
District of Lantzville

REPORT TO CAO

Regular Council Agenda Item
January 12, 2015

G: Reports/2015/TUP Vacation Rental
File: 3360-30-14-2

AUTHOR: Robyn Holme, Community Planner

**SUBJECT: Temporary Use Permit Application No. 3360-30-14-2
7346 & 7350 Venture Road (Thomas)
Lots 5 & 6, District Lot 54, Nanoose District, Plan 4835**

Recommendation

1. **THAT** Council not authorize Temporary Use Permit Application 3360-30-14-2 (vacation rental located at 7346 and 7350 Venture Road) to proceed for further review and notification at this time.

Alternatives

1. **THAT** Council direct staff to complete the notification procedures for Temporary Use Permit Application No. 3360-30-14-2 (vacation rental located at 7346 and 7340 Venture Road) and bring forward the results for Council's consideration.
2. **THAT** Council direct staff to proceed with broader public consultation on the implications of allowing vacation rentals in the community of Lantzville and bring forward a report identifying the issues, including potential policies and regulations.

Purpose

To consider an application for a Temporary Use Permit to allow vacation rental as a use on two properties on Venture Road.

Background

The subject properties (see subject property map Attachment No. 1) are located at 7346 and 7350 Venture Road near the Sebastion Road beach access. The applicant owns the two subject properties, and owns and resides at the two adjacent properties to the east located at 7193 and 7183 Sebastion Road. The property owner submitted this application following notification by staff that a vacation rental/tourist accommodation use was occurring on the two properties and that this is not a permitted use. Further, Bylaw Enforcement staff also contacted the owners to formally notify them of the zoning bylaw violation. The owners have subsequently not taken further reservations since being advised of the bylaw infraction, and alternately are renting out one of the properties as a regular residential property (with a minimum rental term of one month).

As a result, the property owner of the two parcels has applied for a Temporary Use Permit (TUP) to allow the continued use of the properties as vacation rentals. The "District of Lantzville Zoning Bylaw No. 60, 2005" allows for the consideration of TUPs in any zone, and allows for the imposition of conditions, pursuant to section 921 of the *Local Government Act*. A TUP may be issued for up to three years, and may be renewed once only (a total of six years). Continued use after this period would require rezoning.

Discussion

The subject properties (and surrounding properties) are zoned Residential 1, Subdivision District L (RS1L) in the "District of Lantzville Zoning Bylaw No. 60, 2005". Pursuant to this bylaw, Residential Use and Home Based Business (including bed and breakfast) are permitted uses in the residential

zone. Residential Use means “the accommodation and homelife of a person or persons in common occupancy, and shall only be conducted within a dwelling unit”. The interpretation of the District has been that residential use does not include short term vacation rentals. In general, monthly terms are considered to be the minimum length for a use to be residential.

Fundamentally, the use of a building for tourist accommodation is a commercial use that has different land use impacts from those caused by a residential use of the same building, even though the individuals who are in occupancy at any particular time are engaged in more or less the same type of activities (eating, sleeping, etc.) as residential occupants would be.¹ Vacation rental use is much more intensive than normal residential use, involving a never-ending stream of fresh occupants.

A bed and breakfast rental is considered to be different from short term vacation rentals in that the primary use of a bed and breakfast is residential and the secondary use is a home based business. To maintain this distinction, the property must be the principal residence of the landowner. In this case, the property owner resides adjacent to the subject properties; therefore, the principal use of the subject properties would be commercial.

Development Implications

The subject properties are owned by the same owner, as are the two neighbouring properties to the east. All four, as well as the properties to the west and south, are zoned Residential 1. To the north is the ocean, and the Sebastion Road beach access is in close proximity.

The lots on Venture Road are small by Lantzville standards, ranging from 0.25 acre to .40 acre in size. A vacation rental use would likely have less of an impact on neighbours on larger lots. However, these particular properties only have a neighbour on one side and across the street. The neighbour to the west has recently erected a fence, providing screening between the two properties.

The table below outlines some considerations Council may wish to consider should vacation rentals in this residential neighbourhood be contemplated (some of which have been included in the attached draft TUP in case Council wishes to proceed for further review and notification):

Noise	Neighbours may have concerns regarding the potential noise of vacationers. The District’s noise bylaw prohibits persistent yelling and shouting between 11:00 pm and 8:00 am. In addition, a clause prohibiting noise, vibration, glare, fumes, odours, dust or smoke detectable off the parcel to the normal senses has been included as a condition in the draft TUP. In the case of the application at hand, the owners would be living next door and are experienced property managers (see attached letter that formed part of the application). This arrangement (with the owners living next door) makes the application unique and similar to a bed and breakfast, and has been included as a condition in the draft TUP. A limitation on the number of occupants has also been included in the draft TUP.
Traffic and Parking	Traffic could be an issue for those living on the same street. There would be the turn-over caused by transient guests arriving and departing from the dwelling unit at the start and end of their stay, plus any comings and goings as the visitors sightsee and travel to other parts of the island. While the actual volume of traffic may be no higher than that of a residential use, long term residents, with a stake in the neighbourhood, are more likely to be considerate of their neighbourhood than visitors. Residential dwelling units are required to have two parking spaces. The “District of Lantzville Zoning Bylaw No. 60, 2005” requires 1 parking stall per bedroom

¹ Buholzer, W., 2001. “British Columbia planning law and practice”.

	<p>unit. In most instances, two parking spaces would likely be sufficient for vacation rental uses as well. A condition has been included in the draft TUP that all parking needs be accommodated on site to ensure that the vacation rental use does not generate on-street parking.</p>
Signage/outside appearance	<p>There may be a need or desire to provide signage to assist visitors in identifying the home as a vacation rental. The same limitations that apply to home based businesses (not changing the outside appearance, and being limited to non-illuminated business sign) has been included as a condition of the draft TUP.</p>
Economic development and availability of other accommodation	<p>Currently, the District does not issue business licences and, as such, does not have a reliable inventory of bed and breakfasts (B&Bs). An on-line search suggests there are at least six B&B's (staff have not confirmed that these are all currently operating).</p> <p>Lantzville's 2008 Tourism Development and Marketing Plan suggests that Lantzville needs more private ventures. Allowing for additional accommodations could support local businesses; however, it also decentralizes the village core by encouraging commercial uses outside of the village commercial centre.</p> <p>Additionally, taxation of short term vacation rentals could prove problematic. According to BC Assessment, Class 1 classification is residential and allows bed and breakfast rentals for a term of less than 7 days. To maintain this classification, the property must be the principal residence of the landowner (same as home based business). Short term vacation rentals that do not meet this requirement could fall into in the Class 6 – commercial classification.</p>
Bylaw enforcement	<p>The concept of using TUPS to regulate vacation rentals is relatively new. The guidelines imposed by the TUP do not impose the same level of compliance as a bylaw amendment or site specific zoning, which may contribute to onerous demands on bylaw enforcement.</p> <p>Further clarification around the length of stay could assist bylaw enforcement procedures.</p>
Building Code and Fire Code	<p>Requirements may vary based on maximum occupancy. An inspection may determine the required egresses from bedrooms, smoke detectors, fire extinguishers, etc. A building permit application would allow the District of Lantzville to determine whether the proposed building complies with the building and fire code requirements for a commercial use.</p> <p>However, the current proposal does not include any construction that would require a building permit.</p>

Regulating Vacation Rentals

Pursuant to the "District of Lantzville Zoning Bylaw No. 60, 2005", Lantzville does not permit vacation rentals as a use in residential zones. Hotel use is permitted in the Commercial 5 and 6 zones only. This approach offers the most certainty to neighbours who may be concerned about the erosion of the residential character of their neighbourhood. Municipalities and Regional Districts throughout the province regulate vacation rentals differently. Staff has undertaken a review of how other municipalities have addressed vacation rentals within their jurisdictions noting that some other communities regulate vacation rentals through temporary use permits (e.g. some islands in the Islands Trust and the Regional District of the Okanagan-Similkameen). At the other end of the spectrum, some communities allow vacation rentals as home based businesses or regulate them

through business licences such as the City of Penticton, or include them as permitted uses in various zones such as Sun Peaks Mountain Resort Municipality; however, this ad-hoc approach provides less certainty to neighbours.

Considering TUPs on a case-by-case basis may be one regulatory tool to consider; however, approving this TUP may open the door to applications for vacation rental uses on other residential properties. Other residents could apply for TUPs for vacation rental use, but Council would have the opportunity to consider each application in its context. TUPs have the advantage of involving a public notification process (giving neighbours a formal opportunity to comment), Council consideration, and an opportunity to not renew if the conditions of the TUP are not adhered to. This TUP could also serve as a pilot case, which staff and Council could monitor over time.

Alternatively, Council could direct staff to bring forward a Zoning Bylaw (comprehensive development zone) amendment to establish specific areas where TUPs for vacation rentals would be considered. The City of Parksville permits tourist accommodation in designated areas such as Resort Area Tourist Accommodation and Mixed Waterfront Commercial, however the use is not intermixed with residential use. The Town of Qualicum Beach, similarly, allows tourist accommodation in the CD5 zone, a comprehensive development zone that specifically encourages a mix of tourist uses such as golf course, restaurant, and spa and fitness centre. The table below summarizes how other local governments regulate vacation rentals:

Town of Qualicum Beach	Site specific zoning (comprehensive development zone); CD5 (a commercial zone)
City of Parksville	Permitted in Resort area tourist accommodation (a commercial zone)
Cowichan Valley Regional District	Not permitted in residential zones; length of stay triggers non-compliance (any length of stay less than one month is non-compliant)
Regional District of the Okanagan-Similkameen (RDOS)	TUPs used for vacation rentals up to 18 months and must meet specific criteria (may be renewed if vacation rental determined to be appropriate)
Sun Peaks Mountain Resort Municipality	Permitted if rezoned to specific zoning that allows both residential and tourist accommodation (from RS-1 to RS-1A). Sun Peaks Mountain Resort municipality specifically created RS-1A zone to regulate vacations rentals. A business license is also required to operate a vacation rental.
Nanaimo Regional District	Not permitted except in agriculture zoning
Islands Trust	TUPs implemented on some islands

Public Consultation Implications

The “District of Lantzville Land Use & Development Procedures & Fees Bylaw No. 37, 2005” includes a policy that owners and occupiers of parcels of land any part of which is within 60.0 metres of the boundary of the subject property shall be given notice of Council’s intention to consider issuance of a TUP. In addition, Notice must be given pursuant to section 921 of the *Local Government Act*.

Financial Implications

Costs to process this application are considered to be within the fees prescribed by the “District of Lantzville Land Use & Development Procedures & Fees Bylaw No. 37, 2005” at a total cost of \$1150 (\$750 + \$400 notification fee). It is not anticipated that additional costs will be incurred on this application; however, if Council reviewed vacation rentals as a larger issue, there would be financial implications to the District of Lantzville, as there would be no applicant or applicant fee from which to recover costs. Should Council direct staff to proceed with the review of larger issues surrounding vacation rentals, it is noted that this item is not included in the work plan for 2015, but could be completed under general land use planning services once the Community Planner position has been filled. Additionally, costs/funding would need to be determined for community engagement activities.

The “District of Lantzville Land Use & Development Procedures & Fee Bylaw No. 37, 2005” states the following:

“An applicant for a Temporary Commercial and Industrial Use Permit shall, upon request by Council and prior to issuance of a permit, provide security to the Municipality in an amount to be determined by Council, to guarantee the performance of the terms of the Permit”.

In this case, no construction is occurring to facilitate the temporary use, however, bylaw enforcement may be required and/or monies for legal fees should the owner/occupant not adhere to the conditions of the TUP if issued. Therefore, staff suggest that Council request a security deposit and add this request to the list of conditions if Council elects to issue the TUP.

Summary

This Temporary Use Permit application requests Council’s consideration to authorize vacation rentals on two properties located at 7346 and 7350 Venture Road with the owner of both properties residing adjacent.

Vacation rentals are a form of short term rental that staff believe should be treated differently than a bed and breakfast or non-paying guests such as friends and family. Recent court decisions (Whistler v. Miller; Whistler v. Wright), have confirmed that vacation rentals are a distinct use from residential use, and that local government may regulate and prohibit the use through zoning. Staff is of the opinion that the rental of dwellings for a term of one month or more can reasonably be considered a residential use.

Staff further note that rental terms of less than one month be considered as a non-residential use and a use that is not permitted unless conducted in a zone where the use is explicitly allowed.

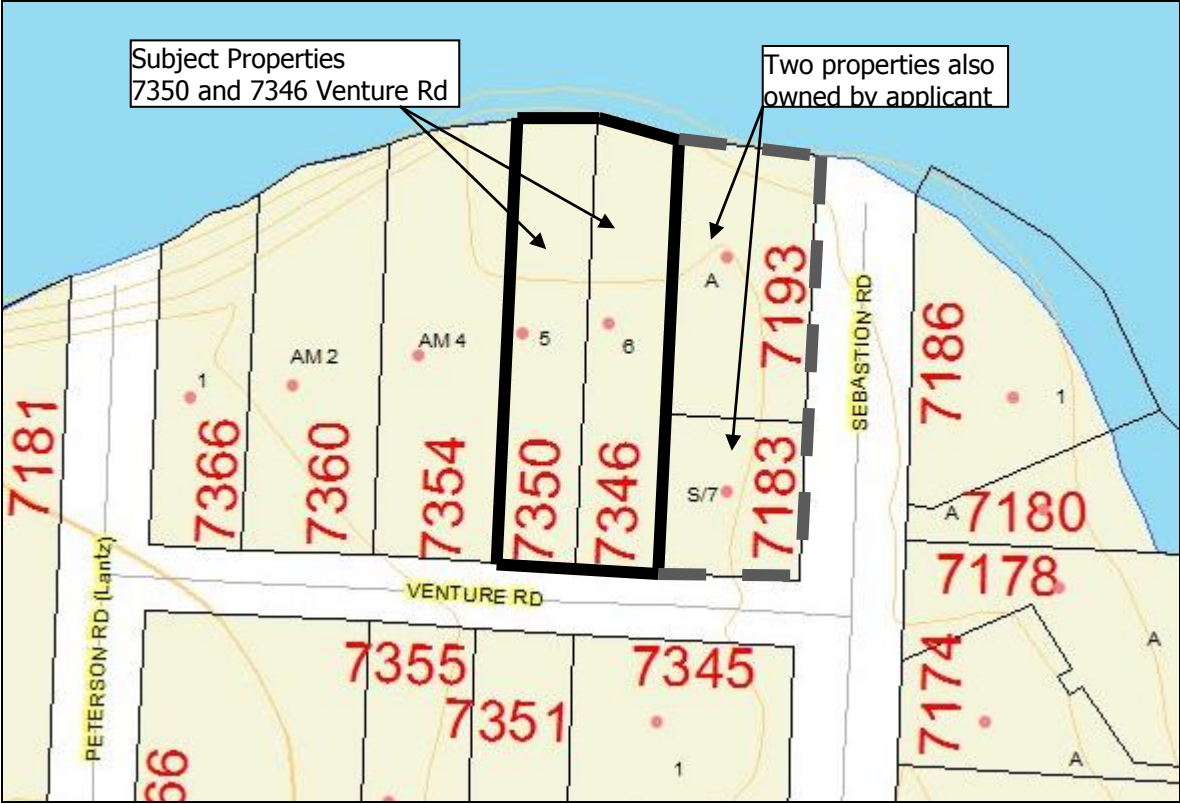
Respectfully submitted

Robyn Holme
Community Planner
District of Lantzville

Reviewed By:

CAO		Dir. Of Finance		Dir. of Corp Admin.	
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Attachment No. 1
Subject Property
Temporary Use Permit No. 3360-30-14-2
7346 & 7350 Venture Road (Thomas)
Lots 5 & 6, District Lot 54, Nanoose District, Plan 4835



Schedule 1
Conditions of Approval
Temporary Use Permit 3360-30-14-2
7346 & 7350 Venture Road (Thomas)
Lots 5 & 6, District Lot 54, Nanoose District, Plan 4835

To permit on a temporary basis 'vacation rental' use on 7346 and 7350 Venture Rd.

The following sets out the conditions of Temporary Use Permit No. 3360-30-14-2:

General Requirements:

1. The property shall be developed in accordance with the site plan submitted (Schedule 2).
2. No additional dwelling units are permitted on the properties (maximum of one dwelling unit per parcel).
3. The vacation rental use shall be permitted on 7346 and 7350 Venture Road only so long as the properties are owned by the same owner and that same owner resides at 7193 Sebastion Road.
4. The vacation rental shall create no noise, vibration, glare, fumes, odours, dust, or smoke detectable off the parcel to the normal senses.
5. A maximum of five occupants at a time per dwelling unit shall be permitted in the vacation rental.
6. The vacation rental use shall not change the outside appearance of the dwelling units. A maximum of one (1) non-illuminated sign per parcel is permitted, provided the sign:
 - a. does not exceed 0.75 m² in sign face area;
 - b. is displayed on the exterior wall face of a dwelling unit, accessory building or fence, or as a free standing sign;
 - c. if freestanding, does not exceed 1.5 metres in height;
 - d. if freestanding, is sited within required setbacks of the applicable zone.
7. All parking needs for the vacation rental use shall be accommodated on the subject properties.
8. The Temporary Use Permit shall expire after three (3) years from the date of issuance, after which time the vacation rental use will cease. The owners may apply to renew the Temporary Use Permit one (1) time by submitting a new application six months prior to the expiry of the date the initial Temporary Use Permit was issued by Council.

Schedule 2 Site Plan Temporary Use Permit 3360-30-14-2 7346 & 7350 Venture Road (Thomas) Lots 5 & 6, District Lot 54, Nanoose District, Plan 4835

