**Township of Scugog’s response to ERO posting titled “Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the Planning Act”, ERO number 019-9198.**

The proposed regulation will require the Township to accept this form of security in place of the Letter of Credit (LOC) if the developer elects to use it. While this will benefit the homebuilders, it may impact the financial security of the municipality. The following are some areas that the Township would like to see the proposed regulation contain clarity on and would also like to see a shift to allow each municipality to have the flexibility to limit use:

**Monitoring Financial Health of Surety Provider with existing Staff Capacity**

With the LOC, municipalities have traditionally dealt with a Chartered Bank which is a known entity that is easy to track and monitor. While the Surety Providers are licensed under the Insurance Act to write surety insurance, details of their status and ongoing financial health may not be readily available. Small municipalities have limited staff with many responsibilities and if they are lower tier and therefore do not issue debt, they may not have existing relationships with credit rating companies. The Township requests the Province develop a registry that all municipalities can access on a central site that lists the details of all companies licensed to provide surety insurance in Ontario. Further, the Township requests the Province monitor the credit worthiness of each licensed surety provider and post this on a centralized site for small municipalities to access in their efforts to monitor the ongoing financial health of the surety provider.

**Longevity of Agreements**

LOC’s are used to ensure the Township has the funds available to complete work if the developer fails to meet their obligations. These funds need to be held, in some cases for years, since many of the related agreements take years for the developer to fulfill their obligations. Are the Surety bonds going to have the longevity needed to ensure work is done, in some cases 20 years after the original agreement was signed? Are Surety companies ready to provide this degree and duration of irrevocable credit guarantee? Municipalities need to know they will be able to draw the funds when a default occurs and not worry that the funds will not be available. The change to a LOC partway through the development process can be time consuming and costly to both the Township and the developer. Drawing down the security to complete work is not desirable in the Township’s opinion and would be done as a last resort. It is always better for the Township to have the developer honor their agreement to complete the work. The fact is that as these agreements get older, costs will escalate. This can become an issue for the Township who will have to make up the shortfall to ensure all residents in the Township have full access to services.

**In the Event of a Claim**

Municipalities do not have a great deal of experience with this new form of surety bond and have concerns that payments may not be as easy to draw as they are with LOCs. The regulation speaks to the municipality receiving payment within 15 days of their written notice and while helpful, staff would like to know what recourse will the municipality have if the surety provider fails to make the payment? Can a form of penalty for late release be imposed? What legal recourse will be available if they refuse to make the payment? If too many claims are made on a surety company, will they view this line of business as unprofitable and choose to withdraw leaving municipalities with the requirement to get LOC from developers?

**Auto-renewable**

Building homes in the community can take years from the shovel in the ground to the build out of the development. Once the work is completed to the Township’s satisfaction and the maintenance period ends, the Township will pass a by-law to assume the subdivision taking responsibility for the ongoing maintenance of roads, parks, and infrastructure in the development. Since the Township cannot assume a development if work is outstanding, will the Surety provider agree to provide bonds that are auto-renewable for an extend period? Are they committed to this line of business for the long term?

**Limitations**

While surety bonds may be an acceptable form of security, municipalities would like the option to limit the dollar value of this type of security accepted or to request a combination of LOC and Surety bonds depending on the type of development involved. As an example, in the case were monitoring of the infrastructure may be required for an extended period, the option should exist to ask for an LOC for this part of the work and accept a surety bond for the balance.

**Right to Refuse**

Municipalities want to see the homes built and to that end are willing to work with developers and accept Surety Bonds as a form of security to guarantee work in the development agreements, however municipalities feel they should have the right to refuse to accept any surety bond that does not comply with their requirements.