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BULLETIN

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BILL 11 TWEAKS PLANNING POWERS

On June 3, 2010 the Lieutenant-Governor gave Royal Assent to Bill 11, the *Miscellaneous Statutes Amendment Act (No. 2), 2010*, which contains several significant amendments to the land use management provisions of the *Local Government Act*. Unless otherwise indicated, Royal Assent brought the provisions discussed in this bulletin into force.

The new provisions regarding in-stream building permit and subdivision applications will likely necessitate officer bylaw amendments in many local jurisdictions.

Regional Growth Strategies

The period of time that an affected local government is given to review and consider accepting a regional growth strategy is reduced from 120 days to 60 days, and local governments are deemed to have accepted each provision of a regional growth strategy to which they do not expressly object. Transitional provisions retain the 120-day period for consideration of regional growth strategies submitted for acceptance prior to June 3.

Phased Development Agreements

The scope of phased development agreements is expanded to enable the parties to specify, in addition to zoning bylaw provisions, subdivision servicing bylaw provisions whose amendment will not affect lands subject to a PDA during the term of the agreement, and to include in a PDA provisions dealing with park land dedication in excess of 5% for a particular phase of development as long as the overall total does not exceed 5%. The approving officer's public interest discretion in relation to the subdivision of land that is subject to a PDA must now take account of the provisions of the PDA, and the approving officer may not consider, in evaluating the public interest, any bylaw amendment that does not apply of its own force to the subdivision due to the provisions of a PDA, or any local government resolution on the same subject matter. Notice of a PDA must now be registered on title in the same manner as a Part 26 permit.

The latecomer charge provisions in s. 939 have been amended to permit the imposition of latecomer charges after 15 years from the date of completion of the services, if there is a PDA that directly relates to the construction of the excess or extended services.

Temporary Use Permits

The temporary use permit powers are amended to eliminate all references to commercial and industrial uses. A TUP may now allow any use that is not permitted by a zoning bylaw, including for example residential, agricultural and institutional uses. The maximum period for a TUP has been increased from 2 to 3 years.

Development Cost Charges

DCC reserve fund expenditure provisions have been amended to clarify that the funds can be used to reimburse a developer who constructs a DCC project.

In-stream Applications

A provision has been added protecting building permit applicants from DCC bylaw changes in the same manner as subdivision applicants are protected under s. 943. This new provision requires the building permit application to have been made to a "designated local government officer", which is defined in the legislation to mean the municipal or regional district corporate officer unless another officer has been assigned responsibility under s. 146 of the *Community Charter* or s. 196 of the *Local Government Act* in relation to the matter. These are the "officer bylaw" provisions for municipalities and regional districts. The application must be "in a form satisfactory to" the designated local government officer. Those local governments that have not used their officer bylaws to assign responsibility for building permit applications to building officials (probably most local governments in the province) should expect that building permit applicants wishing to avoid DCC increases on instream applications will seek to submit their applications to the corporate officer rather than a building official. The corporate officers must accept these applications, and must therefore determine the form of building permit application that is acceptable to them (presumably in consultation with building officials). Generally, this will be a question of completeness; applicants may attempt to vest rights under existing bylaws by filing *pro forma* or otherwise complete applications.

For the sake of consistency, s. 943 has also been amended to enable subdivision applicants to avoid the effect of bylaw changes in a municipality only by submitting their application to the "designated municipal officer", which will be interpreted to mean the approving officer only if the approving officer appointment has been done by bylaw under s. 146 of the *Community Charter*; otherwise it means the corporate officer. Most municipalities have appointed their approving officers by resolution, and will therefore be able to avoid the submission of subdivision applications to the corporate officer only by amending their officer bylaws to designate their approving officers under s. 146. If this is not done, corporate officers should consult with approving officers as regards what "form" of application they should consider satisfactory; again, completeness will be the main issue.

The amendments regarding the submission of building permit applications and subdivision applications to the "designated local government officer" take effect on January 1, 2011, giving local governments six months to amend their officer bylaws and enable their corporate officers to avoid a blizzard of paper that really belongs on somebody else's desk.

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