

CANADA / JUDGMENT

Zeng v. Sechelt (District)

2022 BCSC 2378

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 2378 Zeng v. Sechelt (District)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zeng v. Sechelt (District),

2022 BCSC 2378

Date: 20221228

Docket: S228513

Registry: Vancouver

Between:

Ben Lin Zeng, Gary Bearchell, Greg Bellamy, Shawn Deveau,

Erin Frizzell, Emma Goodman, Tracey Jackson, and Kate Newstead

Petitioners

And

District of Sechelt

Respondent

Before: The Honourable Justice Brongers

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

L. Dineley

S. McFarlane

Counsel for the Respondent:

J. Yardley

Place and Date of Hearing:

Vancouver, B.C.

December 14, 2022

Place and Date of Judgment:

Vancouver, B.C.

December 28, 2022

[1] THE COURT:

Introduction

- [2] This is an application to set aside portions of a municipal business licence bylaw that was recently amended by the District of Sechelt (the "District"). It is brought by way of petition pursuant to s. 623 of the Local Government Act R.S.B.C. 2015 chapter 1 (the "Act").
- [3] The Petitioners own real estate properties in Sechelt that are not their primary residences. They are concerned that the amended bylaw will prevent them from continuing to rent out these secondary residences on a short-term basis. The Petitioners say that the District does not have the power to enact the bylaw amendments, and that they are void for vagueness and uncertainty.
- [4] The District disagrees with the Petitioners' position. It also takes issue with the Petitioners' standing, the timing of their application, and the sufficiency of their supporting evidence.
- [5] While I reject most of the District's threshold objections, I am not persuaded that the amendments made to the business licence bylaw deserve to be struck on the grounds put forward by the Petitioners. The application will therefore be dismissed.

Background

The Impugned Bylaw Amendments

- [6] Beginning in late 2020, the District initiated a project to examine options for regulating short-term housing rentals ("STR") in Sechelt. Spearheaded by the District's director of planning and development, this project included the hiring of a professional planning consultant and the preparation of an STR report for the District of Sechelt Council (the "Council"). Further to that report, the Council decided to modify the District's existing STR regulations by updating its Business Licence Bylaw and its Zoning Bylaw. This was done by

adopting Business Licence Bylaw Amendment 520-4 on September 21, 2022, and Zoning Bylaw No. 580, 2022, on October 6, 2022.

- [7] Prior to these legislative changes, owners of secondary residences in Sechelt were generally permitted to use their properties for STR pursuant to the Zoning Bylaw provided they obtained a business licence in accordance with the Business Licence Bylaw. Such licences were granted for a one-year period, beginning January 1st and expiring on December 31st, and could be renewed annually.
- [8] As a result of the bylaw modifications, however, owners of secondary residences who wish to use their properties for STR purposes will have to apply for and obtain a Temporary Use Permit ("TUP") from the District in addition to a business licence. TUP applications are governed by the District's Planning and Development Procedures Bylaw No. 566, 2018.
- [9] For all practical purposes, the new STR regime will come into effect on January 1, 2023.

The Petitioners

- [10] According to their petition, the eight collectively represented petitioners own eight separate residential real estate properties in Sechelt. Most of them co-own their properties with other individuals, and one is a beneficial owner through a numbered company. Since the Petitioners' primary residences are located elsewhere, the properties in question are all secondary residences.
- [11] The Petitioners plead that when they are not occupying their secondary residences, they make them available for STR. Each petitioner also claims to have a valid STR business licence from the District, which will expire on December 31, 2022.

The Petition

- [12] On October 20, 2022, the Petitioners filed this petition with the Court. It is an application brought pursuant to s. 623 of the Act to set aside ss. 4(b), 4(c), 4(e), and 5(a) of Schedule "B" to the District's amended Business Licence Bylaw. These provisions read as follows:

Short-term rental of residential dwelling units in the District of Sechelt must meet the following terms and conditions to continue to hold and renew a business licence to operate a short-term rental business.

- 4) an individual must not:
 - b) Carry on business as a Short-term Rental Operator unless the Short-term Rental unit being provided is the principal residence, or an accessory dwelling on the property of principal residence, of that individual;
 - c) Operate a Short-term rental Secondary Residence without issuance of a Temporary Use Permit;

- e) Hold more than two Short-term Rental business licences
- 5) A person applying for a Licence as a Short-term Rental Operator must provide the Chief Building Official, or designated official, with the following:
 - a) Documents demonstrating that the Short-term Rental accommodation is located at the address of their principal residence, including but not limited to documentation related to billing, identification, taxation and insurance purposes, which may include income tax returns, Medical Services Plan documentation, driver's licences, personal identification or utility bills.

(the "Impugned Provisions")

- [13] The petition states that the Petitioners are also requesting an order prohibiting the District from considering the residence of an applicant as a criterion for issuing TUPs. At the hearing, however, counsel for the Petitioners advised that this supplementary relief is no longer being sought.
- [14] The petition was originally made returnable at general chambers in Vancouver on November 18, 2022. This was done in order to comply with the timing requirements of s. 623(5) of the Act. That provision requires applications to set aside municipal bylaws to be heard within two months of their adoption, and the Impugned Provisions were adopted on September 21, 2022. However, there was insufficient court time available for the hearing of the petition on November 18, 2022. It was therefore adjourned by the chambers judge, Justice Funt, and made returnable before me at long chambers on December 14, 2022.
- [15] At the petition hearing, counsel for the Petitioners requested that a decision in this matter be rendered prior to the expiry of their clients' STR business licences on December 31, 2022. I agreed and indicated that I would provide an oral judgment today, December 28, 2022.

Issues

- [16] Adjudication of this petition requires consideration of the following three questions raised by the Petitioners:
 - a) Are the Impugned Provisions outside of the District's legislative authority to enact?
 - b) Do the Impugned Provisions conflict impermissibly with provincial non-conforming land use legislation?
 - c) Are the Impugned Provisions unacceptably unclear and contradictory?
- [17] These three questions will be addressed in turn after consideration of four preliminary issues: (1) the timing of the petition; (2) the sufficiency of the Petitioners' evidence; (3) the standing of the Petitioners to bring this application; and (4) the applicable standard of review.

Analysis

Timing

- [18] As a preliminary objection to the petition, the District submits that this matter lacks the "ripeness" that is needed for the Court to grant the relief being sought by the Petitioners. Relying on this Court's decisions in *Atkins v. Anmore (Village)*, 2014 BCSC 2402, at paras. 45 to 47 and *Pacific Wild Alliance v. British Columbia (Forests, Lands, Natural Resource Operations and Rural Development)*, 2022 BCSC 904, at paras. 136 to 141, the District effectively argues that the Petitioners have brought this application too early. This is because the new STR regime has yet to prejudice the Petitioners. The District also says that it is not self-evident that the Petitioners will necessarily be denied a TUP and a business licence by the District which, in turn, would preclude the Petitioners from continuing to use their properties for STR purposes.
- [19] The Petitioners respond that they had to bring their petition now, and could not wait until after the new STR regime is in force and applications for STR TUPs and business licences have been made. This is because the Petitioners' legal challenge is directed at the Impugned Provisions in the amended Business License Bylaw. Such challenges must be brought by means of an application under s. 623 of the Act, and are subject to very strict timelines. In particular, subsection 623(4) of the Act provides that applications to set aside bylaws must be filed within one month of their adoption. Furthermore, the Act does not bestow any discretion upon the Court to extend this deadline.
- [20] I agree with the Petitioners. Had they chosen to delay their legal challenge to the Impugned Provisions until after the new STR regime is fully operational and they are refused the necessary licences and permits, the Petitioners would likely have run afoul of the s. 623(4) limitation period. While the Petitioners would not be precluded from seeking judicial review of District licensing decisions on other grounds, it would presumably be too late for the Court to entertain arguments based on the invalidity of the underlying bylaw. Indeed, when counsel for the District was asked whether his client would refrain from raising a timeliness objection should the Petitioners attempt to challenge the Impugned Provisions in the context of a future judicial review of an STR licensing decision, he was not able to give that assurance.
- [21] Accordingly, the District's prematurity objection to the petition is dismissed.

Sufficiency of the Petitioners' Evidence

- [22] The District's second preliminary objection relates to the sufficiency of the Petitioners' evidence. There are three aspects to this objection.

[23] First, the District notes that the only affidavits filed by the Petitioners were two made by a practice assistant employed by the Petitioners' law firm, and a single affidavit made by Erin Frizzell, who is one of the eight petitioners. The District says that these affidavits contain no supporting evidence in relation to certain assertions made by counsel for the Petitioners in their argument before the Court regarding the following five matters:

- a) the use of properties allegedly owned by Petitioners;
- b) the alleged duration and frequency of bookings;
- c) the alleged duration of use of properties as STRs;
- d) the alleged issuance of business licences for properties; and
- e) whether properties had been lawfully used as STRs.

[24] Second, the District objects to paragraph 16 in Ms. Frizzell's affidavit in which she states her beliefs about how the District will administer the STR TUP regime in the future. The District argues that this paragraph is irrelevant, unsupported by probative evidence, and contains opinion, argument, and impermissible hearsay.

[25] Third, the District notes that none of the other seven petitioners - Ben Lin Zeng, Gary Bearchell, Greg Bellamy, Shawn Deveau, Emma Goodman, Tracey Jackson, and Kate Newstead - have tendered any evidence whatsoever in this proceeding. The District submits that there is therefore no basis to find that these individuals have standing in this matter.

[26] There is some merit to the District's evidentiary objection, particularly in relation to the unexplained absence of affidavits made by the Petitioners themselves with the exception of Ms. Frizzell. I also agree with the District's objection to paragraph 16 of Ms. Frizzell's affidavit, the content of which I will disregard.

[27] However, I accept that the balance of Ms. Frizzell's affidavit is admissible and provides a sufficient factual matrix to decide the issues raised by the petition, which are primarily questions of statutory interpretation.

[28] As for the issue of standing, I will deal with it separately in the following section of my reasons for judgment.

Standing

[29] Section 623(1) of the Act prescribes who may bring an application to the Court to set aside a municipal bylaw in these terms:

623(1) An application to Supreme Court to set aside a municipal bylaw or another municipal instrument may be made by:

- a) an elector of the municipality, or
- b) a person interested in the bylaw, order or resolution, as applicable.

[30] The term "elector" is defined in the Schedule to the Act as follows:

"elector" means a resident elector or non-resident property elector of a municipality or regional district electoral area.

[31] The Petitioners submit that they are all "non-resident property electors" pursuant to s. 66 of the Act and therefore have the necessary standing to bring this application under s. 623(1)(a) of the Act. They say that this is the case since the Petitioners are all landowners in Sechelt.

[32] However, this submission cannot be accepted without supporting evidence to demonstrate that the Petitioners, in fact, meet all of the requirements to be a "non-resident property elector" set out at s. 66 of the Act. These requirements are not limited to simply being a landowner in a municipality. Non-resident property electors must also:

- a) be 18 years of age or older when they register to vote, or 18 years or older on general voting day;
- b) be a Canadian citizen;
- c) have been a resident of British Columbia for at least six months immediately before they register to vote; and
- d) not be disqualified under the Act or any other enactment from voting in an election or be otherwise disqualified by law.

[33] In addition, a person cannot vote as a non-resident property elector based on property owned beneficially through a corporation. According to the petition as pleaded, this appears to be the case for one of the petitioners (Emma Goodman).

[34] Furthermore, if a person co-owns the property with one or more other individuals, only one person is eligible to vote as the non-resident property elector for that property. The owner entitled to vote must also be designated, in writing, by the majority of the property owners. According to the petition as pleaded, all of the petitioners who own their property directly are co-owners, with one exception (Ben Lin Zeng). For the co-owner petitioners, this restriction on non-resident municipal voting is also a potential impediment to qualifying them as "electors" for the purposes of the Act.

[35] Accordingly, for the seven petitioners who did not see fit to tender a personal affidavit in this proceeding, I am unable to conclude that they have standing as electors to bring this application pursuant to s. 623(1)(a) of the Act. The same goes for Ms. Frizzell. While her affidavit demonstrates that she is a co-owner of real property in Sechelt, it does not address all of the other requirements for being a non-resident property elector under s. 66 of the Act.

[36] That is not the end of the matter, however. The Petitioners argue in the alternative that they have standing as persons "interested in the bylaw" pursuant to s. 623(1)(b) of the Act.

- [37] Having reviewed Ms. Frizzell's affidavit, I accept that she does have the requisite interest in the Impugned Provisions so as to qualify for standing under s. 623(1)(b). In particular, Ms. Frizzell's affidavit shows that she is a co-owner of real estate in Sechelt that she uses as a secondary residence, and is the holder of a STR business licence for that property. The affidavit also demonstrates Ms. Frizzell's bona fide concern with the impact of the Impugned Provisions on her ability to continue to effect STRs in respect of her property.
- [38] Therefore, I find that Ms. Frizzell has the necessary standing to bring this petition under s. 623(1)(b) of the Act.
- [39] On the other hand, I find that the other seven petitioners who did not make their own affidavits do not have standing and are not entitled to claim any relief pursuant to s. 623 of the Act.
- [40] These findings notwithstanding, for clarity and simplicity, I will continue to reference the applicant party in this proceeding as "the Petitioners" in my reasons for judgment.

Standard of Review

- [41] There is no dispute regarding the standard of review that applies to an application to set aside a municipal bylaw brought pursuant to s. 623 of the Act. It is reasonableness: *O'Shea/Oceanmount Community Association v. Town of Gibsons*, 2020 BCSC 698, at paras. 43 to 67.
- [42] Such a standard applies even though the Petitioners' challenge to the Impugned Provisions is fundamentally a "vires argument". The Petitioners assert that the District did not have the statutory authority to modify the Business Licence Bylaw in the manner that it did, and therefore the Impugned Provisions are invalid, or ultra vires.
- [43] In *1120732 B.C. Ltd. v. Whistler (Resort Municipality)*, 2020 BCCA 101 ["Whistler"] at paras. 33 to 46, our Court of Appeal addressed the question of how such municipal law vires arguments are to be adjudicated within the judicial review framework established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. It did so in a context similar to the case at bar where the municipality did not provide express reasons to explain its impugned actions. Essentially the Court of Appeal held in *Whistler* that reviewing courts are to consider whether there is a reasonable interpretation of the municipality's enabling legislation which would authorize the enactment or decision that is being challenged. If so, the court is to defer to the municipality and should not interfere. Conversely, reviewing courts are not to simply interpret the legislation and determine whether the municipality acted within the ambit of the authority it bestows. This would amount to conducting an impermissible correctness review.
- [44] Further guidance on how to conduct judicial review of a municipal bylaw whose vires is being challenged can be found in the Court of Appeal's more recent decision in *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176, at paras. 59 to 61:

- [59] Based on all of the foregoing, I would apply a reasonableness standard of review to the City's conclusion that it had statutory authority to enact the Impugned Bylaw.
- [60] As Justice Tysoe explained in *Whistler*, this Court's task on a reasonableness review is not to interpret the relevant legislation and decide if the Impugned Bylaw is *intra vires* the City. That approach would be contrary to *Vavilov*. Rather, this Court's task is to review the City's decision to enact the Impugned Bylaw together with the underlying reasoning and decide if the decision was unreasonable: *Whistler* at paras. 36-39; *Vavilov* at para. 83. An administrative decision maker's decision is reasonable if it is transparent, intelligible and justifiable in relation to the relevant factual and legal constraints that bear on the decision. When a party asserts that an administrative decision is unreasonable, the burden is on the challenging party to show the decision is unreasonable: *Vavilov*, at paras. 99-100.
- [61] If an administrative decision maker does not give explicit reasons for a decision in a matter of statutory interpretation, that interpretation may be discernible from the record. As noted in *Vavilov*, in cases concerning the *vires* of municipal bylaws, courts have traditionally deduced the municipality's reasons for enacting a bylaw from the debate, deliberations and policy statements that gave rise to the bylaw: at paras. 123, 137. Like other questions of law, matters of statutory interpretation are amenable to reasonableness review, although "the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision." In other words, when this Court assesses the City's decision to enact the Impugned Bylaw, the usual principles of statutory interpretation apply: *Vavilov* at paras. 115, 120.
- [45] I will apply these jurisprudential principles as I review the District's enactment of the Impugned Provisions.

Issue 1: Legislative Authority for the Impugned Provisions

- [46] The Petitioners' first basis for seeking to set aside the Impugned Provisions is their assertion that the District lacked the legislative authority to amend the Business Licence Bylaw in the manner that it did.
- [47] It is common ground between the parties that the District's ostensible statutory basis for enacting the Impugned Provisions is to be found at s. 8(6) of the Community Charter, S.B.C. 2003, chapter 26. It states:
- 8(6) a council may, by bylaw, regulate in relation to business.
- [48] Where they part company, however, is on the question of whether it was reasonable for the District to effectively conclude that this provision empowers the District to adopt the Impugned Provisions.
- [49] The Petitioners say that this question should be answered in the negative, for two reasons.

- [50] First, they argue that the Impugned Provisions do not simply "regulate" STR businesses operated in secondary residences; they "prohibit" them. Invoking the presumption of consistent expression (*First Majestic Silver Corp. v. Santos*, 2014 BCCA 115, at para. 26), the Petitioners note that the wording of subsection 8(6) of the Community Charter differs from that set out in its neighbouring provisions at subsections 8(3), 8(4), and 8(5), which reference the power to "prohibit" and/or "impose requirements", as well as the power to "regulate." Accordingly, s. 8(6) of the Community Charter cannot be used to enact bylaws that prohibit otherwise lawful businesses (*Prince George (City of) v. Payne*, 1977 CanLII 161 (SCC), [1978] 1 SCR 458 ["Prince George"] at para. 22).
- [51] Second, the Petitioners argue that the Impugned Provisions effectively regulate land use. They say that while a business licence bylaw enacted pursuant to s. 8(6) of the Community Charter may be used to regulate the operation of a business, it cannot be used to regulate the use of a property for the business. Such regulation can only be done through the municipality's specific zoning powers under s. 479 of the Act (*Westfair Foods Ltd. v. The Corp. Of The District of Saanich*, 1997 CanLII 971 (BC SC) at para. 56, *aff'd* 1997 CanLII 3686 BCCA at para. 31).
- [52] The District, on the other hand, denies that the Impugned Provisions prohibit STR businesses or regulate the use of land. It says that the Impugned Provisions lawfully regulate STR businesses and the manner in which they are operated. The District notes in particular that s. 8(8)(a) of the Community Charter sets out examples of municipal powers to regulate under s. 8, which include the power "to provide that persons may engage in a regulated activity only in accordance with the rules established by the bylaw." The District says that this is precisely what the Impugned Provisions do in respect of STR businesses. As such, the District has the statutory authority to enact the Impugned Provisions.
- [53] As a starting point for the analysis of this issue, it is important to keep in mind that municipal legislation such as the Community Charter must be interpreted broadly and purposively: *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19 (CanLII), [2004] 1 SCR 485, at paras. 6 and 8. This is particularly the case given the legislative direction provided by s. 8 of the Interpretation Act, R.S.B.C. 1996 c. 238, to construe enactments as being remedial, and to interpret their provisions in a fair, large, and liberal manner so as to ensure the attainment of their objects.
- [54] Furthermore, ss. 3 and 4 of the Community Charter provide:
- 3 the purposes of this Act are to provide municipalities and their councils with:
- a) a legal framework for the powers, duties, and functions that are necessary to fulfill their purposes,
 - b) the authority and discretion to address existing and future community needs, and

- c) the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.

4(1) The powers conferred on municipalities and their councils under this Act or the Local Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[55] I turn now to the impugned provisions themselves.

[56] In my view, ss. 4(b), 4(c), 4(e), and 5 of Schedule "B" of the Business Licence Bylaw do indeed "regulate in relation to business" pursuant to s. 8(6) of the Community Charter as the District contends, and do not "prohibit" business in a manner similar to the Prince George case as the Petitioners contend.

[57] While each of the Impugned Provisions establish rules respecting what "must or must not be done" in relation to STR businesses, this falls precisely within the definition of the term "regulate" that is set out in the Schedule to the Community Charter:

"regulate" includes authorize, control, inspect, limit, and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things, or other matters being regulated.

[58] In particular, each of the Impugned Provisions impose limits and restrictions on STR businesses, but do not outright prohibit or prevent them from operating as follows:

- 1) Section 4(b) requires STR businesses conducted at principal residences or in accessory dwellings located on principal residences to be operated by the individual property owners themselves.
- 2) Section 4(c) requires STR businesses conducted at secondary residences to be operated by persons who have obtained a TUP.
- 3) Section 4(e) limits individuals from holding more than two STR business licences.
- 4) Section 5 requires an applicant who seeks an STR business licence to provide certain documentation in order to obtain the licence.

[59] Furthermore, I disagree with the Petitioners that the Impugned Provisions constitute an impermissible attempt by the District to effect land use zoning regulation through the Business Licence Bylaw. As has already been noted, the Impugned Provisions do not forbid STRs on properties located within certain land zones. Instead, they simply regulate and restrict how STRs may be effected.

- [60] In addition, there is no indication that the Impugned Provisions apply differently depending upon which zone the residential property to be used for STRs is located. As such, the situation in the case at bar is akin to that which was considered in *Chase Discount Auto Sales Ltd. v. Waugh*, 2019 BCCA 271, at paras. 33 to 35. The Court of Appeal in that case also rejected a disguised zoning regulation argument similar to the one the Petitioners are advancing here.
- [61] Accordingly, I conclude that it was reasonable for the District to effectively determine that it could enact the Impugned Provisions further to the power bestowed upon it by s. 8(6) of the Community Charter. The Petitioners' argument to the contrary is therefore dismissed.

Issue 2: the Impugned Provisions' Impact on Non-Conforming Land Use

- [62] The Petitioners' second ground for challenging the Impugned Provisions is the alleged conflict between the amended Business Licence Bylaw and s. 528 of the Act which provides for the possibility of lawful non-conforming use of land subject to zoning bylaw changes.
- [63] The Petitioners say that prior to its October 6, 2022 amendment, Sechelt's Zoning Bylaw effectively permitted STRs in secondary residences provided a STR business licence is obtained pursuant to the Business Licence Bylaw. However, Sechelt's amended Zoning Bylaw includes a new provision that precludes STRs in secondary residences unless a TUP is obtained, as follows:
- 2.8.1(i) Short-Term Rental of a secondary residence is not permitted without a valid Temporary Use Permit from the District of Sechelt.
- [64] The Petitioners then argue that, but for the Impugned Provisions of the Business Licence Bylaw, they would be entitled in the future to continue their non-conforming use of their secondary residences as STRs by virtue of s. 528 of the Act. However, the Impugned Provisions will prevent the Petitioners from doing so by imposing the requirement for a TUP in order to obtain an STR business licence.
- [65] The Petitioners explain their argument at paragraph 59 of their written submissions as follows:

The effect of this is to prohibit and eliminate the lawful non-conforming use. A property owner who previously lawfully used his or her secondary residence for short-term rental in compliance with the Previous Zoning Bylaw and the [Business Licence] Bylaw cannot continue that use as a lawful non-conforming use. He or she cannot obtain a business licence to operate without a Temporary Use Permit, and cannot apply for a Temporary Use Permit as that would bring the property under the existing zoning regime set out in the Zoning Bylaw, and eliminate the lawful non-conforming use status of the property. Further, if a Temporary Use Permit was issued, this would only allow short term rental in a secondary residence on a temporary basis, and eliminate the lawful non-conforming use status of the property.

- [66] Accordingly, the Petitioners effectively say that the District is improperly trying to use its business licence powers to prohibit lawful non-conforming uses that are protected by s. 528 of the Act.
- [67] The District, on the other hand, does not agree that the Business Licence Bylaw eliminates the lawful non-conforming use status of the Petitioners' properties. It says that any impact on lawful non-conformity would arise under the Zoning Bylaw, which continues to provide for the possibility that secondary residences can be used for STR purposes so long as a TUP is obtained under the District's Planning and Development Procedures Bylaw. As such, the Impugned Provisions do not conflict with s. 528 of the Act.
- [68] As a preliminary observation, I note that this is an application to set aside the Impugned Provisions brought pursuant to s. 623 of the Act. It is not an application for a declaration that STRs at the Petitioners' properties are a lawful non-conforming use pursuant to s. 528 of the Act. Accordingly, the only question that is properly before me is whether the Impugned Provisions ought to be struck because it was unreasonable for the District to adopt them. I am not determining the extent of the Petitioners' s. 528 rights, if any.
- [69] In my view, the Petitioners' apparently novel basis for challenging the Impugned Provisions is without merit. I can see no reason to strike down an otherwise valid amendment to a business licence bylaw just because it may preclude continuing non-conforming use of land pursuant to s. 528 of the Act, and I was not made aware of any jurisprudential authority to this effect. This is particularly the case where the fundamental impact of the Impugned Provisions on existing secondary property STR business licence holders is simply to require them to obtain an additional licence in the form of a TUP. I am not prepared to invalidate the Impugned Provisions based on the hypothetical and speculative possibility that some or all of the Petitioners may be denied a TUP or a business licence in the future, particularly given the thin evidentiary record that is before me.
- [70] In sum, this argument of the Petitioners is dismissed as well.

Issue 3: Clarity and Coherence of the Impugned Provisions

- [71] The Petitioners' third and final ground for challenging the Impugned Provisions is that some are impermissibly vague, and others are contradictory and impossible to comply with.
- [72] With respect to vagueness, the Petitioners take issue with the terms "Secondary Residence category" and "Short-term rental Secondary Residence" found at ss. 2 and 4(c) of Schedule "B" of the Business Licence Bylaw. The Petitioners say that they are not defined within the bylaw, and it is impossible to determine whether a property, business, or individual would be captured and governed by these regulations.
- [73] The Petitioners also take issue with s. 5(a) of Schedule "B" of the Business Licence Bylaw. They say it stipulates that a person who applies for an STR business licence must provide proof that the accommodation proposed to be rented is located at the applicant's principal

residence. At the same time, s. 4(c) references the concept of a Short-term rental Secondary Residence which can be operated with a TUP. The Petitioners argue that it is therefore impossible to comply with both sections 4(c) and 5(a) of the Business Licence Bylaw, making them impermissibly contradictory.

- [74] The District denies that the Impugned Provisions are unacceptably vague since their meaning can be determined by applying legal criteria. Furthermore, the term "Secondary Residence" is defined in Part 4 of the District's Zoning Bylaw, an *in pari materia* statute in relation to STRs which can be used to give it an equivalent meaning (*Society of Notaries Public of British Columbia v. Law Society of British Columbia*, 2017 BCCA 448, at para. 26). That definition is as follows:

Secondary Residence: means a Dwelling Unit that is not an owner's principal residence. It is a vacation rental or investment property.

- [75] As for s. 5(a), the District says that a contextual approach which avoids absurd results should be applied to its interpretation. The District suggests that such an interpretation would exempt an applicant for a business licence in respect of a secondary residence STR from having to provide evidence that the property is a principal residence.
- [76] In *Kelowna Mountain Development Services Ltd. v. Central Okanagan (Regional District)*, 2014 BCCA 369, at paragraph 17, our Court of Appeal set out a comprehensive summary of the principles to be applied when considering a vagueness challenge to a municipal bylaw:
- [17] The leading authorities applicable to the vagueness challenge in this case are *R. v. Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 S.C.R. 606, and *Okanagan Land Development Corp. v. Vernon (City)*, 2012 BCCA 332. The relevant principles from those authorities include:

Laws need not achieve absolute precision in order to survive a vagueness challenge. However, a law will be found to be unconstitutionally vague if it so lacks in precision as not to provide an adequate basis for legal debate - that is, for reaching a conclusion as to its meaning by reasoned analysis applying legal criteria: *Nova Scotia Pharmaceutical Society* at 643.

By stating certain propositions, legal provisions outline permissible and impermissible areas of conduct, and they also provide some guidance to ascertain the boundaries of these areas. They provide a framework, a guide as to how one may behave, but certainty is only reached in a given case, where law is actualized by a competent authority. By setting out the boundaries of permissible and impermissible conduct, these norms give rise to legal debate. They bear substance and they allow for a discussion as to their actualization. By introducing boundaries, they therefore limit enforcement discretion, and they also sufficiently delineate an area of risk to allow for substantive notice to citizens: *Nova Scotia Pharmaceutical Society* at 638-640.

In the context of municipal bylaws, the test for assessing vagueness asks whether a reasonably intelligent person would be unable to determine the meaning of the bylaw and govern his or her actions accordingly. Mere difficulty in the interpretation of the bylaw is not sufficient: *Dhillon v. Richmond (Mun.)* (1987), 1987 CanLII 2623 (BC SC), 16 B.C.L.R. (2d) 80 (S.C.) at 85-86; *Okanagan Land Development Corp.* at para. 50.

A municipal bylaw is not necessarily void for uncertainty merely because its terms may be susceptible to more than one interpretation: *The City of Montreal v. Morgan*, (1920), 1920 CanLII 90 (SCC), 60 S.C.R. 393 at 404.

Municipal bylaws are to be interpreted benevolently and supported if possible: *The City of Montreal* at 404; *Okanagan Land Development Corp.* at para. 50.

[77] From a review of these principles, it is evident that the threshold to be met by an applicant who seeks to have municipal bylaws voided for vagueness is a high one. In my view, the Petitioners have fallen far short of the mark here.

[78] This is because the term "secondary residence" found in the Business Licence Bylaw is sufficiently precise and well understood so that a reasonably intelligent person can determine its meaning and govern their actions accordingly. Paraphrasing the Zoning Bylaw's definition, the term "secondary residence" as used in the Business Licence Bylaw means a dwelling unit that is not an owner's principal residence, which typically is used for vacation purposes and as an investment property. This term certainly "provides an adequate basis for legal debate" and therefore is not void for vagueness.

[79] I am further fortified in my conclusion by the Petitioners' petition itself, where they plead the following at paragraph 4 of its Part 2: Factual Basis section:

Each Petitioner utilizes their property on a part-time basis as a secondary residence, with their principal residence being elsewhere.

[my emphasis added]

[80] In my opinion, the Petitioners cannot plausibly submit that it is impossible for them to know that the Impugned Provisions relating to "secondary residences" govern their rights and obligations while at the same time arguing that they will be prejudiced by this legislation unless the Court strikes it down.

[81] Finally, I am also not persuaded that ss. 4(c) and 5(a) of Schedule "B" of the Business Licence Bylaw warrant being set aside because they are contradictory and impossible to comply with. To that end, I agree with the District that these provisions must be interpreted so as to avoid absurd results: *Ontario v. Canadian Pacific Ltd.*, 1995 CanLII 112 (SCC), [1995] 2 SCR 1031, at para. 65. This is accomplished by acknowledging that, unlike the balance of s. 5 of Schedule "B" of the Business Licence Bylaw, subparagraph 5(a) does not apply to STR business licence applications made in respect of secondary residences.

[82] Accordingly, I conclude that the Petitioners' vagueness and uncertainty argument is unfounded.

Disposition

[83] For all of these reasons, the petition is dismissed with costs payable by the Petitioners to the District on Scale B.

"Brongers, J."

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