

February 23, 2017

Mayor and Council,

Presently, the City of Victoria will issue a transient accommodation business licence to any residential strata lot property owner where that owner wishes to operate a short-term vacation rental, as long as the zoning allows for transient accommodation as a permitted use.

The act of issuing a transient accommodation business licence to a residential strata lot owner has the effect of changing the current residential use of the property to a commercial use for transient accommodation.

The effect of the City issuing transient accommodation business licences to strata lot owners is that unsuspecting neighbours find themselves living in a hotel-like environment, surrounded by short-term vacation rentals.

This practice of commercializing residential strata as short-term vacation rentals is being acutely felt by many downtown residential strata owners, future property purchasers, renters, and the tourism and hospitality industry.

Although strata councils have the option to prohibit and take action against strata lot owners who operate non-compliant rental accommodations, the effort to enforce such prohibitions is exasperated by the city issuing transient accommodation business licences.

Residential strata are "designed or intended to be used primarily as a residence", as defined in the Strata Property Act, and strata lot owners have no property rights other than those granted to them by way of the Strata Property Act and to a lesser extent individual strata bylaws. The commercialization of residential strata is not contemplated by the Act, unless the strata was created as a commercial strata, which is a separate and distinct classification to residential strata. However, the plain language distinction between a residential strata and a commercial strata is clear, and at the time the strata plan is deposited, the permitted use of the strata lots are defined until such time of the strata corporation's unwinding.

To be certain the Strata Property Act never contemplated that a residential strata lot would be used as a hotel suite.

It's important to note that in British Columbia, when strata plans are deposited by a developer with the Land Titles and Survey Authority, the developer must register the newly created strata as either Residential, non-Residential, or a mix of Residential and non-Residential. By doing so, the developer is defining the permitted use of the strata at that time. It is, therefore, provincial statute, by way of the Strata Property Act, that ultimately defines the permitted use of a strata lot and not municipal bylaws.

By way of the legal principle of priority (where it is recognized that there is 'priority' between laws or regulations by different levels of government, and if there is a conflict between a provincial law and a municipal law, the former prevails) the City of Victoria simply lacks the authority, or justification, to change the already solidified permitted use of a residential strata lot to any type of commercial use, including transient accommodation, by issuing a commercial business licence to a residential strata lot owner.

City council needs to respect provincial statute and take immediate action to halt the issuing of all commercial business licences, specifically transient accommodation business licences, to residential strata lot owners, in order to preserve the residential use of residential strata developments, and to stop the spread of short-term vacation rentals.

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