IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Sechelt (District) v. Cutlan,***
2007 BCSC 1087

Date: 20070723
Docket: S065769
Registry: Vancouver

Between:

The Corporation of the District of Sechelt

Petitioner

And

Christopher Scott Cutlan and Krista Agnes Cutlan

Respondents

Before: The Honourable Mr. Justice Sigurdson

Reasons for Judgment

Counsel for the Petitioner:	J.H. Goulden H. Wang
Counsel for the Respondents:	J.A. Vamplew
Date and Place of Hearing:	May 11 & 15, 2007
Written Submissions:	July 11, 2007
	Vancouver, B.C.

INTRODUCTION

[1] Are the respondents allowed to use an accessory building on their property in Sechelt as sleeping accommodation for their bed and breakfast business?

[2] The petitioner says no, and seeks a declaration that the respondents are in breach of the zoning, building and business licence bylaws, as well as an injunction to prevent them from using the accessory building for any accommodation use, including a bed and breakfast use.

ISSUE

[3] A recent amendment to the zoning bylaw in March 2006 made it clear that a bed and breakfast use was not permitted in an accessory building on a lot of the size owned by the respondents. However, the respondents had a building permit for the main and accessory buildings which they say were lawfully under construction under the zoning bylaw as it existed prior to the March 2006 amendment. As such, they say they are entitled to use the accessory building as sleeping accommodation for part of the bed and breakfast as a non-conforming use.

[4] The petitioner says that the zoning bylaw, even before the amendment to clarify, prohibited the use of the accessory building for sleeping accommodation for a bed and breakfast operation.

[5] The issue really is whether the possible use of the accessory building on the Cutlans' property for the bed and breakfast use was permitted under the bylaw that was in place when the Cutlans applied for their building permits.

FACTS

[6] The petitioner, the Corporation of the District of Sechelt, is a municipal corporation. The respondents, Christopher Scott Cutlan and Krista Agnes Cutlan are owners of the property at 7545 Islet Road, Sechelt, British Columbia. The lands are zoned R-3.

[7] Between 2002 and 2005, the Cutlans, originally through Mr. Cutlan's mother-in-law, Lucy Sorenson, applied to construct a single family dwelling on the property. They then entered into a land exchange with the municipality which allowed their development to proceed.

[8] In 2005, the respondents applied for building permits in respect of a main building and an accessory building. Permit No. 3925 was issued for the main building. Permit No. 3926 was issued for the accessory building. The accessory building permit indicated that the value of the accessory building was approximately $30,000.

[9] The accessory building permit indicated in writing that the accessory building was not to be used as a sleeping area for the respondents' bed and breakfast business. On July 13, 2005 when picking up the permits, Mr. Cutlan crossed out that wording on the accessory permit, without the approval of the district building inspector. Shortly thereafter the staff of the district advised the Cutlans that the district would not accept this unilateral change and the accessory building could not be used for sleeping accommodation. I should add that, in my view, nothing turns on the fact of this insertion or deletion, and I need not resolve precisely what occurred. The question is whether the zoning bylaw at that time prohibited the use of an accessory building on the Cutlans' property for a bed and breakfast use.

[10] Mr. Cutlan appeared before council on August 3, 2005 and allegedly stated that the accessory building would not be used as a residence. The district staff advised the respondents that an accepted final inspection of the accessory building would be contingent on an accepted final inspection of the main building.

[11] On March 13, 2006, after receiving complaints that the respondents were using the accessory building as accommodation for their bed and breakfast business, something which is

disputed by the respondents, the Sechelt district council amended the zoning bylaw by adopting zoning amendment bylaw no. 25-186, 2006 ("the amending bylaw"). It prohibited, among other things, the use of accessory buildings for bed and breakfasts. The respondents take the position that the district staff were aware of their intention to use the accessory building for accommodation as of July 13, 2005 when the building permits were issued, and that they were "grandfathered" and not required to comply with the amending bylaw.

[12] On April 5, 2006 the district's solicitor wrote to the respondents demanding that they cease violation of the bylaws and commit in writing not to use the accessory building for any accommodation use in the future.

[13] The district asserts that there is evidence that the accessory building is actually being used as part of the bed and breakfast business under the name "Tuwanek Hotel", but that is disputed by the respondents. The evidence does suggest, however, that the respondents on their website are advertising three suites for rent as sleeping accommodation as part of their bed and breakfast operation, and therefore one suite must be in the accessory building.

[14] The Cutlans and their company Tuwanek Enterprises have sued the district seeking a declaration that the amending bylaw is invalid as being passed in bad faith and discriminatory. They also claim damages on the basis of intentional and negligent representations from the district that they would be permitted to operate a bed and breakfast in the main building and the accessory building.

[15] The issue comes down to whether the respondents were entitled to operate a bed and breakfast business in the accessory building under the original bylaw. If they were not then it could not be a lawfully non-conforming use at the time of the introduction of the amending bylaw.

[16] First let me set out the relevant provisions of the bylaw prior to the introduction of the amending bylaw.

RELEVANT PROVISIONS OF THE ZONING BYLAW

[17] Section 518 of the zoning bylaw reads:

> 518. Permitted Uses
>
> Except as otherwise provided in Part 3, Section 303 of this Bylaw, the following and no other uses are permitted in the area designated as R-3:
>
> a) single family dwellings;
>
> b) home occupation;
>
> c) accessory buildings, subject to the regulations in Part 3, Section 305 of this Bylaw.

[18] The subject lands are in an area designated R-3.

[19] Therefore, the permitted uses for properties in this zone, such as the Cutlans', are single family dwellings, home occupation and accessory buildings. A bed and breakfast is a "home occupation" as defined in s. 102 of the zoning bylaw.

[20] The question is whether the home occupation use -- a bed and breakfast accommodation -- can be carried on in the accessory building.

[21] The zoning bylaw defines a "guest cottage" in s. 102 as: "a building used as a dwelling, the floor area of which does not exceed fifty-five (55) square metres". Guest cottages are expressly permitted in certain residential zones where the lot area exceeds 2000 m². As the Cutlans' property is 771.838 m², a guest cottage is not permitted under the zoning bylaw.

[22] Home occupations are governed by s. 307 of the zoning bylaw, the relevant provisions of which are:

> 307. Home Occupation
>
> General
>
> 1. A home occupation must be located on or within a residential premises and must be clearly accessory to the primary residential use and may include … bed and breakfast accommodations … AND is subject to all other provisions of this and other bylaws of the District of Sechelt.
>
> …
>
> Outdoor Use Limited
>
> 3. All uses shall be conducted entirely within a completely enclosed building permitted under this Bylaw, EXCEPT in the case of a group day care where outdoor recreation uses are required under the Community Care Facilities Act; and there shall be no outdoor storage of materials, equipment, containers, or finished products.
>
> …
>
> Bed and Breakfast
>
> 12. Bed and Breakfast operations shall accommodate a maximum of up to four guests in up to two sleeping rooms for a maximum of 15 days for any one guest.
>
> Number of Home Occupations
>
> 13. Up to two home occupations are permitted per dwelling unit.

[23] Section 102 of the zoning bylaw contains the following definitions:

> "Accessory To" means customarily incidental to the permitted use of land, buildings, and structures located on the same lot;
>
> …
>
> "Dwelling Unit" means a suite of rooms which provides accommodations for one family, has its respective entrance, and contains sleeping, toilet facilities and not more than one set of cooking facilities;
>
> "Dwelling, Single Family" means any detached building consisting of one dwelling unit which is occupied or intended to be occupied as the home or residence of one family;
>
> …
>
> "Family" means an individual, or two or more persons related by blood, marriage, or adoption, or a group of not more than five unrelated, non-transient persons,

living together as a single non-profit group in a housekeeping unit and including servants (caregivers) employed on the premises;

…

"Guest Cottage" means a building used as a dwelling, the floor area of which does not exceed fifty-five (55) square metres;

…

"Home Occupation" means an occupation, profession or craft meeting the requirements of Section 307 of this bylaw.

[24] Section 305 of the zoning bylaw reads:

305. Accessory Buildings and Structures

1. Accessory building and structures shall be permitted in conjunction with a principal use in any zone provided that:

a) accessory buildings do not include agricultural buildings;

…

PARTIES' POSITIONS

[25] The petitioner asserts that at the time the building permits were issued, the use of the accessory building as a bed and breakfast use was expressly prohibited by the district's bylaw. Simply put, the petitioner says that the bed and breakfast use which is permitted under the zoning bylaw must be conducted in one enclosed building, and although an accessory building is allowed, the use of it for sleeping or the bed and breakfast business is not permitted. The petitioner says that the use of the accessory building as sleeping accommodation or as part of a bed and breakfast is not customarily incidental to the permitted use of the land and buildings, but is simply an extension of the principal use.

[26] The petitioner says that the amending bylaw, while clarifying that a bed and breakfast operation is not allowed in an accessory building, does not change the law.

[27] The respondents disagree. They say that an accessory building is permitted in an R-3 zone, which is not disputed. They say that a bed and breakfast use, as a home occupation, is a permitted use in the R-3 zone, which is acknowledged by the district. The only express restriction is that the accessory building has to conform to a certain size based on lot size (section 305) and the accessory building is not challenged in that respect. The respondents say that there is no express prohibition against using the accessory building as a sleeping accommodation or as part of the bed and breakfast operation.

[28] Mr. Vamplew makes the following arguments for the respondents, which are controversial:

- the accessory building is not a dwelling unit (only one dwelling unit is allowed on a property of this size)
- the accessory building is not a dwelling unit because a dwelling unit, as defined in section 102, must contain one set of cooking facilities, and as there are none this cannot be a dwelling unit.

- the phrase “accessory building” should not be defined by reference to “accessory to”, a defined term in the zoning bylaw. The proper interpretation is not that an accessory building must be “customarily incidental to the permitted use …” but rather, the phrase should be interpreted in accordance with the dictionary definition. “Accessory” in the context of “accessory building” should therefore be interpreted to mean: contributes to a subordinate degree, whether it is additional to or whether it aids or contributes to the bed and breakfast operation.
- the owners acknowledge that the bylaws provide that they can only have 4 guests in total in 2 sleeping rooms at any time (s. 307(12)), but they argue that one room in the main house and one in the accessory building can be in use, so at least three sleeping rooms are permitted, so long as only 2 are in use at any one time. Moreover, the respondents say that the use of a zoning bylaw to regulate the capacity of a business or the number of customers is *ultra vires*: ***Jensen v. Surrey (District)*** (1989), 47 M.P.L.R. 192 (B.C.S.C.). The district disputes this and says that if it is *ultra vires* because it purports to regulate the number of customers, s. 307(12) should be read down and the total number of permissible sleeping rooms for a bed and breakfast purpose in a single home occupation remains two.

ANALYSIS

[29] The bed and breakfast use is a lawful home occupation use in the R-3 zone.

[30] As the respondents’ property is less than 2000 square meters, only one single family dwelling is permitted.

[31] A single family dwelling is defined to mean “any detached building consisting of one dwelling unit which is occupied or intended to be occupied as the home or residence of one family.” A dwelling unit is defined as “a suite of rooms which provides accommodations for one family, has its respective entrance, and contains sleeping, toilet facilities and not more than one set of cooking facilities”.

[32] The respondents acknowledge that given the size of the property, there can only be one dwelling unit on the property. However, they say that the accessory building is not a dwelling unit as it does not have cooking facilities, which they say that it must to be a dwelling unit.

[33] In considering whether the accessory building can be used for sleeping accommodation as part of a bed and breakfast operation, I will consider the following questions: (1) Is sleeping accommodation a permitted use of an accessory building? (2) Must the bed and breakfast use be in the same completely enclosed building as the single family dwelling? (3) Is an accessory building, without cooking facilities, that is used for sleeping accommodation, a dwelling unit?

[34] If sleeping accommodation is permitted in an accessory building, if the bed and breakfast operation can be operated in more than one building, and if the accessory building on the Cutlans’ property is not a dwelling unit, then the petition must fail. However, if sleeping accommodation is not allowed in the accessory building, then the petition will succeed.

Accessory Building

[35] The district says that a bed and breakfast or sleeping accommodation use is not permitted in an accessory building. It points to the definition of “accessory to” in the zoning

bylaw. “Accessory to” is defined as meaning “customarily incidental to the permitted use of land, buildings, and structures located on the same lot”.

[36] The respondents say that “accessory to” is the defined term, not “accessory building”, and as such that definition of “accessory to” does not apply. If that is correct, the district argues that the ordinary meaning of accessory building in the context of the zoning bylaw would not permit what is simply an extension of the principal use.

[37] Since oral argument, I received further submissions from counsel on this point and a number of other points.

[38] The district argues that there is no basis for a different interpretation of the word “accessory” whether it appears in the phrase “accessory building” or “accessory to”. It makes no logical difference, it says, whether the term is used as a preposition or as an adjective. The district refers to the principle of consistent expression that “[i]t is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings”: Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes, 4th ed.* (Butterworths: Toronto, 2002 at page 162). In this sense, the district argues that if the meaning of “accessory” when used with “building” is governed by the definitions in the zoning bylaw, then it would mean that an accessory building is one that is customarily incidental to the permitted use of the land.

[39] Both parties referred me to cases where the word accessory appeared in municipal bylaws: ***North Vancouver (City) v. Cullen***, 2003 BCSC 679; ***Parkside Resort Motel Ltd. v. Prince Rupert (City)***, [1986] B.C.J. No. 1957 (S.C.); ***McRae v. Squamish (District)***, 2000 BCSC 1339; ***Home Depot Canada v. Richmond (City)***, [1996] B.C.J. No. 1403 (S.C.); ***Hung Ly v. Toronto (City) Chief Building Official***, [1988] O.J. No. 1109 (Dist. Ct.); ***Abbotsford (City) v. Marshall Pacific Development Corp.***, 2007 BCSC 108; ***Conlin v. Prowse***, [1993] O.J. 2923 (Gen. Div.).

[40] As noted by the respondents, in the cases above the terms “accessory use”, “accessory building, structure or use”, “accessory building”, and “accessory” all appeared in municipal bylaws where those particular terms were defined. None of the cases is directly on point. The term “accessory” relating to buildings or to use is obviously a common concept in zoning legislation and its precise meaning depends on the bylaw in question.

[41] In ***Home Depot,*** Thackray J., as he then was, considered a bylaw that used the term “accessory use" to mean “a subordinate use … the purpose of which is clearly incidental to that of the principal use…”. He noted at ¶18 that “[s]everal dictionary definitions of "incidental" were cited. These included "having a minor role", "not essential", "subordinate", "nonessential", and "subordinate to the general purpose"."

[42] If the definition of “accessory to” in the zoning bylaw is not directly applicable to the interpretation of “accessory building”, the district relies on the ordinary meaning of the term accessory building. Mr. Goulden finds some support for his argument in ***Dobson v. Edmonton (City)*** (1959), 19 D.L.R. (2d) 69 where the Alberta Supreme Court relied on the following definition of accessory:

> Webster's Dictionary states that the word "accessory" used as an adjective means "aiding or contributing in a secondary way". As a noun this dictionary describes the word as meaning "that which contributes subordinately to an effect; an adjunct or accompaniment". The Oxford Dictionary defines "accessory" as meaning "additional or subordinately contributive". The Standard Dictionary states that as an adjective "accessory" means "aiding the principal design, or assisting subordinately the chief agent; contributory, supplemental, additional";

and as a noun, "a person or thing that aids subordinately the principal agent; an adjunct; accompaniment".

[43] The petitioner's argument is that regardless of whether accessory is defined in relation to the definition of "accessory to" in the zoning bylaw or has its ordinary meaning, the result is the same and the term "accessory building" as it appears in the zoning bylaw must mean that the accessory building must have a use or purpose that is customarily incidental, subordinate and inferior to the use or purpose of the main building.

[44] The respondents disagree. They say that the term "accessory buildings" should not be interpreted in light of the defined term "accessory to" but should be interpreted in accordance with its ordinary meaning and they refer to the Oxford and Webster's Dictionaries:

> The *Oxford English Dictionary*, 2nd ed. (Oxford: Clarendon Press, 1989) at p. 74 defines "accessory" as follows:
>
> > accessory
> >
> > A**.** *adj.*
> > 1**.** a. Of things: Coming as an accession; contributing in an additional and hence subordinate degree; additional, extra, adventitious.
> >
> > B**.** *sb* [substantive]…
> > 1**.** An accessory thing, something contributing in a subordinate degree to a general result or effect; an adjunct, or accompaniment…
>
> The *Webster's Ninth New Collegiate Dictionary* (Springfield: Merriam Webster Inc., 1990) at p. 49 defines "accessory" as follows:
>
> > accessory *adj* (1607)
> >
> > 1**:** assisting as a subordinate; *esp*: contributing to a crime but not as the chief agent
> > 2**:** aiding or contributing in a secondary way: SUPPLEMENTARY
> > 3**:** present in a minor amount and not essential as a constituent <an *accessory* mineral in a rock>

[45] They argue that the issue is not whether the use of the accessory building as a sleeping accommodation is "customarily incidental" to the bed and breakfast operation but whether the accessory building contributes in a subordinate degree, whether it is additional to or whether it aids or contributes to the bed and breakfast operation. Mr. Vamplew argues that the accessory building does not stand alone but is dependent on the main building in order to operate as a bed and breakfast operation. The respondents argue that the very nature of a bed and breakfast is to provide a complete experience to guests. Without cooking facilities, a reception, access to spa services, the beach, boating, swimming and hiking, without a common sitting room and library, and without the common games room with pool table and the common theatre, the accessory building is merely sleeping accommodation which is only one aspect of the whole bed and breakfast experience. The respondents say the building in question does not stand alone but is at all times dependent on the main building in order to operate as a bed and breakfast, and therefore amounts to an "accessory building".

[46] I disagree with the respondents' interpretation and have concluded that the petitioner's position is correct.

[47] The zoning bylaw must be interpreted as a whole, coherently and with its purpose in mind. The term "accessory" as it appears in "accessory building" should be given the same

meaning as the term “accessory” as it is defined in the bylaw in “accessory to”, if context requires. The interpretation that the district urges is that “accessory building” should be interpreted to mean “customarily incidental to the permitted use of … buildings … on the same lot”. I agree that this definition is supported by section 305(1), which reads: “accessory buildings and structures shall be permitted in conjunction with a principal use in any zone…”. I think that the proper meaning of “accessory building” should draw on and be consistent with the meaning of “accessory to” and therefore it must be customarily incidental to the principal use.

[48] I agree with Mr. Goulden that the approach taken by the respondents in arguing that the accessory building only provides one aspect of a complete experience is a unique and, I find, unusual interpretation. Mr. Goulden argues that the principal use of the main building is to provide residence, shelter and overnight accommodation, either permanently or temporarily and that this is what defines a residential zone and distinguishes it from commercial uses. I think that the terms of the zoning bylaw should be interpreted in their ordinary sense, but with regard to the object and purpose of the zoning bylaw; this approach accords with the modern principle of statutory interpretation endorsed by the Supreme Court of Canada in ***Re Rizzo and Rizzo Shoes***, [1998] 1 S.C.R. 27 at 41: the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[49] My conclusion is this. Whether the phrase accessory building is defined with reference to the words “accessory to”, as I think that it should be, or with reference to the ordinary meaning, it means a building that is customarily incidental or contributing in a secondary way to the use of the main building. Perhaps the use of the building to store bicycles would amount to its use as an accessory building, as that would be customarily incidental or contributing in a secondary way to the use of the main building. However, I do not think that the use of the building for sleeping accommodation is using it as an accessory building because such a use is simply extending the principal use into the accessory building; it is a use that is one and the same as the principal use and I think that was clearly not intended.

Section 307

[50] The petitioner says that its interpretation of the meaning of accessory building is supported by the fact that the effect of sections 307(1), (3) and (12), properly interpreted, is that a bed and breakfast use must be in the same enclosed building. The respondents disagree and say that all that section 307 does is require that the bed and breakfast use be conducted indoors, not necessarily in the same building.

[51] The petitioner relies on the presumption of coherence as stated in *Sullivan and Driedger* at p. 168 that the provisions of the legislation are parts of a functioning whole and are presumed to work together to accomplish their intended goal. The goal here, the petitioner says, is to establish standards which will enhance and preserve the quality of life in the municipality and the amenities considered conducive to the health, safety, convenience and welfare of the inhabitants.

[52] The petitioner acknowledges that the requirement in s. 307(1) that “a home occupation must be located on or within a residential premises” could refer to either a dwelling or the entire lot with buildings and structures as premises, and is not defined in the zoning bylaw.

[53] The respondents say that the phrase “on or within” must be given some meaning and that “residential premises”, which is not defined, should be interpreted broadly, and that the requirement in section 307(3) that the use be conducted within a “completely enclosed building”,

properly interpreted, means, as the explanatory notes suggest, that the bed and breakfast operation must be conducted indoors.

[54] I find that the more reasonable interpretation is that any ambiguity in section 307(1) as to scope of the residential premises where a home occupation business may be located is clarified by the phrase in s. 307(3) that it is to be "entirely within a completely enclosed building". It is significant that the singular of "building" rather than the plural was used. That has the effect of restricting outdoor use, but it also indicates that a home occupation use is to be carried on in one building, not more than one building.

[55] The respondents however point to section 307(2) which they suggest restricts signage for a building and argue it could not have been intended to restrict signage for only one building. If so, they ask, where are the restrictions for the other buildings? The respondents say that reference to "building" in section 307(2) must have been intended to apply to numerous buildings. Section 307(2) reads, in part: "[n]o external indication shall exist that a building is used for a purpose other than that normally associated with a residential building, EXCEPT for a single non-internally illuminated sign not to exceed 0.3 m²". The petitioner argues that this provision does not restrict signage on a single building but restricts signage about the single building. I agree with that argument.

[56] I find that it is unnecessary to deal with the respondents' argument that s. 307(12) in regulating the number of guests or the capacity of the business is *ultra vires*.

[57] In my view, the proper interpretation of section 307 is that the home occupation use must be conducted out of one completely enclosed building. Reading the bylaw as a whole, I find that section 307 supports the petitioner's interpretation of the zoning bylaw that the bed and breakfast use was to be in the main building and not also to be in an accessory building.

Dwelling Unit

[58] The respondents acknowledge that given the size of the property, only one dwelling unit is permitted. They say that the use of the accessory building as part of the bed and breakfast operation is not using it as a dwelling unit. Under the zoning bylaw, "dwelling unit" has the following definition: "a suite of rooms which provide accommodation for one family, has its respective entrance, and contains sleeping, toilet facilities and not more than one set of cooking facilities". The respondents say that there must be at least one set of cooking facilities for something to be a dwelling unit, which they say is confirmed by the fact that a dwelling unit is to accommodate one family and that the members of the family live together in a housekeeping unit which the respondents say must contain separate facilities for the preparation of food. Therefore, they argue that the proper interpretation of "dwelling unit" requires that the building contain one set of cooking facilities, and as the accessory building does not, it cannot be a dwelling unit.

[59] The respondents argue that this interpretation is confirmed by the administrative interpretations of the petitioner's employees.

[60] The petitioner says that the accessory building is a separate dwelling unit as defined in the zoning bylaw as "a suite of rooms which provides accommodation for one family, has its respective entrance, and contains sleeping, toilet facilities and not more than one set of cooking facilities" [emphasis added]. I agree that the choice made by the district was that two sets of cooking facilities in the unit would make it not a dwelling unit and therefore not allowed, but I think that having no cooking facilities falls within the meaning of "not more than one set of cooking facilities".

[61] Mr. Goulden says that that there should be a purposive analysis when defining words used in a zoning bylaw. The question, he submits, that should be considered is whether the character of the zone is being changed or the real objective of the zoning bylaw is being in any way frustrated by the use made of the premises. He argues that the intention of the municipality that there be a single family dwelling on a lot of this size should not be thwarted by the fact that the homeowner did not put cooking facilities in the accessory building and then was allowed to use it for residential purposes.

[62] I agree with Mr. Goulden that the comments of the administrative staff about the municipal bylaws are not admissible as evidence of their proper meaning.

[63] Mr. Vamplew however, argues that an application of the *ejusdem generis* rule to the definition of "dwelling unit" means that the phrase "and contains … not more than one set of cooking facilities" should be read narrowly to mean that the suite of rooms must contain cooking facilities, just as it must contain sleeping and toilet facilities.

[64] I agree with the petitioner that the application of the *ejusdem generis* or limited class rule does not operate to support the respondents' interpretation. According to the Supreme Court of Canada in ***National Bank of Greece (Canada) v. Katsikonouris*** (1990), 74 D.L.R. (4th) 197 at 203, quoted in *Sullivan and Driedger* at p. 175, the limited class or *ejusdem generis* rule provides that "when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it".

[65] According to the respondents, because the definition of "dwelling unit" includes "sleeping facilities" and "toilet facilities" and they both describe household amenities, then all subsequently mentioned amenities must also be required for it to be a dwelling unit. I do not think that the respondents are really applying the limited class rule in making this argument. The *ejusdem generis* rule does not apply here and it does not assist the respondents.

[66] I have concluded that sleeping accommodation is not permitted in the accessory building. I base that conclusion on my interpretation of the zoning bylaw as a whole. The requirements that the home occupation be conducted within a completely enclosed building and that there may only be one dwelling unit on a property of the size of the respondents' also support that interpretation. As such, the petitioner is entitled to the injunction it seeks. The respondents asked me to dismiss the application and have all issues decided in the action they started. I decline to do that. This ruling does not affect the respondents' claim for damages that they are pursuing in the related action.

CONCLUSION

[67] The petitioner is entitled to an injunction restraining the respondents from using the accessory building as sleeping accommodation in their bed and breakfast business.

"J.S. Sigurdson J."
The Honourable Mr. Justice J.S. Sigurdson