

## **Appeal Package**

**Permit DP 14A 17 (Adams)**

**7652 Ships Point Road**

**Lot 14, District Lot 26, Newcastle District, Plan 17305,**

**PID 003-923-011**

### **Included in the Appeal Package:**

- Letter requesting the Electoral Area Services Committee reconsider the decision to deny the amendment to Development Permit which would allow us to develop a low impact, environmentally responsible staircase access to the beach,
- Copy of letter to Ms. Alana Mullaly dated April 9, 2018 requesting that she reconsider the decision to deny the amendment to Development Permit which would allow us to develop a low impact, environmentally responsible staircase access to the beach,
- Copy of email to Ms. Mullaly summarizing our telephone conversation of April 10, 2018,
- Copy of Ms. Mullaly's email to us dated April 11, 2018 which confirmed the details of our conversation April 10, 2018 with some supplemental information
- Photo Gallery of public and private beach accesses along Ships Point shoreline

May 3, 2018

Electoral Area Service Committee  
Comox Valley Regional District

Good Day,

Recently, on April 5, 2018, I received an email from Ms. Alana Mullaly, Acting General Manager, Planning and Development Branch, denying our application to develop a staircase access to the beach in front of our property at 7652 Ships Point Road, Fanny Bay, BC. My wife and I respectfully ask that you reconsider this decision to deny our Development Permit for the staircase to the waterfront, due to the points outlined below:

**Due Diligence:**

We viewed the property and offered a purchase price in early August, 2017. Following acceptance of our offer, and over the next six weeks, we did our due diligence prior to closing the sale. In addition to speaking with Federal and Provincial Wildlife Authorities, I spoke with Ms. Brianne Labute and Mr. Ton Trieu of the CVRD Planning Department several times prior to our purchase. Conversations with both staff members confirmed for us that the property could be developed for a residential home with attached garage and an access to the beach.

In one conversation Mr. Trieu was particularly helpful. On August 23, 2017, Mr. Trieu outlined the steps needed to be granted a development permit. He stated that while there were three potential triggers including Heron Nests, Steep Slope Setback, and 30-meter Aquatic Zone, he believed that it was possible to develop the property for a residence with attached garage and an access to the beach provided we follow the recommendations outlined by a Geotechnical Engineer and a Registered Professional Biologist. Hence, prior to purchase, we commissioned Geotechnical Engineer, Johannes Fischer of Lewkowich Engineering Associates, Registered Professional Biologist, Ian Moul, and Professional Land Surveyor, Sandy Grant, to provide us the information we needed to make an informed decision about whether to move forward with the purchase. Both the Geotechnical Engineer and Registered Professional Biologist recommended a staircase access to the beach in their original reports, and have subsequently amended their reports to add more information regarding such a staircase. We shared these reports with CVRD personnel prior to our purchase and were given optimism to proceed by both Mr. Trieu and Ms. Labute.

Interestingly, Mr. Trieu said to me during our conversation that it is not for the CVRD to create a situation where the property cannot be developed as it would make the property valueless and unsellable.

**All Consultation Regarding Our Staircase Application Suggested Approval:**

We had heard that the CVRD was considering changes to the bylaw regarding staircase access, so we booked an appointment with Ms. Labute in early January, 2018, to discuss an amendment to our original 'Permit to Develop' to include a staircase access to the beach. During this meeting, Ms. Labute continued to advise us of the process we needed to follow in order to receive approval to construct the stairs. We applied January 9, 2018. To facilitate CVRD approval we contracted Mr. Peter Christensen, of 'Shoreline Designs', to build us a staircase similar to the one approved by the CVRD in January and built on the property directly south of us in February, 2018.

Since our application on January 9, 2018, we have forwarded all additional information to the CVRD, as requested, including amendments to our Geotechnical and Biophysical reports specific to building a staircase. Throughout the process, while working with Ms. Labute, everything seemed to be progressing toward approval. In fact, Ms. Labute gave me verbal confirmation that the staff report from her was going forward with a recommendation to accept. In an email from Ms. Labute dated February 22, 2018, she stated, *"In my manager's review she had a few comments about the biophysical assessment, nothing major."* I immediately contacted Biologist Ian Moul, who promptly answered all the comments from the CVRD. At no time have we received any suggestion that the application would be denied. In her email dated March 12, 2018, Ms. Labute stated that her staff report *"will go back to her (Manager of the Planning Department) for sign off then to my General Manager for approval"*. Hence, our absolute shock to discover that Ms. Labute recommended refusal of the amendment to our 'Permit to Develop' in order to build a staircase.

### **Every Other Private Residence Along Ships Point Shoreline Has Beach Access:**

Please review the included picture gallery showing the variety of private beach accesses along the Ships Point shoreline. Every other private residence has beach access.

### **Environmentally Responsible Staircase:**

Both the Geotechnical Engineer and Registered Professional Biologist recommended a staircase access to the beach in their original reports and have subsequently amended their reports to add more information regarding the construction of a low impact staircase.

We wish to build a low impact, environmentally conscious staircase as designed and constructed by 'Shoreline Designs', a company which specializes in low impact, environmentally responsible beach accesses. We have contracted 'Shoreline Designs' to build our staircase should we be granted approval.

Please review the photo gallery attached to this appeal package to see the favorable aspects of the 'Shoreline Designs' staircase, including:

- two small landings each supported by 4 small sonotube footings. The concrete foot print of this staircase is very small and as suggested by Mr. Ian Moul, Registered Professional Biologist, "inert like rocks,"
- a drawbridge final landing that does not sit permanently on the earth,
- lightweight old growth cedar to reduce the weight and pressure on the foundations and terrain,
- a vast open area to allow sunlight and water access to support vegetation regeneration and growth (note the amount of natural vegetation that has already grown back since this staircase was installed in February, 2018)

Of note, I have heard from Mr. Peter Christensen of Shoreline Designs that he was contacted by Ms. Labute about six weeks ago because the CVRD liked his low impact designs so much that they were seeking his input to help draft a pending bylaw change.

## **Land Value**

Potentially our lot could be the only lot along the entire Ships Point shoreline that would not have beach access. To deny us access to the beach renders our property little more than a view lot. Like the residents across the street, we would have to access the beach via a public access. Yet, our BC Land Assessment is almost 3 times higher than properties across the street. Our BC Land assessment for 2017 was \$394000 while directly across the street was \$136000, which represents a \$258000 difference of land value. Certainly, had we known that we would be denied beach access during our due diligence, we would have either withdrawn our offer or offered significantly less to reflect the lack of beach access.

## **Shoreline Property Owner Riparian Rights:**

The following are direct quotations from the document:

*Riparian Rights and Public Foreshore Use in the Administration of Aquatic Crown Land  
August 2008*

*Ministry of Agriculture and Lands*

*Crown Land Division*

*Province of British Columbia*

In cooperation with the

*Land Title and Survey Authority of British Columbia*

“Owners of waterfront property enjoy certain riparian rights.” Page 4

“The ministry recognizes and respects the riparian rights of waterfront property owners.” Page 5

“Historical or traditional riparian rights which apply in British Columbia include the following:

Ingress and Egress – access to and from navigable waters from all points along the natural boundary of the upland parcel.” Page 6

“Waterfront property owners have the right to unimpeded access to and from their property to deep water for the purposes of navigation.” Page 7

“This right of access to and from the water applies to every point along the natural boundary of the waterfront property.” Page 7

“The traditional right of access to deep water for navigation has often been interpreted to include the right to construct facilities on the foreshore to provide such access.” Page 8

## **Our Love of the Environment:**

My wife and I are lovers of the natural environment. It was what inspired us to purchase a piece of property along the Ships Point shoreline. We love the natural look of the riparian shoreline there. We appreciate regulations that protect the environment and are most willing to work with professional consultants to mitigate harm as we develop our property to include a 3-bedroom home with an attached garage, plus a beach access. Throughout the entire process of developing our property on Ships Point Road we have willingly complied with recommendations of all Professional Consultants and with the Comox Valley Regional District Staff. We were pleased with, and are happy to comply with, the recommendations of both the Geotechnical Engineer and the Registered Professional Biologist regarding building a staircase access in order to reduce the impact on the vegetation and terrain of our foreshore.

In support of our appeal application, please review the following inclusions:

- a copy of a letter sent to Ms. Alana Mullaly dated April 9, 2018, to request that she reconsider the decision to deny us our amendment to develop a staircase,

- a copy of an email to Ms. Alana Mullaly summarizing our telephone conversation of April 10, 2018,
- a copy of Ms. Mullaly's email to me, on April 11, 2018, which confirmed the details of her conversation with me, with some supplemental information,
- and a picture gallery of public and private beach accesses along Ships Point Road.
- We have not included the professional reports from the Geotechnical Engineer, the Registered Professional Biologist, or the Professional Land Surveyor, as it is our understanding that those documents will be included in Ms. Mullaly and Ms. Labute's package to your committee.

In summary:

- we took guidance from CVRD staff prior to purchasing the property,
- we contracted a Geotechnical Engineer, a Registered Professional Biologist, and a Professional BC Land Surveyor to provide valuable information prior to purchasing the property,
- prior to final purchase, CVRD staff clearly indicated that based on the recommendations of the Geotechnical Engineer and the Registered Professional Biologist we would be able to develop our property to include a residential house with attached garage and staircase access to the beach,
- we have respected and followed all subsequent input and recommendations from CVRD staff,
- riparian rights as waterfront property owners exist under provincial authority,
- every other private residence along the Ships Point Shoreline has beach access,
- the CVRD has now, without prior warning, denied us access to the beach, resulting in a likely devaluation of our property, as well as considerable extra costs for amendments and applications, not to mention a great deal of stress, worry and heartache,
- we wish to construct a low impact, environmentally responsible staircase as recommended by a Geotechnical Engineer and Registered Professional Biologist,
- we have contracted 'Shoreline Designs', a company specializing in low impact, environmentally responsible staircase accesses, to build our staircase if approved, and
- we highly value the natural environment and have every intention of developing the property in an ethical and careful manner.

We, again, respectfully request that your committee reconsider the decision to deny the amendment to our Development Permit which would allow us to develop a low impact, environmentally responsible staircase access to the beach.

Sincerely

Michael J. Adams and Gail C. Adams

April 9, 2018

Ms. Alana Mullaly, MCIP RPP  
Acting General Manager Planning and Development Services Branch  
Comox Valley Regional District  
600 Comox Road  
Courtenay, BC V9N 3P6

Dear Ms. Mullaly

Recently on April 5, 2018 I received an email from you denying our application to develop a staircase access to the beach in front of our property at 7652 Ships Point Road, Fanny Bay, BC. My wife and I ask that you reconsider your decision to deny our Development Permit for the stairs to the waterfront, due to the points noted below.

I must admit that this denial came as a complete shock to my wife and me. Nothing in any correspondence with any Comox Valley Regional District (CVRD) personnel since early August would have prepared me for this decision. In fact, quite to the contrary. If the Development Permit guidelines never permit stairs to the waterfront, we should have been informed of this in our first discussion with CVRD staff in August.

We understand and respect that Development Permit guidelines need to form part of the Official Community Plan, to require detailed analysis of specific issues by qualified professionals (i.e. for environmental issues) as part of land development. However, it is our understanding that these are guidelines, and if an applicant provides applicable professionals' reports that mitigate the impact, the Development Permit can be granted. As an example, a Steep Slopes Development Permit Area application to the CVRD requires the submission of a Geotechnical Engineer's report, thus implying that the input of a professional's report would be taken into consideration in evaluating an application.

We viewed the property and offered a purchase price in early August 2017. Following acceptance of our offer and over the next six weeks we did our due diligence prior to closing the sale. In addition to speaking with Federal and Provincial Wildlife Authorities, I spoke with Ms. Brianne Labute and Mr. Ton Trieu of the CVRD Planning Department several times prior to our purchase. Conversations with both staff members confirmed for us that the property could be developed for a residential home with attached garage and an access to the beach.

In one conversation Mr. Trieu was particularly helpful. On August 23, 2017, Mr. Trieu outlined the steps needed to be granted a development permit. He stated that while the lot was a "problem child" with three potential triggers including Heron Nests, Steep Slope Setback, and 30-meter Aquatic Zone, he believed that it was possible to develop the property for a residence with attached garage and an access to the beach provided we follow the recommendations outlined by a Geotechnical Engineer and a Registered Professional Biologist. Prior to purchase we commissioned Geotechnical Engineer, Johannes Fischer of Lewkowich Engineering Associates, Registered Professional Biologist Ian Moul, and Professional Land Surveyor, Sandy Grant, to provide us the information we needed to make a decision whether to move forward with the purchase. Both the Geotechnical Engineer and Registered Professional Biologist



recommended a staircase access to the beach in their original reports and have subsequently amended their reports to add more information regarding a staircase. We shared these reports with CVRD personnel prior to our purchase and were given optimism to proceed by both Mr. Trieu and Ms. Labute.

Interestingly, Mr. Trieu said to me during our conversation that it is not for the CVRD to create a situation where the property cannot be developed as it would make the property valueless and unsellable.

On November 27, 2017, we were granted permission for removal of existing buildings, land clearing to create a building envelope, construction of a single detached dwelling with an attached garage, construction of a driveway, installation of a Type 2 subsurface pressurized drip septic system and installation of a drainage trench. Upon recommendation from Ms. Labute, the building of the staircase was not specifically mentioned in the original Application to Develop, however, it was fully understood, right from our initial conversations in August 2017, by both Ms. Labute and Mr. Trieu that we were intending to apply for beach access.

We had heard that the CVRD was considering changes to the bylaw regarding staircase access, so we booked an appointment with Ms. Labute in early January, 2018, to discuss an amendment to our original Permit to Develop to include a staircase access to the beach. During this meeting Ms. Labute continued to advise us of the process we needed to follow to receive approval to construct the stairs. We applied January 9, 2018. To facilitate CVRD approval we contracted Shoreline Designs to build us a staircase similar to the one recently approved by the CVRD and built on the property directly south of us in January, 2018.

Of note, I have heard from Mr. Peter Christensen of Shoreline Designs that he was contacted by Ms. Labute about a month ago because the CVRD liked his designs and was looking for his input to help draft the aforementioned pending bylaw change.

Since our application on January 9, 2018, we have forwarded all additional information as requested to the CVRD including amendments to our Geotechnical and Biophysical reports specific to building a staircase. Throughout the process while working with Ms. Labute everything seemed to be progressing toward approval. In fact, Ms. Labute gave me verbal confirmation that the staff report from her was going forward with a recommendation to accept. In an email from Ms. Labute dated February 22, 2018 she stated, **“In my manager’s review she had a few comments about the biophysical assessment, nothing major.”** I immediately contacted Biologist Ian Moul who promptly answered all the comments from the CVRD. At no time have we received any suggestion that the application would be denied. Hence, our absolute shock to discover that Ms. Labute recommended refusal to our amendment to develop a staircase.

One wonders how such a drastic change could have occurred without warning. To state that there was “nothing major” in response to comments about our application and then to have the application refused appears very disingenuous. At what point did the staff recommendation change?

Potentially our lot could be the only lot along the entire Ships Point Shoreline that would not have beach access. To deny us access to the beach renders our property little more than a view lot. Like the residents across the street we would have to access the beach via a public access. Yet our BC Land Assessment is almost 3 times higher than properties across the street. Our BC Land assessment for 2017 was \$394000 while directly across the street was \$136000, which represents a \$258000 difference of land value. Certainly, had we known during our due diligence we would have either withdrawn our offer or offered significantly less to reflect the lack of beach access.

So given the fact that we took guidance from CVRD staff, following and respecting all their input, prior to using our life savings to purchase the property on Ships Point Road, and given the fact that CVRD has now, without warning, denied us access to the beach, we feel denial of our Development Permit has substantially devalued our property and resulted in the extra cost of amendments and applications, not to mention a great deal of stress, worry and heartache.

Personal information removed

However, it was the positive discussions we had with both Mr. Trieu and Ms. Labute that convinced us to move forward with our purchase. Hence, it is all the more disconcerting to discover that we have been denied approval to construct a staircase.

Given the information I have provided, we request that you reconsider your decision to deny our Development Permit. I look forward to our conversation Tuesday, April 10 @ 2:00 p.m.

Sincerely,

Michael J. Adams and Gail C. Adams



Michael Adams

Apr 10

to Alana

<amullaly@comoxvalleyrd.ca>

Dear Alana

Thank you for our conversation today. It helped me to understand the situation more clearly.

I would like to confirm my understanding of some of the salient points we discussed.

- You are currently the Acting General Manager of Planning and Development for the Comox Valley Regional District and as such are the ultimate staff decision maker. You stated that the Heron Nest and Steep Slopes guidelines do not have any subjectivity to provide you authority to reverse the decision to deny our application. You also stated that you had reached the "limit of her authority"
- The staircase allowed for our neighbours was a mistake made by CVRD staff.
- Not having provided my wife and I information pertaining to guidelines around structures within the 15 meter zone commencing August, 2017, at the onset of our due diligence to purchase the property, was a CVRD staff mistake for which both you and Brianne Labute apologized several times.
- Regulations similar to these have been in place since 1998 but were amended into their present form in 2014.
- Our neighbours' very recent application was the first, since the amendments, that the CVRD staff had seen which invoked all three triggers (Aquatic Zone, Heron Nest and Steep Slope) , hence the error.
- You stated that based on the Engineer and Biologist Reports, and the design of the staircase we plan to use, our project would be a low impact project. You felt the professional consultants' reports and the staircase design gave you "comfort" that the project would not be an issue to the integrity of the slope or the environment of the area, and that it is "a whole lot better than others along the shoreline."
- Our only recourse to have the decision reversed is to go to the Electoral Area Service Committee meeting and seek an appeal. Should they chose not to support the development of a staircase that would be the end of our appeal process.
- I have been put on to the agenda for the next Electoral Area Services Committee meeting scheduled for May 14 @ 10:00 at the CVRD offices.
- The CVRD staff will be taking to that meeting:
  - the process we have followed to date,
  - the legal authority to deny our application,
  - the legal authority for our appeal,
  - our Geotechnical report,
  - our Heron Nest report,
  - our Biophysical report
  - our proposed staircase design.
  - CVRD staff will write it up in such as way that the EASC could recommend our proposal on the spot to take it to the full board for approval June 5.
- I will be forwarding a package prior to May 7 to Brianne Labute so that she can forward the package to the EASC prior to the meeting. In the package there will be:
  - a letter outlining some of today's conversation,
  - my letter dated April 9, 2018 addressed to you,
  - as well as a series of photographs showing other development along the Ships Point Shoreline.

I believe that I have correctly interpreted the salient points of our conversation today. Thank you again for clarifying the situation. I look forward to meeting you at the Electoral Services Area Committee meeting May 14, @ 10:00.

Thanks again  
Mike Adams

Alana Mullaly <amullaly@comoxvalleyrd.ca>

Apr 11

to Brianne, me

Hi Mike,

Thank you for speaking with Brianne and me yesterday and for the synopsis below. Thank you also for your professionalism.

A couple of thoughts on your points below:

As acting general manager, I have delegated authority to approve development permit applications pertaining to the steep slopes development permit area, nest DPA, and aquatic DPA. The corporate officer (being our general manager of corporate services) has, under delegated authority, the ability to issue development permits once approved. Our delegation bylaw includes the ability for an applicant to appeal a development permit refusal that has been refused under delegated authority. That is the process that we discussed yesterday. The elected officials (in this case, specifically the three electoral area directors) are always the ultimate decision makers.

We will write a staff report and will endeavor to include it on the May 14<sup>th</sup> agenda. I say “endeavor” because our CAO needs to approve the meeting agenda but, it is absolutely our intention to get this item on the May 14<sup>th</sup> agenda.

I agree with all of your other points below.

Again, I offer my apologies. We will be in touch.

Kind regards,  
Alana

Alana Mullaly, MCIP RPP  
Manager of Planning Services, Planning and Development Services Branch

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[600 Comox Road](#)  
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Every private residence along the Ships Point shoreline has some sort of access to the beach. The following pictures show the different and varied accesses to that shoreline. All pictures were taken from below the high water mark (Aquatic Crown Land).

My wife and I are not making a judgement regarding the means by which our neighbours have accessed the shoreline and in no way should these pictures be seen as any form of complaint. These pictures are simply intended to demonstrate the varied methods of access along the Ships Point shoreline.

Of note are:

- use of concrete foundations and retaining walls
- lush lawns down to the water's edge
- concrete or paved boat launches
- decks and storm watching areas

We completely recognize that a number of these beach accesses have been in place for many years, prior to current riparian bylaws and regulations; however, there are also several structures which appear to be very recent, including the CVRD's own public beach access.

















The following pictures show a staircase very similar to the one we wish to build. It was constructed on the property adjoining ours, on the south side, by 'Shoreline Designs', a company which specializes in low impact, environmentally responsible beach accesses. We have contracted 'Shoreline Designs' to build our staircase should we be granted approval.

Of note with this design:

- two small landings, each supported by 4 small sonotube footings. The concrete foot print of this staircase is very small and as suggested by Mr. Ian Moul, Registered Professional Biologist, "inert like rocks,"
- a drawbridge final landing that does not sit permanently on the earth,
- lightweight old growth cedar to reduce the weight and pressure on the foundations and terrain,
- and a vast open area to allow sunlight and water access in support of vegetation regeneration and growth (please note the amount of natural vegetation that has already grown back since this staircase was installed in February, 2018).



As a final point, it is interesting to note the number of man made structures on the Aquatic Crown Land along the Ships Point shoreline, including roadways and rock



weirs. We recognize that these structures are completely licenced and properly permitted in support of the commercial oyster industry of the area; however, they are not part of the natural environment.



We believe that our proposed low impact, environmentally conscious beach access will be a minimal addition to the variety of beach accesses and activities portrayed in this photo gallery.