



Island woman on the hook for \$600,000 in archeological fees

Judge expresses 'great sympathy' for her plight, but arbitrator's ruling that province acted in good faith is upheld

BY SANDRA MCCULLOCH, POSTMEDIA NEWS MARCH 9, 2011



Excavation of this property in 2007 wound up requiring an archeological impact assessment permit, which cost \$600,000.

Photograph by: Bruce Stotesbury, Postmedia News Files, Postmedia News

An Oak Bay woman who built a house on an unregistered aboriginal midden has had her bid to recoup \$600,000 from the provincial Archeology Branch struck down.

Wendi Mackay of 2072 Esplanade had asked B.C. Supreme Court to review arbitrator John Horn's January 2010 decision that cleared the province of blame.

In a decision made public Monday, Justice Shelley Fitzpatrick agreed with the arbitrator, but said she has "great sympathy" for Mackay.

"She and her late husband bought this property without any knowledge of its history and the potential impact of the Heritage Conservation Act on the property and her rights to develop a home on the property," Fitzpatrick said.

Mackay simply wanted to build a home "and was met not only with having to satisfy the usual development requirements, but also extensive, lengthy and expensive requirements under this Act too," she said.

Mackay was unaware that in 1971 the area had been identified as having archeological significance. It was not deemed a heritage site under the Heritage Conservation Act.

Mackay bought the property in 2005 from her parents for \$750,000. She moved the original house from the site and planned to build a retirement home there.

The title search came back clear.

But through her architect, Mackay learned she needed an archeological impact assessment permit and would have to pay the archeologists' salaries.

The law states that Mackay could not "damage, excavate, dig in or alter any heritage object from a site that has historical or archaeological value unless that person has a permit," Fitzpatrick said.

Mackay had to hire an archeologist to carry out an inspection and investigation work before any redevelopment.

In late 2007, Mackay finally received approval to build her home.

She sued the province, alleging the archeology branch didn't have the statutory authority to require her to get permits and carry out the extra work.

The arbitrator found, and the court agreed, that the province acted honestly and in good faith.

Mayor Chris Causton couldn't comment on this case specifically, but he did say that the issue is "of great concern" to both homeowners and municipalities.

"The homeowner becomes wholly responsible for all the costs but has no control over the expenditures or management of the project," he said.

Oak Bay is facing similar issues with new separate sewers in the Uplands, meaning residents there would be required to pay to connect that sewer.

"We have no idea what the budget ramifications are from these heritage regulations," Causton said.

"It means that we're unable to budget. And if we're unable to budget, Oak Bay's inclination is not to do it."

The municipality ran into the problem in Mackay's neighbourhood, where it wanted BC Hydro to put overhead wires underground.

The affected homeowners would pay the bill under the Heritage Conservation Act.

"You don't know how much to borrow from the bank," Causton said.

If all the homeowners were required to pony up \$500,000 apiece, "that would bring the whole project to a halt," Causton said.

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