
OLR Bill Analysis

sHB 5320

AN ACT CONCERNING BONDS AND OTHER SURETY FOR APPROVED SITE PLANS AND SUBDIVISIONS.

SUMMARY:

The law allows municipal land use commissions to require developers to post a bond to guarantee that site plan and subdivision improvements are completed. PA 11-79 made various changes to these laws, including (1) expanding the types of financial instruments that a person could use to fulfill a bond requirement, (2) prohibiting commissions from requiring bonds to secure the maintenance of certain improvements, and (3) giving the person posting the bond the discretion to post it any time before completing the improvements.

This bill amends these requirements in various ways. Among other things, the bill:

1. eliminates references to bonds or surety, referring instead to these instruments as “financial guarantees;”
2. limits the types of site improvements and activities for which a zoning commission can require a bond;
3. eases the restriction on commissions requiring financial guarantees to secure the maintenance of certain improvements;
4. allows, rather than requires, municipal planning and zoning commissions to accept surety bonds;
5. creates an exception to the requirement that a developer post a bond before a certificate of occupancy is issued or lots are transferred; and
6. prohibits commissions from requiring developers to establish a

homeowners association or placing a deed restriction on the property to maintain approved site improvements.

Current law allows municipalities to enact ordinances prohibiting or regulating building permits for structures on lots that abut unaccepted streets, except for farm or accessory buildings that conform to the municipality's zoning or building regulations. The bill bars such ordinances from prohibiting buildings or structures on approved site plans and subdivisions as long as the approvals have not expired.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage; the provisions concerning financial guarantees for site plan and subdivision approvals are applicable to approvals or extensions granted on or after that date.

FORM OF THE FINANCIAL GUARANTEE

PA 11-79 expanded the types of financial instruments that a person could use to fulfill a bond requirement for site plan and subdivision approvals. Specifically, it required municipal planning and zoning commissions to accept (1) surety bonds; (2) cash bonds; (3) passbook or statement savings accounts; and (4) other surety, including letters of credit, provided the commission finds the instrument and the financial institution or entity issuing it acceptable. The bill allows, rather than requires, the commissions to accept surety bonds. It continues to require the commissions to accept the other types of financial guarantees, including letters of credit, as long as they find the instrument and the financial institution or entity that issued it acceptable.

POSTING THE BOND

PA 11-79 gave the person required to post the bond the discretion to post it any time before completing the site plan improvements or subdivision public improvements and utilities, as long as the bond was posted before the (1) town issued a certificate of occupancy for the site plan or (2) developer transferred lots to buyers in the subdivision. The bill creates an exception to this requirement if the commission or its

agent is reasonably satisfied that the approved site improvements or public improvements and utilities are complete.

Under PA 11-79, the commission can require a developer to post a bond for erosion control before work can start. The bill allows the commission to also require a bond for sediment controls before work starts.

MAINTENANCE BONDS

PA 11-79 prohibited a commission from requiring a bond to secure the maintenance of roads, streets, or other improvements associated with a site plan or subdivision for maintenance occurring after a municipality has accepted the improvements. The bill allows the commission to require financial guarantees for maintenance purposes for up to one year after the improvements are completed to the reasonable satisfaction of the commission or its agent or accepted by the municipality. It also allows commissions to require bonds for the maintenance of retention and detention basins for up to one year after completion.

The bill bars commissions from requiring payments, rather than financial guarantees, to secure the maintenance. It also prohibits commissions from (1) requiring developers to establish a homeowners association or (2) placing a deed restriction or easement on the property to maintain approved site improvements. It specifies that this prohibition does not apply to any deed restriction or easement that gives the municipality access to the improvements.

SITE PLAN IMPROVEMENTS SECURED BY BONDS

By law, a zoning commission can approve, deny, or modify a site plan. The law allows zoning commissions, as a condition of approving modified site plans, to require developers to post a bond to guarantee that site plan modifications (i.e., site improvements) are completed. The bill allows zoning commissions to require financial guarantees for any site plan, not just modified site plans, which conforms to current practice.

The bill also restricts the types of improvements or activities for which a zoning commission can require a bond for site plan approval to (1) site improvements that will be conveyed to or controlled by the town and (2) erosion and sediment controls required during the construction. Under current law, the commission can require a bond to secure any site improvements.

BOND AMOUNT FOR SITE PLAN APPROVAL

PA 11-79 capped the bond amount a commission could require as a condition of approving a site plan at no more than the cost of performing the modifications plus an additional 10%. The bill instead limits the bond to the anticipated actual costs for completing the site improvements or erosion and sediment controls described above plus a contingency amount of up to 10% of such costs.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 19 Nay 2 (03/23/2012)