



**REPORT TO THE ELECTORAL AREA SERVICE COMMITTEE
MEETING OF WENESDAY, 06 APRIL 2011**

SUBJECT DESIGN AND INSTALLATION OF WATER COLLECTION SYSTEMS (POTABLE WATER SYSTEMS) CAPITAL REGIONAL DISTRICT POLICY, THAT COLLECTION SYSTEMS REQUIRE THE REGISTRATION OF SECTION 233 LAND TITLES COVENANT FOR RAINWATER SYSTEMS

ISSUE

The current building inspection department practice of requiring a restrictive covenant to secure the engineering report associated with the installation and maintenance of rainwater harvesting systems is considered to be over regulation by some residents and is being questioned.

BACKGROUND/ISSUE

The Electoral Director for Southern Gulf Islands forwarded email correspondence to staff indicating that some residents of the Southern Gulf Islands feel that they are being over regulated with engineering and regulatory requirements. Specifically, some property owners are suggesting that the requirement to register a Section 233 Land Titles covenant to secure the engineering report associated with the installation and maintenance of rainwater harvesting systems should be eliminated.

It is the current Capital Regional District (CRD) practice to require the registration of a Section 233 covenant prior to acceptance of a rainwater system as a potable water supply for new construction and additions to existing dwellings. The existing practice to require a covenant also provides for a provision to indemnify and save harmless the CRD, directors, officers, servants, employees, and agents from all claims, causes of action, suits, demands, expenses, cost and legal fees that arises from the owners obligations to maintained the water system.

Engineering reports received by the CRD include water system maintenance schedules. Components of a rainwater collection system such as water storage tanks and water pipes are required to be shocked and flushed with chlorine to remove residual bacteria. In addition there are requirements to replace carbon filters, remove sediment and to test of interior water taps for total coliform bacteria, fecal coliform bacteria, non-coliform bacteria and E-coli. Water tests are to be performed by a recognized water testing laboratory.

The British Columbia Building Code (BCBC) requires that every dwelling unit be supplied with potable water. The term *potable* means "safe for human consumption" as defined in the BCBC. There are presently no provincial requirements within the Ministry of Health regarding water quality, for individual property owners that are not served by a community water system and there is no ongoing requirement to test the water for individual properties not served by a community water system unless carried out by the property owner themselves or under a public health order.

However, Section 290(1) of the *Local Government Act* reads as follows:

- (1) *If a municipality issues a building permit for a development that does not comply with the Provincial Building Code or another applicable enactment respecting safety, the municipality must not be held liable, directly or vicariously, for any damage, loss or expense caused or contributed to by an error, omission or other neglect in relation to its approval of the plans submitted with the application for the building permit if*

(a) a person representing himself or herself as a professional engineer or architect registered as such under Provincial legislation certified, as or on behalf of the applicant for the permit, that the plans or the aspects of the plans to which the non-compliance relates complied with the then current building code or other applicable enactment to which the non-compliance relates, and

(b) the municipality, in issuing the building permit, indicated in writing to the applicant for the permit that it relied on the certification referred to in paragraph (a).

ALTERNATIVES

1. Give consideration to a policy that will relax the requirements of a Section 233 restrictive covenant for rainwater systems by relying on the engineer's certification and direct staff to bring forward a proposed amendment to the Building bylaw that would specify the requirement for an engineer's certification of rainwater collection and other private water systems that provide potable water.
2. Continue with CRD Building Inspection practice that all rainwater collection systems and other private water systems for potable water supply require the registration of a Section 233 restrictive covenant with the engineer's certification documents and maintenance manual.

CONCLUSION

When conditions are imposed by the CRD in respect of or in the course of inspection, the CRD is not liable to any person for loss or damages as a result of the conditions not being complied with in the case of where the building inspector relies on a certification of an engineer, architect, etc.


While it is certainly advantageous to the CRD to be requesting acknowledgement by way of a restrictive covenant that property owners have consented to the obligation to maintain their own potable water from rainwater collection systems, there is in fact no express statutory authority in the *Local Government Act* or the *Community Charter* that would enable the CRD to impose this requirement on land owners. Further, the CRD solicitor has suggested that it is doubtful that the general authority under Section 694(1)(e) of the *Local Government Act* is sufficient authority to permit a local government to impose such a requirement, and such a requirement may be vulnerable to legal challenge by an owner. However to date this practice has been accepted by property owners as a condition of building permits without a legal challenge.

If the committee wishes to direct staff to discontinue this practice, it is recommended that the CRD Building Regulation Bylaw be amended to provide for the engineer's certification of rainwater collection and other private water systems that provide potable water. As a condition of a building permit, the CRD would continue to obtain an engineer's report certifying that the rainwater collection system will supply potable water and the CRD would issue a permit indicating in writing that it has relied on the engineer's certification with the report held on file together with other building permit documents. It should also be clarified in the Building bylaw that the CRD is not assuming any responsibility to review or inspect the installation of the water system and that its role is not one of "approval" but merely accepting and relying on the engineer's certification. With the amendment to the bylaw the CRD should be able to limit additional potential liability in relation to building plan approval, the issuance of permits, including approval for occupancy.


RECOMMENDATIONS

That the Electoral Area Services Committee:

1. Gives consideration to a policy that will relax the requirements of a Section 233 restrictive covenant for rainwater systems by relying on an engineer's certification.
2. Directs staff to bring forward a proposed amendment to the Building Bylaw that would specify the requirement for the engineer's certification of rainwater collection and other private water systems that provide potable water and clarify that the CRD is not assuming any responsibility to review or inspect the installation of the water system and that its role is not one of "approval" but merely accepting and relying on the engineer's certification.



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