

CANADA / JUDGMENT

Guest v. North Vancouver (District)

2012 BCSC 1626

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DECIDED

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2012 BCSC 1626 Guest v. North Vancouver (District)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Guest v. North Vancouver (District),

2012 BCSC 1626

Date: 20121101

Docket: S123395

Registry: Vancouver

Between:

John William Charles Guest

Petitioner

And:

The Corporation of the District of North Vancouver

Respondent

Before: The Honourable Mr. Justice D.M. Masuhara

On Judicial Review from a decision of the Chief Building Official, District of North Vancouver,
April 13, 2012 in relation to Building Permit Application BLD2012-00176

Reasons for Judgment

The Petitioner, acting on his own behalf:

J.W.C. Guest

Counsel for the Respondent, District of North Vancouver:

F. Marzari

Place and Date of Hearing:

Vancouver, B.C.

June 20, 2012

Place and Date of Judgment:

Vancouver, B.C.

November 1, 2012

Introduction

[1] Mr. Guest seeks judicial review of a decision by the Chief Building Official for the District of North Vancouver (the "District"), Brent Dwyer, dated April 13, 2012, rejecting his building permit application of April 4, 2012 to construct a single building dwelling on property he owns on Seymour Mountain. The property is located in a densely forested remote area in the District generally west of Mt. Seymour Parkway and north of Ann Macdonald Way. There is no access road and no water, sewer, or electrical services to the property. Mr. Guest seeks an order requiring the Chief Building Official to reconsider his decision.

[2] The Chief Building Official's decision to reject (the "Decision") reads as follows:

Pursuant to s.4.2 of the District's Building Regulation By-law 7353, 2003, the Chief Building Official may refuse to issue a permit if, in his opinion, a proposed work will contravene the requirements of the British Columbia Building Code. The new "recreational" single family residential dwelling project proposed in your above-noted building permit application would contravene s.9.10.20.3 of the Building Code in that there is no access for fire department equipment to the proposed building. Primarily due to the forest fire risks associated with the proposed development, I am not prepared to exercise my discretion to grant a special variation as contemplated by s.A-9.10.20.3(1) of the Building Code.

I recognize that your application includes provisions for a wet sprinkler system incorporating rainwater collection and an electric pump presumably charged by an on-site generator and backup battery or batteries. However, this property is isolated, unserved by water or power utilities, and located in a hillside forest area.

In these circumstances, the proposed development would create unacceptable wild fire interface risks. I have therefore concluded that the objectives of the Building Code and the District's Building By-law to minimize fire risk of a building are not adequately met by an on-site fire suppression system.

Accordingly, I must regretfully advise that building permit application number BLD 2012-00176 is hereby refused.

Issues

[3] There are two issues:

- (a) was the Decision reasonable; The parties agree that the applicable standard of review is that of "reasonableness". I have reviewed the authorities provided and I agree that this is the correct standard; and
- (b) was there a breach of procedural fairness.

Background

- [4] In February 2007, Mr. Guest, during a visit to Vancouver, saw a real estate listing for bare property in a forested area in the District. He went to view it on March 30, 2007. Access to the property is only possible by a walking trail. On June 11, 2007 he purchased the property which is comprised of two contiguous lots. The property is legally described as the North ½ of Lot 8, Block 6, District Lot 623, Plan 2428 (Parcel Identifier 013-774-506) and the South ½ of Lot 9, Block 6, District Lot 623, Plan 2428 (Parcel Identifier 013-774-468). He paid \$45,000 for each lot. The titles to the lots contain no legal notations, charges, or easements. I will refer to the lots collectively as the "Property".
- [5] On September 27, 2007, Mr. Guest met with a District building official and a residential plan reviewer to explore the uses and restrictions applicable to the Property. Mr. Guest prepared a list of questions in advance and took notes during the meeting. It appears that the advice he received was that he could build a shed on the Property without obtaining a building permit provided it was less than 107 square feet. He sent an email reflecting this understanding to the District official. There appears not to have been a response correcting his understanding.
- [6] In December 2007, Mr. Guest had the Property surveyed at a cost of \$10,000. He then contracted with a company to build him prefabricated panels for a 100 square foot shed at a cost of \$16,000. Mr. Guest and his sons carried in building materials by backpack to construct a foundation for the shed. A helicopter was hired to deliver the prefabricated panels onto the Property.
- [7] Unfortunately, on February 29, 2008, Mr. Guest was informed by the District's Supervisor of Building Inspections that the District's by-laws did not permit the construction of an accessory building in the absence of a primary building on the Property.
- [8] In June 2008, in light of the prohibition against an accessory building, Mr. Guest decided to seek a building permit for a single family residence as a primary building. He had a builder prepare designs for a 480 square foot "off the grid" dwelling. Communications were also sent by Mr. Guest to the District's Mayor and council of his plans to apply for a building permit

for a residence on the Property. Mr. Humenny, a builder hired by Mr. Guest, sought to meet with District plan checkers regarding Mr. Guest's proposed building design; however, they refused to look at the plans but appear to have provided several concerns in written point form regarding the proposal.

[9] Mr. Guest was advised by letter dated July 8, 2008 from the District that his shed had to be removed within 30 days and that "removal by helicopter is not supportable".

[10] On July 9, 2008, Mr. Humenny sent an email to Councillor A. Nixon and the District's council, advising that he had been turned away by the District's staff from discussing the building permit.

[11] Mr. Guest was sent a letter dated July 8, 2008 by Mr. Dwyer, in which he wrote:

Reference is made to a recent appointment for a building permit application on the above property and an existing unlawfully erected structure [the shed].

The property you have erected a structure on is zoned Residential but cannot be developed due to the lack of road access and municipal services as required by the BC Building Code and District of North Vancouver Building Bylaw. Furthermore the property is surrounded by Park zoned and designated land through which access will not be granted to permit vehicle access.

Of particular note is the property's location in a potential wildfire hazard area. The construction on this lot would pose a significant fire hazard due to the lack of Fire Department access.

In summary the District has no intention of permitting development on isolated lots located in wildfire interface areas lacking vehicle access.

[12] In March 2011 the District filed a petition seeking a declaration that the shed erected by Mr. Guest on the Property was contrary to the District's Zoning and Building Regulation By-laws and an injunction requiring the removal of the shed from the Property. The application was heard by Justice Fitch on November 25, 2011. On December 15, 2011 Justice Fitch declared that the shed was contrary to the District's By-laws and Building Code and granted the injunction. His reasons are indexed at 2011 BCSC 1790. Subsequent appearances before Justice Fitch led to the extension of the removal date to June 30, 2012.

[13] In response to the court's decision, Mr. Guest prepared to reapply for a building permit for a principal dwelling on his lot. On February 9, 2012, he sent an email to Ms. Marzari, counsel for the District, advising her of the progress he had made in preparing an application for a primary residential building and requesting a meeting with District officials to discuss requirements for his application. She replied on behalf of the District on February 10, 2012 declining to meet and advised the petitioner to submit a formal building permit application, which the District would then review and comment upon.

- [14] Working with Mr. Humenny, Mr. Guest redesigned the plans for a residential dwelling to use predominantly non-combustible materials and engaged the services of a structural engineer, a fire control engineer, a rainwater system design engineer, and an electrical engineer to design appropriate alternative solutions to accommodate for the lack of road access to the lot.
- [15] The filed digital images of the proposed dwelling in the materials show a building in a forested area containing tall trees.
- [16] The aerial view of the general area of Mount Seymour shows that there are residential developments to the southeast and southwest of the Property.
- [17] Fire control engineers from Gage-Babcock Ltd. designed a National Fire Protection Association ("NFPA")-compliant fire sprinkler system and wrote a letter to the District Fire Chief. This letter was signed by Boris Turishev, P.Eng, M.Eng, and reviewed by Cel Chow, P.Eng, M.Eng, both professional engineers with specialist knowledge of fire control and alternative solutions under the Building Code. In this letter, they wrote:

We have been retained by our client Bill Guest to prepare a letter outlining the fire department access requirements for the captioned project, and the proposed approach for compliance with these requirements. The project is a recreational dwelling unit with an area of 500 sq. ft. that is located on a steep lot. The building construction will be governed by Part 9 of the 2006 British Columbia Building Code (BCBC).

At present, the lot is accessed by a walking trail and presumably, this road is not suitable to serve as a fire department access route.

In accordance with Article 9.10.20.3 of the BCBC, access to a building is required to be provided as follows: access for fire department equipment shall be provided to each building by means of a street, private roadway, or yard.

Sentence A-3.2.5.6(1) of the BCBC further clarifies that the design of fire department access routes involves the consideration of many factors. Some of these factors include the type and size of fire department vehicles available in the municipality. It is appropriate, therefore, that the local fire department be consulted prior to the design and construction of access routes. On the other hand, Sentence A-9.10.20.3(1) suggests that special variations could be permitted for a house or residential building that is protected in accordance with an automatic sprinkler system designed in accordance with applicable NFPA standards and with a reliable water supply. The BCBC Appendix also specifically points out that these recommendations may be taken into consideration in relation to buildings that are located on the side of hills, and are not conveniently accessible by roads designed as fire department access routes. This condition accurately depicts the proposed project which is served by a gravel road and is located on the steep slope of a hill.

In accordance with information conveyed to us by InHabit Modern Dwellings Ltd., the building will be heated during winter seasons, which permits the equipping of the proposed building with a wet sprinkler system conforming to NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes." [Technical details of proposed sprinkler system follow].

Gage-Babcock is writing this letter with recognition that the acceptance of the considerations outlined in this letter is at the full discretion of the Authorities Having Jurisdiction. Nonetheless, it is our opinion that the proposed approach is consistent with the spirit of the BCBC and does not compromise the level of fire and life safety contemplated by the BCBC.

[18] I note at this point that Mr. Turishev's statement that the Property is "served by a gravel road" is incorrect. There is no gravel road servicing the Property.

[19] On April 4, 2012 the petitioner and his builder submitted a building permit application in person to the District for a principal dwelling on the Property and paid a building permit application fee of \$592.

[20] As noted above at para. 2, on April 13, 2012 Mr. Dwyer, wrote to Mr. Guest refusing the building permit application.

[21] On April 16, 2012, the petitioner replied in a letter to Mr. Dwyer, asking that he provide a general overview of the fire safety engineering solutions that would be acceptable to the District for construction of a building on the lots, and that he advise of the steps for the petitioner to take to appeal the building permit application process.

[22] On May 16, 2012, the Chief Building Official in response to the above inquiry responded that his role is to review plans for compliance with the Building Code, and to make decisions as to the issuance or non-issuance of a building permit on that basis. He stated that it was not his role or the staff's to design engineering solutions for private developments with respect to special variations. The Chief Building Official reiterated, as per his letter of April 13, 2012, that it was his conclusion that the objectives of the Building Code and the District's Building By-law would not be adequately met by an on-site fire suppression system in the absence of any form of fire vehicle access to the Property.

[23] In terms of his discretion the Chief Building Official stated:

I have discretion in relation to special variations or other alternate solutions under the Building Code. In exercising this discretion I may or may not choose to retain the services of outside experts and consultants. In this case I determined that the District has sufficient in-house expertise. I am also very familiar with the Fire Department's requirements in this regard, and I am aware that the lack of access to the Parcel is a substantial concern for the Fire Department that cannot be overcome by an on-site fire suppression system.

[24] In terms of Mr. Guest's assertion that it was the District's action which created the subdivision on which the Property exists with RS1 zoning but no road access, the Chief Building Official stated:

You assert in your letter that the District through its past actions was responsible for the subdivision that created your Parcel, and that the District is somehow responsible for impediments to development of the Parcel. These assertions are not accurate. The impediments to development are lack of access and lack of services, and these problems are not of the District's making.

I have inquiries into the historical background of your Parcel and understand that the subdivision within which the Parcel is located was created by Subdivision Plan 2428 in 1909. This was before modern regulatory controls on subdivision. It would appear from Plan 2428 (copy attached), that a rigid geometric grid was simply overlaid on the land without any regard for topography, hydrology, geographical constraints or natural features such as streams etc. I understand that the District had no authority at that time to ensure that all or any parcels created by subdivisions would be or even could be serviced.

[25] The Chief Building Official summarized his decision as follows:

In summary, my refusal of your building permit for the proposed residential dwelling on the Parcel is not affected by the zoning applicable to the Parcel. Rather, it is a result of the inaccessibility of this parcel, and the lack of services to the Parcel, required by the current Building Code for residential development.

[26] In terms of appeal steps, the Chief Building Official told Mr. Guest that he had a right to petition for a judicial review.

[27] The petition for judicial review was filed May 11, 2012.

[28] The petitioner's lots are zoned RS1 Single-Family Residential under the District's Zoning Bylaw. The only permitted use of each lot is for a single family dwelling, and accessory uses if a dwelling is present on the lot. The Zoning Bylaw states:

500 The intent of the RS zoning regulations is to maintain the single-family residential character of all properties zoned RS.

501 All uses of land, buildings and structures in RS Zones are prohibited except

501.1 the use of such land for a purpose related to a use of buildings and structures permitted in these zones;

501.2 the use of such buildings and structures as

- (a) one single-family residential building per lot,
- (b) buildings and structures accessory to (a).

[29] The petitioner's lots are designated "Residential Level 1: Rural Residential" under the District's Official Community Plan, approved June 27, 2011. The definition of "Residential Level 1: Rural Residential" under the Official Community Plan is:

Areas designated for rural residential are intended for detached housing on large lots situated outside the urban boundary. The OCP does not envision further intensification of use through subdivision in this designation and/or through extension of services. Detached rural residences are generally allowed up to approximately 0.35 FSR [Floor Space Ratio].

District of North Vancouver Official Community Plan, p. 26

[30] As mentioned earlier, the lots do not have road access or municipal services and are accessible by a walking trail from a public parking lot. Mr. Guest says it is a 12-minute walk from the parking lot to the Property. The lots were originally intended to be part of a larger residential subdivision but all the land immediately around the lots is currently owned by the District, zoned PRO (Parks, Recreation, and Open Space) and used as a park for walking and mountain biking.

B.C. Building Code

[31] The stated object of the Building Code is safety. In regard to fire safety, the Code says:

Fire Safety

An objective of this Code is to limit the probability that, as a result of the design or construction of the building, a person in or adjacent to the building will be exposed to an unacceptable risk of injury due to fire.

[32] As Fitch J. observed at para. 40 of his decision:

The regulatory framework applicable to this case exists to enforce minimum standards of building and public safety including protecting from potential fire hazards those using specific buildings and those living in the surrounding area: *Kipton v. Canada (Attorney General)*, 2002 BCSC 1645 at para. 145, *aff'd* 2004 BCCA 72.

[33] Section 9.10.20.3 of the Code reads as follows:

Fire Department Access to Buildings

- 1) Access for fire department equipment shall be provided to each building by means of a street, private roadway or yard. (See A-3.2.5.6(1) and A-9.10.20.3.(1) in Appendix A.)
- 2) Where access to a building as required in Sentence (1) is provided by means of a roadway or yard, the design and location such roadway or yard shall take into account connection with public thoroughfares, weight of firefighting equipment, width of roadway, radius of curves, overhead clearance, location of fire hydrants, location of fire department connections and vehicular parking.

[34] Section A-3.2.5.6(1) reads as follows:

Fire Department Access Route

The design and construction of fire department access routes involves the consideration of many variables, some of which are specified in the requirements of the Code. All these variables should be considered in relation to the type and size of fire department vehicles available in the municipality or area where the building will be constructed. It is appropriate, therefore, that the local fire department be consulted prior to the design and construction of access routes.

[35] Section A-9.10.20.3.(1) reads as follows:

Fire Department Access Route Modification

In addition to other considerations taken into account in the planning of fire department access routes, special variations could be permitted for a house or residential building that is protected with an automatic sprinkler system. The sprinkler system must be designed in accordance with the appropriate NFPA standard and there must be assurance that water supply pressure and quantity are unlikely to fail. These considerations could apply to buildings that are located on the sides of hills and are not conveniently accessible by roads designed for firefighting equipment and also to infill housing units that are located behind other buildings on a given property.

Discussion

[36] I will address the question of whether the Decision was reasonable first and then whether there has been a breach of procedural fairness.

[37] Mr. Guest submits that in regard to the latter there existed a reasonable apprehension of bias. I note that this allegation is only a recent one and is not set out in the petition.

A. Reasonableness

[38] As mentioned earlier, the proper standard of review is that of reasonableness.

[39] I note that prior to the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, which restated the standard of review analysis, the standard applicable to building inspector decisions was that of patent unreasonableness, the highest level of deference. At para. 49 of *Dunsmuir*, the court stated the longstanding understanding that in many cases those working in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime: D.J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 C.J.A.L.P. 59, at p. 93.

- [40] In determining if a decision is reasonable there is to be regard for "the processes followed and whether the outcome falls within a reasonable range of alternatives in light of the legislative scheme and contextual factors relevant to the exercise of the power": *Catalyst Paper Corp v. North Cowichan (District)* 2012 SCC 2 at para. 13. If a decision is found to fall within this zone of reasonableness, it is not open to the court to substitute a result which it believes would be more appropriate.
- [41] Mr. Guest, while agreeing the standard of review is that of reasonableness, argues that deference should be afforded at the low end of the spectrum of reasonableness. Mr. Guest argues that expertise of the Chief Building Official is not substantial. He says Mr. Dwyer is not an engineer and that there is no evidence of specialized training in fire protection or alternative solutions under the Building Code. Mr. Guest submits that while the Chief Building Official will have become familiar with commonly-encountered situations, the design of fire-suppression systems for off-the-grid houses is not such a circumstance. The assessment of expertise, it is argued, should be evaluated relative to that of the specialist fire control engineering firm hired by the petitioner to design his proposed project. A further factor argued in favour of low deference is the impact of the decision of the Chief Building Official on the ability of the petitioner to make any use of his property. I do not accept this argument. First, expertise is a relative assessment between the administrative authority and the courts. Second, the variability of deference within reasonableness zone is not consistent with the majority decision of the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654. At para. 47, Rothstein J. writing for the majority stated:

The majority reasons in *Dunsmuir* do not recognize variable degrees of deference within the reasonableness standard of review and with respect neither do the reasons in *Canada (Canadian Human Rights Commission)*. Once it is determined that a review is to be conducted on a reasonableness standard, there is no second assessment of how intensely the review is to be conducted.

- [42] In support of his argument that the Chief Building Official's decision was unreasonable, the petitioner argues that the Chief Building Official did not exercise his discretion, failed to consider relevant factors, used his authority for an improper purpose, failed to consider alternative solutions for achieving Building Code compliance and discriminated against the petitioner.
- [43] I do not agree that the Chief Building Official failed to exercise his discretion nor do I find that the exercise of discretion was for an improper purpose. His letter clearly sets that he was exercising his discretion. Further, the materials do not disclose an improper purpose; rather, the decision is clearly focused on the Building Code and zoning bylaw.
- [44] Similarly, I do not accept the petitioner's submission that the Chief Building Official failed to consider relevant factors in adjudicating the application.

- [45] I find that the decision of the Chief Building Official to refuse to allow the 2012 permit application falls within a reasonable range of alternatives in light of the legislative scheme and contextual factors relevant to the exercise of his powers.
- [46] I agree with the submission of the District that, in this case, the evidence shows that in exercising his discretion to refuse a special variation for a property with a sprinkler system, the Chief Building Official reasonably considered the total lack of road access (not simply awkward or inconvenient access) for fire suppression equipment to the Property, the forest fire risks in the forested area surrounding the Property, the potential of a forest fire to spread to existing neighbourhoods, the isolation of the Property, the lack of a water service, the lack of a reliable power supply, and the purpose and objectives of the requirements for fire vehicle access in the Building Code. His conclusion to refuse a permit for a building that relied entirely on the proposed on-site fire suppression system for fire protection was reasonable, and well within the four corners of his discretion.
- [47] This is not a case of delayed fire response because of awkward or inadequate access roads; this is a case where fire vehicles would not be able to reach the property at all in the event of a fire.
- [48] Further, I do not place weight upon the petitioner's allegation that the existence of other structures in forested areas without road access demonstrates discrimination in assessing his application. This point was not before the Chief Building Official when the application was before him. Moreover, the District denies that permits were provided by the District for such structures except for water access lots, where the District agrees it has a practice of considering water access for fire vehicles and equipment (fire boats). In any event, this judicial review concerns the specifics of the Property and the reasonableness of the decision relating to it.

B. Procedural Fairness

- [49] Mr. Guest submits that he was denied procedural fairness on two grounds. He asserts an apprehension of bias on the part of the Chief Building Official. He also asserts a general lack of procedural fairness. The burden of proof is upon Mr. Guest.
- [50] On the latter assertion, Mr. Guest submits that he had spent months of his time and thousands of dollars preparing his application, acting on the District's position that his shed would only be allowed if there were a primary dwelling on his lot. To then have District officials refuse to look at the drawings and to receive their written reasons on a Post-It note was insulting. The procedurally fair course of action would have been to receive the permit application, adjudicate it in the usual manner, and if it was found deficient explain the deficiencies in a way that the petitioner could constructively address. Not even the first step of a fair procedure was followed.

- [51] Mr. Guest says the events when he reapplied for a building permit in April 2012 differed in appearance but not in effect. In an email to the District's counsel Ms. Marzari, Mr. Guest asked for a meeting to discuss the District's requirements for a building permit application. Ms. Marzari declined to hold such a meeting, instead suggesting the Petitioner begin by submitting a building permit application.
- [52] Mr. Guest says that he spent months more of his time and thousands more dollars on preparing the building permit application. This time the District did accept the application but replied in a one-page letter as already described. This letter contained no indication of how the petitioner might revise his application to make it acceptable to the Chief Building Official; indeed, because the reason given was the self-evident lack of road access to the lots, a factor over which the petitioner has no control, the conclusion arising from the letter is that there is no building that would be acceptable.
- [53] The petitioner submits that commonly under the doctrine of procedural fairness, a person who is having matters of importance to him or her determined by an administrator has the right to make a presentation to that administrator. The petitioner does not claim that a formal oral hearing was necessary, rather just that District officials ought to have been willing to meet with him to engage in honest discussions about how to build a single-family dwelling on his property and thereby achieve its intended use under the zoning bylaw. The petitioner requested such discussions, but they were declined as noted above. While I have some sympathy for Mr. Guest in this regard, I do not find that in the circumstances this amounts to procedural unfairness.
- [54] In terms of the allegation a reasonable apprehension of bias, Mr. Guest notes the Chief Building Official had previously taken a position against any development on the petitioner's lots and referred to the Mr. Dwyer's letter of July 8, 2008 which stated:

The property you have erected a structure on is zoned Residential but cannot be developed due to the lack of road access and municipal services as required by the BC Building Code and the District of North Vancouver Building Bylaw In summary the District has no intention of permitting development on isolated lots located in wildfire interface areas lacking vehicle access.

- [55] Mr. Guest submits that Mr. Dwyer's statement amounts to a prejudgment against any possibility of building on the Petitioner's lots. This gives rise to a reasonable apprehension of bias (in fact, is evidence of an actual bias in the form of a prejudgment of fact) and the suspicion that the Chief Building Official had a closed mind in adjudicating the Petitioner's building permit application. The grounds on which Mr. Dwyer states that the lot cannot be developed, "the lack of road access and municipal services", are precisely those grounds on which the Petitioner is asking Mr. Dwyer to exercise his discretion. Mr. Dwyer's statement indicates that he had concluded in advance of reviewing the Petitioner's building permit application that there is no alternative solution satisfactory to him. Since making this statement, Mr. Dwyer has given no indication of qualifying or retreating from this position.

- [56] In my view, the assertion of an apprehension of bias is not one that I will entertain given the lateness of the allegation and the resulting unfairness to the District. The petitioner, in submitting his application of April 4, 2012 to the District, did not raise any concerns regarding the ability of the Chief Building Official or members of his staff to consider the application. Further, this is an allegation not raised in the petitioner's petition for of judicial review. I note that the District says that in the enforcement proceeding before Justice Fitch, they undertook to give the application immediate and serious attention. Moreover, the District argues that by submitting the 2012 permit application and then objecting to the consideration of the application by the Chief Building Official or his staff after he considered the permit application, Mr. Guest puts the District in an impossible position. The District says that this court should decline to consider the allegation of bias at this stage of the judicial review process. In the circumstances, I agree with this submission.
- [57] In any event, my view is that the petitioner has not established a reasonable apprehension of bias. I agree with the District's submission that there is no evidence in the reasons or letters of April and May 2012 that the Chief Building Official had closed his mind to a consideration of the specific proposal for addressing emergency access in 2012. His adherence to safety concerns, particularly in regard to fire risks relative to the isolated location of the proposed building in a forested area with no access for fire department equipment, was appropriate and consistent with the Building Code. The fact that the Chief Building Official rejected an earlier application based on similar concerns does not in the circumstances here lead to a reasonable apprehension of bias.
- [58] I dismiss the application of the petitioner.

"The Honourable Mr. Justice Masuhara"

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