

ADMINISTRATIVE REPORT



TO: Planning & Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: July 22, 2021

RE: Expansion of Vacation Rental Uses in the Electoral Area Zoning Bylaws
Administrative Response

Administrative Recommendation:

THAT the recommendation from the Electoral Area “D” Advisory Planning Commission (APC) at its April 13, 2021 meeting requesting a review of zoning regulations governing vacation rental uses be respectfully denied.

Purpose:

To provide Committee with an overview of resource and work plan implications and to confirm legislative and/or legal authority regarding a resolution passed by the Electoral Area “D” APC requesting a review of zoning regulations governing vacation rental uses.

Background:

On January 18, 2012, the BC Supreme Court found against the Regional District in the case of *Okanagan-Similkameen (Regional District) v. Leach, 2012 BCSC 63*, which related to the operation of a short-term “vacation rental” use within the Residential Single Family One (RS1) Zone under the Electoral Area 'E' Zoning Bylaw No. 2459, 2008.

Following this decision, the Regional District approved a series of amendments to the Okanagan Electoral Area Official Community Plan (OCP) and Zoning Bylaws in order to more clearly distinguish “bed and breakfast” uses from “vacation rental” uses and to require that the latter be the subject of an approved Temporary Use Permit (TUP) prior to operating in a residential dwelling unit.

The only exception to this TUP requirement is at Apex Mountain Resort, where “vacation rentals” were introduced as a permitted use in the residential zones that apply to this community, subject to certain restrictions (i.e. occupancy load, provision of on-site parking, etc.).

Generally, a “vacation rental” use is considered to be a small-scale commercial use of a dwelling unit that is otherwise occupied on a permanent residential basis for a majority of a calendar year. Unlike a bed and breakfast use, a vacation rental operation does not require the permanent resident of the dwelling unit to be present in the house at the same time as their patrons.

Since introducing these land use regulations in 2014, the Regional District has issued approximately 28 TUPs for vacation rental uses. Enforcement is strictly complaint-based.

There have also been a few occurrences where property owner’s have sought TUPs for short-term tourist accommodation uses unrelated to the use of the principal dwelling unit on the property (i.e. in separate structures, such as cabins or converted garages).

At its meeting of April 13, 2021, the Electoral Area “D” Advisory Planning Commission (APC) considered one of these latter types of applications (i.e. use of multiple tourist cabins on a property) and, in recommending approval of the permit further resolved that “the legislation be looked at so we have policies around this type of application.”

At its meeting of June 3, 2021, the Board considered the Electoral Area “D” APC Minutes from its April 13, 2021, meeting and directed that the minutes “be referred to administration to undertake a review of the recommendations therein to determine potential impact to current resources and workplans or to confirm legislative and/or legal authority.”

Analysis:

The recommendation from the Electoral Area “D” APC to review the regulation of vacation rental and other tourist accommodation uses is within the Board’s authority and there are not seen to be any legislative or legal issues with reviewing the current regulatory approach to these uses.

Due, however, to current staffing levels, application volumes and in-process projects, resources to undertake this project would not be available until the latter half of 2022.

This project would require substantial staff time and resources and would impact other Board priorities (i.e. Electoral Area OCP Bylaw Reviews). This is based upon previous experience of amending the land use bylaws following the BC Supreme Court decision in *Okanagan-Similkameen (Regional District) v. Leach, 2012 BCSC 63*.

The proposal to expand the definition of “vacation rental” to include structures other than a residential dwelling unit is troublesome. The provision for allowing vacation rentals in residential neighbourhoods through a TUP was understood to provide an avenue for homeowners who wished to rent out their home while they were on vacation to provide a small-scale revenue stream that would not adversely impact the character of existing residential neighbourhoods.

Creating a pathway to formalise vacation rentals was not intended as an avenue for property owners to introduce other tourist accommodation uses into residential areas such as boutique hotels, motels or campgrounds. Nor was it intended to result in the conversion of dwelling units from residential occupancy for a majority of the year to only seasonal tourist accommodation usage.

Other APC’s have informally raised concerns recently regarding “vacation rentals” and a desire by members to review existing policies in order to potentially restrict this use due to concerns about its impact on housing affordability, availability of long-term rental units and neighbourhood character. There will be no consensus on this matter.

The existing policy and regulatory approaches that view the principal use of Low Density Residential and Small Holdings zoned neighbourhoods as residential are considered appropriate and new tourist accommodation uses should be assessed on their merits against existing Board policies contained in the OCP Bylaws.

Alternatives:

1. THAT the resolution passed by the Electoral Area “D” Advisory Planning Commission (APC) at its meeting of April 13, 2021, requesting a review of zoning regulations governing vacation rental uses be brought forward for consideration as a strategic project for 2022.

Respectfully submitted:

A handwritten signature in blue ink, appearing to be 'C. Garrish', written over a horizontal line.

C. Garrish, Planning Manager