

VIA EMAIL: erin@arbutuslaw.ca

May 11, 2020

Erin Gray
Arbutus Law Group LLP
132 - 328 Wale Road
Victoria, BC V9B 0J8

Dear Ms. Gray:

Re: Seacroft Estates
Our File No. 00071-0284

We are the solicitors for the Town of Qualicum Beach (the "Town"). We write in response to your letter to the Town dated May 4, 2020 expressing concern on behalf of your client, the Qualicum Nature Preservation Society, in relation to the development of the property (the "Property") legally described as PID: 024-935-000, Lot C, Plan VIP71752, District Lot 17 & 78, Newcastle Land District, for two dwelling units.

The Property is located within the Town's boundaries and its use is subject to the development regulations contained in the Town of Qualicum Beach Land Use and Subdivision Bylaw No. 580, 1999 (the "Zoning Bylaw").

The Town has long recognized the ecological importance of the Property. For this reason, for decades, the Property has been zoned Residential 1 under the Zoning Bylaw, restricting the development of the Property to two single family dwellings. Over the years, the Town has received numerous enquiries to rezone the Property for greater development, but those applications have all been denied on the basis of the ecological importance of the Property. However, the Town does not have the legal authority under its land use regulation powers to sterilize the use of the Property to protect its ecological importance without compensation to the Owner.

As you know, the Town, through the Official Community Plan Bylaw No. 800, 2018, (the "OCP") has established a number of development permit areas within the Town's boundaries. By doing so, lands located within those areas may not be developed unless the owner of the lands has

WWW.YOUNGANDERSON.CA

1616 - 808 Nelson Street, Box 12147 Nelson Square, Vancouver, BC V6Z 2H2 | tel: 604.689.7400 | fax: 604.689.3444 | toll free: 1.800.665.3540
201 - 1456 St. Paul Street, Kelowna, BC V1Y 2E6 | tel: 250.712.1130 | fax: 250.712.1180

obtained a development permit authorizing the proposed development or the proposed development is exempt from the requirement for a development permit by virtue of an exemption contained in the OCP.

Pursuant to the OCP, the Property is in whole or in part within two development permit areas, being the Little Qualicum/Laburnum Ecological Greenway Development Permit Area and the Hazardous Lands Development Permit Area. For the Hazardous Lands Development Permit Area, the Property is included in that area as being in the flood plain.

The OCP contains the following exemption from a development permit requirement for both the Little Qualicum/Laburnum Ecological Greenway Development Permit Area and the Hazardous Lands Development Permit Area:

The actions listed below will not require an Ecological Greenway Development Permit, provided they are designed and installed to resist erosion and avoid negative impacts on adjacent habitat areas.

...

- ... construction of a building or other structure ... where the ... the Building Inspector, pursuant to Section 56 of the *Community Charter*, can require the owner of land to provide the Building Inspector ... with a report certified by a qualified professional that the land may be used safely for the use intended and that the activity complies with all the requirements of all applicable Development Permit Areas.

It must be noted that the foregoing exemption becomes applicable as a matter of law. Where an owner of land can show that the construction of a building or other structure:

1. Is designed and installed to resist erosion and avoid negative impacts on adjacent habitat areas;
2. The Building Inspector can require a report from a qualified professional under section 56 of the *Community Charter*; and,
3. The activity complies with all requirements of all applicable development permit areas,

the owner is exempt from the requirement for a development permit. The Town does not have any discretion in relation to the exemption.

The Town has received information from the owner of the Property that the proposed construction of the two dwelling units, including the clearing of land for the same, will not negatively impact adjacent habitat areas, and otherwise complies with the requirements of the applicable development permit areas. Moreover, there is no question that, with the Property being located in the flood plain, the Building Inspector is entitled to require the owner to the

Property to provide a geotechnical report under section 56 of the *Community Charter* in support of the construction of the two dwelling units on the Property. In the circumstances, the construction of the two dwelling units, including the clearing of land for the same, is exempt, as a matter of law, from the requirement for a development permit.

In addition, it should be noted that, for the Little Qualicum/Laburnum Ecological Greenway Development Permit Area, the OCP specifies the following:

Development Permit Area No. G1– G12, as shown on map ‘Schedule No. 2.4’.

For these areas, Development Permit Area boundaries and Ecological Greenways shall be established as follows:

...

G5 – Little Qualicum/Laburnum

The Development Permit Area boundaries for Area G5 shall include sensitive land in one of four types:

- a) The Riparian Assessment Areas required by the RAR. Within the Development Permit Area boundaries, Aquatic Habitat Greenways shall be defined to include the Streamside Protection and Enhancement Areas (SPEAs) as defined under the RAR.
- b) Aquatic Habitat Greenways that encompass all wetlands, which means all areas of land that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, fens, vernal pools and estuaries, plus wetland buffers, as recommended by a Registered Professional Biologist.
- c) Upland Habitat Greenways that encompass sloping terrain plus 3m from the top of sloping terrain and 3m from the toe of sloping terrain.
- d) Upland Habitat Greenways that encompass any nest tree of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, plus nest tree buffers, as recommended by a Registered Professional Biologist.

While the whole of the Property is identified on Schedule 2.4 of the OCP as being in the Little Qualicum/Laburnum Ecological Greenway Development Permit Area, the above text from the OCP makes clear that the boundaries of the area are limited to the portions of the Property meeting one of the descriptions above. Interpreting the OCP otherwise would render the above text superfluous.

The development work currently being undertaken on the Property is not on any portion of the Property meeting one of the descriptions above. As such, a development permit is not required for that work in relation to the Little Qualicum/Laburnum Ecological Greenway Development Permit Area.

In all the circumstances, the Town remains of the view that a development permit is not required for the development work that is being undertaken on the Property. The Town considers this matter to be closed.

We trust the foregoing adequately sets out the Town's position.

Yours truly,

YOUNG ANDERSON



Sukhbir Manhas

manhas@younganderson.ca

SM/sm

copy to: Daniel Sailland, Town of Qualicum Beach
Luke Sales, Town of Qualicum Beach