

**DATE:** October 31, 2017

**FILE:** 3090-20 / DV 4A 17

**TO:** Chair and Directors  
Electoral Areas Services Committee

**FROM:** Russell Dyson  
Chief Administrative Officer

Supported by Russell Dyson  
Chief Administrative Officer

***R. Dyson***

**RE:** Development Variance Permit – 4014 Haas Road (Zaborniak)  
Baynes Sound – Denman/Hornby Islands (Electoral Area A)  
Lot 2, District Lot 86, Comox District, Plan 18006, PID 002-174-821

### **Purpose**

To consider a Development Variance Permit (DVP) to increase the maximum height for a recently built accessory building from 6.0 metres to 6.4 metres.

### **Recommendation from the Chief Administrative Officer:**

THAT the board approve the Development Variance Permit DV 4A 17 (Zaborniak) to increase the height for an accessory building from 6.0 metres to 6.4 metres for a property described as Lot 2, District Lot 86, Comox District, Plan 18006, PID 002-174-821 (4014 Haas Road);

AND FINALLY THAT the Corporate Legislative Officer be authorized to execute the permit.

### **Executive Summary**

- The 0.5 hectare property contains a single detached dwelling and a recently built accessory building.
- The applicants were issued a building permit for the accessory building on November 29, 2016.
- The maximum height permitted for an accessory building is 6.0 metres (measured from the average natural grade to the highest point). A requirement of the building inspection was a letter from a BC Land Surveyor (BCLS) confirming the post construction height. The BCLS confirmed the height of the accessory building is 6.4 metres triggering the need for a DVP.
- The applicants have indicated that the building is over the maximum permitted height as they misunderstood that height was measured from average natural grade and consequently the structure was built higher than permitted.
- Given the existing vegetation and distance between neighbouring buildings, the height increase is considered minor and still meets the general intent of the zoning law. For these reasons, staff recommend the issuance of the DVP.

Prepared by:

***B. Labute***

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Brianne Labute  
Planner

Concurrence:

***A. Mullaly***

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Alana Mullaly, M.Pl., RPP, MCIP  
Manager of Planning Services

Concurrence:

***A. MacDonald***

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Ann MacDonald, RPP, MCIP  
General Manager of Planning  
and Development Services  
Branch

**Stakeholder Distribution (Upon Agenda Publication)**

Applicants	✓
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**Background/Current Situation**

An application has been received to consider a DVP (Appendix A) to increase the maximum height of an accessory building from 6.0 metres to 6.4 metres. The residential property is 0.5 hectares and bound by residential properties to the northwest and southeast, Breakwater Esplanade to the northeast and Haas Road to the southwest (Figure 1 and 2). The owner obtained a building permit (Building Permit No. 10323) and built an accessory building (Figure 3). During the inspection process, a BCLS confirmed that the building was over the height allowance. The applicants have indicated that the building is over the maximum permitted height as they misunderstood that height was measured from average natural grade. (Appendix B).

Official Community Plan Analysis

The subject property is designated Settlement Expansion Area in the Official Community Plan, being the “Rural Comox Valley Official Community Plan Bylaw, No. 337, 2014”. The accessory building does not conflict with the residential policies established in this document.

Zoning Bylaw Analysis

The property is zoned Residential Rural (R-RU) in Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005” (Appendix C). The R-RU zone permits an accessory building. The variance would provide relief from Section 309 (3) “*The maximum height of all accessory buildings is 6.0 metres...*” and legalize an existing accessory building with a height of 6.4 metres. See Table 1 for a summary of the requested variance.

**Table 1: Variance Summary**

Zoning Bylaw	Variance	Existing	Proposed	Difference
Section 803	Accessory height	6.0 metres	6.4 metres	0.4 metres

The zoning bylaw defines height as the vertical distance from average natural grade of the building footprint to the peak of the roof. The Comox Valley Regional District (CVRD) building official requested that the building height be confirmed by a BCLS. The applicants retained Eric Hoerbürger, BCLS, who completed a survey of the accessory building on September 23, 2017 and determined that the peak of the roof was 6.4 metres above average natural grade. An older dwelling was demolished on the property and the accessory building has been built in the same location, therefore, the neighbours are accustomed to a taller building on the property. Given the existing vegetation and proximity to neighbouring buildings, a height increase of 0.4 metres is not expected to have a negative impact on the neighbours' viewscape or privacy. For these reasons, staff recommends the issuance of the DVP.

**Policy Analysis**

Section 498 of the *Local Government Act* (RSBC, 2015, c.1) (LGA) authorizes a local government to consider issuance of a DVP that varies the provision of a bylaw, provided that the use or density of the land is not being varied, the land is not designated floodplain, or the development is not part of a phased development agreement.

**Options**

The board could either approve or deny the requested variance.

**Financial Factors**

Applicable fees have been collected for this application under the “Comox Valley Regional District Planning Procedures and Fees Bylaw No. 328, 2014”.

**Legal Factors**

The report and recommendations contained herein are in compliance with the LGA and the CVRD bylaws. DVP’s are permitted in certain circumstances under Section 498 of the LGA.

**Regional Growth Strategy Implications**

The subject property is designated Settlement Expansion Area in the Regional Growth Strategy (RGS), being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010”. The requested height increase does not conflict with the growth management policies of the RGS.

**Intergovernmental Factors**

There are no intergovernmental factors.

**Interdepartmental Involvement**

This DVP application was referred to relevant internal departments. No concerns were identified.

**Citizen/Public Relations**

At their meeting on October 23, 2017, the Electoral Area ‘A’ Advisory Planning Commission approved a motion to support the application. The minutes from the meeting will be forwarded to the Electoral Areas Services Committee (EASC).

Notice of the requested variance will be mailed to adjacent property owners within 100.0 metres of the subject property at least 10 days prior to the EASC meeting. The notice informs these property owners/tenants as to the purpose of the permit, the land that is the subject of the permit and that further information of the proposed permit is available at the CVRD office. It also provides the date and time of the EASC meeting where the permit will be considered. Consultation with these property owners/tenants is through their written comments received prior to the EASC meeting or their attendance at the EASC meeting.

Attachments: Appendix A – “Development Variance Permit - DV 4A 17”  
Appendix B – “Letter from Applicant”  
Appendix C – “Copy of R-RU Zone”

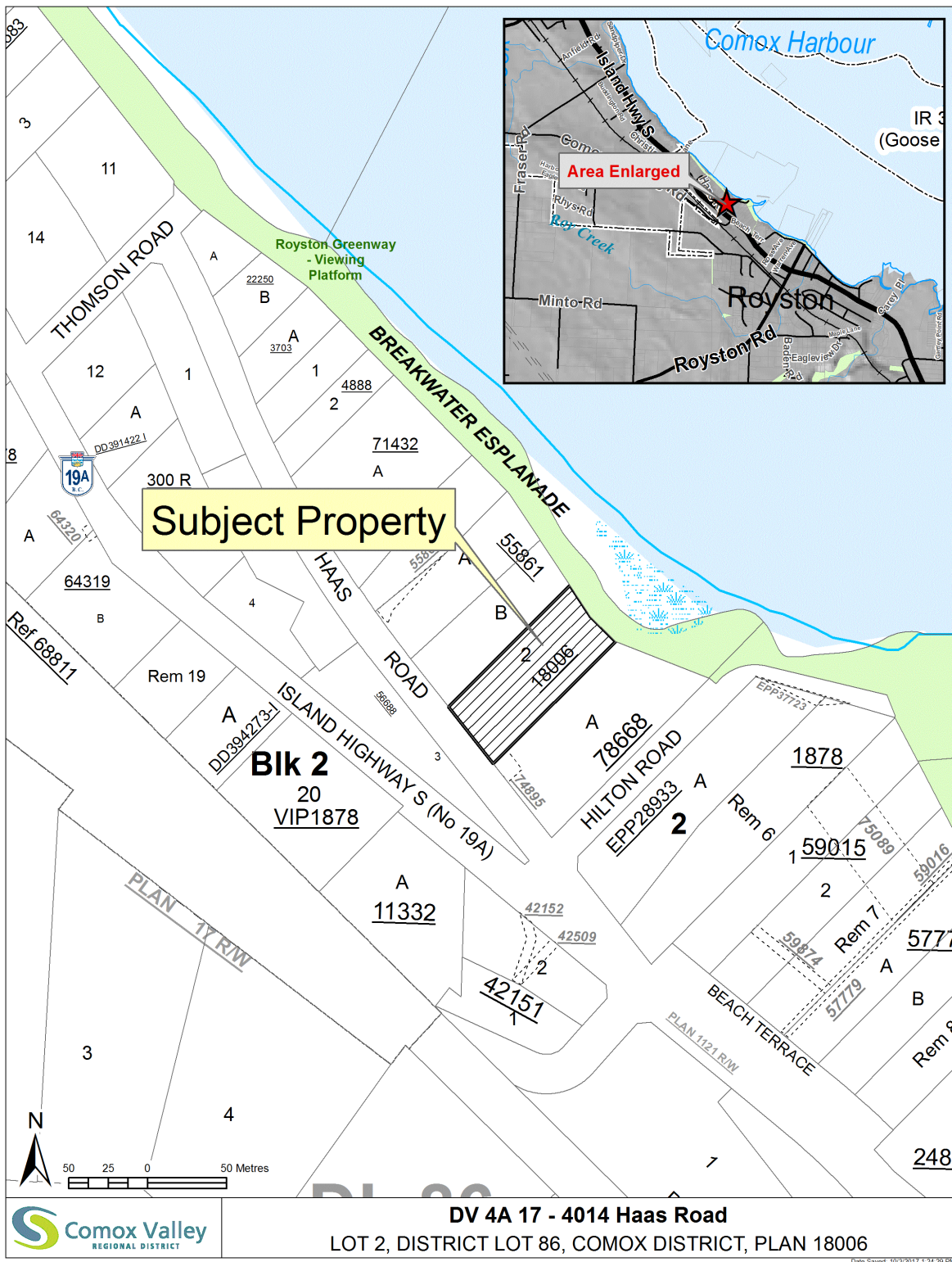


Figure 1: Subject Property Map





Figure 2: Aerial Photo





Figure 3: Accessory Building

**DV 4A 17**

**TO: Kimberly and Mitchell Zaborniak**

1. This development variance permit (DV 4A 17) is issued subject to compliance with all of the bylaws of the Comox Valley Regional District applicable thereto, except as specifically varied or supplemented by this permit.
2. This development variance permit applies to and only to those lands within the Comox Valley Regional District described below:  
**Legal Description: Lot 2, District Lot 86, Comox District, Plan 18006**  
**Parcel Identifier (PID): 002-174-821 Folio: 771 01189.00**  
**Civic Address: 4014 Haas Road**
3. The land described herein shall be developed strictly in accordance with the following terms and provisions of this permit:
  - i. THAT the development shall be carried out according to the plans and specifications attached hereto which form a part of this permit as the attached Schedules A, B, C and D;
  - ii. THAT all other buildings and structures must meet zoning requirements.
4. This development variance permit is issued following the receipt of an appropriate site declaration from the property owner.
5. This development variance permit (DV 4A 17) shall lapse if construction is not substantially commenced within two (2) years of the Comox Valley Regional District board's resolution regarding issuance of the development variance permit (see below). Lapsed permits cannot be renewed; therefore application for a new development permit must be made, and permit granted by the Comox Valley Regional District board, in order to proceed.
6. This permit is *not* a Building Permit.

CERTIFIED as the **DEVELOPMENT VARIANCE PERMIT** issued by resolution of the board of the Comox Valley Regional District on \_\_\_\_\_.

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James Warren  
Corporate Legislative Officer

Certified on \_\_\_\_\_

Attachments: Schedule A – “Resolution”  
Schedule B – “Subject Property Map”  
Schedule C – “Accessory Building Subject to Height Variance”  
Schedule D – “Letter from BC Land Surveyor”

DRAFT



**Schedule A**

**File: DV 4A 17**

**Applicants: Kimberly and Mitchell Zaborniak**

**Legal Description: Lot 2, District Lot 86, Comox District, Plan 18006, PID 002-174-821**

**Specifications:**

THAT WHEREAS pursuant to Section 309 (3) of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” the maximum height of all accessory buildings is 6.0 metres except for structures containing a residential use, such as carriage houses, which have a maximum permitted height of 7.0 metres;

AND WHEREAS the applicants, Kimberly and Mitchell Zaborniak, wish to increase the maximum height of the accessory building shown on Schedule C to 6.4 metres;

THEREFORE BY A RESOLUTION of the board of the Comox Valley Regional District on \_\_\_\_\_, the provisions of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” as they apply to the above-noted property are to be varied as follows:

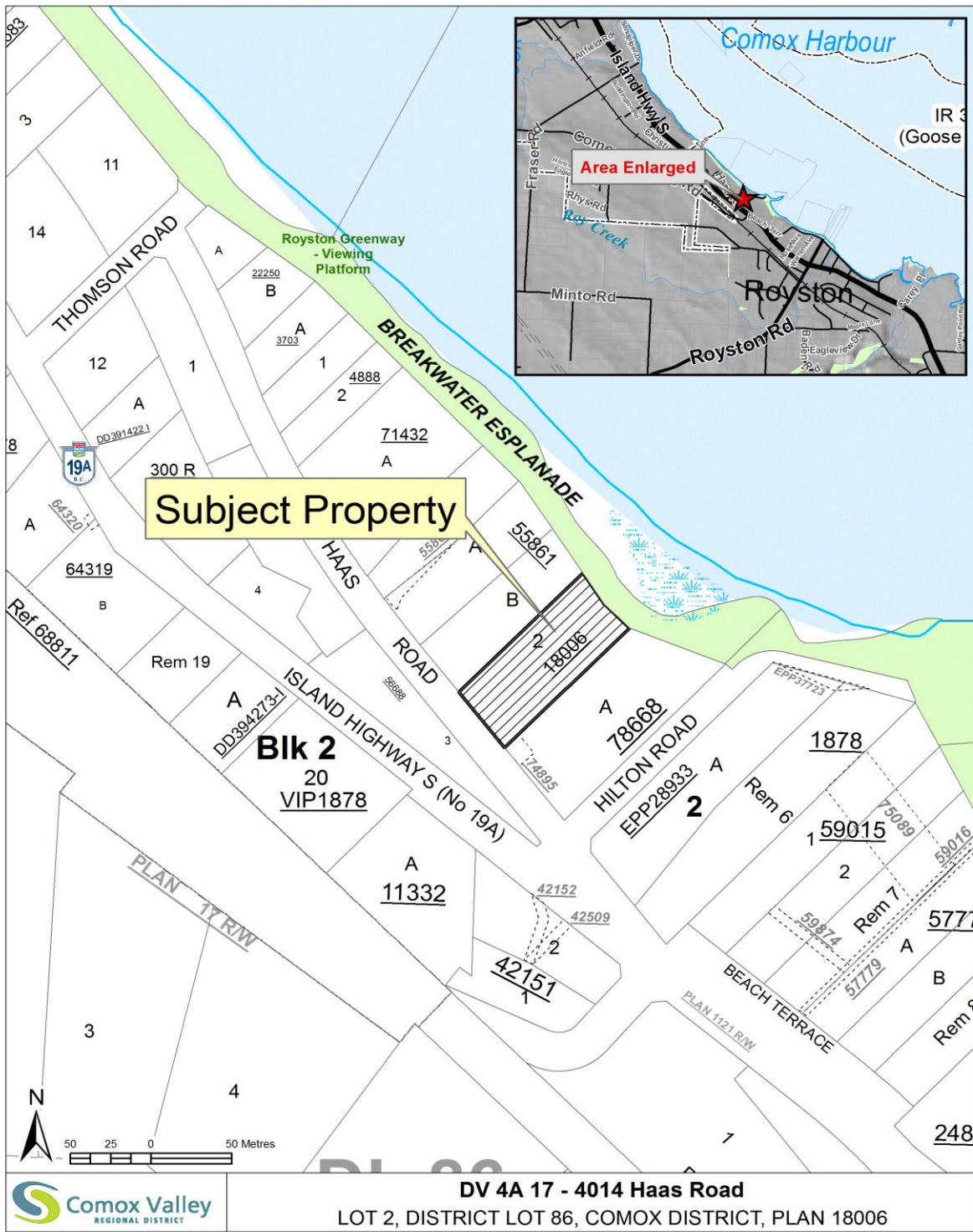
309(3) The maximum height of the accessory building shown on Schedule C is 6.4 metres.

I HEREBY CERTIFY this copy to be a true and correct copy of Schedule A being the terms and conditions of Development Variance Permit File DV 4A 17.

\_\_\_\_\_  
James Warren  
Corporate Legislative Officer

Certified on \_\_\_\_\_

### Schedule B Subject Property Map



**Schedule C**  
**Accessory Building Subject to Height Variance**





## HOERBURGER LAND SURVEYORS

280-A Anderton Road, Comox, B.C. V9M1Y2  
Ph. (250) 890-0100 e-mail: hlsurveyors@gmail.com

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September 23, 2017

Mitch & Kimberly Zaborniak  
4014 Haas Road,  
Courtenay, B.C.

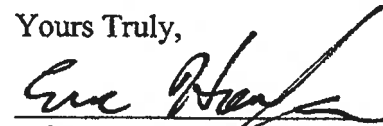
**Re: Building height verification for the work shop under construction  
located at 4014 Haas Road, Courtenay, B.C.**

Dear Mitch & Kimberly;

Thank you for requesting the above noted survey work. After a field survey we have determined the roof peak height (highest point) for the new work shop at 4014 Haas Road is **6.4 meters** above the average natural grade.

I trust the above is in order, but if you have any questions please call me at (250) 890-0100.

Yours Truly,



Eric A. Hoerburger, BCLS

## 4014 Haas Road – Building Permit # 10323 – Reason for DP Application

This Accessory building is intended to be used as a workshop/garden shed/ storage/ etc.

We were unaware of the building height restriction at the time of exploring the permit process, when we first went to the CVRD with our plans (Greg was at the front counter), Greg said that we were over height, and that the minimum height of the accessory building would have to be 6.0 m. He said we could just change it from 14/12 pitch to a 12/12 pitch and that should be good if it meets the 6.0 m. We went home and I calculated the new building height based off the 12/12 pitch which reduced it from 6.4 m. to just under 6.0 m. We then submitted our application on Oct. 20, 2016, with the original plans by just crossing out the 14/12 pitch and writing in 12/12 pitch, which was approved, and received the building permit around the end of Nov. 2016.

At the time of the framing/sheathing inspection, when John and Garth said that we needed to supply a BCLS building height survey at this time, I told them I was unaware of this, as we just went off page 3 when to call for a building inspection as this is what we were told to do as it is a confusing process for the one-time builder as it had all the pertinent information that was required for when to call for an inspection. At the time of this inspection, we measured the building height right there on site with John and Garth, and was just around the 6.0 m. but we were not finished backfilling yet, and this would require an additional approx. 4 – 6" of soil yet to bring it to finished grade and the building would be under the 6.0 m. building height at that point. At this point John said the building height is to be taken from natural average ground. I asked why natural ground, and John said this is where the height of the building is taken from, and I replied I don't think it says that on the permit, however I will check to be sure. In the mean time we (John, Garth, and myself) picked a spot as to what was natural ground was which was higher in elevation at the one end of the building. Once they left we reviewed the permit, and it just said building height of **6.0 m.** on a **table on page 5** and also on **page 7**, nowhere did it say from natural ground. However on the plans it was red inked Max. 6 m fr actual natural grade showing an arrow going from the roof pitch to a ground level sloping away from the building, leading me to believe finished grade. So I left it at that, and contacted a BCLS surveyor, but they could not come down for some time. In the mean time a plumbing roughin inspection was completed, and Garth asked if we had the height of building surveyed yet, I replied not yet but was forth coming. We than called for an insulation/vapour barrier inspection, John called and said that they could not do the inspection till after the BCLS was completed. I asked why, and he said that they need the BCLS building height before they can do anymore inspections. We had the building height survey completed, and was sure that this would pass, however received his letter stating that it did not meet the required 6.0 m. but was in fact 6.4 m. I called the BCLS surveyor and he explained it was taken from natural ground and his interpolation was just that, an interpolation based on what he seen on our lot. He said you can go have another survey done and possibly they may see it differently than he, and it may meet the 6.0 m. I tried to explain to him that the original house (Major Hilton built) on the property that we demolished 2 years earlier had been standing for 100+ years, and that they owned the lots to the north and south before it was subdivided in 1965, and there was the likely possibility the natural ground was disturbed and disappeared, and asked if he took into account the surrounding property's for his interpolation, which he said no.

Interpolated natural ground elevation should not be used in this instance as the original owner of our property, once owned the now 1 adjacent property to the south, and the 2 lots to the north. This one

large property was sub-divided in 1965 into 4 lots. Prior to this Major Arthur Mansfield Hilton built his home here on our present lot, in 1912-1917 which was approx. 33' high (we measured it for a possible move off the property to build our new home), which we later decided not move, but demolish after building our present home. So for a BCLS to only look only at our lot and not the adjacent lots, in their determination of natural ground is unfair as this lot has changed in 100+ years. There is no original topography plans, no satellite imagery, no aerial photo graphs, of the area to show what the contours may have been prior to when the original house was built in 1912/17. As well there was the Comox Logging Railway, and camps in this immediate area, and a lot has changed in the course of a 100+ years.

As well, if you are taking the mean of the BCLS natural ground elevations around the perimeter of an accessory building, you should therefore also take into consideration **the mean height line between the peak and the height of the walls**, (see "Guide to Building Height" for a Pitched Roof, as published by Planning & Development Services West Vancouver). The CVRD should not be treating a building structure with a Peak roof like a flat roof structure which is totally unfair.



**706 Residential-Rural (R-RU)**

**1. PRINCIPAL USE**

- i) **On any lot:**
  - a) Residential use.
- ii) **On any lot over 4000 metres<sup>2</sup> (1.0 acre):**
  - a) Agricultural use.

**2. ACCESSORY USES**

**On any lot:**

- i) Secondary suite;
- ii) Home occupation use;
- iii) Accessory buildings;
- iv) Bed and Breakfast.

#4

**3. DENSITY**

**Residential use is limited to:**

- i) **On any lot:** One single detached dwelling and secondary suite, or one single detached dwelling and one carriage house, or one single detached dwelling and one secondary dwelling limited in area to 90.0 metres<sup>2</sup> (968.8 feet<sup>2</sup>).

#112

**4. SITING AND HEIGHT OF BUILDINGS AND STRUCTURES**

The setbacks required for buildings and structures within the Residential Rural zone shall be as set out in the table below.

Type of Structure	Height	Required Setback			
		Front yard	Rear yard	Side yard	
				Frontage <31m	Frontage >31m
Principal	10.0m (32.8 ft)	7.5m (24.6ft)	7.5m (24.6ft)	1.75m (5.8ft)	3.5m (11.5ft)
Accessory	4.5m-or less (14.8ft)	7.5m (24.6ft)	1.0m (3.3ft)	1.0m (3.3ft)	1.0m (3.3ft)
Accessory	6.0m-4.6m (19.7ft)	7.5m (24.6ft)	7.5m (24.6ft)	1.75m (5.8ft)	3.5m (11.5ft)

Except where otherwise specified in this bylaw, no building or structure shall be located in any required front and side yard setback areas. [Part 400, Siting Exceptions, of this bylaw and Bylaw No. 1836 being the “Floodplain Management Bylaw, 1997” may affect the siting of structures adjacent to major roads and the natural boundaries of watercourses and the sea, respectively.]

**5. LOT COVERAGE**

- i) The maximum lot coverage of all buildings and structures shall not exceed 35% of the total lot area.

**6. FLOOR AREA REQUIREMENTS**

- i) The maximum combined gross floor area of all accessory buildings shall not exceed 200.0 metres<sup>2</sup> (2152.9 feet<sup>2</sup>).

**7. SUBDIVISION REQUIREMENTS**

- i) Despite any other provision of this bylaw, the minimum permitted lot area within areas designated as “settlement expansion areas” under “Comox Valley Regional Growth Strategy Bylaw No. 120, 2010” is 4.0 hectares. #200
- ii) Despite any other provision of this bylaw, for the purpose of subdivision, the following sections of this bylaw do not apply to lots within areas designated as “settlement expansion areas” under “Comox Valley Regional Growth Strategy Bylaw No. 120, 2010”:
- a) Section 503 Subdivision Standards 1. AREA AND FRONTAGE REQUIREMENTS i);
- b) Section 503 Subdivision Standards 2. LOT SIZE EXCEPTIONS i) a); and
- c) Section 503 Subdivision Standards 2. LOT SIZE EXCEPTIONS iii).

iii) **Lot Area**

The minimum lot area permitted shall be 0.8 hectares (2.0 acres)

Despite (iii), a subdivision with lots smaller than identified above may be created by subdivision provided that the average lot area within the subdivision is equal to the minimum lot area permitted.

*End • R-RU*