



COVENANTS & SSMUH

PLN Webinar #5

January 15, 2025

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The Policy Distinction

Provincial Policy Manual & Site Standards

- Existing section 219 covenants are not affected by the SSMUH legislation. However, local governments should not pursue new covenants that would prevent the prescribed residential densities required under the SSMUH legislation. Covenants can however still be requested for health, safety, and the protection of the natural environment. (pg. 24)

Land Use Bylaws v. Section 219 Covenants

Land Use Bylaw	S. 219 Covenant
An enactment	A contract attaching to land
Applies to all users	Applies only to registered owner
Enabled by Provincial statute	An instrument enhanced by Provincial statute
Unilaterally imposed by council or board, but subject to public-facing procedures	(Usually) voluntarily granted by an owner (but sometimes expropriated or required by bylaw)
Negative in nature (parking is pseudo-positive)	Can be positive or negative
Endures until repealed or amended	Vulnerable to waiver and obsolescence
Enforceable through statutory remedies	Enforceable through common law remedies
Terms found in bylaw, zoning map and lawful non-conforming protections	Terms found on title to the specific property

Parallel Density Control (pre-SSMUH)

- In *Natura Developments Ltd. v. Ladysmith*, 2015 BCSC 1673 a s. 219 covenant restricted land use to 15 units, but zoning allowed 29 units. Court did not consider zoning to constitute an implied agreement for cancellation under section 35 of the *Property Law Act*:

“On the other hand, even if the covenant does bind Natura to Ms. Kelt's particular multi-unit phased development plan, there is no evidence before me to suggest that this plan constitutes an obsolete or otherwise inappropriate use of the property, or that Natura could not pursue development under the plan.

...

the covenant nevertheless serves another purpose in controlling the density of the neighborhood through the prohibition in s. 4. The petitioner concedes as much in arguing that the ‘purpose of the covenant in this case is an intended restriction or control on development.’ As was the case in *Murrayfield*, there is nothing in the evidence before me to suggest that circumstances have subsequently rendered that purpose obsolete.”

- But is this view “SSMUH-proof”?

Private Covenants

- Density and site standards may be restricted by private restrictive covenants or statutory building schemes.
- In theory the private covenant should continue to impose restrictions despite changes in zoning. A dominant tenement may seek to acquire such a covenant to restrict development on a servient tenement precisely because the dominant tenement does not trust the land use authority to regulate “suitably”.
- Statutory building schemes bind all affected owners and can be enforced by any affected owner.

***Pon v. Burnaby (City)*, BCSC Vancouver Registry No. 245341**

- Owners seek cancellation of building scheme as it applies to their property.
- Building scheme limits lots to a single-family dwelling.
- Owners claim that “Bill 44 and resulting legislative changes, have rendered SBS obsolete”. *Property Law Act*, s. 35 enables cancellation of obsolete charges.
- No one responds to petition and court grants the order sought.



Thank you!