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Oak Bay woman on the hook for archeological dig takes case to B.C. Court of Appeal

BY SANDRA MCCULLOCH, TIMESCOLONIST.COM MARCH 26, 2011 10:21 AM

STORY PHOTOS (1)



Excavation of this property in 2007 wound up requiring an archeological impact assessment permit, which was part of a total \$600,000 bill.
Photograph by: Bruce Stotesbury, Postmedia News Files, Postmedia News

An Oak Bay woman who tried unsuccessfully to sue the province for the \$600,000 cost of an archeological dig and subsequent construction difficulties is taking her case to the B.C. Court of Appeal.

Wendi Mackay, of 2072 Esplanade Avenue, bought the property off her parents and moved the old home off the property. She was told that there was a good possibility that aboriginal artifacts were on the site and she had to have a permit under the Heritage Conservation Act before she could build.

If she knew then what she knows now, Mackay said she would have renovated the old house and saved on time, stress and money.

"All you get is held up for a year and sent these huge bills from consultants who aren't accountable to anybody," Mackay said.

People should research what is on land before they buy it, Tseycum chief Vern Jack said on Friday. Aboriginal grave sites can be anywhere because 200 years ago their communities were widespread, he said.

"It's our belief that our people should rest in peace — it's not happening," said Jack. "The government, they hide behind legislation and policies. The law has to be changed."

Grave sites of both white people and aboriginals should be protected, said Jack. "If we could rewrite the law, it would be equal. It's not equal right now, it's one-sided. It frustrates us and it hurts, really hurts our people."

Tseycum gravedigger Simon Smith said the ceremony involved in putting aboriginal people to rest has great cultural significance.

"It isn't like the European culture to phone a guy to come in and dig the grave for them," he said.

"A lot of the frustration that comes with the graves of our ancestors is the fear people put into it, whether there's a homeowner or a developer — they say 'Don't tell [if there are aboriginal remains there] or it's going to cost you a lot of money.'

"That shows they don't have respect for people who owned the land before."

The province is committed to ensuring that heritage resources are preserved and protected — archaeological sites are important links to our past, David Currie, spokesman for the Ministry of Forests, Lands and Natural Resources, said in an email.

"Similar to having a home inspector come see your house before purchase, part of the due diligence when buying land is checking with the archaeology branch who will conduct a search of the provincial site inventory to determine if there is a protected site on the land," said Currie.

The branch issues 450 to 500 permits each year. Sixty-five per cent involve archeological impact assessments, 31 per cent involve site alteration permits and four per cent involve investigation permits.

Mackay was told initially that she would have to pay \$5,000 for an archeologist to inspect the lot. The work exceeded the estimate and took longer than expected.

Then she was told a second permit costing \$42,000 was needed.

Mackay lost trust in the first consultant and hired another, which quoted \$51,000.

After three months of digging, Mackay asked the firm for an accounting and was told the price was \$62,000 so far, and the work was only half done.

She was told a trench had to be dug under the foundation which had already been poured. The \$600 estimate turned into an \$8,000 bill. "At that point I started to get a bit frantic," Mackay said. She had paid about \$70,000 in archeology costs but the required report to the government was not done.

Mackay amended her house plans to redesign her plans and eliminate the basement: "I would have had an archeologist on site digging that whole hole with a pail and shovel."

The archeological dig turned up stone chips that could have come from the making of tools. There were also very small fragments of bones but it was not clear if they were human or animal, said Mackay.

Some people have suggested she should have dug first and asked questions later, but Mackay wanted to be honest.

"There's no reward for being honest and co-operating. In fact you're slammed, and they'll just drain your bank account," she said.

"I understand the frustrations of the First Nations people but, for the homeowner, you're not even engaged in the process.

"The bigger question you could ask is how significant is this stuff anyway? It could be [First Nations] ancestors or it could be someone else.

"I don't think an honest taxpayer should be ambushed like that."

smcculloch@timescolonist.com

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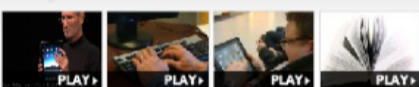
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