

Fax

To: Mike Kirkegaard **From:** Alan Gelfand
Fax: 932-6734 **Date:** October 4, 1999
Phone: **Pages:** 3
Re: Horstman Zoning **CC:** Russell Barton, Bill Wright

Urgent For Review Please Comment Please Reply Please Recycle

•**Comments:** Dear Mike,

Russell Barton acting as chair and Bill Wright acting as vice-chair have asked me to bring you up to date about what took place at our meeting. Russell Barton and I have now been assigned the responsibility to be your official contact's for Horstman Estates with all written correspondence going to Russell Barton and copying to myself. To bring you up to date the following took place at our annual strata meeting on Saturday October 2, 1999.

- a) Ron Norman is no longer a member of the Strata Council.
- b) Russell Barton was elected the Strata Council Chairman.
- c) Myself and 4 others were elected to the Strata Council making it 6 members.
- d) A special resolution to ban nightly rentals in Horstman Estates was defeated for the third year in a row.
- e) **Less than 25% of the total membership voted for the resolution.**

This sends a clear message to RMOW that less than 25% of our community feel strongly that our area should be a non-rental area. The members are no longer being as easily swayed as Ron has been able to do in the past and are more interested in the facts of the lawyers and RMOW than the opinions of Ron and a few of his extremist supporters. In fact, there are many new members of our community in the past year and none of them voted for the resolution to pass.

What this also says is it is highly unlikely the current strata membership will ever vote 75% in favor one way or the other. The onus and the responsibility once again falls totally on RMOW for both sections of our sub-division (BLUC & RS3).

I would like to reiterate our conversation Thursday and encourage you and your staff to review the facts because through all of this, the facts make the most sense.

Fact: The area of Horstman Estates within the BLUC falls within a ZONE which from 1979 to 1988 did not allow any "warm beds" within any of the "Permitted Uses" in that ZONE.

FACT: In 1988 the BLUC was amended and changed the above ZONE to a ZONE which allowed "warm beds" within the "Permitted Uses" of that ZONE. Once again Horstman Estates was in an area that lay within this ZONE.

FACT: Nowhere within any of the documents sourced by RMOW both on and off title in reference to Horstman Estates (dating back before the development was made) was there any mention of restricting A) nightly rentals, B) temporary use, or C) "warm beds".

FACT: The definition of "Single Residential Building" (SRB for our purposes) was laid out within the original BLUC and has never been altered, amended or changed. Its definition "shall mean a building consisting of one Dwelling Unit which is occupied or intended to be occupied seasonally or permanently by one family or six fewer unrelated persons living together as a single domestic unit...". Nowhere within the definition does it restrict other "Permitted Uses" within the building when it is not being used seasonally or permanently by a family or as many as 6 unrelated persons.

FACT: The only Restrictive Covenant on title for Horstman Estates has nothing to do with on-going use. It was clearly for construction purposes only.

The above are the only facts that are indisputable and should be conclusive enough for RMOW to designate the area of Horstman Estates within the BLUC as allowing "warm beds" within the SRB at any time except when it is being occupied seasonally or permanently (which we openly admit must be a prerequisite).

It was common knowledge at that time that the mandate of the RMOW as well as all the other governing bodies was to designate all "Resort Lands" as "warm beds". This is consistent with all of the facts above. All other facts are ambiguous and should not be relied on. For example:

- A) The term "**Residential**" is clearly used by RMOW in documentation on title for both properties, which were definitely built and zoned to not permit nightly rentals, and those that were clearly built and zoned for nightly rentals. How can RMOW tell us that Horstman does not allow nightly rentals because the "original intention was to make it a **residential** neighborhood"? **THEY CAN'T!** As any court would probably rule in our favor based on all the ambiguity over the definition. RMOW has already acknowledged this ambiguity and worked towards correcting it in the area adjacent to the Chateau Whistler Golf Course and into the Woodlands neighborhood.
- B) The terms of "SRB and "Multiple Residential Building" (MRB for our purposes) are identical in meaning in reference to "Permitted Uses" except that SRB's must have the intention to be used seasonally or permanently. If MRB's allow nightly rentals than so do SRB's. If RMOW were to argue this point it would open up a whole can of worms based on the ambiguity between MRB's, Lodge's, and Hotel's. If one is to follow the definitions in the BLUC one would find that there are really no lodges within the BLUC by it's own very definition. The BLUC defines a lodge has having only "sleeping units" however, the only "sleeping units" in the whole BLUC by definition are in the Chateau Whistler Resort (a "Hotel"). Therefore, all other units within the BLUC are "Dwelling Unit's" which are defined as a "self-contained **residential** unit having cooking facilities". If they are dwelling units, then 92% of all the units within the BLUC are MRB's and therefore should not be able to be used for nightly rentals by RMOW's own interpretation. This represents a huge ambiguity that clearly exits and once again would probably favor our position if it ever were taken to court. **The inconsistencies are tremendous.**
- C) The parking requirements within the BLUC are totally inconsistent as the majority of complex's that definitely allow nightly rentals do not meet the same requirements as we have been told we have to meet (by the way, our property does have 8 stalls on it). This is another example of ambiguity and inconsistency that would probably once again favor us in the courts.

In summary, although a lot of our correspondence to date has been based on the technicality that we fall under a "lodge" use (which by the way is the same technicality that allows 92% of the BLUC to allow nightly rentals – all MRB's), clearly, the facts as I have outlined them above, prove that Horstman Estates was created in a "warm bed" area and the only restrictions upon the homes built there were that they would have to follow construction guidelines within the Restrictive Covenant and the intention was to use them seasonally and permanently by a single family. If RMOW or the developer of Horstman Estates clearly wanted to restrict nightly rentals they had plenty of simple opportunities to do so. They did not. The point you also have to realize is that Intrust back then and right up until today have always maximized their marketing abilities by not restricting **any** of their projects (to my knowledge) from nightly rentals. This should once again send a clear message to RMOW what their original intention was especially when you combine this with the previous mandate I mentioned. I also strongly believe that the additional facts laid out as ambiguities would fully support this theory and it is something I would recommend RMOW to be careful of as it would surely open up that "can of worms" that for your sake should probably remain sealed.

In addition, since you have clear documentation which says that the RS3 area was to be the same as the BLUC area you should treat this area as one and make whatever zoning adjustments you have to make it consistent. A Strata vote is unnecessary similar to what you did in the area's near us because you have the documentation on title that says it must be the same. I don't believe you had that in the areas nearby.

Finally, I hope you can make a positive recommendation to council today in reference to acknowledging Horstman Estates as allowing nightly rentals as it is clearly in a "warm bed" area and there is nothing on title to say otherwise. I would be happy to make a personal presentation to council to explain this fax and be available for any questions.

Sincerely,



Alan Gelfand

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