October 15, 2024

Ministry of Municipal Affairs and Housing
17th Floor, 777 Bay Street
Toronto, ON
M7A 2J3

SUBMITTED ELECTRONICALLY

RE: Environmental Registry of Ontario Posting 019-9198: Proposed Regulation under the Planning Act Relating the Authorization of Landowners to Stipulate Pay-On-Demand Surety Bonds to be Used to Secure Municipal Obligations that are Conditions of Land-Use Planning Approvals.

Please accept this letter in response to the Environmental Register of Ontario (ERO) proposal 019-9198 regarding the regulatory changes under the Planning Act to authorize landowners to stipulate pay-on-demand surety bonds to be used to secure municipal obligations that are conditions of land-use planning approvals. Staff have undertaken a review of the proposal and offer the following comments.

Proposal Summary

Regulatory changes are proposed that would allow for a wider acceptance of pay-on-demand surety bonds to be used to secure municipal obligations that are conditions of land-use planning approvals.

Under Bill 109, the *More Homes for Everyone Act, 2022,* the province amended the *Planning Act* to provide regulation-making authority to the Minister of Municipal Affairs and Housing to authorize landowners to stipulate the instruments to be used to secure municipal obligations that are conditions of land-use planning approvals. As part of Bill 185, the *Cutting Red Tape to Build More Homes Act, 2024,* the government announced that it would consult on a potential regulation to prescribe instruments.

Comments

When approving a development proposal, municipalities may impose conditions on the homebuilders, which could include obtaining financial assurance from the homebuilder that the required public infrastructure (e.g., roads, sidewalks) or improvements (e.g., plantings) are built as per municipal standards and function as intended. Typically, this financial assurance takes the form of a Letter of Credit (LOC) issued by a bank. If a homebuilder fails to fulfil their contractual obligations, the municipality can draw on the LOC to complete the work to its standards.

Currently the City of Barrie only allows cash and Letters of Credit as securities for works associated with development projects. This proposal would allow for a landowner to stipulate a pay-on demand surety bond as an alternative to Letters of Credit or cash.

There are several items that should be considered prior to the implementation of this instrument, as listed below:

- Clear direction on how the three-party instrument will be implemented.
- The municipality should be given the opportunity to review the pay-on-demand surety bond prior to acceptance.
- Conditions of the pay-on-demand surety bond should ensure that it is as liquid as a letter of credit. The terms of the bond should be adjusted to allow as much control as possible for the municipality.
- Where there is an existing letter of credit in place with the municipality, they should be maintained. Existing letter of credit should not be "swapped" out for a pay-on-demand surety bond.
- The municipality should be able to review the developer's history with bonds, prior to acceptance, i.e. not be required to accept a pay-on-demand surety bond from everyone.
- There should be no obligation on the municipality to prove that there is a requirement to draw on the bond. It is solely the discretion of the municipality to determine if the principal (i.e., homebuilder) fails to meet the agreed upon development obligation.
- Pay-on-demand surety bonds should not have an expiry date and should be in place for the life of the project or should have an automatic renewal.
- The municipality should be provided with proof that the pay-on-demand surety bond was issued by an insurer that is licensed under the *Insurance Act* to write surety insurance.
- In its bond policy, the municipality should be permitted to require a replacement security if the credit rating of the surety falls below what is considered acceptable. This is intended to ensure that the security provided by the developer remains suitable throughout the life of the obligations under the agreement.
- There needs to be recourse available to the municipality if the "principal" terminates the pay-on-demand surety bond and does not provide the municipality with a replacement security.
- The pay-on-demand surety bond must have clear reference to the specific agreement for which it provides security to the municipality.

It is understood that the municipal requirement such as LOCs, which municipalities generally require to secure homebuilder obligations when building communities, tie up the homebuilder's capital that could otherwise be invested in additional home-building projects and make some projects that currently cannot obtain more viable financing.

Thank you for providing the opportunity to comment on this proposal.

Respectfully,

Michelle Banfield

Michelle Banfield, RPP,
Executive Director of Development Services

cc Mayor Alex Nuttall
Michael Prowse, CAO, City of Barrie
Wendy Cooke, Clerk, City of Barrie