

Date: 19991119
Docket: 99/2200
Registry: Victoria

IN THE SUPREME COURT OF BRITISH COLUMBIA

**In the matter of the *Judicial Review Procedure Act*, and
Re: Lot A, District Lot 4055, Group 1, New Westminster
District, except that part in Plan 19747**

BETWEEN:

557058 B.C. LTD.

PETITIONER

AND:

SUNSHINE COAST REGIONAL DISTRICT

RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE QUIJANO

Rajiv K. Gandhi

Counsel for the Petitioner

Troy DeSouza

Counsel for the Respondent

Place and Date of Hearing:

Victoria, British Columbia
November 3, 1999

INTRODUCTION

[1] The plaintiff is the owner of a 55.1 hectare parcel of land on Jervis Inlet located within the geographical area administered by the Sunshine Coast Regional District ("the District"). The petitioner has applied for a development permit to develop what it described as a "hunting and fishing camp" on the property and says that is a permitted use in the relevant bylaw.

[2] The District has refused to issue a building permit for the proposed development, saying that it is not a "hunting and fishing camp". The District initially took the position the proposed development was a lodge, then later revised its opinion and said it was a motel. The District has advised the petitioner that the property will have to be re-zoned in order to permit the development to proceed.

[3] The petitioner seeks judicial review of that refusal and an order compelling the District to issue the building permit.

[4] The petitioner's planned development involves the creation of 58 strata lots, each of which is to include a structure comprised of a living room, dining room, kitchen, bathroom and two bedrooms. The petitioner intends to sell the individual strata lots to members of the public. There is no plan to operate the development as a commercial fishing or

hunting business. In other words, the individual owners can do as they wish with their property, presumably subject to any strata rules or other bylaws.

[5] The petitioner's property is zoned RU2, which is described as "Rural Resource" zoning. That bylaw provides as follows:

RU2 (RURAL RESOURCE)

Permitted Uses

- 1021.1 (1) Except as permitted in Part V, land, buildings and structures on parcels 3,500 square metres or less in the RU2 zone shall be used for the following purposes only:
- (a) one single family dwelling;
 - (b) agriculture;
 - (c) bed and breakfast home.
- (2) On parcels exceeding 3,500 square metres the additional permitted uses are:
- (a) auxiliary light industry;
 - (b) garden nursery;
 - (c) raising of fish for domestic consumption.
- (3) On parcels exceeding 1 hectare the additional permitted uses are:
- (a) a second dwelling unit to create a duplex; or
 - (b) a second single family dwelling, a transition house or a bed and breakfast inn.
- (4) On parcels exceeding 1.75 hectares the additional permitted uses are:

- (a) campgrounds;
 - (b) riding stable and academy;
 - (c) animal shelter, kennel;
 - (d) storage of no more than 4 licensed vehicles or pieces of heavy equipment associated with the logging or construction industries;
 - (e) intensive agriculture;
 - (f) "hunting and fishing camp";
 - (g) a single fully enclosed building to house manufacturing or storage provided that:
 - (i) there is no storage outside of an enclosed building;
 - (ii) no such building shall exceed 4.5 meters in height;
 - (iii) the required setback from all parcel lines is 7.5 metres;
 - (iv) the floor area of such a building shall not exceed 75 square meters;
- (5) On parcels exceeding 4 hectares the additional permitted uses are:
- (a) a third single family dwelling;
 - (b) one auxiliary dwelling unit.

Dwelling Units Per Parcel

- 1021.2 No more than four dwelling units may be located on a parcel.

Floor Area

- 1021.3 The total floor area of a transition house shall not exceed 300 square metres.

Density

- 1021.4 The maximum number of campsites and recreational vehicle sites in a campground is 10 per hectare of parcel area.

Siting Requirements

- 1021.5 No structure shall be located within:
- (a) 5 metres of the front or rear parcel line;
 - (b) 1.5 metres of a side parcel line; or
 - (c) 4.5 metres of an exterior side parcel line.

Parcel Coverage

- 1021.6 The parcel coverage of all buildings and structures shall not exceed 15 percent except where the parcel is 2000 square metres or less the parcel coverage shall not exceed 35 percent.

[6] Zoning bylaw No. 337, the District's relevant zoning Bylaw, does not contain a definition of "hunting and fishing camp". It does contain definitions for dwelling unit, single family dwelling, lodge and motel, amongst others.

[7] The petitioner argues that, because the development is to be used as a fishing and hunting camp by the individual owners, the Sunshine Coast Regional District cannot refuse to issue a building permit with respect to the proposed development. The petitioner says that in the absence of any definition of "hunting and fishing camp" in the bylaws that the court ought not to give a restricted meaning to the term but ought to find that because of their wilderness waterfront setting the units could be used as a "hunting and fishing camp" as described in the bylaw.

[8] The District argues that the meaning of "hunting and fishing camp" within the bylaw should be interpreted in accordance with the decision in *Neilson et al v. The District of Langley et al* (1982), 134 D.L.R. (3d) 550. In particular, Hinkson J.A. at p. 554 says this:

... The Chambers Judge made reference to two lines of authority concerning the interpretation of zoning by-laws; the restrictive interpretation and the liberal or remedial interpretation. In this connection reference was made to the decision of the Supreme Court of Canada in *Bayshore Shopping Centre Ltd. v. Township of Nepean et al.* (1972), 25 D.L.R. (3d) 443, [1972] S.C.R. 755. Spence J., delivering the judgment of the Court, made reference to these different approaches to the interpretation of zoning by-laws and said at p. 449:

I find little assistance from decisions which purport to indicate the philosophic attitude which the Court should adopt in construing zoning by-laws.

In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach **but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.**

(emphasis added)

[9] In addition to the question as to whether the description of the development as a "hunting and fishing camp" is sufficient to enable the development to go forward pursuant to zoning Bylaw RU2, two further issues are raised by the District in opposition to the application. Those are:

- (1) The density that would result from the proposed development offends the RU2 zoning; and
- (2) The petitioner has not obtained a permit for sewage disposal.

[10] Because there is no definition of "hunting and fishing camp" contained in the bylaw, the approach to be taken to determine the first question is to consider what the term "hunting and fishing camp" must mean in the context of RU2 zoning. This accords with the direction from the Court of Appeal in *Neilson, supra*.

[11] In relation to this issue the petitioner argues that the structures sought to be constructed and then sold as strata units are not single family dwellings, not dwelling units, not a lodge and not a motel, as those terms are defined in the bylaw. Rather, the petitioner says, the structures are something less, more like cabins or camps where the individual owners might come to enjoy the recreational opportunities that the area affords.

[12] The definition of "dwelling unit" found in the bylaw is as follows:

"dwelling unit" means a self-contained set of rooms located in a dwelling and used as a place of habitation occupied exclusively as a home by not more than one family and which set of rooms does not contain more than one set of cooking facilities;

[13] The definition of "single family dwelling" found in the bylaw is as follows:

"single family dwelling" means a building consisting of one dwelling unit which is occupied or intended to be occupied as the residence of one family;

[14] The definition of "Lodge" and "motel" are found in the bylaw but are irrelevant to the determination of the issues here. The definition of "parcel" found in the bylaw is relevant. It is:

"parcel" means any lot, block or other area in which land is held or into which it is subdivided ...

[15] It is necessary to look at the RU2 zoning bylaw in its entirety to determine the context within which the meaning is to be given to "hunting and fishing" camp.

[16] The petitioner's land is held in a single parcel. The bylaw is concerned, in part, with ensuring limited density in RU2 zones and with limiting the kinds of activities that can take place in RU2 zones.

[17] Section 1021.2 of the RU2 bylaw restricts the number of "dwelling units" to 4 per parcel. Section 1021.1(5) limits the number of "single family residences" on a parcel the size of the petitioner's to 3 per parcel.

[18] I do not read the list of permitted uses in section 1021.1(4) as providing exceptions to the density instructions in the balance of the bylaw on the basis that the development is to be used for one of the permitted uses. That seems to be the thrust of the petitioner's position.

[19] A broad definition of "hunting and fishing camp" could be appropriate provided it does not offend the density restrictions.

[20] The petitioner's proposal for 58 structures, which clearly are "single family residences" as that term is defined in the bylaw, far exceeds the density allowed for the existing zoning.

[21] For the above reasons, the application for an order of *mandamus* compelling the District to issue a building permit is refused.

[22] Having come to this conclusion it is not necessary to deal with the objections on the basis of the failure to obtain a permit for the treatment of sewage. This conundrum resulted, in my view, from the size of the density being proposed by the petitioner, a density not contemplated by the bylaw.

[23] The respondent will have its costs of this application at Scale 3.

"G.M. QUIJANO, J."

THE HONOURABLE MADAM JUSTICE QUIJANO