would not enable a cap to be placed on the eventual number.

Since...

As it turns out, vacation rentals have proved to be sufficiently profitable that the number advertised has increased by over 50% since they became legalized. Over 15% of the island’s housing stock is being advertised for visitor accommodation. It seems clear that the majority of rentals are being conducted in the second dwellings of non-residents rather than supporting residents’ ability to continue to live in their only home which they occupy most of the year.

Now...

It is clear that the original assumptions about growth in vacation rentals not being an issue was wrong. This local government, like other jurisdictions, needs to have the ability to cap the number of residential dwellings being used for non-residential purposes.

This can be done through no longer allowing vacation rentals as a permitted use in zoning regulations (thereby rendering existing vacation rentals as legally non-conforming) and establishing the number of additional TUPs that would be issued for new vacation rentals over and above those already operating.

3. Compliance with regulations

Then...

The regulations evolved through slow and careful consultations with the community – especially with those already operating vacation rentals.

Originally, the call from operators was to allow what they then referred to as “summer rentals” occurring in July and August when commercial visitor accommodation tended to be fully occupied. However, lobbying expanded this demand to include June and September and then May. There was also intense lobbying around increasing occupancy levels and not requiring TUPs.

These proposals were given due consideration. As a result, the final regulatory framework was generously permissive. There was an expectation that this fortunate situation would be honoured and that the modest regulations to address legitimate community concerns would be respected.

Since...

There has consistently been a significant proportion of vacation rentals operating in excess of the regulations - aided and abetted by HICEEC, a tax-funded community organization, that has been willing to advertise illegal operations that don't conform to community standards.

Now...

The widespread disrespect for the existing generous regulatory regime indicates that a new one is needed that follows how other jurisdictions are more carefully managing vacation rentals in destination communities.

By discontinuing vacation rentals as a permitted use in zoning regulations, existing operations would continue to be legal. However, if they exceeded what is permitted in those regulations, they would lose legal status and would have to apply for a TUP. If an operator failed to comply with TUP regulations, this would jeopardize the permit being renewed or a new permit being issued.

This would make enforcement more straightforward and effective.

4. Groundwater resource protection

Then...

An over-riding land use objective in the Hornby Island Official Community Plan is to protect the groundwater resource. With respect to commercial activities (like visitor accommodation), water supply/use and sewage disposal can be appropriately addressed through the conditions of a TUP. It is much harder to do it through zoning regulations.

There was an attempt to do this in the regulations for vacation rentals by requiring proof of adequate sewage treatment before vacation rentals can be conducted in the 1A aquifer.

Since...

To my knowledge, no operators of vacation rentals in the 1A aquifer met the requirement to provide proof of adequate sewage treatment.

There is a question whether the *Local Government Act* provides authority to require this outside of a permitting process (such as for a TUP).

Selecting just the **1A** aquifer for this requirement is based on a false premise. All aquifers on Hornby Island are ranked with the letter “A” signifying *high vulnerability* which requires measures to address potential pollution such as through inadequate sewage disposal. The number “1” represents *high development* which gives a rationale for special measures to address water use, not sewage disposal.

Now...

The present regulations do not adequately address an over-riding land use objective because they do not ensure that there is adequate sewage disposal for commercial operations in vulnerable aquifers, particularly in small lot zones.

TUPs will enable this to be addressed for any additional vacation rental operations (and for ones that have not complied with existing regulations).

5. Islands Trust Policy Statement

Then...

The *Islands Trust Policy Statement* has a policy (4.4.2) requiring measures to ensure that *neither the density nor intensity of land use is increased in areas which are known to have a problem with the quality or quantity of the supply of freshwater.*

The *Islands Trust Act* (154) requires that the Executive Committee not approve LTC bylaws if they are *contrary to or at variance with the trust policy statement*.

When the Executive Committee was considering approval of the Hornby Island proposed bylaws that would enable vacation rentals, a significant concern was whether they would increase the intensity of land use in areas of Hornby Island (small lot subdivisions) that are known to have a problem with freshwater.

I attended the meeting as a representative of the Hornby Island LTC and presented the LTC's understanding that permitting vacation rentals would not lead to intensification of land uses in those areas. The Executive Committee approved the bylaws.

Since...

One of my biggest regrets as a past trustee is that I mislead the Executive Committee into wrongly approving these bylaws – not out of intent but because of naive wishful thinking.

It is clear that since the bylaws were adopted, both the growth in numbers of vacation rentals and the significant proportion of operations that have exceeded what is permitted has led to an intensification of land use.

Now...

With this evidence, I believe the LTC has a responsibility to bring the OCP and LUB more in line with the legal requirement of the Policy Statement by no longer allowing an unlimited number of vacation rentals through zoning regulations that do not address water issues.

6. Temporary Use Permits for Vacation Rentals

Then...

In May 2008, the Hornby Island Advisory Planning Commission recommended that short-term vacation rentals should require a Temporary Use Permit (TUP) and that TUPs must address the availability and conservation of potable water and require proof of an approved septic or waste disposal system, with allowed rental capacity based on availability of water and capacity of waste disposal.

At that time, one local trustee opposed considering TUPs and the other supported this, particularly for small lots.

Subsequent community consultation indicated strong opposition to TUPs. Operators were resistant to having to apply for a permit to continue an activity that in some cases they had been doing for years. Some pointed to the fact that vacation rentals had long been a permitted use on South Pender Island (though that community is not much of a vacation destination compared to Hornby Island and vacation rentals are only allowed there on lots where there is a permitted cottage with a resident occupying the principal dwelling). They noted that there had only been 6 applications on Gabriola Island where TUPs were required.

There was talk of a mass refusal to apply for permits if they were required here.

Discussion of options were continued with an effort to create land use regulations that attempted to implement some of what might be required through TUPs. These were eventually adopted with a commitment to review them after five years.

Since...

As noted above, Hornby Island is out of step with other local governments where business licenses – or TUPs in non-incorporated areas - are used to permit and manage vacation rentals more effectively than can be accomplished through zoning regulations.

Now...

What is different now is that if TUPs are used instead of zoning regulations, TUPs would not be required for existing operators (they would be legally non-conforming) thereby eliminating the concern that made existing operators previously resistant to TUPs.

Thus the LTC can more readily implement the recommendations of two different Hornby Island Advisory Planning Commissions that TUPs should be used.

While business licenses are a useful tool for regulating commercial visitor accommodation, they are not available to local trust committees or regional districts.

With respect to local trust committees, the Islands Trust Council rejected business licensing authority when selecting issues to propose to the Province for possible legislative changes. In a letter to me dated 27 April 2021, Patrick Thomas, the Director of Government Services in the Ministry of Municipal Affairs, stated: *“The Islands Trust’s objects (powers) and authorities in the legislation are in relation to land use and planning. If business licensing is to be pursued on Hornby Island, it would be through the regional district legislative framework.”*

With respect to regional districts, UBCM has requested that the Province of BC amend the *Local Government Act* to enable regional districts to use business licenses. This has been rejected.

In his letter, Patrick Thomas, stated: *“A regional district board that is interested in requesting the additional authority is encouraged to provide the Minister of Municipal Affairs with a rationale for their request, which would include information about the need for the additional authority and how the business regulation would be used and implemented.”* The Comox Valley Regional District has had no interest in making such a request and will not be doing so this term. Because of the process involved, it is unlikely a future board will do so unless business licences are seen as a necessary tool for the region beyond just Hornby Island.

Temporary Use Permits, therefore are the only tool available for managing vacation rentals on Hornby Island and is likely to be into the future.

It is interesting to note that one of the two reasons that the Province originally introduced Temporary Commercial and Industrial Use Permits (as they were then called) was to enable local governments to permit the use of residential dwelling units for visitor accommodation in conjunction with Expo 86.

7. Fees for Temporary Use Permits

Then...

One of the objections by vacation rental operators to Temporary Use Permits was the cost of fees.

The fee for a TUP, which would run for two years, was \$1,100 dollars. It could be renewed for a further two years for \$165. That would be a total of \$1,265 for four years – or \$316 per year.

Vacation rentals were charging between \$500 and \$2,000 per week (with a handful of exceptions above and below those numbers), providing gross incomes of between \$5,000 and \$20,000 for ten weeks of rentals.

Since...

The cost of TUPs has decreased. The income from vacation rentals has increased.

Now...

The fee for TUPs has not changed, but the period has been extended from two years to six years. The total fees for six years would be \$1,265 – or \$210 a year. (This compares with a fee of \$485 or more a year for a vacation rental business licence in Tofino.)

The weekly rent for vacation rentals currently being advertised ranges from \$1,000 to \$5,000 (with a handful of exceptions above and below those numbers), providing gross incomes of between \$10,000 and \$50,000 for ten weeks of rentals.

And, of course, existing operators in compliance with present regulations would not be subject to paying a TUP fee because they would be legally non-conforming.

8. Aggressive lobbying

Then...

One of the biggest challenges for previous local trust committees was that the pro-vacation-rental lobby was so aggressive that it inhibited community members with different perspectives from making their

views known. Of course, everyone has a right to lobby but when it is done in a way that negates other voices it becomes problematic. On multiple occasions I heard legitimate concerns expressed (eg at the Co-op, in the ferry line-up, and even after meetings) that were not presented at meetings and therefore did not contribute to evidence-based decision-making. If those concerns had made it onto the public record the resulting decisions might have been different.

Since...

I am not sure to what extent this has continued since.

Now...

To avoid a repeat of what happened before the LTC could take careful steps to create a safe environment and encourage broad participation in accessible opportunities for providing input.

Thank you for reading and considering this.

I do hope it is helpful.

Tony Law