

Building Permit Applications and New DCCs

Effective January 1, 2011, the new s. 937.001 of the *Local Government Act* comes into force, protecting building permit applicants from new DCC bylaws unless the applicant agrees that the bylaw will apply. Section 937.001 was part of Bill 11, the *Miscellaneous Statutes Amendment Act (No. 2), 2010*. It provides protection for building permit applicants similar to that afforded to subdivision applicants under s. 943 of the *Local Government Act*.

The preconditions to a one-year holiday from paying DCCs, or new DCCs in the case of bylaws that increase existing DCCs, are the same as those applicable to a subdivision application: an application for a building permit must have been made prior to the adoption of the DCC bylaw, and any applicable fee must have been paid. Presumably, the case law related to s. 943 and subdivision applications will provide some guidance as to the operation of s. 937.001, on such matters as what constitutes a complete building permit application and at what point a building permit application has been modified to such an extent that it is a new application not eligible for the protection afforded by s. 937.001.

Section 937.001 requires that a building permit application has been made to “a designated local government officer” to qualify the applicant for protection from DCC bylaw changes. That term is defined in s. 5 of the *Local Government Act* to mean the designated municipal officer or designated regional district officer, as applicable. The former is defined in the *Community Charter* to mean the municipal officer assigned responsibility under s. 146 in relation to the matter, or if no such assignment has been made, the corporate officer. Section 146 is the provision that permits the Council to establish officer positions in addition to the positions of corporate officer and financial officer, and to assign powers, duties and functions to those positions. “Designated regional district officer” is defined in s. 5 of the *Local Government Act* in an analogous way. Thus a building permit applicant who submits their application to a building official in the usual way, will only qualify for s. 937.001 protection if the municipal council or regional district board has established the building official position in its officers bylaw.

If building officials are not formally designated as “officers” in this way, the applicant will have to submit their building permit application to the corporate officer to qualify for protection from DCC bylaw changes. To avoid that result, local governments should probably consider amending their officer bylaws (the authority for which, in the case of regional districts, is s. 196 of the *Local Government Act*) to establish building official positions as officer positions. Another Bill 11 amendment to s. 943 itself will necessitate equivalent “officer” designations for

approving officers if such designations are not already in place and the local government wishes to avoid subdivision applicants attempting to submit their applications to the corporate officer instead of the approving officer. The actual appointments of particular persons as building officials and approving officers in duly established officer positions should continue to be done by council or board resolution; the officers bylaw should simply establish the position as an officer position of the local government. Note that the principal effect of such designations, apart from the DCC-related effects, is that the termination of officers is subject to special procedural rules: see ss. 152 of the *Community Charter* and 202 of the *Local Government Act*. In addition, regional district officers must swear or affirm an oath of office.

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