



TOWN OF LADYSMITH

A regular meeting of the
Council of the Town of Ladysmith
will be held in Council Chambers at City Hall on

TUESDAY, MAY 19, 2009
at 7:00 P.M.

AGENDA

CALL TO ORDER

Page

1. AGENDA APPROVAL

2. BYLAWS

- 2.1. Town of Ladysmith Highway Closure and Dedication Removal Bylaw 2008,
No. 1663 **1 - 2**
Re: May be adopted

3. STAFF REPORTS

- 3.1. Manager of Development Services **3 - 13**
Re: Covenant – GPM Developments Ltd.

4. QUESTION PERIOD

ADJOURNMENT

**TOWN of LADYSMITH
BYLAW NO. 1663**

HIGHWAY CLOSURE AND DEDICATION REMOVAL BYLAW 2008, No. 1663

WHEREAS the soil and free hold of every highway in the Town of Ladysmith is vested in the Town of Ladysmith; and

WHEREAS the Council may, by bylaw pursuant to Section 40 of the *Community Charter*, both stop up and close to traffic a highway or portion of it, and remove highway dedication; and

WHEREAS it is deemed expedient to stop up and close to traffic and remove highway dedication to a portion of Russell Road for the purpose of disposing of the land to the adjacent landowner for consolidation with the adjacent landowner's lands; and

WHEREAS all lands and premises immediately adjoining, and in the vicinity of the portion of highway that is stopped up and closed and highway dedication removed, will be adequately serviced by highways giving convenient access to all such premises; and

WHEREAS public notice pursuant to Section 94 of the *Community Charter* has been published in a newspaper circulating in the Town of Ladysmith.

THEREFORE BE IT RESOLVED that the Council of the Town of Ladysmith, in open meeting assembled, HEREBY ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as "Highway Closure and Dedication Removal Bylaw 2008, No. 1663".
2. That portion of Russell Road dedicated on Plan 33125, all within District Lot 91, shown as Closed Road comprising 0.170 ha on a plan to accompany Town of Ladysmith Bylaw 2008 No. 1663 prepared by McElhanney Associates, Professional Land Surveyors and dated the 21st day of July, 2008 a print of which is attached as Schedule A to "Highway Closure and Dedication Removal Bylaw 2008, NO. 1663", is hereby closed to all traffic.
3. The highway dedication of that part of Russell Road referred to in section 2 is hereby removed.
4. His Worship the Mayor and the Corporate Officer are hereby authorized to execute all the necessary documents as may be required for the due completion of the aforesaid road closure and dedication removal and affix the Seal of the Corporation thereto.

READ A FIRST TIME on the 2nd day of September, 2008

READ A SECOND TIME on the 2nd day of September, 2008

Notice of intention to proceed with this bylaw was published on the 23rd day of December, 2008 and the 30th day of December, 2008 in the Chronicle newspaper, circulating in the Town of Ladysmith, pursuant to Section 94 of the *Community Charter*.

READ A THIRD TIME on the 5th day of January, 2009

Approved by Ministry of Transportation on the 5th day of May, 2009

ADOPTED on the _____ day of _____, 2009

Mayor (R. Hutchins)

Corporate Officer (S. Bowden)



BRITISH
COLUMBIA

The Best Place on Earth

MAY - 5 2009

His Worship
Mayor Robert Hutchins
Town of Ladysmith
410 Esplanade
PO Box 220
Ladysmith BC V9G 1A2

Reference: I:77651
RECEIVED
MAY - 7 2009
TOWN OF LADYSMITH

Dear Mayor Hutchins:

Re: Bylaw 2008, No. 1663

I am writing in response to your letter of February 12, 2009, and attachments, sent by Approving Officer, Patrick Durban, to the Minister of Transportation and Infrastructure, regarding your Council's Bylaw 2008 No. 1663 proposing closure of a portion of undeveloped right-of-way on Russell Road in the town of Ladysmith. As a provincial election has been called I am responding on behalf of the Minister.

The Town's Bylaw has been reviewed and the ministry has no objections to the closure.

Regarding any future connections to the Trans-Canada Highway that may be contemplated by the town, please have your staff contact Debbie O'Brien, the ministry's Senior District Development Technician in Nanaimo. Ms. O'Brien can be reached by telephone at 250 751-3268 or by e-mail at Debbie.O'Brien@gov.bc.ca and would be pleased to assist.

Thank you for taking the time to write.

Yours truly,

DB C.O.O.
for: Peter Milburn
Deputy Minister

Copy to: Tracy Cooper, Regional Director
South Coast Region

Debbie O'Brien, Senior District Development Technician
Vancouver Island District



Town of Ladysmith
STAFF REPORT

To: Ruth Malli, City Manager
From: Felicity Adams, Manager of Development Services
Date: May 8, 2009
File No: 3360-06-13

Re: **COVENANT – GPM DEVELOPMENTS LTD.**
Lot 3, Block 1399, Oyster District, Plan VIP75559, Except Part in Plan
VIP80608

RECOMMENDATION(S):

That Council accepts the covenant prepared by GPM Developments Ltd. for rezoning application 3360-06-13 and authorizes the Mayor and Corporate Officer to execute the document.

PURPOSE:

The purpose of this report is to seek Council's agreement to the draft covenant provided by GPM Developments Ltd.

INTRODUCTION/BACKGROUND:

The covenant is to secure on-site storm water management; park land dedication and park improvements; Built Green construction; rental of units; geotechnical evaluation prior to land alteration; public transit (trolley) bus stop; amenity fund contribution; water conservation measures; and sanitary sewer upgrades.

SCOPE OF WORK:

Covenant registration would be undertaken by the owner's solicitor. Once confirmation of covenant registration has been received from the owner's solicitor, the rezoning bylaws will be provided to Council for consideration of final adoption.

ALTERNATIVES:

That Council provide further input to the draft covenant.

FINANCIAL IMPLICATIONS:

None.

LEGAL IMPLICATIONS:

The covenant secures the owner's commitments to provide the green features and amenities requested by Council.

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

None.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

Both the Director of Parks, Recreation and Culture / Approving Officer and the Director of Public Works have provided input into the draft covenant.

ALIGNMENT WITH STRATEGIC PRIORITIES:

The covenant secures green features and amenities.

SUMMARY:

The attached covenant has been prepared by the owner's solicitor and provides the items required by Council. Staff recommend acceptance of the covenant.

I concur with the recommendation.

Ruth Malli

Ruth Malli, City Manager

ATTACHMENTS:

Draft covenant.

LAND TITLE ACT

FORM C

(Section 219.81)

PROVINCE OF

BRITISH COLUMBIA

GENERAL INSTRUMENT - PART I (This are for Land Title Office Use)

Page 1 of 9 Pages

1 Application: MAGUIRE & COMPANY, Barristers & Solicitors, 1727 Jefferson Ave.
Victoria, BC, V8N 2B3 (Telephone: 370-0300)
File No.: 027.09 _____
Signature of authorized agent

2. Parcel Identifier(s) and Legal Description(s) of Land:*(
(PID) (Legal Description)
025-708-643 Lot 3, Block 1399, Oyster District, Plan VIP75559 Except Part in Plan VIP80608

3. Nature of Interest: (Document Reference) Person Entitled to Interest
(Description) (Page and Paragraph)
S. 219 COVENANT Entire Document Transferee
PRIORITY AGREEMENT Page 9 Transferee
granting _____ priority
over Mortgage No.: CA8021 and
Assignment of Rents No. CA8022

4. Terms: Part 2 of this instrument consists of (select one only)
(a) Filed Standard Charge Terms _____ D.F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release (Discharge) _____ There is no Part 2 of this instrument

A Selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. Transferor(s): * **GPM DEVELOPMENTS LTD.** (Registered Owners)
ISLAND SAVINGS CREDIT UNION (Mortgagee)

6. Transferee(s): **TOWN OF LADYSMITH**
410 Esplanade, P.O Box 220, Ladysmith, British Columbia, V9G 1A2

7. Additional or Modified Terms:* **NONE**

8. Execution(s): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Execution Date

Officer Signature(s)

Y M D

Robert J. Maguire
Barrister & Solicitor
1727 Jefferson Avenue
Victoria, B.C. V8N 2B3

GPM DEVELOPMENTS LTD. by its
authorized signatory

RICHARD CHARLES MEAGHER

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "see schedule" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

EXECUTIONS CONTINUED

Officer Signature	Execution Date	Party(ies) Signature
	Y M D	

ISLAND SAVNGS CREDIT UNION
by its authorized signatories

As to signatures for
Island Savings Credit Union

Town of Ladysmith
by its authorized signatories

Mayor:

Corporate Officer:

As to signatures for
Town of Ladysmith

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "see schedule" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

Section 219 Covenant

BETWEEN:

GPM DEVELOPMENTS LTD.

c/o 2015 Dron Place
Victoria, BC V8N 6B8

(the “Covenantor”)

AND:

TOWN OF LADYSMITH a municipality
under the *Local Government Act* having its offices at
410 Esplanade, P.O Box 220,
Ladysmith, British Columbia, V9G 1A2

(the “Covenantee”)

WHEREAS:

- A. The Covenantor is the registered owner in fee simple of those lands and premises in Ladysmith, British Columbia, which are legally described as:

PID:	LEGAL DESCRIPTION:
025-708-643 VIP80608	Lot 3, Block 1399, Oyster District, Plan VIP75559 Except Part in Plan VIP80608

(the “Lands”)

- B. WHEREAS The Covenantor has made application to the Town for a OCP amendment and zoning amendment for a 190 unit Multi-Family development upon the Lands and acknowledging that it is in the public interest that the use and building upon the Lands be restricted and subjected to additional requirements, the Covenantor wishes to grant this Covenant to the Covenantee; and
- C. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, in respect of:
- the use of land or the use of a building on or to be erected on land;
 - that land is to be built on in accordance with the covenant;
 - that land is not to be built on or subdivided except in accordance with the covenant;
 - that land is not to be used, built on or subdivided;
 - that separate parcels of land are not to be sold or transferred separately;
 - that land or specified amenities be protected, preserved, conserved,

maintained, enhanced, restored or kept in its natural or existing state;

may be granted in favour of the municipality and may be registered as a charge against the title to that land.

NOW THEREFORE in consideration of the premises and the covenants herein contained, the payment of the sum of \$10.00 paid by the Covenantee to the Covenantor, and the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

STORMWATER MANAGEMENT

1. Prior to the Covenantor undertaking any alteration of the Lands for development, the Covenantor must provide a storm water management plan for the Lands that is satisfactory to the Covenantee's Engineer acting reasonably.

PARKLAND

2. Concurrently with the registration in the land title office of the first subdivision of the Lands by the Covenantor, the Covenantor shall dedicate in favour of the Covenantee, an area of parkland of approximately 2.5 acres, generally in the area marked as "Parkland" on the sketch plan attached as **Schedule "A"** hereto.
3. Prior to the issuance of any occupancy permit in respect of any improvements constructed on the Lands, the Covenantor shall, in the area designated as Parkland, and to the reasonable satisfaction of the Covenantee:
 - a) undertake a program to remove non-native invasive plant species; and
 - b) construct a trail or trails linked to the Holland Creek Trail and install a reasonable number of picnic tables and benches in relation thereto.

BUILT GREEN CONSTRUCTION

4. All residential dwellings constructed on the Lands shall be constructed to at least the CHBA Built Green Bronze standards applicable to the type of dwelling (townhome or multi-storey) being constructed.

RENTAL OF UNITS

5. It is the intention of the Covenantor and Covenantee that the first multi-storey (not townhome) building constructed on the Lands will contain strata lots that may be rented. The Covenantor, must, prior to the filing in the land title office of the strata plan for the first multi-storey building constructed on the Lands, file a Rental Disclosure Statement with the Superintendent of Real Estate that allows for all of the strata lots in such building to be rented for a period of not less than 99 years. Nothing in this paragraph prohibits the Covenantor from allowing the rental of other units constructed on the Lands.

GEOTECHNICAL WORK

6. Prior to the Covenantor undertaking any alteration of the Lands for development, the Covenantor shall ensure that the recommendations contained in the Preliminary Geotechnical Assessment by Levelton Consultants Ltd. dated April 28, 2008 and previously submitted to the Covenantee are being implemented or will be implemented in the course of development of the Lands to the satisfaction of the Covenantee, acting reasonably.

COMMUNITY AMENITIES

7. Prior to applying to the Covenantee for an occupancy permit in respect of any improvements constructed on the Lands, the Covenantor shall construct a 'bus stop' for the Covenantee's public transit (trolley) service at a convenient location on the Lands acceptable to the Covenantee
8. The Covenantor shall pay to the Covenantee the sum of \$80,000.00 as a contribution to the Covenantee's community amenity fund. This payment shall be made at the time of application for building permits by the Covenantor and the payments may be pro-rated for the number of units for which a particular building permit is granted as a percentage of the total number of units (190) in the development.

WATER CONSERVATION

9. The Covenantor shall implement the following water conservation measures in respect of the improvements constructed on the lands:
 - a) install low-flow washing machines;
 - b) install low-flow toilets and shower heads as per the *British Columbia Building Code*; and
 - c) install individual water meters in each unit.
10. The Covenantor shall install facilities for the townhomes constructed in the first phase of development of the Lands to collect rainwater and re-use it for toilet flushing and irrigation of landscaping.
11. The Covenantor shall, at its sole expense, provide to the Covenantee an evaluation of the rainwater collection and reuse facilities so installed and other water use mitigation strategies implemented in the first phase of the Covenantor's development of the Lands to determine if such facilities and strategies have a cost-effective and environmentally beneficial impact with a view to implementing such facilities in other aspects of the development of the Lands if the evaluation is positive.

SANITARY SEWER UPGRADES

12. Prior to final approval of a subdivision of the Lands by the Covenantee, the Covenantor will upgrade that part of the sanitary sewer system downstream from the Lands, running from the intersection of Strathcona Road and Second Avenue along the TransCanada Highway and First Avenue to the mid-block lane (between Symonds and Warren) and

down the lane to Cenotaph Park in the Town of Ladysmith, that has previously been identified by Herold Engineering as under-capacity for new development, through installation or upgrade of either a larger diameter (375mm) pipe or an overflow pipe (200mm) to run parallel to the existing pipe.

13. The Covenantor and Covenantee acknowledge and agree, that the upgrades to the sanitary sewer system as above-described will be subject to an agreement pursuant to section 939 of the *Local Government Act* (commonly referred to as a 'latecomers agreement'), for cost-recovery from those other users of that part of the upgrades that is an excess or extended service that have not directly funded the construction of the upgrades (commonly referred to as the 'latecomers'). The Covenantor may be a party that directly funds the upgrades pursuant to paragraph 12 and therefore may obtain cost-recovery from the 'latecomers', or the Covenantor may be a party that does not directly fund the upgrades and therefore will fulfill its obligation under paragraph 12 by contributing its share as a 'latecomer'.
14. Completion of the upgrades to the sanitary sewer system as above-described shall not affect the liability of the Covenantor to pay such development cost charges as may be applicable from time to time in respect of sanitary sewers in the course of the development of the Lands by the Covenantor.

BONDING OPTION

15. Nothing herein shall prohibit the Covenantee from accepting a bond or other security for future performance of an obligation of the Covenantor in lieu of immediate performance of such obligation.

COVENANTEE'S RIGHTS

16. Nothing herein contained or implied shall prejudice or affect the rights and powers of the Covenantee and the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Covenantor.
17. The Covenantor and the Covenantee agree that the enforcement of this Agreement shall be entirely within the discretion of the Covenantee and that the execution and registration of this covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the Covenantee to the Covenantor or to any other person to enforce any provision or the breach of any provision of this Agreement.
18. The Covenantor covenants and agrees that the Covenantee may withhold development permits, building permits and occupancy permits as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a development permit, building permit or occupancy permit does not act as a representation or warranty by the Covenantee that the covenants of this Agreement have been satisfied.

OWNER'S RESERVED RIGHTS

19. The Covenantor reserves all of its rights as owner of the Lands, including the right, to use, occupy and maintain the Lands in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement.
20. Nothing in this Agreement restricts or affects the rights of the Covenantor or any other party to do anything reasonably necessary to:
 - a) prevent potential injury or death to any individual; or
 - b) prevent, abate or mitigate any damage or loss to any real or personal property.

ACCESS FOR OBSERVATION

21. The Covenantor gives permission to the Covenantee and its agents to enter the Land, upon giving reasonable advance notice, for the purposes of monitoring the terms and conditions of this covenant.

SEVERANCE

22. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.

RUNS WITH LANDS

23. The covenants set forth herein shall charge the Lands pursuant to Section 219 of the *Land Title Act* and shall be covenants the burden of which shall run with the Lands and bind the Lands and every part or parts thereof. The covenants set forth herein shall not terminate if and when a purchaser becomes the owner in fee simple of the Lands, but shall charge the whole of the interest of such purchaser and shall continue to run with the Lands and bind the Lands and all future owners of the Lands and any portion thereof. No owner is liable for breaches of this Agreement that occur after the owner has ceased to be a registered owner of the Lands.

DISCHARGE

24. Upon the Covenantee being satisfied that the obligations of the Covenantor pursuant to this document have been satisfied the Covenantee shall execute a registerable discharge of this covenant, and all costs of, preparation and registration of the discharge shall be for the Covenantor's account. The Covenantee may, where appropriate, discharge this covenant from some but not all of the Lands charged by this covenant from time to time.

RELEASE AND INDEMNITY

25. The Covenantor hereby releases and forever discharges the Covenantee of and from any claim, cause of action, suit, demand, expenses, costs and legal fees whatsoever which the Covenantor can or may have against the said Covenantee for any loss, damage, deprivation

or injury, in law or equity, that the Covenantor may sustain or suffer arising out of this Agreement.

26. The Covenantor covenants and agrees to indemnify and save harmless the Covenantee from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands or by a person who has an interest in or comes onto the Lands or by anyone who suffers loss, damage, deprivation or injury to his person or property, that arises out of the terms and restrictions of this Agreement or a breach of this Agreement by the Covenantor.
27. It is mutually understood, acknowledged and agreed by the parties hereto that the Covenantee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Covenantor other than those contained in this Agreement.

INTERPRETATION

28. Wherever the expressions "Covenantor" and "Covenantee" are used herein, they shall be construed as meaning the singular, plural, feminine or body corporate or politic where the context or the parties so require.

FURTHER ASSURANCES

29. The parties hereto shall execute and do all such further deeds, acts, things, and assurances that may be reasonably required to carry out the intent of this Agreement.

WAIVER

30. Waiver by the Covenantee of any default by the Covenantor shall not be deemed to be a waiver of any subsequent default.

ENUREMENT

31. This Agreement shall enure to the benefit of and binding on the parties hereto and their respective successors and permitted assigns.

REFERENCES

32. Every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows.

EXECUTION

As evidence of their agreement to be bound by the terms of this instrument, the Covenantor has executed the Land Title Office Form C which is attached hereto and forms part of this Agreement and the Approving Officer of the Covenantee has executed this agreement below.

CONSENT AND PRIORITY AGREEMENT

ISLAND SAVINGS CREDIT UNION, the registered holder of a charge, by way of a mortgage and assignment of rents, against the Land which charge is registered in the Land Title Office at Victoria, British Columbia, under Nos. CA8021 and CA8022, hereby approves of and consents to the foregoing grant of covenant and to its registration in the Land Title Office aforesaid with priority over the registration of the said mortgage and assignment of rents.

AS EVIDENCE of its agreement with the Covenantee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, ISLAND SAVINGS CREDIT UNION has executed and delivered this agreement by executing Part 1 of the land Title Act Form C to which this agreement is attached and which forms part of this agreement.