

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Corporation of the District of Saanich*
v. Kinney,
2025 BCSC 1132

Date: 20250618
Docket: 231164
Registry: Victoria

Between:

The Corporation of the District of Saanich

Petitioner

And

Nancy Anne Kinney

Respondent

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the Petitioner:

G. Simair

Counsel for the Respondent:

K. Tousaw

Place and Date of Hearing:

Victoria, B.C.
April 14 and 17, 2025

Place and Date of Judgment:

Victoria, B.C.
June 18, 2025

Table of Contents

INTRODUCTION 3

ISSUES..... 3

DISCUSSION..... 4

 The legal framework..... 4

 Exceptional circumstances..... 4

 Allowing unpermitted and unlicensed businesses to operate 6

 Allowing the use of or using RVs and other vehicles for lodging or accommodation
 8

 The use of RVs for lodging farm workers..... 9

 The use of RVs for accommodation related to agri-tourism..... 11

 Permitting secondary suites on the property 13

 Permitting occupancy without an occupancy permit..... 15

 Constructing structures without valid and subsisting permits and not conforming to
 the Building Code 15

EVIDENTIARY ISSUES..... 17

 Evidence regarding non-compliance with the Building Code..... 17

 Evidence regarding the non-existence of permits or licenses 18

 Hearsay..... 19

ORDERS AND COSTS 19

Introduction

[1] In this petition proceeding, the District of Saanich seeks declarations, injunctions, and various other orders enforcing by-laws allegedly violated by the respondent. All of the relief sought involves a 17-acre rural lot, owned and occupied by the respondent, located on Old East Road in Saanich (the “property”).

[2] The property is located within the Agricultural Land Reserve (ALR) and is designated by Saanich’s zoning bylaw as “A-1 Rural.” There are eleven structures on the property, including a large house, a covered riding ring, a small building with a washer, dryer, toilet, and shower (the “washroom building”), several small buildings used for storage, a metal workshop, a woodworking shop, and two garages.

Issues

[3] Saanich submits that the property is being used in five prohibited ways. It alleges that the respondent:

- a) is allowing unpermitted and unlicensed businesses to operate on the property;
- b) is allowing the use of trailers, motor vehicles, or recreational vehicles for lodging, sleeping, accommodation or residences contrary to Saanich’s zoning bylaw;
- c) is permitting secondary suites on the property;
- d) is permitting occupancy of a building, or parts of a building, on the property, without a subsisting occupancy permit; and
- e) has constructed or altered the use or occupancy of buildings or structures on the property without valid and subsisting permits, and not in conformity with the BC Building Code.

[4] I will address these alleged contraventions in turn.

Discussion

The legal framework

[5] Section 274(1) of the *Community Charter*, S.B.C. 2003, c. 26, provides that a municipality may, by a proceeding brought in Supreme Court, enforce, prevent, or restrain the contravention of a by-law. Once a municipality establishes a clear breach of a bylaw, the Court should grant the injunction, barring exceptional circumstances. To the extent that the respondent may suffer hardship from the imposition and enforcement of an injunction, that will not outweigh the public interest in having the law obeyed: *Maple Ridge (District of) v. Thornhill Aggregates Ltd.*, 1998 CanLII 6446 (BCCA) at para 9.

[6] I observe that in some of the cases relied upon by the respondent, the Court has considered whether there is an arguable defence in the course of determining whether an injunction ought to be granted: see, for example, *Saanich (District) v. Island Berry Company Ltd.* 2008 BCSC 614. However, those cases involve applications for interlocutory injunctions. While it is logical that pre-hearing relief might be denied if there is an arguable defence to the contravention claim, it is not appropriate to consider on the final hearing of such a claim simply whether a defence is arguable.

[7] On a final hearing of a by-law contravention dispute on its merits, the Court's task is to make a determination as to whether, in light of the respondent's defences, the municipality has established a clear breach of the applicable by-laws. It must also consider whether it ought to exercise its narrow discretion to refuse an injunction that would otherwise be ordered, because of exceptional circumstances.

Exceptional circumstances

[8] In *Victoria (City) v. Smith*, 2020 BCSC 1173 [*"Smith"*] at para. 29, Justice Mayer (then of this Court) identified five examples of "exceptional circumstances" that may cause the Court to deny an injunction to enforce an enactment:

a) where there was a right that pre-existed the enactment contravened;

- b) where there is a clear and unequivocal expression that the unlawful conduct will not continue;
- c) where there is such uncertainty that it can be said that the breach is not being flouted;
- d) where the events do not give rise to the mischief the enactment was intended to preclude; or
- e) where the respondent has ceased the majority of its offending activities and carried on, only in a limited way, with activity that is not harmful in the way that the bylaw was intended to prevent: *Maurice*, at para. 20.

[9] The respondent argues that the first of these circumstances (the “pre-existing right exception,” also known as “non-conforming use”) applies in this case. In support of this argument, she relies on an affidavit from the previous owner in which he describes the various ways in which he used the property. Those ways are similar to the ways in which the respondent is using the property today and which are the subject of this petition.

[10] However, the respondent appears to misconceive the meaning of the first exceptional circumstance set out in *Smith*. It is not sufficient for her to show that the property was used in the same way before she purchased it; rather, she must show that the previous owner had a *right* to use the property in that way.

[11] Section 528 of the *Local Government Act*, R.S.B.C. 2015, c. 1, provides:

Non-conforming uses: authority to continue use

528 (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,

(a) land, or a building or other structure, to which that bylaw applies is lawfully used, and

(b) the use does not conform to the bylaw,

the use may be continued as a non-conforming use.

[Emphasis added]

[12] As no evidence has been adduced regarding the legality of the previous owner’s use, the pre-existing right exception is not applicable in this case.

[13] I have considered whether any of the other exceptional circumstances set out in *Smith* arise in this case, and I have concluded that they do not. The respondent

has not clearly and unequivocally expressed that the unlawful conduct will not continue, and the alleged contraventions are the type of activity that the enactments are intended to prevent. As will be discussed below, the respondent has not ceased the majority of her offending activities.

[14] In respect of each of the alleged contraventions, I will consider two questions: what facts are proven by admissible evidence; and do those proven facts demonstrate a clear breach of the applicable by-law?

Allowing unpermitted and unlicensed businesses to operate

[15] Regarding the operation of unpermitted and licensed businesses, the respondent admits that there are several businesses operating on the property. The Petition Response concedes that multiple businesses “make up the farm operation” and that other businesses “are on the Property working on various projects as part of the overall farm operation which is quite extensive and is year-round.”

[16] Further, Saanich’s position on this issue is supported by affidavit evidence from Derek Archer, an assistant business license inspector employed by Saanich.

[17] Mr. Archer deposes that he observed on the property a “tarped off area containing a large amount of patio furniture,” and he exhibits to his affidavit copies of online advertisements for the sale of patio furniture which, he deposes, show the same “floor and background” that he observed at the property.

[18] Mr. Archer also deposes that he observed multiple recreational vehicles, cars, and trucks parked inside the covered riding ring on the property, and he exhibits a copy of another online post advertising “indoor parking for boats, trailers, vehicles available.” The photograph in that advertisement shows vehicles parked in the covered riding ring.

[19] Further evidence on this issue was given by Robert Carrie, a bylaw enforcement officer for Saanich. He deposes that there is a metal workshop on the property, and that he found in that workshop order forms and invoices for a company

called “Metal Magnate Art Ltd.” These documents are exhibited to Mr. Carrie’s affidavit, and the affidavit of Roy Thomassen, Manager of Building Inspection Services for Saanich.

[20] In my view, based on the evidence described above, it is clear that the property is being used for business purposes not related to farming.

[21] Section 3.2 of the Saanich Zoning Bylaw 8200 (the “Zoning Bylaw”) provides that no “land, building or structure shall be used ... for any use other than a use which is expressly permitted.”

[22] Schedule 101 sets out the permitted uses in areas zoned “A-1.” They include only “agriculture,” “single family dwelling,” “boarding,” “home occupation,” “accessory produce sales,” and “accessory buildings and structure.” None of these permitted uses encompass the business uses being made of the property in this case.

[23] Further, s. 9 of Saanich’s Business License Bylaw, 2002 no. 8213 (the “Business Bylaw”) states that “No person shall carry on a resident business in or from any premises in Saanich other than those specified on a valid and subsisting Business License.” Mr. Archer deposes that he searched Saanich’s files to determine if there were any business licenses for the property, and there was none.

[24] In relation to this issue, the respondent relies on s. 24 of the *Agricultural Land Reserve Use Regulation*, B.C. Reg. 36/2022 [the “ALR Use Regs”]. Section 24(1) provides:

Home occupation use

[24] (1) The use of agricultural land for a commercial or similar use within a structure is permitted, but may be prohibited as described in section 20, if all of the following conditions are met:

- (a) the structure is accessory to and located on the same parcel as a residence;
- (b) the structure occupies an area that does not exceed
 - (i) the limit specified in an applicable local government enactment or first nation government law, or
 - (ii) if subparagraph (i) does not apply, 100 m².

[25] Section 20 provides:

Permitted non-farm uses that may be prohibited

[20] The non-farm uses permitted under this Division may be prohibited

(a) by a local government enactment, or

(b) by a first nation government law, if the activity is conducted on settlement lands.

[26] The respondent argues that s. 24(1) means that commercial use of a property is generally permitted but may be prohibited if the conditions in ss. 24(1)(a) and (b) are satisfied. However, in my view, that interpretation neither conforms with a strict construction of the section nor does it make logical sense.

[27] First, the respondent's construction of s. 24 would require one to ignore the second comma. Second, it is evident that the conditions in ss. 24(1)(a) and (b) ought to lead to greater permission for commercial use, not less: why would the municipality want to prohibit commercial uses in small structures, but not large ones?

[28] In my view, s. 24 provides that if commercial use is not prohibited under s. 20 (in other words, if no government enactment or first nation government law has been enacted prohibiting commercial use), commercial use is permitted *if* the conditions in ss. 24(1)(a) and (b) are met.

[29] For these reasons, s. 24 of the *ALR Use Regs* does not assist the respondent. It is clear, in my view, that her use of the property for business purposes not related to farming constitutes a contravention of s. 3.2 of the Zoning Bylaw and s. 9 of the Business Bylaw.

Allowing the use of or using RVs and other vehicles for lodging or accommodation

[30] Some facts relating to the use of recreational vehicles (RVs) for lodging or accommodation on the property are conceded. The Petition Response states that the property "has ten serviced sites connected to septic, water and electricity in the

former outdoor riding area used for tourists, farm workers and shareholders of the Company that leases the Property from the Petition Respondent.”

[31] Further, Mr. Carrie deposes that he observed eight RVs on the property. Six were hooked up to electricity, water, and sewer. He entered each of them and found clothing, personal effects, and food in the refrigerators. The Court is readily able to infer from those facts that when Mr. Carrie attended at the property, the RVs were being used for lodging or accommodation.

[32] Section 5.2 of the Zoning Bylaw prohibits use of a trailer or RV for lodging, sleeping, or accommodation. It provides:

Prohibited Uses of Land, Buildings and Structures

The following uses shall not be permitted in any zone unless expressly permitted in the applicable zone:

...

(f) The use of a tent, trailer, motor vehicle, recreational vehicle, or accessory or agricultural building for lodging, sleeping, accommodation or a residence.

[33] In response to Saanich’s submissions with respect to this issue, the respondent argues that some of the RVs are related to farm operations, in that they provide lodging for farm workers, and that other RVs are designated for agri-tourism. These arguments bring into play two different statutory schemes.

The use of RVs for lodging farm workers

[34] I have been shown no provision in any statute that exempts farm workers from s. 5.2 of the Zoning Bylaw.

[35] The respondent relies on s. 2 of the *Farm Practices Protection (Right to Farm) Act*, R.S.B.C. 1996, c. 131 [the “FPPA”] which provides:

Normal farm practices protected

[2] (1) If each of the requirements of subsection (2) is fulfilled in relation to a farm operation conducted as part of a farm business,

(a) the farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation, and

(b) the farmer must not be prevented by injunction or other order of a court from conducting that farm operation.

(2) The requirements referred to in subsection (1) are that the farm operation must

(a) be conducted in accordance with normal farm practices,

(b) be conducted on, in or over land

(i) that is in the agricultural land reserve,

(ii) on which, under the *Local Government Act*, farm use is allowed,

(iii) that is used for a type of aquaculture prescribed for the purpose of paragraph (h) of the definition of "farm operation", or

(iv) that is Crown land designated as a farming area under subsection (2.1), and

(c) not be conducted in contravention of the *Public Health Act*, *Integrated Pest Management Act*, *Environmental Management Act*, the regulations under those Acts or any land use regulation.

[36] The respondent argues that s. 2(1) precludes the injunction sought in this case with respect to farm workers housed in RVs. In my view, however, there are at least two reasons why s. 2(1) does not assist the respondent.

[37] First, in my view, the *FPPA* is not intended to preclude all injunctions that would prevent a farmer from conducting a farm operation. Rather, s. 2(1) is intended to deal with injunctions grounded in nuisance claims: in that context, subsection (a) provides that no liability shall flow from such claims, and (b) provides that no injunction is available in respect of such claims.

[38] This interpretation of the *FPPA* is consistent with the decision in *Holt v. Farm Industry Review Board*, 2014 BCSC 1389 at para 9, wherein Justice Armstrong held:

In 1995, the BC legislature enacted the *FPPA* to protect farmer's rights in BC. The *FPPA* specifically relates to nuisances such as odour, noise, dust or other disturbances. Under the *FPPA*, if a farmer uses normal farm practices and does not contravene any other legislation, the farmer is not liable to any person for nuisance and cannot be prevented from operating a farm by an injunction or court order.

[39] Second, s. 2(1) does not exempt the property from the Zoning Bylaw. Under s. 2(2)(c), the farm operation may not be conducted in contravention of "any land

use regulation.” As stated by this Court in *Agricultural Land Commission v. Munro*, 2006 BCSC 1408:

[101] The combined effect of these provisions is that a farm operation must be in compliance with all applicable land use regulations, including those in the *ALCA*, before the "right to farm" protection of s. 2(1)(b) of the *FPPA* can be invoked.

The use of RVs for accommodation related to agri-tourism

[40] In relation to the respondent’s argument that some of the RVs are used for agri-tourism, the respondent deposes:

The Company’s farm operation on the Property involves various activities such as beekeeping, growing industrial hemp and lavender, vermiculture, foraging, land clearing, firewood and lumber production, animal husbandry (sheep, pigs, goats and chickens), and agritourism and tourism. The Company aims to establish a farm gate store for all of its products, and to expand its agritourism activities to include events and agritourist accommodations to showcase and market their farm products. That is the plan at least ...

[Emphasis added.]

[41] I infer from this passage that the present farm operation includes some agri-tourism and tourism, but that agritourist accommodations are an “aim” or a plan for the future. The respondent also deposes:

The RV sites provide homes for farm workers, shareholders of my farm operations and tourists. Everyone in the RV sites who live on the Property full time, have very little – if no other options, for accommodations anywhere in the city, due to an extreme lack of affordable housing in the city and are all very pleased to have a home.

[42] In this passage, although the respondent states that the RV sites provide homes for tourists, she also acknowledges that there are at least some tenants who live in the RVs full-time.

[43] In light of the foregoing, I have concluded that the respondent is using RVs on the property for lodging or accommodation in contravention of s. 5.2 of the Zoning Bylaw. However, in case the respondent is also providing or may provide accommodations in the RVs to agritourists, it is necessary to consider whether that

use of the RVs would be legal, and to what extent. In this regard, the respondent cites s. 4 of the *ALR Use Regs* which states:

Farm uses that may not be prohibited

[4] The farm uses referred to in this Division may not be prohibited

- (a) by a local government enactment except a bylaw under section 552 [*farming area bylaws*] of the *Local Government Act*, or
- (b) by a first nation government law, if the activity is conducted on settlement lands.

[44] The “farm uses referred to in this Division” include agri-tourism, which is addressed in s. 12:

Agri-tourism

[12] (1) The use of agricultural land for conducting an agri-tourism activity described in subsection (2) of this section is designated as a farm use and may not be prohibited as described in section 4 if all of the following conditions are met:

- (a) the activity is conducted on agricultural land that is classified as a farm under the *Assessment Act*;
- (b) members of the public are ordinarily invited to the activity, whether or not a fee or other charge is payable;
- (c) no permanent facilities are constructed or erected in connection with the activity.

(2) The following are agri-tourism activities for the purposes of subsection (1):

- (a) an agricultural heritage exhibit displayed on the agricultural land;
- (b) a tour of the agricultural land, an educational activity or demonstration in respect of all or part of the farm operation conducted on that agricultural land, and activities ancillary to any of these;
- (c) cart, sleigh and tractor rides on the agricultural land;
- (d) subject to section 9 [*horse facilities*], activities that promote or market livestock raised or kept on the agricultural land, whether or not the activity also involves livestock raised or kept elsewhere, including shows, cattle driving and petting zoos;
- (e) dog trials held on the agricultural land;
- (f) harvest festivals and other seasonal events held on the agricultural land for the purpose of promoting or marketing farm products produced on that agricultural land;
- (g) corn mazes prepared using corn produced on the agricultural land on which the activity is taking place.

[45] Further, s. 33 and s. 34 of the *ALR Use Regs* allow for agri-tourism accommodation. Section 33 and s. 34(1) and (2) provide:

Agri-tourism accommodation

33 (1) In this section, "sleeping unit" means the following:

- (a) a bedroom or other area used for sleeping located in a residence, cabin or other structure;
- (b) a vehicle, trailer, tent or other structure located on a campsite, field or other area.

(2) The use of agricultural land for providing accommodation in relation to an agri-tourism activity is permitted if all of the following conditions are met:

- (a) the accommodation is located on agricultural land that is classified as a farm under the *Assessment Act*;
- (b) the total developed area for structures, landscaping and access for the accommodation is less than 5% of any parcel;
- (c) the accommodation is limited to 10 sleeping units in total, including bedrooms under section 34 [*tourist accommodation*];
- (d) accommodation is provided on a seasonal or short-term basis only.

Tourist accommodation

34 (1) In this section, "bedroom" means a bedroom or other area used for sleeping in a residence.

(2) The use of agricultural land for providing accommodation for tourists is permitted in a principal residence that is not a pre-existing residential structure if both of the following conditions are met:

- (a) the accommodation is limited to 4 bedrooms in total;
- (b) accommodation is provided on a short-term basis only.

[46] It is apparent from the foregoing that s. 33 allows for up to ten sleeping units to be provided in vehicles or trailers in relation to agri-tourism, although only on a seasonal or short-term basis. In my view, s. 34 has no application in this case: in particular, the secondary suites are not "bedrooms" as that term is used in the section.

Permitting secondary suites on the property

[47] In relation to secondary suites, evidence on behalf of Saanich was provided by Mr. Thomassen and Mr. Carrie.

[48] Mr. Carrie deposes that the main house on the property is divided into three separate dwelling units.

[49] He describes unit one on the lower level as a “self-contained suite with a kitchen, three-piece bathroom and one bedroom.” There was a woman inside when Mr. Carrie attended at the building.

[50] He describes the second unit on the lower level as a “self-contained suite with a kitchen, three-piece bathroom, laundry room and two bedrooms.” He deposes that the suite appeared lived in, with unspoiled food in the fridge, clothes and personal effects in the bedrooms, and personal items in the bathroom. He also deposes that the respondent told him that she lived in that unit.

[51] Mr. Carrie deposes that there was a third dwelling unit upstairs in the house. He describes it as having a full kitchen and three bedrooms with “lots of clothing items and personal effects in them.” He deposes that when he and Mr. Thomassen arrived, a woman answered the door.

[52] In my view, this evidence establishes that there were at least two secondary suites on the property.

[53] The prohibitions against secondary suites are found in the Zoning Bylaw. It was brought to my attention during the hearing that the bylaw was changed between the date that the applicant’s materials were prepared and the hearing date. The Zoning Bylaw provided to the Court at the hearing did not provide for any secondary suites in A-zoned lots, but the current Zoning Bylaw provides as follows at s. 5.24:

Secondary Suite – Rural and Single Family Zone

(b) Notwithstanding any other provision of this bylaw, a secondary suite is a permitted accessory use in all RS, RD, and A zones, subject to the following conditions:

- No more than one secondary suite is permitted per real estate entity;
- The secondary suite must be located within a single family dwelling or houseplex;
- A secondary suite shall not be sited or located on a separate titled parcel from the single family dwelling or houseplex;

- No person shall occupy a secondary suite, and no person shall permit or suffer a person to occupy a secondary suite, unless an occupancy permit has been issued for the secondary suite under the Building Bylaw, No. 9529, or any successor bylaw.
- Unless the applicable regulations say otherwise, one additional on-site parking space for the occupant of the suite must be installed per the requirements of Zoning Bylaw, 2003;
- Boarding is not permitted within the secondary suite.

[54] This provision allows for one secondary suite per real estate entity. As a result, one of the secondary suites on the property is allowed by s. 5.24 of the Zoning Bylaw.

[55] In its prayer for relief, Saanich seeks an order that “the respondent decommission or convert all secondary suites on the property to a single-family dwelling to the satisfaction of Saanich.” This prayer for relief was not specifically addressed during argument, and I have not been made aware of any authority or enactment that would require such decommissioning or conversion, or what that might mean. As a result, I am not prepared to grant this term of the order sought, but an injunction will be granted prohibiting the respondent from having more than one secondary suite on the property.

Permitting occupancy without an occupancy permit

[56] Saanich relies on s. 4.2 of the Building Bylaw which requires occupancy permits in respect of any building or structure. However, I have been shown no evidence that there are no occupancy permits in respect of the secondary suites, and I do not understand Saanich to be alleging that any other building on the property is being occupied without an occupancy permit. In my view, the RVs are not buildings or structures within the meaning of the bylaw.

Constructing structures without valid and subsisting permits and not conforming to the Building Code

[57] Section 4.1 of the Building Bylaw prohibits any person from “commencing or continuing” construction, or changing the use or occupancy of any building except in conformity with the British Columbia Building Code. Section 7.1 requires every

owner to apply for and to obtain a permit prior to constructing, repairing, altering, occupying, or changing the use of a building or structure.

[58] Saanich alleges that the respondent has contravened s. 7.1 by failing to apply for and obtain a permit before constructing, repairing, altering, occupying, or changing the use of the secondary suites and the washroom building. Mr. Thomassen deposes that he reviewed Saanich's files and there are no permits allowing homes on the property to be divided into multiple suites.

[59] However, in my view, the evidence adduced by Saanich is insufficient to prove this contravention, as there is no admissible evidence that the respondent constructed any of these units or structures.

[60] Saanich urges the Court to draw an inference from photos of the secondary suites that the respondent must have constructed, or at least altered, them. However, she purchased the property only in 2011. I am not prepared to infer simply from the apparent "newness" of the renovations as depicted in the photos that the renovations were performed after 2011.

[61] Further, I am unable to find that the construction of the washroom building contravened the Building Bylaw. According to section 3.3, the Building Bylaw does not apply to an accessory building with a floor area of less than 10 square meters. As there is no evidence regarding the size of the washroom building, and I cannot infer that it is greater than 10 square meters, I cannot find that it was constructed in contravention of s. 4.1 or s. 7.1.

[62] Saanich alleges that various aspects of several buildings on the property do not conform to the Building Code, but the evidence advanced by Saanich in support of those allegations is also insufficient. For example, Mr. Thomassen deposes that a wood stove in one of the buildings on the property "did not meet clearance requirements as set out in the BC Building Code." As argued by the respondent, he provides no dimensions or measurements and does not set out the Building Code

requirements in his affidavit, making his statement conclusory and without an evidentiary foundation.

[63] Similarly, Mr. Thomassen deposes that work in a second building “appeared unpermitted and non-compliant with the BC Building Code; in particular, insufficient guardrails for the stairs to the second floor and the second-floor walkway, and insufficient ceiling clearance.” Again, he does not provide any dimensions or measurements, and he does not set out the Building Code requirements.

[64] Mr. Thomassen deposes that he is an experienced building inspector and a registered “building official.” Notwithstanding his expertise and experience, however, he is required to state and provide evidence of the underlying facts and standards upon which he relies. Otherwise, it is impossible for the Court to assess and for the respondent to test his assertions that structures on the property do not comply with the Building Code.

[65] For the reasons stated, I am unable to find that the respondent contravened ss. 4.1 and 7.1 of the Building Bylaw by constructing structures without valid and subsisting permits and without conforming to the Building Code.

Evidentiary issues

[66] In defence of this petition, the respondent raises three broad evidentiary issues.

Evidence regarding non-compliance with the Building Code

[67] The respondent attacks the evidence proffered by Saanich in support of its argument that certain aspects of buildings on the property are non-compliant with the Building Code on the basis that it is comprised of conclusory statements for which the foundation is insufficient. I agree with the respondent on this point, and I have addressed those evidentiary concerns above.

Evidence regarding the non-existence of permits or licenses

[68] The respondent seeks to exclude evidence given by Mr. Archer and Mr. Thomassen that certain permits or licenses were not found in Saanich's records for the property. In particular, I have relied above on Mr. Thomassen's evidence that he reviewed Saanich's files and there are no permits allowing homes on the property to be divided into multiple suites. Further, I have relied on Mr. Archer's evidence that he searched Saanich's files to determine if there were any business licenses for the property, and that he found none.

[69] With regard to this evidentiary point, the respondent cites this Court's decision in *Surrey (City) v. Kallu*, 2024 BCSC 333 [*"Kallu"*]. In that case, the city's application for an injunction was dismissed because the key witnesses on behalf of the city all derived their knowledge "from reviewing records by someone else." The Court in that case held that this use of the city's records constituted impermissible hearsay.

[70] However, in my view, *Kallu* does not preclude the admission of the evidence of Mr. Archer and Mr. Thomassen about which the respondent complains. In my view, this case is distinguishable because, in *Kallu*, the city was seeking to prove the extent to which the building on the respondent's property deviated from what had been authorized. Therefore, it was necessary to have reference to the contents of the records. The appropriate course in *Kallu* would have been for someone to produce the records and to have them admitted under the business records exception to the hearsay rule.

[71] By contrast, in this case, Mr. Archer and Mr. Thomassen depose to the lack of *any* permits or licenses and do not rely on the contents of the records. They depose that they did the searches themselves. In my view, their evidence that there were no permits or licenses at all does not engage the same concerns as would be engaged if they were seeking to refer to the details of permits that are not before the Court. For these reasons, I have concluded that the evidence of Mr. Archer and Mr. Thomassen as to the lack of any permits or licenses is admissible.

Hearsay

[72] The third evidentiary objection raised by the respondent is that much of Saanich’s evidence is comprised of hearsay, which is inadmissible on the hearing of a petition.

[73] I agree that there is much hearsay in the affidavits adduced by Saanich. As two examples, Mr. Carrie deposes that he was told certain things by persons that he encountered when attending at the secondary suites, and he repeats assertions made in complaints received by Saanich from members of the public about the respondent’s use of the property.

[74] However, I have been careful not to rely on inadmissible evidence when making the findings set out above, and, in the course of these reasons I have described the admissible evidence upon which I have relied in making those findings. Accordingly, in my view, it is not necessary to further address the hearsay objections advanced by the respondent.

Orders and costs

[75] I order as follows, with reference to the enumerated prayers for relief in Saanich’s petition filed March 23, 2023:

[1] The application for a declaration that the respondent has contravened s. 5.2 of the Zoning Bylaw by using RVs on the property for lodging or accommodation is granted;

[2] The application for a declaration that the respondent has contravened ss. 4.1 and 7.1 of the Building Bylaw by constructing structures without valid and subsisting permits and without conforming to the Building Code is dismissed;

[3] The application for a declaration that the respondent has contravened s. 4.2 of the Building Bylaw by permitting occupancy of a building without a subsisting occupancy permit is dismissed;

[4] The application for a declaration that the respondent has contravened s. 3.2 of the Zoning Bylaw and s. 9 of the Business Bylaw by permitting the use of the property for business purposes not related to farming is granted;

[5] The application for a declaration that the respondent has contravened s. 5.24 of the Zoning Bylaw by having secondary suites on the property is granted except in relation to one secondary suite;

[6] A permanent injunction is granted prohibiting the respondent from:

[a] using trailers or recreational vehicles on the property for lodging, sleeping, accommodation, or residence, except for the accommodation of agritourists in accordance with s. 33 of the *ALR Use Regs*;

[b] having more than one secondary suite on the property; and

[c] having any business on the property within the definition of the Business Bylaw, except a licensed home occupation business as defined in the Zoning Bylaw;

[7] The applications for the removal or remediation of items on the property are dismissed;

[8] The application that the respondent shall decommission or convert all secondary suites on the property to a single-family dwelling is dismissed;

[9] The application for an order authorizing the petitioner to enter onto the property any day between the hours of 9:00 a.m. and 5:00 p.m. for the purpose of inspection to confirm compliance with the orders made by this Court, upon the provision of 24 hours prior notice by email, is granted;

[10] The application for an order prohibiting the respondent, her employees, agents, or servants from interfering with or obstructing the petitioner, its officers or employees, in the exercise of their functions under paragraph [9] is granted.

[76] In order to give the tenants in the RVs and secondary suites sufficient time to move out and to find alternate accommodation, and for the business activities on the property to be shut down or moved, the permanent injunctions in paragraph [6] shall be suspended and will not come into force until midnight at the end of July 31, 2025.

[77] As Saanich has proven three clear and significant by-law contraventions in relation to secondary suites, the use of the property for business purposes not related to farming, and the use of RVs on the property for lodging or accommodation, the costs of this petition shall be payable by the respondent to Saanich at Scale B.

“The Honourable Justice Loo”