COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *North Pender Island Local Trust Committee v. Conconi,* 2010 BCCA 494

Date: 20101105
Docket: CA036988

Between:

North Pender Island Local Trust Committee

Respondent
(Plaintiff)

And

Robert Leslie Conconi

Appellant
(Defendant)

Before: The Honourable Madam Justice Rowles
The Honourable Mr. Justice Tysoe
The Honourable Madam Justice Bennett

On appeal from: Supreme Court of British Columbia, March 11, 2009 and July 27, 2009 (*North Pender Island Local Trust Committee v. Conconi*, 2009 BCSC 328 and 2009 BCSC 1017)

Counsel for the Appellant:	P. D. MacDonald and A. M. Gunn
Counsel for the Respondent:	F. V. Marzari
Place and Date of Hearing:	Vancouver, British Columbia September 23, 2010
Place and Date of Judgment:	Vancouver, British Columbia November 5, 2010

Written Reasons by:
The Honourable Mr. Justice Tysoe

Concurred in by:
The Honourable Madam Justice Rowles
The Honourable Madam Justice Bennett

Reasons for Judgment of the Honourable Mr. Justice Tysoe:

Introduction

[1] This appeal deals with the issues of whether the use as a commercial resort of property on North Pender Island owned by the appellant, Mr. Conconi, complies with the current land use bylaw of the respondent, North Pender Island Local Trust Committee (the "Trust Committee"), or whether the use is a permissible non-conforming use on the basis that it was a permissible use under the Trust Committee's former zoning bylaw that was replaced by the current land use bylaw. Section 911 of the *Local Government Act*, R.S.B.C. 1996, c. 323, provides that a non-conforming use under a bylaw may be continued if the use was lawful when the bylaw was adopted and if the non-conforming use is not discontinued for a continuous period of six months.

[2] Following a summary trial under Rule 18A, the summary trial judge concluded the use of the property as a commercial resort was not permitted under the former zoning bylaw or the current land use bylaw, and she granted an injunction prohibiting that use of the property. Mr. Conconi appeals from both findings of the judge and, alternatively, says the judge erred in exercising her discretion to grant the injunction. He also appeals from the award of costs made against him as the unsuccessful party.

[3] For the reasons that follow, I agree with the conclusions of the judge and am of the view it was appropriate for the judge to have granted the injunction, and I would dismiss the appeal. It follows I would also dismiss the appeal against costs.

Background Facts

[4] The property in question is a 34 acre parcel purchased by Mr. Conconi in 1994. From 1994 to 1999, the use of the property was governed by Zoning Bylaw No. 5 (the "Former Bylaw"). In 1999, the Former Bylaw was replaced by Land Use Bylaw No. 103 (the "Current Bylaw"). The relevant portions of the Former Bylaw and the Current Bylaw, as reproduced in the appellant's factum, are attached to these

reasons as Appendices “A” and “B”, respectively. The property falls within the Rural 1 Zone (R1) of the Former Bylaw and the Rural (R) Zone of the Current Bylaw. Section 1.3 of the Current Bylaw was repealed in April 2000.

[5] The density provision of the Former Bylaw allowed for only a one-family dwelling on each parcel of land unless the owner entered into a restrictive covenant agreeing that there would not be more than one one-family dwelling and one guest cabin (a permitted use under s. 7.1 of the Former Bylaw) per four hectares (or 10 acres). Mr. Conconi entered into such a restrictive covenant, which meant that he was permitted to construct three one-family dwellings and three guest cabins on the property.

[6] Between 1994 and 2000, Mr. Conconi caused three dwelling buildings and three guest cabins to be built on the property. He also arranged for the construction of a structure that has been referred to as the drying shed because its initial proposed use was to process, store and package horticultural goods.

[7] The first dwelling constructed by Mr. Conconi has been used as a residence for himself and his family. Friends of Mr. Conconi also stay in the first dwelling when visiting him.

[8] The judge found that the other two dwelling buildings, the three guest cabins and the drying shed were being used by Mr. Conconi in the operation of commercial resort called “the Timbers”. Mr. Conconi does not challenge this finding of fact on appeal, and the finding is amply supported by the evidence. I will briefly summarize some of the facts supporting the finding.

[9] Each of the two dwelling buildings and three guest cabins used in the operation of the resort (which I will refer to as the larger units and the smaller units, respectively, and collectively as the units) is available to the public for booking throughout the year. The units are usually fully booked in July and August, on a weekly basis, and on weekends during May, June and September. The Timbers has

a website offering the units for booking, and the bookings are handled by a professional booking agency.

[10] The resort has a full-time caretaker. The units are fully furnished with linens and dishes, and they are cleaned between bookings.

[11] Recreational facilities are provided by the Timbers. These include a swimming pool, a playground, a trampoline and a Frisbee golf course. There is a dock where boats may be moored, and a small boat is provided for use by the guests.

[12] The drying shed is no longer used to process horticultural goods. It is available for wedding receptions, family retreats and corporate retreats, with kitchen facilities and seating for up to 100 people.

Discussion

(a) Standard of Review and Principles of Interpretation

[13] The parties are agreed that the issues of whether the use of the property as a commercial resort was a permitted use under the Former Bylaw or is a permitted use under the Current Bylaw is a question of law reviewable on a standard of correctness. They are also agreed that the judge correctly set out the general approach to statutory interpretation in para. 29 of her reasons, quoting Elmer Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974) at 67, which I will modify slightly to conform to the context of this case:

> ... the words of an [enactment] are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the [enactment], the object of the [enactment], and the intention of [the legislative body that passed the enactment].

See *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 at para. 26.

[14] In interpreting zoning or land use bylaws, one must have regard to their general purpose. That purpose was described in I. M. Rogers, *Canadian Law of*

Planning and Zoning (Toronto: Carswell, 1973), which was cited with approval in *Whistler (Resort Municipality) v. Miller*, 2001 BCSC 100, 20 M.P.L.R. (3d) 128 at para. 51, aff'd 2002 BCCA 347, 32 M.P.L.R. (3d) 29, as follows:

> The principal purpose of zoning regulations, as with restrictive covenants, is to preserve property values by prohibiting uses which are believed to be deleterious to neighbourhoods mainly residential in character. People living in an area of single family homes naturally want the same type of homes in the district, that is, a use that is compatible. They want to preserve the amenities of their locality. Thus from the standpoint of the rate payers it is the status quo that is sought to be maintained and build up residential areas which are figuratively rimmed with "keep out" signs. Industry, always an unwelcome intruder in a residential community, also favours a zoning wall that bars residential and other incompatible encroachments.

[15] The parties are not agreed on one particular principle of interpretation. The evidence before the judge included affidavits of former and current trustees of the Trust Committee containing their opinions with respect to the interpretation of the Former Bylaw and the Current Bylaw. The judge did not consider these affidavits in connection with her interpretation of the Former Bylaw and the Current Bylaw because she did not find the relevant portions of these bylaws to be ambiguous. She also did not regard the affidavits to be evidence of administrative interpretation and found them to be contradictory.

[16] Mr. Conconi says the judge erred in this regard because ambiguity is not a precondition to evidence of administrative interpretation, and he relies on the authority of the text, R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ont: LexisNexis Canada, 2008) at 574-577, 621, 624-630, and the decisions in *Rolfe v. AXA Insurance Co.*, 2004 NBCA 14, 269 N.B.R. (2d) 16 at para. 59, and *Bayshore Shopping Centre Ltd. v. Nepean (Township)*, [1972] S.C.R. 755 at 767-768, 25 D.L.R. (3d) 443 (as well as two non-appellate decisions).

[17] I do not read any of those case authorities as standing for the proposition that evidence of administrative interpretation can be considered when there is no ambiguity in the enactment. Nor do I read anything in Professor Sullivan's text to stand for that proposition. At 626-627, Professor Sullivan cites the following

statement from *Nowegijick v. R.*, [1983] 1 S.C.R. 29 at 37, 144 D.L.R. (3d) 193, as the principle governing the use of administrative interpretation:

> Administrative policy and interpretation are not determinative but are entitled to weight and can be an "important factor" in case of doubt about the meaning of legislation.
>
> [Emphasis added.]

There can only be doubt if there is an ambiguity. In footnote 176 on p. 626, Professor Sullivan also cites *Mattabi Mines Ltd. v. Ontario (Minister of Revenue)*, [1988] 2 S.C.R. 175, 53 D.L.R. (4th) 656 at 665 for the proposition that interpretation bulletins can have persuasive force "in the event of ambiguity".

[18] In addition, I agree with the judge that the affidavits in question do not provide reliable evidence of administrative interpretation, which Professor Sullivan describes as the interpretation of legislation by persons "who are charged with the administration or enforcement of the legislation" (p. 621). The affidavits simply contain expressions of subjective opinions of persons who were trustees of the Trust Committee during certain periods of time, and they do not consist of any documents prepared in connection with the general administration or enforcement of the bylaws.

(b) The Former Bylaw

[19] Section 7.1 of the Former Bylaw listed the permitted uses in the Rural 1 Zone, and stipulated that no other uses were permitted. In contrast to s. 11.1, which expressly permitted commercial guest accommodation in the Commercial 2 Zone, s. 7.1 did not list commercial guest accommodation as one of the permitted uses. Hence, the issue is whether Mr. Conconi's use of his property as a commercial resort falls within one or more of the uses listed in s. 7.1.

[20] Mr. Conconi criticizes the comment of the judge when she stated it was clear from reading the Former Bylaw as a whole that accommodation of temporary public guests is expressly permitted in the Commercial 2 Zone and not in the Rural 1 Zone. It is true that s. 7.1 did permit the accommodation of temporary public guests to some extent because one of the permitted uses in the Rural 1 Zone was home occupations, which included a "bed and breakfast" occupation by virtue of the

definitions in s. 2.1 of the Former Bylaw. However, Mr. Conconi does not attempt to support the use of his property as a commercial resort by asserting that it qualified as a home occupation under the Former Bylaw. I agree with the Trust Committee's characterization of the judge's comment as an over-generalization, and the absence of the use of commercial guest accommodation in s. 7.1 does establish that, generally speaking, it was not intended for commercial lodging to be permitted in the Rural 1 Zone.

[21] Mr. Conconi says his use of the two larger units as part of the Timbers resort was permitted under the Former Bylaw under the use "one-family dwelling" listed in s. 7.1 and his use of the three smaller units was permitted under the use "guest cabin" listed in s. 7.1. With respect, I do not agree.

[22] Mr. Conconi argues the larger units were used as one-family dwellings under the Former Bylaw because the phrase "place of habitation" in the definition of "dwelling unit" simply referred to a place fit for human occupation. He submits the term "residence" was used elsewhere in the Former Bylaw and, as a result, the terms "place of habitation" and "residence" must have had different meanings. As a result, he says the larger units were used as "dwelling units" because they were used or intended to be used as a "place of habitation" and, hence, their use qualified as a one-family dwelling within the meaning of s. 7.1.

[23] In submitting the phrase "place of habitation" in the definition of "dwelling unit" was intended to describe a place fit for human occupation, Mr. Conconi relies on the following definition of "habitation" in the *Concise Oxford English Dictionary*, 9th ed.:

> habitation *n*. **1** the process of inhabiting (*fit for human habitation*). **2** a house or home.

In my view, this definition does not assist Mr. Conconi. The italicized words in brackets are intended to give an example of how the word "habitation" can be used, and they are not endeavouring to ascribe a meaning to the word irrespective of the context in which it is used.

[24] The flaw in Mr. Conconi's argument is that the word "habitation" in the definition of "dwelling unit" was not employed in the context of describing the state or condition of the unit (as in being fit for habitation). Rather, it was employed in the context of describing the use or intended use of the unit – the wording of the definition is "any room or suite [of] rooms used or intended to be used as a place of habitation" (emphasis added). In this latter context, the second meaning given by the *Concise Oxford English Dictionary* is the appropriate one in view of the context in which the word was used in the definition of "dwelling unit". Mr. Conconi was not using the two larger units as homes and, therefore, their use was not permitted under s. 7.1

[25] The Trust Committee cites numerous authorities that have distinguished between dwellings used for residential purposes and facilities in which commercial accommodation is permitted. These include the appellate authorities of *Kamloops (City) v. Northland Properties Ltd.*, 2000 BCCA 344, 76 B.C.L.R. (3d) 63; *Whistler (Resort Municipality) v. Miller*, *supra*; and *Canmore (Town) v. Fossheim*, 2000 ABCA 71, 250 A.R. 333. As pointed out by Madam Justice Fruman at para. 10 of *Canmore (Town) v. Fossheim*, definitions in other cases are usually of little help because each case turns on the wording of the specific bylaw. The relevant term in question in that case was "domicile" and, in para. 10, Fruman J.A. referred to a definition of "domicile" in *The Oxford English Dictionary*, 2d ed., as being "a place of residence or ordinary habitation; a dwelling-place, abode; a house or home". The phrase "a place of habitation" in this definition is used synonymously with the terms "a place of residence", "a dwelling-place" and "a home".

[26] Mr. Conconi argues that the use of the three smaller units as part of the Timbers resort was permitted under clause (2) of s. 7.1 of the Former Bylaw because they fit within the definition of "guest cabin". He says they are residential buildings used "for the purpose of accommodating guests in conjunction with a one family dwelling" because both the larger units and the smaller units were offered for short-term rent as part of a single property with a common purpose.

[27] In my opinion, this argument fails for two reasons. The first reason is that, as I have held, the use of the larger units as short-term rentals was not a permitted use under s. 7.1. The second reason is that, as held by the trial judge, the phrase "in conjunction with" requires that there be a connection between the use of the guest cabin and a permissible one-family dwelling. Even if the larger units had been used as one-family dwellings, the smaller units could not have been rented out to members of the public because there would have been no relationship between such a use of the smaller units and the use of the larger units as one-family dwellings.

[28] Accordingly, I conclude the use of the five units as part of the Timbers resort was not a permitted use under the Former Bylaw and, hence, cannot be continued as a non-conforming use. In view of this conclusion, it is not necessary to consider whether the uses of the drying shed and the dock as part of the resort were permitted under the Former Bylaw.

(c) The Current Bylaw

[29] Mr. Conconi relies primarily on the repeal of s. 1.3 of the Current Bylaw to justify his use of the units as part of the Timbers resort. Section 8.2.2 of the Current Bylaw permits the use of property in the Rural (R) Zone as a dwelling and the term "dwelling" is defined, in part, to mean "a building used as a residence for a single household". Mr. Conconi says the introduction and repeal of s. 1.3 means that the word "residence" must be interpreted in a manner that permits short-term vacation rental.

[30] Apart from s. 1.3, it is beyond doubt that the two larger units are not being used as "a residence for a single household". They are rented to members of the public for short-term accommodation; they are not being used as single-household homes. Thus, their use as part of a commercial resort is not permitted under s. 8.2.2.

[31] The next issue is whether this conclusion is affected by s. 1.3 or its repeal. For ease of reference, I will reproduce s. 1.3:

> Where this Bylaw permits the use of land for dwellings and cottages, the permitted use is, in the case of dwellings, the use of the dwelling as a permanent or seasonal residence and, in the case of cottages, the use of the cottage as a permanent residence or as an accessory building for the accommodation of non-paying guests of persons resident in the principal dwelling on the same lot. Accordingly, no such dwelling or cottage may be occupied by any person under a tenancy or similar agreement for less than a 30 day period or otherwise used as a commercial guest accommodation unit. The intent of this provision is to ensure that commercial guest accommodation uses occur exclusively at locations zoned for that purpose.

[32] The inclusion of s. 1.3 in the Current Bylaw clearly does not assist Mr. Conconi. The first sentence describes what is meant by the use of land for dwellings and cottages. Mr. Conconi's use of the five units as part of the Timbers resort does not fall within those descriptions. The second sentence appears to allow tenancies of 30 days or more (which Mr. Conconi does not have) and then stresses that commercial guest accommodation is not permitted. The third sentence states the intention that commercial guest accommodation is permitted only at locations with that zoning. Accordingly, there is nothing in s. 1.3 that would permit the use of the five units for commercial guest accommodation. Indeed, the provision makes it clear that such use is not permitted.

[33] The issue then becomes whether the repeal of s. 1.3 rendered commercial guest accommodation a permitted use in the Rural Zone. When s. 1.3 was repealed, it was not replaced with another provision that permitted what s. 1.3 prohibited (namely, commercial guest accommodation under the uses of dwelling and cottage). It cannot be inferred that a use prohibited in the repealed provision is now permitted. The authorization for the use must be found in the remainder of the Current Bylaw that was not repealed. The authorization for the use of the five units as part of the Timbers resort is not contained in s. 8.2.2 because, as explained above, that use does not fall within the permitted use as a dwelling.

[34] In order to accept Mr. Conconi's argument, it would be necessary to conclude that the repeal of one provision in an enactment can serve to change the meaning of another provision in the enactment that was not cross-referenced or made subject to the repealed provision. No authority was cited for any such principle of statutory interpretation.

[35] It is not necessary, in my view, to determine what was intended by the repeal of s. 1.3. The affidavits sworn by current and former trustees of the Trust Committee give conflicting explanations. All that needs to be determined is whether the repeal of s. 1.3 rendered Mr. Conconi's use of his property as a commercial resort a permitted use and, in my view, it did not.

[36] As Mr. Conconi's use of his property as a commercial resort is not a permitted use under the Current Bylaw and was not a permitted use under the Former Bylaw, it is necessary to consider whether the judge erred in the exercise of her discretion in granting an injunction to prohibit the use of the property as a commercial resort.

(d) The Injunction

[37] The trial judge observed that the requested injunction is not based in equity but is a statutory injunction under s. 274 of the *Community Charter*, S.B.C. 2003, c. 26. After referring to three decisions of this Court (*Langley (Township) v. Wood*, 1999 BCCA 260, 173 D.L.R. (4th) 695; *Burnaby (City) v. Pocrnic*, 1999 BCCA 652, 71 B.C.L.R. (3d) 211; and *Coquitlam (City) v. Aweryn*, 2001 BCCA 373, 156 B.C.A.C. 218), the judge concluded that the narrow jurisdiction to refuse an injunction did not exist in this case because an injunction would remedy the mischief of the bylaw. Mr. Conconi says the judge erred in principle because she viewed the discretion to refuse an injunction too narrowly.

[38] It is my view that the judge did not err in granting the injunction. The requested injunction is a statutory remedy that engages the public interest. The discretion of the court to decline an injunction to enforce a bylaw is very narrow and

is reserved for rare cases with exceptional circumstances. This is not one of those rare cases.

Conclusion

[39] It is for these reasons that I would dismiss the appeal.

"The Honourable Mr. Justice Tysoe"

I agree:

"The Honourable Madam Justice Rowles"

I agree:

"The Honourable Madam Justice Bennett"

APPENDIX "A" – FORMER BYLAW
NORTH PENDER ISLAND TRUST COMMITTEE
BYLAW NO. 5

[As reproduced in the Appellant's Factum:]

FORMER BYLAW ("ZONING BY-LAW"), SECTIONS 2.1 (EXCERPTS), 4.1(2), 4.5, 7.1(1), 7.6, 11.1, 11.2

DEFINITIONS

2.1 "Accessory Building" means a building or structure that is normally incidental, subordinate and exclusively devoted to a principal use, building or structure located on the same LOT therewith, and is a detached building not exceeding one storey in height and not used for human habitation.

"Bed and Breakfast" is a home occupation use excluding a Room and Board use and a Guest House use which allows for overnight accommodation and the provision of breakfast to the transient public for remuneration in a single family dwelling for a period not exceeding one week.

"Building" means any structure (including a mobile home) which is attached to a permanent foundation embedded in the ground and which is used or intended to be used for the shelter, habitation, accommodation, assembly, or storage of persons, animals, goods or chattels.

"Commercial Guest Accommodation Unit" is the area allocated to a registered guest for temporary public lodging, except in a campground.

"Dwelling, one family" means any building consisting of one self-contained dwelling unit.

"Dwelling unit" means any room or suite [of] rooms used or intended to be used as a place of habitation by one or more persons.

"Dwelling unit, self-contained" means a dwelling unit which includes the necessary kitchen, toilet and bathroom facilities.

"Guest Cabin" means a separate residential building with a floor area of 46.5 sq. metres (500 sq. ft.) or less for the purpose of accommodating guests in conjunction with a one family dwelling.

"Guest House" means a commercial use which allows for the provision of food and lodging to the transient public for remuneration in a single family dwelling.

"Home Occupation" means a use of land in which any trade, business except a Room and Board use and a Guest House use profession or other occupation is carried on for remuneration within a self-contained dwelling unit or within a permitted accessory building by a person or persons resident on the land on which the home occupation is conducted. Such a use is clearly secondary to the use of land and buildings for residential purposes.

"Marina" means public moorage and launching facilities available for a fee and includes the rental of boats and the sale of accessory marine equipment and allows as an accessory use the sale of fuel directly to boaters, but excludes boat building or boat repairs for a fee or charge.

"Residential use" means a use providing for the accommodation and home life of a person or persons.

"Restaurant" means an eating establishment providing for the sale of prepared foods and beverages.

"Room and Board" means a use providing up to three meals per day and lodging within a single family dwelling for remuneration for any number of people for periods of two weeks or less or providing up to three meals per day and lodging within a single family dwelling for remuneration for not more than two people for any period of time.

"Secondary Uses" means a use customarily and ordinarily incidental to a principal use and which may be made available to the public at large.

"Structure" means anything that is constructed or erected that is fixed to, supported by or sunk into land or water, but specifically excludes signs and landscaping, paving improvements or similar surfacing of land.

GENERAL PROVISIONS

4.1 Uses permitted in any zone

Except where specifically excluded the following uses shall be permitted in any zone:

(1) public service uses;

(2) uses, structures and buildings which are necessary to the principal use, and to any dwelling unit, including a pump house;

(3) hiking, horse riding trails and bicycle paths;

(4) Road-side produce stands, not exceeding 5 square meters in area, for the sale of farm products grown or reared on the land upon which the stand is located;

(5) private road access.

4.5 Home Occupations and Extended Home Occupations

(a) Home Occupation Regulations

Home occupations shall be subject to the following conditions:

(1) There shall be no variation from the external residential character of the land and premises, including accessory buildings in which a home occupation is conducted.

(2) A home occupation conducted in a dwelling must be clearly secondary to the use of a dwelling as a residence. Not more than 50 percent of the total floor area of a dwelling unit may be used for home occupation purposes. A home occupation conducted in both a dwelling unit and a permitted accessory building shall not occupy more than a total of 65 square metres of floor area.

(3) Except for the retail sale of placement parts for goods manufactured, processed, or repaired as part of a home occupation, or the retail

sales of those materials directly related to a personal service conducted as a home occupation, no retail or wholesale sale of any other product or material is permitted as a home occupation.

(4) Not more than three persons shall be employed in any home occupation, at least one of whom shall live on the premises in or about which such occupation is carried on.

(5) Except for one unilluminated nameplate not exceeding .55 square metres (6 sq. ft.) in area, no sign or other advertising matter shall be exhibited or displayed in or about the premises where a home occupation is carried on and in no other way shall a home occupation indicate from the exterior that the premises are being so used.

(6) There shall not be carried on as a home occupation any occupation which by reason of its nature or of the manner in which the same is carried on produces or emits or causes to be produced or emitted noises, dust, smoke, gas or other effluvia in such quantities or under such conditions as to be noxious or offensive to persons other than persons living in the dwelling in which the home occupation is carried on.

(7) There shall be no exterior storage of materials, commodities or finished products.

(8) Home occupations must conform to all licensing, health or other business regulations passed by the Capital Regional District or the Government of British Columbia.

(9) In addition to the parking spaces required for a single family dwelling unit there shall be two off-street parking spaces provided for patrons of a home occupation.

(10) In addition, the following regulations apply to a Bed and Breakfast use:

a) not more than 6 guests shall be accommodated;

b) not more than 3 rooms shall be used to accommodate guests;

c) in addition to the 2 parking spaces required for each single family dwelling unit there shall be one additional parking space for each room used for Bed and Breakfast accommodation;

d) There shall be no rental of equipment or material except to registered guests;

e) not withstanding the provisions of paragraph 4.5(a)(2) concerning use of an accessory building, a Bed and Breakfast home occupation must be practised solely within the principal residence.

(b) <u>Extended Home Occupation Regulations</u>

(1) The following uses and no others are permitted extended home occupations:
a) boat building;
b) shake manufacture;

c) contractor yards;
d) portable sawmilling;
e) cabinet manufacture;
f) welding shops;
g) salvage yards.

(2) Not more than 1 extended home occupation shall be conducted on a parcel of land.

(3) Extended home occupation use or uses:

a) shall not be permitted on lots less than 2 hectares (5 acres) in area;
b) shall be located not less than 50 metres from any lot line;
c) shall be screened from view by landscape screen from abutting lots and from public lands and public road rights-of-way; and
d) shall be conducted by a person or persons residing on the lot plus not more than two additional employees;
e) except for a single unilluminated nameplate not exceeding .55 square metres (6 sq. ft.) in area to identify the extended home occupation, no other signs or indicia are permitted.

RURAL 1 ZONE (R1)

7.1 Uses permitted

In addition to uses permitted in Section 4.1 of this bylaw the following uses and no others shall be permitted in a Rural 1 Zone.

(1) one-family dwelling;

(2) guest cabin, camper, travel trailer subject to Section 7.2;

(3) schools, churches, community halls, or centres, libraries and firehalls;

(4) home occupations subject to the provisions of Section 4.5;

(5) parks, playgrounds, golf courses, equestrian facilities;

(6) commercial agricultural, horticulture, beekeeping, and the keeping and production of animals, livestock and birds, except the following uses which shall not be permitted: mushroom, poultry, pig and fur farming and other similar agricultural, horticultural and animal raising uses in which the intensity and nature of the uses would be materially more offensive by reason of noise, odour, or appearance than the farm uses usually associated with mixed farming or small holdings;

(7) portable sawmills for the sawing of logs harvested on the parcel.

7.6 Site Density

The maximum density shall be one (1) one family dwelling per parcel which is created and registered by a plan of subdivision, provided however, that in the case of a parcel against which there is registered in the Land Registry Office, a restrictive covenant in favour of the Crown providing for the siting on that

parcel not more than one (1) one family dwelling per four (4) hectares (10 ac.), a density equal to one (1) one family dwelling per four (4) hectares (10 ac.) shall be permitted with respect to that parcel.

COMMERCIAL 2 ZONE (C2)

11.1 Principal Uses Permitted

In addition to the uses permitted in Section 4.1 of this bylaw, the following principal uses and no others are permitted in the Commercial 2 Zone:

(1) hotel, motel, cottages, or lodge, providing four or more commercial guest accommodation units on the parcel;

(2) campground;

(3) marina.

11.2 Secondary Uses Permitted

If a principal use is established, the following secondary uses but no others are permitted in the Commercial 2 Zone.

(1) laundromat;

(2) recreation facilities;

(3) restaurant;

(4) licensed liquor establishment but excluding neighbourhood pub;

(5) retail sale of accessory marine equipment and marine fuel and boat rentals;

(6) any other retail use not exceeding 139.35 square metres (1500 sq. ft.) in total floor area per parcel;

(7) i) One self contained dwelling unit per parcel with a floor area not less than 37 square metres (400 sq. ft.) as part of or separate from a building, for the accommodation only of the owner of the parcel;

ii) One self contained dwelling unit per parcel as part of, or separate from, a building for the accommodation of employees.

APPENDIX "B" – CURRENT BYLAW
NORTH PENDER ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 103, 1996

[As reproduced in the Appellant's Factum:]

CURRENT BYLAW ("LAND USE BYLAW")
SECTIONS 1.1 (EXCERPTS), 1.3, 8.2.2, 8.5.2

INTERPRETATION

1.1 Definitions

1.1.1 In this Bylaw,

"accessory" in relation to a use, building or structure means incidental, secondary and exclusively devoted to a principal use, building or structure expressly permitted by this Bylaw on the same lot or, if the accessory use, building or structure is located on the common property in a bare land strata plan, on a strata lot in that strata plan.

"bed and breakfast" means a home business comprising the provision of sleeping accommodation and a morning meal to paying guests.

"building" means a roofed structure, including a mobile home, used or intended to be used for supporting or sheltering any use or occupancy.

"cottage" means a dwelling with a floor area of 56 m^2 (603 ft^2) or less.

"commercial guest accommodation unit" means a room or suite of rooms in a hotel, motel or lodge, not exceeding 56 m^2 (603 ft^2) in total floor area and containing not more than two bedrooms, used for the temporary accommodation of travellers.

"dwelling" means a building used as a residence for a single household and containing a single set of facilities for food preparation and eating, sleeping and living areas.

"home business" means an accessory commercial use conducted on a residential lot and includes: bed and breakfast and cottage uses and any profession, trade, business, artistic endeavour, where such activities are clearly accessory to a principal residential use."

"hotel" means a building containing commercial guest accommodation units, a restaurant and a lobby area for guest registration and access to the accommodation units.

"lodge" means commercial guest accommodation units and facilities in detached buildings.

"marina" means the use of a water area for the temporary storage of boats and includes the installation of floats, wharves, piers, ramps and walkways and the provision of wharfage services to the boating public.

"motel" means a building containing commercial guest accommodation units each of which has a separate entrance from the exterior of the building.

"principal" in relation to a use, building or structure means the main or primary use, building or structure, as the case may be, conducted or constructed on a lot.

"restaurant" includes the use of a building for the serving of alcoholic beverages with meals;

"structure" means anything that is constructed or erected and that is fixed to, supported by or sunk into land or water, but excludes fences, septic fields, concrete and asphalt paving, or similar surfacing of the land.

1.3 Residential Uses

Where this Bylaw permits the use of land for dwellings and cottages, the permitted use is, in the case of dwellings, the use of the dwelling as a permanent or seasonal residence and, in the case of cottages, the use of the cottage as a permanent residence or as an accessory building for the accommodation of non-paying guests of persons resident in the principal dwelling on the same lot. Accordingly, no such dwelling or cottage may be occupied by any person under a tenancy or similar agreement for less than a 30 day period or otherwise used as a commercial guest accommodation unit. The intent of this provision is to ensure that commercial guest accommodation uses occur exclusively at locations zoned for that purpose.

8.2 Rural (R) Zone

8.2.1 ...

8.2.2 Permitted Uses

(1) In addition to uses permitted in Section 3.1 of this Bylaw, the following uses and no others are permitted in the Rural (R) Zone:

(a) dwelling;

(b) on lots 1.2 hectares (3 acres) in area and larger, one cottage;

(c) accessory home business, subject to Section 3.5, and on lots greater than 2 hectares (5 acres) in area accessory home industry, subject to Section 3.6;

(d) on lots that do not abut a lake or reservoir used as a source of potable water supply or the Ecological (ECO) Zone, accessory rabbit and poultry raising;

(e) on lots 1.2 hectares (3 acres) in area and larger that do not abut a lake or reservoir used as a source of potable water supply, a wetland or the Ecological (ECO) Zone, the keeping of horses and other equine animals, cattle, goats and sheep as an accessory use; and

(f) agriculture.

(2) Pig farming, dog breeding and boarding kennels are not permitted as agricultural or accessory uses on lots less than 1.2 hectares (3 acres) in area.

8.5 Commercial Two (C2) Zone

8.5.1 ...

8.5.2 Permitted Uses

(1) In addition to uses permitted in Section 3.1 of this Bylaw, the following uses and no others are permitted in the Commercial Two (C2) Zone:

(a) hotel, motel, and lodge;

(b) campground;

(c) marina;

(d) boat launching ramps;

(e) retail sales;

(f) accessory laundromat, restaurant, café, recreation facility, boat rental, and premises, other than a neighbourhood pub, licensed under the *Liquor Control and Licensing Act*, subject to subsection 8.5.3; and

(g) up to two accessory dwelling units for the caretaker, owner, operator or employees of a permitted principal use, subject to Subsection 8.5.3.