ADMINISTRATIVE REPORT

TO: Planning & Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: April 5, 2012

RE: Vacation Rentals and Zoning Bylaw Compliance

Administrative Recommendation:

THAT the Regional District Board direct staff to prepare the following land use bylaw amendments:

1. the "private visitor accommodation" use in Electoral Area 'E' Zoning Bylaw be replaced by "bed and breakfast";
2. the regulations which pertain to "bed and breakfast" operations be updated and made consistent across all Electoral Area Zoning Bylaws;
3. use of a dwelling for "vacation rentals" be excluded from the definition of "bed and breakfast" and/or "dwelling unit" in all Electoral Area Zoning Bylaws; and
4. the definition of "bed and breakfast", "dwelling unit" and "single detached dwelling" be reviewed and made consistent across all Electoral Area Zoning Bylaws;

AND THAT staff be directed to explore the use of Temporary Use Permits to control vacation rentals and to bring forward a report on issues and potential policies.

Reference:

Electoral Area 'E' Zoning Bylaw No. 1566, 1995

Electoral Area 'E' Zoning Bylaw No. 2373, 2006

Electoral Area 'E' Zoning Bylaw No. 2459, 2008

Okanagan-Similkameen (Regional District) v. Leach, 2012 BCSC 63

Background:

At its meeting of November 15, 2007, the Regional District Board agreed to commence legal proceedings against the owner of Lot A, Plan KAP74736, District Lot 210, SDYD (3585 4th Street, Naramata), in relation to the operation of a "vacation rental" use within the Residential Single Family One (RS1) Zone. This action was initiated as a result of a series of complaints that had been received by the Regional District in relation to an existing "single detached dwelling" be used as a short-term "vacation rental". See Attachment 1 for typical definitions of terms used.

A legal trial commenced in May of 2011, and a decision from the BC Supreme Court was handed down on January 18, 2012, which found that "the Regional District has failed to show that the defendants are utilizing the Property in breach of the 2008 Zoning Bylaw [and] … The Regional District's application is therefore dismissed."

In finding against the Regional District, the Court concluded that the Electoral Area 'E' Zoning Bylaw No. 2373, 2006, and Zoning Bylaw No. 2459, 2008, both allowed for "private visitor accommodation" as a "secondary use" where a principle residential use — "single detached dwellings" — was established within the RS1 Zone. The 1995 Area 'E' Zoning Bylaw was also reviewed in the proceedings and was found to permit the "vacation rental" use as well.

"Private visitor accommodation" is unique to the Electoral Area 'E' Zoning Bylaws and encompasses "bed and breakfast" operations, which are otherwise stand-alone uses in other Electoral Area Zoning

Bylaws. It is understood that the term "private visitor accommodation" was introduced at the time of the 2006 Review of the Electoral Area 'E' land use bylaws and was intended to address a concern raised by the Review Committee that overnight accommodation be allowed to occur within a residence without the requirement to serve breakfast (i.e. a Bed without the Breakfast).

Of note in the BC Supreme Court decision is the interpretation of a number of definitions. Specifically, the Court concluded that the current definition of a "dwelling unit" is seen to describe a structure and does not limit the use of that structure only to residential. Following on from this, the definition of "private visitor accommodation" does not limit the use of a "dwelling unit" to only a "bed and breakfast" operation where the regular occupants of the "dwelling unit" are conducting the business (as opposed to a third party, such as a property management business).

Consequently, the BC Supreme Court concluded that "vacation rentals" are not a permitted principal use in the RS1 zone; and the use of an entire "dwelling unit" for the purposes of a "vacation rental" is a permitted secondary use (i.e. "private visitor accommodation use"), subject to a number of preconditions, including:

- evidence that the amount of time the property is occupied by renters is less than the amount of time that the property is occupied by the owners and their non-paying guests;
- the "vacation rental" may not be permitted in a secondary suite;
- no more than 8 people may be accommodated with the dwelling unit as part of the "vacation rental" at any one time;
- no more than 3 bedrooms used for this purpose on smaller lots and no more than 4 bedrooms on larger parcels are permitted as part of the use; and
- the "vacation rental" may only be operated by the principal residents of the dwelling. "Vacation rentals" operated by commercial vacation rental businesses are not permitted.

While the decision of the Court does not provide for unrestricted "vacation rental" use of "single detached dwellings" in Electoral Area 'E', it certainly broadens the use of "private visitor accommodation" beyond the traditional scope of how the Regional District has understood and applied this particular aspect of Zoning Bylaw No. 2459, 2008.

All Electoral Areas Zoning Bylaws have the same definition of "dwelling". For other regulations:

- Areas A and C Bylaws do not appear to have the problem wording of Area E and are likely enforceable against whole vacation rentals;
- Areas D-1 and D-2 Bylaws appear to have similar flaws to the Area E Bylaw and problematic;
- Areas F, G and H Bylaws list a Bed and Breakfast as a home occupation with a maximum area of 50m^2 – providing additional regulations that appear to be enforceable. (Note that the Area H Zoning Bylaw is in the process of being replaced.)

Options:

In response to the decision of the BC Supreme Court, Administration is seeking direction from the Board on a preferred strategy to be applied in relation to the treatment of bed and breakfast and short-term "vacation rentals" throughout the Regional District. Administration considers that there are a number of options that could be pursued by the Board, including, but not limited, to the following:

1. ***Status quo*** – accept the decision of the BC Supreme Court that "vacation rentals" are a permitted form of "private visitor accommodation" within Electoral Area 'E and permitted in Area D and potentially other Electoral Areas . This approach would not require any bylaw amendments.
2. ***Bed and breakfast amendments*** — respond to the decision of the BC Supreme Court by amending the Electoral Area 'E' and other Electoral Area Zoning Bylaws in order that it conforms to past practices of not allowing "vacation rentals" as a permitted form of "private visitor accommodation". This will require amendments to the Zoning Bylaw to remove the term "private

visitor accommodation" in Area E and replace with revised "bed and breakfast" regulations for all Electoral Area Bylaws.

3. ***Ad Hoc/Limited Vacation Rentals*** — respond to the decision of the BC Supreme Court by defining what constitutes a "vacation rental" and dealing with these uses on an ad hoc basis or limited basis either through the creation of spot zones (i.e. a site specific zoning or a new Zoning District) or issuance of Temporary Use Permits (TUPs). This option could also be expanded to other Electoral Areas.
4. ***Vacation Rentals in All Zones*** — respond to the decision of the BC Supreme Court by defining and introducing "vacation rentals" as a permitted use in all Rural, Low Density Residential and Medium Density Residential Zones within Electoral Area 'E'. This option could also be expanded to other Electoral Areas.

Analysis

At present "vacation rental" businesses are not uncommon within the Regional District and, apart from the recent Court ruling regarding the operation of these businesses in Electoral Area 'E', they are not seen to be permitted by the relevant Zoning Bylaw.

The Regional District annually receives numerous complaints from neighbours of dwellings being operated as "vacation rentals" and these complaints are generally related to issues of noise and other related disturbances; traffic and parking overflow; adverse impact on the character of a neighbourhood; and septic system failures. It is considered that such complaints are generally related to "vacation rental" operations that accommodate upwards of 16 guests, and where outdoor pools or beach areas create late evening gatherings.

Administration also recognizes that the South Okanagan and Similkameen Valleys are tourism destinations; that there is a demand for vacation rentals by visitors to the region; and that existing prohibitions against such uses appear to have done little in terms of restricting the proliferation of these uses.

Administration has undertaken a review of how member municipalities have addressed this situation within their jurisdictions and, with the exception of the City of Penticton (which allows "vacation rentals" in most zones), "vacation rentals" are generally not a permitted use (see Attachment No. 1).

A review of each options includes:

1. The status quo will allow for "vacation rentals" in many single family areas of the region within the limits of the bylaws (ie. 8 guests in 3 bedrooms). This approach may create concerns from single family residents who do not support "vacation rentals" in their neighbourhoods beyond current levels. With somewhat different regulations in each of the 8 zoning bylaws, there will be a patchwork of conditions in the region and considerable confusion of what is allowed and where. Enforcement of complaints will be difficult due to problems in determining the owners level of use of the property.

2. B&B uses are permitted in most residential zones in the South Okanagan / Similkameen. There are many such businesses and few complaints. Administration also considers that the definition and regulations which apply to "bed and breakfast" uses (or "private visitor accommodation" in Electoral Area 'E') need to be reviewed and made consistent across Electoral Areas. Specifically, Administration considers that the operation of a "bed and breakfast" by the regular occupants of a dwelling needs to be clarified and re-stated as well as clarification of the definition of "dwelling unit" as a residential use. This option will update bylaws to reflect the well-established concept of B&Bs and provides a consistent regional approach.
3. Should the Board support the ad hoc/limited approach, consideration will also need to be given as to how to accommodate "vacation rental" uses. Some of these options include allowing "vacation rentals" only certain zones or areas; or on a case-by-case basis. Upon application a new spot

zone could be created for specific properties and through the process input from neighbours would be sought. In Community Plans, areas could be established for "vacation rental" use of homes – although likely with considerable controversy. As a negative, rezoning creates a permanent use.

Administration considers that the advantage of a Temporary Use Permit is that permanent zoning is not granted, the use can only operate for a specified period of time (up to 3 years) and if there are no significant problems or complaints from the neighbourhood, the use can be extended (up to 3 years). A new application can provide for a further 3+3 years. TUP's are used extensively on the Gulf islands to provide for "vacation rentals", and this approach allows for the commercial operation, while providing for neighbourhood input and with significant conditions attached. TUPs are enforced through the Courts similarly to a Zoning Bylaw infraction

4. The option of allowing "vacation rentals" in all dwellings in the region would be a very bold step and would provide significant opportunity for property owners. On the negative side, the would likely be an impact on single family neighbourhoods and on commercial tourist accommodation businesses. Without a business licence tool available enforcement would be challenging.

In summary, Administration favours the ad hoc formalization of "vacation rentals" as a result of the recent ruling from the BC Supreme Court, and that this be achieved in the following manner:

1. the "private visitor accommodation" use in Electoral Area 'E' be replaced by "bed and breakfast";
2. the regulations which pertain to "bed and breakfast" operations be updated and made consistent across all Electoral Area Zoning Bylaws;
3. "vacation rentals" be specifically not permitted in dwellings or in Bed and Breakfast operations in all Electoral Area Zoning Bylaws;
4. the definition of "bed and breakfast", "dwelling unit" and "single detached dwelling" be reviewed and made consistent across all Electoral Area Zoning Bylaws; and

That staff be directed to explore the use of Temporary Use Permits to control vacation rentals and to bring forward a report on issues and potential policies.

Respectfully submitted:

Donna Butler

Donna Butler, MCIP
Development Services Manager

Attachments: Attachment No. 1

Attachment No. 1

For purposes of this report, following terms are defined:

Bed and Breakfast means the use of a single family dwelling carried out by the residents/occupants of the dwelling to provide sleeping accommodations in bedrooms to the travelling public and may include provision of the morning meal	**Vacation Rental** means the rental of an entire dwelling to provide accommodations for the travelling public on a short term basis

Private Visitor Accommodation, a term used in the Area E zoning bylaw is defined as an occupation within a principal dwelling, by the residents of the dwelling, which provides sleeping accommodations to the travelling public. A bed and breakfast is a form of private visitor accommodation that includes a morning meal.

For comparison purposes, zoning provisions for B&B and Vacation Rentals in south Okanagan / Similkameen municipalities are outlined below:

Municipality	Bed and Breakfast	Vacation Rental
Penticton		• Permitted in all dwellings in Rural, Agriculture, Single and Multiple Family and Commercial zones • Only rented by property owner • Maximum of 2 persons per bedroom / no more than 5 persons per rental unit • Business license required – fee of $365 per year
Summerland	• Permitted in agriculture, country residential and single family zones • Maximum of 4 bedrooms / 8 guests	• Not permitted
Oliver	• Permitted as a home occupation in agriculture, single family, mobile home park and multiple family zones • Floor area limits such as 50m^2 and 20% of the floor area of a single family dwelling • Maximum of 5 patrons	• Not permitted
Osoyoos	• Permitted as a home occupation in all single family dwellings • Not more than 3 bedrooms • Business license for 3 bedroom uses, not for 2 bedroom or less	• Not permitted in single family dwellings
Princeton	• Permitted as a home occupation in single and multiple family, and agriculture / rural areas • No more than 8 guests / 3 bedrooms	• Not permitted.