Priorities Committee Meeting_Sep15_2020

STRATEGIC INITIATIVE AND UPDATE

Financial Securities and Developer Agreements

Report Purpose
To provide information to the Priorities Committee on bonds as a form of financial security in developer agreements.

Our Prioritized Strategic Goals
Goal 1 - Build strong communities to support the diverse needs of residents
Goal 2 - Manage, invest and plan for sustainable municipal infrastructure

Report
Corporate Finance, Legislative & Legal Services and Planning & Development Services have worked together to provide the financial expertise, the legal expertise and the planning expertise in consideration of this matter.

Background
One of the various mechanisms to mitigate financial risks associated with contracts and agreements with third parties, is to require a form of financial security upon signing. If a third-party defaults on a contract or agreement, the financial security is available for the County to access in order to pay for and rectify the associated project costs.

The County currently accepts Irrevocable Letters of Credit (LOC), certified cheques, or bank drafts as financial security in developer agreements. In other County contracts such as larger scale construction projects, the County typically accepts certain forms of surety bonds, which is an industry standard.

A surety bond is an agreement between the County, a third party (including developers), and a surety company that issues the bond. The surety bond provides a guarantee that the third party will fulfill its obligations in the contracts and/or agreements with the County. Surety companies have an extensive process for prequalifying third parties and only issue bonds when they have the confidence that the third party has the skills, labour, equipment, cash, and experience to be able to complete the work.

Bonds in Developer Agreements
The County was approached by the Urban Development Institute (UDI) and developers to consider accepting surety bonds as financial security in developer agreements (also known as developer bonds). There are some municipalities in Alberta and Canada that have started to accept bonds, but this is a relatively new practice.

The structure of the developer bonds that would potentially be accepted as financial security in developer agreements would vary from the existing types of bonds that the County accepts in other agreements such as performance bonds, labour and material bonds, etc.

Developer Bonds

	County	Developer
Pros	Encourages development by promoting affordability (reducing cost) for developers Provides assurance from the surety company that developers are qualified to complete developer agreement (unlike other forms of security where there are no prequalification considerations) Promotes positive business relations and investment between developers and the County	Frees up working capital or lines of credit Fees to issue bonds would be comparable to fees to issue LOC and often lower depending on developer credit profile No stand-by fees, only pay for the portion(s) of bond used
Cons	Potential risks (prior to mitigation strategies): • Process to call on bonds may be difficult (ability to prove default and collect appropriate amount in timely manner) • Reliability of surety company Administrative changes will be required (templates, agreements, etc.) Potential unknown risk (new to the County)	None (developers can choose to use existing forms of security)

Risk Mitigation

The risks associated with bonds as a form of financial security in developer agreements can be mitigated through ensuring there are specific terms written in the contracts. In addition, the County will assess the reliability of potential surety companies permitted to provide developer bonds.

However, how the product works in practice and what creative legal arguments arise in the future is yet to be seen. Therefore, there will still be some inherent risk despite measures taken to mitigate them.

Options

The County can choose to:

1) **Maintain status quo:** Continue to only accept LOC, certified cheques, or bank drafts as part of developer agreements (i.e. do not accept any form of bonds).
2) **Accept bonds in developer agreements:** Allow bonds to be an acceptable form of financial security in developer agreements. Administration to develop new agreements and details for bonds.
3) **Introduce a criteria-based approach:** Develop criteria in accepting bonds as a form of security in developer agreements. To be discussed and finalized by Administration.

Administration supports the request from UDI and developers to accept developer bonds as a form of financial security in developer agreements (Option 2) and has included this in the Draft Policy SER-008-027 Establishing Security in Developer Agreements being brought to Priorities Committee on September 15, 2020. Administration will take the steps to ensure appropriate mitigation strategies are in place prior to the acceptance of developer bonds.

Other Impacts: n/a
Policy: Draft Policy SER-008-027 Establishing Security in Developer Agreements
Legislative/Legal: n/a
Interdepartmental: Corporate Finance, Planning and Development Services, Legislative and Legal Services
Master Plan/Framework: n/a