

# SUPREME COURT OF YUKON

Citation: *Knapp et al. v. Town of Faro et al.*,  
2009 YKSC 34

Date: 20090428  
Docket S.C. No.: 08-A0125  
Registry: Whitehorse

BETWEEN:

**ANGELIKA KNAPP DBA A. KNAPP ACCOUNTING SERVICES  
AND NORTH STAR ADVENTURES, A PARTNERSHIP BETWEEN  
ANGELIKA KNAPP AND ERIC DUFRESNE**

Petitioners

AND:

**TOWN OF FARO, TOWN OF FARO BOARD OF VARIANCE AND  
TOWN OF FARO LICENSING APPEAL BOARD**

Respondents

Before: Mr. Justice H. Groberman

Appearances:

Susan Roothman

Lori Lavoie and Debbie Hoffman

Appearing for the Petitioners

Appearing for the Respondents

## **REASONS FOR JUDGMENT DELIVERED FROM THE BENCH**

[1] GROBERMAN J. (Oral): The petitioners, Angelika Knapp and her common-law partner, Eric Dufresne, are the owners of Lot 1028 in the Town of Faro. The two reside in a cabin on the lot. At least up until 2006, they operated a canoe rental business at that location.

[2] The land in question is zoned as "Hinterland". The Town says that the use of the land as a residence conflicts with that zoning. Matters were brought to a head in 2007, when the Town refused, on the basis of the alleged violation of the zoning bylaw, to

renew the petitioners' business licence or to approve a development permit for the construction of a well-house and shed on the property.

[3] The petitioners believe that they have been treated unfairly by the Town and that they should be allowed to reside on the property and to conduct their business there. In this proceeding they seek a number of different forms of relief, including a declaration that the Hinterland zoning conflicts with the Official Community Plan of the Town of Faro, and orders quashing decisions of the Town's Board of Variance and of the Town's Business Licensing Appeal Board. They also seek a variety of declarations to the effect that the Town's treatment of them has been improper.

[4] In essence, there are two issues before the Court. The first is whether the Town is acting improperly in taking the position that no residential use of the property is authorized. The second is whether the Town is entitled to deny the petitioners a business licence and a development permit by reason of their alleged violations of the zoning bylaw.

### **Factual Background**

[5] To understand the dispute that is before the Court some of the detailed history of the petitioners' acquisition and use of the land in question must be outlined.

[6] Ms. Knapp immigrated to Canada from Austria in November 2000. A little over a year earlier she had been injured in an automobile accident near Dawson City. As a result of the injuries that she sustained, she did not feel that she could continue in her profession as a forensic accountant.

[7] Ms. Knapp, together with Mr. Dufresne, who is a long-time resident of Yukon, decided that they wished to operate a wilderness tourism business. Their goal was to purchase a remote piece of land where they could live year-round, and from which they could operate their proposed business. They had considerable difficulty locating a suitable piece of property.

[8] In the spring of 2002, they located a piece of leasehold property on Johnson Lake near Faro. The property was leased from the Yukon government by a float plane operator and included a water lot lease and a small cabin. The cabin appears to have been used on an occasional basis as overnight accommodation by float plane pilots.

[9] The land in question was not as remote as Ms. Knapp would have preferred. While not in the centre of the town, it is within the boundaries of Faro. It did have certain advantages, however, from a business standpoint, including its position on a lake and its proximity to a government campground.

[10] The Yukon Government was willing to accept an assignment of the lease to a commercial operation. The government was, further, prepared to grant title to the property, as long as the operator obtained the support of the Town of Faro, First Nations and any neighbours.

[11] In late May and early June of 2002, Ms. Knapp took over the lease of the land and purchased the log cabin, floatplane dock and shed that were on the property. She registered North Star Adventures as a sole proprietorship and obtained a business licence from the Town of Faro permitting North Star Adventures to operate outdoor recreation tours and rentals.

[12] By late June of that year, Ms. Knapp submitted an application to Yukon's Land Application Review Committee seeking to obtain title to the property. The application included a very rudimentary business plan in which Ms. Knapp indicated an intention to begin the business by renting canoes to visitors to the government campground during the summer and also to offer day trips by canoe on the Pelly River from Ross River to Faro. In the longer term, she hoped to expand the business by increasing the variety of canoe tours and possibly by offering guided hiking trips. The plan also included a vague suggestion that North Star Adventures might team up with other operators to provide horseback riding, fly-in fishing and dog sledding in the future.

[13] The Town of Faro was lukewarm towards Ms. Knapp's application. While it supported her efforts to operate an outdoor recreation business, it wished to ensure that the business was a viable one before title to land was granted to North Star Adventures or to Ms. Knapp. From the outset, the Town was concerned to ensure that Ms. Knapp did not turn the property into a primarily residential one, having ostensibly acquired it for a commercial purpose. The Town opposed the granting of title to North Star Adventures until it had actually run a commercial operation on the land for a few years. The Land Application Review Committee adopted the Town's position, and rejected Ms. Knapp's application.

[14] In the summer of 2002, Ms. Knapp commenced certain alterations of the structures on the land. The roof on the log cabin on the property was not in good shape, and it contained sawdust insulation, which is not permissible under current building codes. Almost immediately upon taking possession of the property, Ms. Knapp decided to remove and replace the roof. She determined that no permit was needed to replace

the roof for the purpose of bringing it up to code, and she commenced work. She decided to significantly modify the cabin, however, at that time, adding a loft and sleeping quarters to it.

[15] In the course of the construction, a Yukon government building inspector visited the site and advised Ms. Knapp that she required a building permit, given the changes to the structure that she planned. No stop work order was issued but Ms. Knapp was required to obtain the necessary permits without delay. Prior to obtaining a building permit she had to obtain a development permit from the Town.

[16] The Town of Faro's Development officer approved the application for a development permit the very day it was made. The petitioners place some weight, in their argument, on the contents of the permit. The permit lists the "existing use of land or building on property" as "float plane base". The development that is requested is alteration to the existing cabin, construction of a shed and a change of use to include "outdoor recreation tours and rentals". A site plan is attached to the application, showing the location and measurements of the existing building, the shed and a greenhouse. There is no mention in the application of residential occupation of the property.

[17] In late 2002, Ms. Knapp attempted to obtain the support of the Town of Faro for her application to have North Star Adventures obtain title to the property. It is apparent that, once again, the Town was concerned that her real goal was to use the land as a residence and that her plans to maintain a commercial operation were not serious. The Town ultimately agreed to recommend that Ms. Knapp be granted a lease on the land, with an option to purchase.

[18] Ms. Knapp prepared a more detailed business plan for her application to obtain title. That plan was more sophisticated than the one provided with the initial application to the Land Application Review Committee and gives greater insight into the nature of the business that was contemplated. For the first two years of operation, it would confine itself to canoe rentals. In the third year, there was an intention to expand by providing guided canoe and hiking tours of one to three days duration. Again, there is a rather vague suggestion that at some point in the future North Star Adventures might team up with other businesses to provide activities such as horseback riding, fly-in fishing, guided dog mushing, snowmobile tours and aboriginal tourism.

[19] It is apparent that the planned enterprise was very small in nature; the total investment, including acquisition of the land and buildings, was to be \$40,000. By the third year of operation, total annual revenues were anticipated to rise to only \$8,800 and net profit was anticipated to be under \$3,000. Given this business plan, it is not surprising that the Town was sceptical as to the petitioners' seriousness about operating an outdoor recreation business, nor is it surprising that it had concerns that the petitioners' real intentions were to acquire the land cheaply and live on it.

[20] North Star Adventures' application to obtain an immediate grant of title to the land was not accepted by the Lands Branch, but it did renew the lease over the land for a five year period and gave North Star an option to purchase. The lease provided that it was for "Commercial Uses including Canoe/Boat rentals and float plane dock." It required the completion of construction of the cabin and shed, outhouses and a well or alternate water storage facility. It also required maintenance of the float plane dock. The terms of the lease were that the annual lease payments would be \$150. The option to

purchase the land at market value could be exercised once certain conditions had been met, including a condition that the “parcel has been zoned to appropriate commercial zoning by the Town of Faro.” The lease was only entered into after the Town signified its approval of the lease provisions.

[21] North Star Adventures began operations on the property in 2003, renting canoes. It was, at that time, re-registered as a partnership between Ms. Knapp and Mr. Dufresne. It appears that in 2003 and 2004 Ms. Knapp and Mr. Dufresne continued to reside in Whitehorse for the most part, though they undoubtedly lived in the cabin on the property, at least at times, during the period that the canoe rental business operated.

[22] It is apparent that in her early discussions with officials of the Town of Faro, those officials considered that North Star should have the land rezoned as “commercial”. In June 2004, Town Council considered the issue at a public hearing. Council decided that a rezoning was unnecessary at that time.

[23] It is evident that Ms. Knapp indicated at the meeting that she and Mr. Dufresne planned to eventually move to the property on a full-time, year-round basis, probably around 2006. Ms. Knapp says that she believed that council’s decision to leave the zoning as “Hinterland” was based on the council’s understanding that a permanent residence would be established on the property.

[24] That belief is not entirely well-founded. The Town’s position at that time is set out in a letter dated June 7, 2004, which includes the following statements:

The Town of Faro has contacted Yukon Energy Mines and Recourses [sic] Lands Branch in order to discuss the requirement, stated in the lease contract between North Star

Adventures Ltd. [sic] and YTG that the Town of Faro has to rezone the mentioned parcel to appropriate commercial zoning in order for North Star Adventures Ltd. to title the land. Land Branch representative made it clear that this requirement in the lease agreement is subject to the preferences of the Town of Faro and directions given to Lands Branch by the Town of Faro.

The current Town of Faro Zoning bylaw 96-06 allows discretionary use of Outdoor Recreation Pursuits in Hinterland zoned areas. Therefore North Star Adventures Ltd. under current Zoning Bylaw 96-06, meets the conditions to carry out their current recreation commercial activities. In light of the above, the Town of Faro Municipal Council, under current conditions, does not see the need for re-zoning the mentioned property or area to another zoning category under the current bylaw.

Yukon Energy, Mines and Recourses, Lands Branch will be notified that the Town of Faro does not require rezoning of parcel #813 in order for North Star Adventures Ltd. to title this property.

[25] I do not read this letter as endorsing the position that a permanent residence could be established on the land without further application to council.

[26] As I understand the evidence of Ms. Knapp, she was under the impression, in June 2004, that establishment of a full-time permanent residence on the land would be contrary to the provisions of the existing lease. The lease can certainly be read that way in that it contains a clause that states: "The Lessee shall use the Land solely for the purpose(s) listed in Recital A," those being "Commercial Uses including Canoe/Boat rentals and float plane dock." That said, the lease does not mention of any right to reside on the property, nor does it contain any specific prohibition against residing on the property.

[27] In August 2004, Ms. Knapp obtained confirmation from the Lands Branch that it did not consider residence on the property to be in violation of the lease. Ms. Knapp and Mr. Dufresne sold their home in Whitehorse, and moved to the property in December of 2004.

[28] In September 2005, the Petitioner proceeded to apply to exercise the option to purchase the property at an agreed upon value of \$6700. The Town of Faro was asked to confirm that it did not require rezoning of the property to a commercial zoning. The Town's response discussed the zoning and also set out a number of concerns. It read, in part, as follows:

Re-Zoning

The Town of Faro will not support the re-zoning application of this property from the current "Hinterland" designation. The Town of Faro has strong interest in maintaining the recreational, and possible recreational business nature of this area. Further, the Town of Faro is NOT comfortable with a lease property being converted to titled property where a residential property will be so close in proximity to a Territorial Campground (immediately adjacent). We feel that this is a poor mix, and a recipe for complaints and conflicts.

Business Activities

When the Town of Faro was initially approached by North Star Adventures for support in acquiring and developing this lease for business purposes, we were provided with a copy of their Business Plan. After a number of years of building development on the site, we are still not convinced that there is a business in operation at this location. Indeed, the Town of Faro feels that this property has been acquired under a business pretense but shall be utilized solely as a residential property. There is no telephone or internet service available at this location for North Star Adventures and, indeed, except for a few small signs posted by the road, there is no other advertising about this business that the Town can find whatsoever....

[29] Ms. Knapp complained to the Town about the comments, and noted that the business was advertised on the Town of Faro's website and at the Interpretive Center operated by the Town. She also pointed out that the business had a telephone number, though it was a Whitehorse number so as to allow the business to have voicemail, which was not available with a Faro number.

[30] The Town retracted some of its comments in a letter to Lands Branch dated March 8, 2006, stating:

There is no doubt that North Star Adventures has, and continues to operate a business from this property that conforms to our interpretation of the discretionary uses permitted under hinterland zoning in the Town of Faro Zoning Bylaw 96-06 that currently applies to this property.

Mayor and Council have been apprised of this information, and concur that the information contained in the paragraph headed "Business Activities" should not have been included in the original document....

The Town reiterates certain concerns, including "The issue of non-conforming use of the property, i.e. residential, in an area zoned as hinterland which does not permit such use."

[31] Ms. Knapp took issue with the Town's position, writing to it on March 23, 2006 as follows:

Under Town of Faro Bylaw 96-06, the hinterland zoning permits "accessory buildings and Uses"....

The word "accessory" is defined to mean "when used to describe a use or building, means a use or building naturally and normally incidental, subordinate and exclusively devoted to the principal use or building and located on the same lot or site."

The principal current use and intended future use of the land is to operate a wilderness tourism business. The Official Community Plan under Section 4.2.2. states: "The Town of Faro will encourage the development of wilderness tourism businesses in Faro through zoning and policy developments."

The cabin on the land provides shelter to persons and chattels related to operating the said wilderness tourism business. That is a use naturally and normally incidental to the operation of that kind of business. It is located on the same lot. Accordingly, in our view it is a permitted use.

[32] There were considerable delays in processing North Star Adventures' application for title, some of which were related to the Town's concerns and some of which were not. North Star was, however, ultimately granted title to the land in 2007.

[33] In January 2007, the Town refused to renew North Star Adventures' business licence. The stated basis for refusal was as follows:

The Town of Faro has made it clear that use of the property in question as a canoe rental and guided tours operation is accepted under the discretionary uses prescribed under The Town of Faro Zoning Bylaw on property zoned as Hinterland.

The town has made it equally clear that use of the property in question for residential purposes is in contravention of the permitted and discretionary uses prescribed for Hinterland under The Town of Faro Zoning Bylaw.

You have not initiated any of the required actions for the Town of Faro to consider a change in zoning that may lead to residential use being permitted for the property in question, and you have failed to advise this office that the unapproved residential use of the property has ceased.

I regret to inform based on this information, I am unable to approve your application, and will be unable to do so until action is taken by you to resolve the issue of the inappropriate residential use of the property in question.

[34] Also in 2007, the petitioners wished to construct a well-house to cover over the well on the property, as well as construct a shed to replace the shed that had been situated within the Ordinary High Water Mark. North Star Adventures applied for a development permit for the proposed construction. On September 19, 2007, the Town refused a development permit, “on the basis that the continued residential use of the property is in contravention of the permitted and discretionary uses prescribed in the Hinterland Zone.”

[35] North Star appealed the denial of the development permit to the Board of Variance, as provided for in the Town’s bylaws. On June 12, 2008, the Board gave its decision, stating that it was allowing the appeal “on condition that if the adjudication of the impending court case between Angelika Knapp/Eric Dufresne and the Town of Faro is in favour of Angelika Knapp and Eric Dufresne, the Development Application Permit will be issued. However, if the adjudication of the aforementioned court case is in favour of the Town of Faro, then the Development Application Permit will be declined.”

[36] There was, in fact, at that time, no pending court case, though the Town did commence a prosecution for a bylaw infraction a few days later. (those charges were eventually stayed). It appears, as well, that the Board of Variance may have received some correspondence from the Town that was not disclosed to the petitioners.

[37] On July 9, 2008, the Board of Variance wrote to the petitioners, stating:

The Board of Variance wishes to inform you that after delivering their decision to the Town of Faro, the Town’s lawyer Lori A. Lavoie sent a letter stating that the decision was a non-decision and that the Board would have to reconvene to make a proper decision. Due to other

commitments by the Board members they have not been able to meet and get clarification on Ms. Lavoie's letter.

I should say that the evidence does not suggest that Ms. Lavoie sent any letter to the Board of Variance. Rather, it appears that correspondence that she wrote to her client, the Town of Faro, may have been forwarded to the Board of Variance without her knowledge.

[38] The Board of Variance next wrote to the petitioners on July 28, 2008, in the following terms:

Pursuant to our letter of June 13, 2008 and upon further legal advice, the Board have discussed the Development Permit Application again. We are definitely of the same opinion that was stated by the Development Officer in his letter of September 19, 2007; this being that the continued residential use of the property is in contravention of the permitted and discretionary uses prescribed in the Hinterland zone. Therefore we are upholding his decision to deny the application.

[39] The Town's refusal to issue a business licence to North Star Adventures was appealed to the Licensing Appeal Board. The appeal was brought very late because the petitioners were apparently unaware of their right of appeal. The Licensing Appeal Board gave its decision on June 27, 2008, denying the appeal.

[40] The parties will appreciate that even with the very lengthy summary of facts that I have given I have left out much of the material that was before me. I can assure them that I have read all of the material and have simply attempted to summarize those portions that are essential to my consideration of the matter.

## **Is Residential Use of the Property Allowed?**

[41] I will begin my analysis by dealing with the biggest issue raised by the parties, that is, whether the full-time year-around occupation of the property for residential purposes is contrary to the zoning bylaw.

[42] The bylaw sets out the various zones for the Town of Faro, and includes the following definitions:

ACCESORY, when used to describe a use or a building, means a use or building naturally and normally incidental, subordinate and exclusively devoted to the principal use or building and located on the same lot or site.

DISCRETIONARY USES are those which are considered on their own individual merits and circumstances by the Council, and may be permitted, with or without conditions, on a specific site within a zone provided that the use conforms to all regulations of the particular zone to which the use applies and provided Council has given due consideration to adjoining land uses.

PERMITTED USES are those uses which are unconditionally allowed in a particular zone, provided that the use conforms to the regulations of the particular zone to which the use applies.

PRINCIPAL USE means the main purpose for which a lot or building is being used.

[43] Section 1.6(2) of the bylaw contains the general prohibition:

- (2) No land, building or structure shall be used, and no development is permitted for any purpose, except in conformity with this Bylaw.

[44] The Hinterland Zone is quite restrictive in terms of the uses that are allowed.

The permitted uses are: "Cemetery; Communication Installations; Public Parks; Public Utilities and Uses; and Accessory Buildings and Uses". The Discretionary Uses are

“Aircraft Sales/Service/Rentals; Airport; Fishing, Forestry and Agriculture; Float Plane Base; Mining or Quarrying; Solid Waste Dump & Sewage Lagoons; Accessory Buildings and Uses; Temporary Construction Accommodation Camp; Education Facility; and Outdoor Recreation Pursuits.”

[45] It is evident that residential use of dwellings is not *per se* a permitted use in the Hinterland Zone. In zones where residential occupation is a permitted use, it is explicitly set out. The only residential type of use that is specifically set out in the Hinterland Zone, in contrast, is “Construction Accommodation Camp,” which is a discretionary use.

[46] This does not mean that no residential accommodation can exist in the Hinterland Zone. The parties agree that “Accessory Uses” may, in some cases, include residential accommodations. It is important to note, though, that “Accessory Buildings and Uses” is listed both as a permitted use and as a discretionary use. The only sensible interpretation, it seems to me, is that uses that are accessory to permitted uses are themselves permitted uses, while uses that are accessory to discretionary uses are themselves discretionary uses. Thus, residential accommodations for a cemetery caretaker might be a permitted accessory use in the Hinterland Zone while residential accommodations for students of an Educational Facility might be a discretionary accessory use.

[47] If I am correct in this regard, then any residential use connected with the Petitioners’ business must be discretionary, since the Outdoor Recreational Pursuits is itself a discretionary use.

[48] There is no evidence before me to suggest that Town Council has ever exercised its discretion to allow residential use of the lands in question in this case. Accordingly, such use is, at best, a use which the petitioners can apply to make of the property.

[49] In saying this, I do not ignore the fact that there is some evidence of occasional use of the cabin as overnight accommodation for float plane pilots prior to the petitioners taking possession of the land. There is no evidence as to when that use commenced, nor is there any evidence as to the nature of the authority for such use. It is possible that such a use predated the zoning bylaw, and so that it is a legal non-conforming use. It is equally possible that Council may have, at least at some stage, exercised its discretion to make occasional overnight use of the cabin an approved discretionary use. Finally, it is possible that such use of the cabin was simply unlawful. Whichever of these scenarios is the case, however, it would not support the use of the cabin as a permanent full-time residence.

[50] In view of my conclusion on the interpretation of the bylaw, I need not consider whether the use that is made of the cabin by the petitioners could properly be described as being accessory to Outdoor Recreation Pursuits. I say only that, in view of the very limited nature of the petitioners' business and the fact that it is seasonal, I doubt very much that year-round, permanent residence on the property can properly be described as "accessory".

[51] The Town, therefore, must succeed on the question of whether the use of the land as a full-time residence by the petitioners is a permitted use. It is not. At best, it

might arguably be a discretionary use, though even that is doubtful. In any event, if it is a discretionary use, council has not exercised its discretion to permit it to date.

### **Denial of Business Licences**

[52] I turn next to the issue of the denial of a Business Licence. North Star Adventures was denied a business licence on the basis that the property was being occupied for residential purposes. I do not consider that there is any connection between that unlawful use of the property, however, and the proper considerations for the Town in deciding whether or not to issue a business licence. There is no suggestion that North Star Adventure's business operations violated bylaws or were in any sense inappropriate. In this regard, I place some reliance on the case of *Westfair Foods v. Saanich (District)*, (1997) 49 B.C.L.R. (3d) 299 (CA). While the legislation at issue in that case differed somewhat from the *Municipal Act*, R.S.Y. 2002, c. 154, it appears to me that the reasoning of the case is equally applicable under the Yukon legislation.

[53] In *Westfair*, the District of Saanich denied the petitioner a business licence and a development permit, not because the licence or permit would necessarily result in a violation of zoning regulations, but because it suspected, based on the petitioner's operations in another municipality, that it intended to operate in violation of the zoning. The British Columbia Supreme Court granted an order requiring the municipality to grant the licence and permit and the Court of Appeal affirmed the judgment. At para. 25, Finch J.A. (as he then was) said for the Court:

... Council did not direct its attention to the use of land proposed in Westfair's development permit application. The application did not seek any use that was not permitted by the definition of wholesaling. Rather, Council directed its

attention to what it believed would be Westfair's failure to act in accordance with the permit and the bylaw. If Council's subjective belief were correct, it was not the development permit which would vary the use of the land, but rather Westfair's anticipated breach of the bylaw.

[54] In the case at bar, the granting of a business licence would in no way further any unlawful use of land by the petitioners. The Town was not entitled to use the business licence application as an opportunity to exact penance on the petitioners or to place pressure on them to cease unlawful uses on their land. In my view, the denial of the business licence for North Star Adventures was based on considerations that were extraneous and irrelevant. It follows that I would quash the decision to refuse North Star Adventures a business licence and would remit the matter to the Town for proper consideration.

[55] Counsel for the petitioners mentioned in argument that a second business licence was also refused. This second licence related to Ms. Knapp's accounting business. In my opinion, the Town was within its rights to refuse her that licence. The activity which was sought to be licensed, accounting services, itself constituted an unlawful use in the Hinterland zone. The fact that the business itself was unlawful at the site where it was to be undertaken was a valid reason on which to deny a business licence.

### **Denial of the Development Permit**

[56] The refusal of the Board of Variance to issue a development permit raises some of the same issues as are raised in respect of the business licence. It is not clear that the proposed developments, a well-house and a shed, are contrary to the zoning bylaw,

as they would appear to be accessory buildings connected with use of the land for outdoor recreation pursuits. As an accessory use to a discretionary use, it seems to me that the matter ought to have been referred to Council for it to decide whether to exercise its discretion.

[57] There are other problems with the manner in which the Board of Variance dealt with the matter. In particular, there was a clear breach of procedural fairness when the Board varied its decision without inviting submissions from the petitioners. It also appears that the Board took into account submissions that were not provided to the petitioners.

[58] The respondent, in argument, raised, then abandoned, an argument to the effect that as a further appeal of the denial of a development permit lies to the Yukon Municipal Board under s. 3.4(3) of the Zoning bylaw, this Court should not hear a judicial review application. Ordinarily, this Court would exercise a discretion not to hear a judicial review until the internal appeal process was exhausted: *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561 at 588; *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3.

[59] Section 3.4(3) of the Zoning Bylaw reads as follows:

Any person who is aggrieved by a decision of the Board of Variance under this Bylaw may appeal in writing to the Yukon Municipal Board as specified in the Yukon Municipal Act, (1986) RSYT.

[60] The difficulty with this provision is that the *Municipal Act*, R.S.Y. 1986, c. 119, was repealed by the *Municipal Act*, S.Y. 1998, and the current statute does not have a

provision for appeals to the Yukon Municipal Board of the nature contemplated in the bylaw. It may be that s. 24(1)(b) of the *Interpretation Act*, R.S.Y. 2002, c. 125, nonetheless preserves the right of appeal to the Yukon Municipal Board. I need not decide this issue, however, as I have concluded that an appeal to the Yukon Municipal Board is not appropriate in the circumstances of this case. The appropriate remedy is to quash the decision of the Board of Variance and the decision of the Development Officer, and to remit the matter to the Development Officer so he may treat the application as one for development of accessory buildings that are accessory to the Outdoor Recreation Pursuits use. The Development Officer will, I believe, be required to refer the matter to Council under the Zoning bylaw.

### **Other Issues**

[61] The petitioners raise a number of other arguments, seeking various declarations. In my view, none of those arguments are sustainable. The zoning bylaw does not conflict with the Official Community Plan, nor has it been shown that the Town is taking steps to frustrate the OCP or taking insufficient steps to encourage outdoor recreation use in the Town. The treatment of the petitioners is not discriminatory in the municipal law sense. The Town is perfectly entitled to impose different standards when dealing with the Hinterland zone than it applies in commercial zones. Finally, the argument that the *Canadian Bill of Rights* prohibits restrictions on the use of property is not arguable.

### **Conclusion**

[62] In summary, the petitioners' applications for various declarations are all dismissed. The decision of the Licensing Appeal Board denying North Star Adventures

a business licence is quashed, and the matter is remitted to the Town for fresh consideration in accordance with these reasons. The decision of the Board of Variance denying a development permit is also quashed, and the matter remitted to the Development Officer of the Town of Faro to be dealt with in accordance with these reasons.

[63] As success is divided, I do not propose to make any order as to costs.

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GROBERMAN J.