

June 5, 2024

Dear Mayor and Council,

We are seeking the City of Courtenay's support for **the designation of covenant be removed from our properties** which were affected by the unlawful actions in December of 2021 by Above & Beyond Tree Removal Service and SMG Management Ltd. d/b/a/ Japonica Park Trailer Park Management Company.

Below is information for you as to what has occurred and what we have been left to deal with (photos attached):

- December 2021, the guilty parties had **unlawfully removed trees located on the covenant area of our properties** without the proper permits from the City of Courtenay and/or permission of the property owners
- both parties were ticketed and fined by the City of Courtenay
- limbed trees were left standing with ropes still hanging from them along with rusty metal fence wire creating **safety hazards**
- the piles of very dry debris and standing dead trees left behind by the contractor for over two years are extremely close to our homes. They are a potential **wild fire hazard** and are of extreme concern to us, especially with the forecasted dry weather and fire season!

We are asking for your support in removing the covenant on Lambert Drive based on the following:

1. The Fisheries and Oceans Canada (DFO) have closed their investigation and will not be pursuing remedial works on the affected properties (attachment page 2).
2. Some sales of property have lost value because of the covenant.
3. There appears to be no uniformity of covenant use and size along Lambert Drive.

4. The Union of BC Municipalities (UBCM) also provides some insight on the impact of redundant covenants (see attachment pages 4 and 5).

Thank you for your consideration in reviewing this most distressing matter.

Yours very truly,

Linda and Terry Hamilton, 2074 Lambert Dr.
Charles and Laurie Beek, 2038 Lambert Dr.
Bill and Cathie Matthews, 2086 Lambert Dr.
250 871-1857, bmatthews941@gmail.com
Bill and Hazel Eliason, 2100 Lambert Dr.

From: Pagliericci, Gino
Sent: Tuesday, June 21, 2022 1:43 PM
To: Pagliericci, Gino
Subject: City of Courtenay Message in Regards to the Investigation in regards to the tree cutting in the Covenant area

Hello All,

I was directed to provide you with a quick update on the investigation into the tree cutting in your backyards:

- 1). The City has completed its investigation and has charged two firms [REDACTED] tickets each. [REDACTED] per ticket;
- 2). Department of Fishery Office (DFO) is completing its investigation and will issue restoration orders if the creek is fish bearing to the individuals responsible;
- 3). The city is awaiting a response from the Provinces Natural Resource Officers, as they are also doing their own investigation;
- 4). A further written update from the City of Courtenay regarding restoration will be provided once we have more information from the DFO and the Province.

Thank you for your patience in this matter, as you can see it is a very complicated investigation conducted by several different organisations.

Yours truly,

Gino

Gino Pagliericci
Bylaw Enforcement Officer
City of Courtenay



830 Cliffe Ave.
Courtenay, BC V9N 2J7
Office: 250-334-4441 Ext: 7286
Cell: 250-207-7280
gpagliericci@courtenay.ca www.courtenay.ca

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I respectfully acknowledge that the land we gather on is on the Unceded traditional territory of the K'ómoks First Nation, the traditional keepers of this land

From: Gothard, Nancy ngothard@courtenay.ca
Subject: RE: Tree Removal Cleanup - [REDACTED] Lambert St.
Date: April 18, 2023 at 4:09 PM

To: O'Connell, Kate koconnell@courtenay.ca, Bill Matthews [REDACTED]
Cc: deGraaf, Peter pdegraaf@courtenay.ca

NG

Hello Bill,

I am also sorry that this has happened to your property and that you are continuing to live with the unsightly premises.

I am challenged by finding a way to ensure that sensitive debris removal occurs and ideally restoration. As it is a riparian area there are stipulations around how the work is conducted.

I continue to have this on my list to find a solution or direction for you and your neighbours re: the clean up. I just don't have the answer at this moment. I will follow up as soon as I have a clear path.

I very much appreciate your continued patience.

Take care,

Nancy Gothard RPP, MCIP
Manager of Community and Sustainability Planning/ Acting Manager of Development Planning
City of Courtenay
(she/her) *Why I list my pronouns
I respectfully acknowledge that I live, work and play on the Unceded territory of the K'ómoks First Nation.

I must advise that due to high volume of work, competing needs, and temporary gap in capacity in this department, that I may personally not be able to read all my emails in a timely manner particularly in March & April. In the event of serious problem that requires quicker attention please direct your contact to our planning division administration at planning@courtenay.ca; or our Interim Director Rob Roycroft roycroft@courtenay.ca. Thank you for your patience and understanding.

Tel. 250 703 4831, ngothard@courtenay.ca
General planning inquiries may be sent to: planning@courtenay.ca

City Hall general number: 250 334 4441
830 Cliffe Ave | Courtenay, B.C. | V9N 2J7
www.courtenay.ca

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-----Original Message-----

From: O'Connell, Kate
Sent: Wednesday, April 12, 2023 8:54 AM
To: 'Bill Matthews' <bmatthews941@gmail.com>
Cc: Gothard, Nancy <ngothard@courtenay.ca>; deGraaf, Peter <pdegraaf@courtenay.ca>
Subject: RE: Tree Removal Cleanup - 2086 Lambert St.

Hello Bill,

I am very sorry that this has happened to your property and we will do what we can to assist you in navigating the remediation processes. I met with Nancy last week and she will be in touch with you regarding the options to address the debris trees including permits and the existing covenant.

Regarding your questions about the DFO, the DFO has advised the City that their investigation regarding the status of the waterway is closed as they have determined the waterway to be non-fish bearing and they will not be pursuing remedial works on the affected properties. The City's role, regarding the bylaw investigation has also come to an end as the investigation has concluded and the responsible parties have been ticketed under the authorities of the bylaw.

As private property, any remediation activities would be led by the property owner. Although I cannot provide you with any legal advice, in the event you choose to pursue legal action against the two businesses involved in the tree removal, we can provide you through our Access Request process any investigation documentation that may be needed. Should you wish to file an Access Request, please contact the City's Corporate Officer, Adriana Proton at aproton@courtenay.ca

Regards,

Kate O'Connell MPP (She/Her)
Director of Corporate Services

Corporate Support Services
Bylaw Services
830 Cliffe Avenue
Courtenay, B.C. V9N 2J7



Phone 250-334-4441
Fax 250-334-4241
info@courtenay.ca
www.courtenay.ca

File No. 4020-20

July 15, 2022

Cathie-Lyn Matthews
William George Matthews
2086 Lambert Drive
Courtenay, BC V9N 9C9

REGULAR MAIL

Dear Mr. & Mrs. Matthews,

Update re: Unlawful Tree Cutting Investigation in the Vicinity of 20th Street and Lambert Drive, Courtenay, B.C.

As an affected property owner of the unlawful tree cutting activities that took place near Lambert Drive in December of 2021, this letter is to provide you with an update on the City's investigative process and next steps. We have not found any evidence that as the property owners of the subject property you were involved in the illegal activities. It was/is not the City's intent to penalize property owners who did not have a role in the unlawful tree cutting.

Upon conclusion of the investigation, it was determined that trees were unlawfully cut within a riparian area of the Piercy Creek watershed, and protected by covenants which required that it remain in a natural state. Having identified the responsible parties, the City of Courtenay issued 107 tickets to a contractor and a further 107 tickets to a property owner company for cutting or damaging over 100 protected trees, contrary to the *Tree Protection and Management Bylaw*. Fines associated with the tickets total \$107,000 (\$1,000 per protected tree) for each party, as per the City's *Municipal Ticket Information Bylaw*. These matters are now before the courts and are likely to heard next year.

In terms of site restoration and ecological preservation of the Tributary of Piercy Creek, the Department of Fisheries and Oceans (DFO) have conducted an initial investigation and are in the process of sending a biologist to the site. A timeline has not been forwarded to the City. The City has also notified the provincial Ministry of Forests natural resources officers who are responsible for the *Water Sustainability Act*.

Please do not hesitate to contact me directly at 250 334-4441 extension 7297, if you have any questions regarding this file.

Sincerely,

Peter de Graaf, CPHI(C), BA, MBA
Manager of Bylaw Services

cc Kate O'Connell, Director of Corporate Support Services

Redundant Covenants on Property

Year: 2010

Number: B141

Sponsor(s): Maple Ridge

WHEREAS redundant covenants on title can contradict a local governments zoning bylaw and negatively impact development potential for private owned property; AND WHEREAS approvals for release of the charges by the signatories to the charges can be difficult to obtain and local governments are not authorized by the Land Title Act, the Community Charter or the Local Government Act to release the charges from title: THEREFORE BE IT RESOLVED that the Union of BC Municipalities lobby the provincial government to amend the Land Title Act to allow local governments to apply to the BC Land Title Survey Authority for the release of the charges from title.

Provincial Response

Ministry of Forests, Mines Lands It is assumed that the term redundant covenants as used in the UBCM resolution refers to privately held restrictive covenants whose terms have become obsolete. Although restrictive covenants registered on title to a property may, in some cases, appear to contradict or limit a local governments land use planning goals or zoning provisions applicable to a particular property, they cannot override anything prohibited by a local governments bylaws. However, restrictive covenants are enforceable as private contracts that attach to the land and bind successive owners of the land beyond what would otherwise have been permitted under local government bylaws. Options currently exist to allow the

removal of restrictive covenants from title. If a covenant is found to be unreasonable in terms of its impact on the persons having an interest in the land involved, the Supreme Court may order the covenant to be cancelled or modified under section 35 of the Property Law Act once the required criteria have been met to the satisfaction of the Court. Note that a local government would not likely have standing to make an application under this section unless it held an interest in the land that was subject to the covenant, which is uncommon. In cases where a local government is the beneficiary of a statutory covenant i.e. one that is registered under section 219 of the Land Title Act, the local government can apply unilaterally to the Land Title Office to have the covenant released without the consent of the party who granted the covenant in the first place.

Convention Decision

Endorsed

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