Cutting Edge Issues in Zoning

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DO YOU KNOW YOUR BONDS?
“Performance Guarantees AKA Bonding Improvements”

In January, 2018, the legislature radically revised the existing law regarding performance and maintenance guarantees, more commonly known as bonding of improvements related to development.¹ The key section of the Municipal Land Use Law controlling guarantees is N.J.S.A. 40:55D-53. The new law limits the extent of bonding to on-site structures; prohibits the bonding of structures to be turned over to utilities and governments; and requires that municipalities establish an ordinance, if they want to take full advantage of the Act. It would be worthwhile to re-evaluate your municipal ordinance to ensure that you are fully compliant with the changes in this law.

Guarantees

The guarantee ordinance should be drafted to provide that any successor developer must furnish a replacement guarantee “as a condition to the approval of a permit update under the State Uniform Construction Code, for the purpose of updating the name and address of the owner of property on a construction permit”²…
Guarantees

The ordinance may require the developer to post a “performance guarantee in favor of the municipality in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer’s agreement, ordinance or regulation to be dedicated to a public entity, and that have not yet been installed.” As in the past, the municipal engineer makes that determination in accordance with **N.J.S.A. 40:55D-53.4**

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Guarantees

The following improvements are covered by this law: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments… water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.⁴
Guarantees

“A municipality may also require a performance guarantee to include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by local ordinance or imposed as a condition of approval. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.”

Guarantees

The time allowed for installation of the bonded improvements, for which the performance guarantee has been provided, may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation.
Temporary Certificate of Occupancy Guarantee

It happens regularly that the majority of the project is completed sufficiently to permit occupancy. For instance, the building is completed in the middle of the winter and can be occupied, but the landscaping cannot be planted until spring, at the earliest. The law is now taking that situation into consideration, provided municipalities create a Temporary Certificate of Occupancy Guarantee in its Guarantee Ordinance. The municipality may require a guarantee of up to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the Temporary Certificate of Occupancy,

and which are required to be installed or completed as condition precedent to the issuance of the permanent Certificate of Occupancy. The trade-off is that upon the posting of the Temporary Certificate of Occupancy Guarantee, all sums remaining under a performance guarantee shall be released. The common thread through this new law is that municipalities are not entitled to double up on their sureties. The law provides that the scope and amount of the Temporary Certificate of Occupancy Guarantee may be determined by the zoning officer, municipal engineer or other designated municipal official as set by the ordinance.
Safety and Stabilization Guarantee

The municipality is also permitted to create a “safety and stabilization guarantee,” which may be a line item of the performance guarantee or a separate guarantee at the developer’s option. The sole purpose of this guarantee is for “returning property that has been disturbed to a safe and stable condition, or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in circumstances that:

(i) site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure, and

(ii) work has not recommenced within 30 days following the provision of written notice by the municipality to the developer of the municipality’s intent to claim payment under the guarantee. A municipality shall not provide notice of its intent to claim payment under a “safety and stabilization guarantee” until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. A municipality shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.”

Safety and Stabilization Guarantee

The law further limits a “safety and stabilization guarantee” to $5,000 for a development with bonded improvements in an amount not exceeding $100,000, then two and one-half percent through one million, and just one percent for any amount beyond one million Dollars. A municipality shall release a separate “safety and stabilization guarantee” to a developer, upon the developer's furnishing of a performance guarantee, which includes a line item for safety and stabilization in the amount required under this paragraph. A “safety and stabilization guarantee” is to be released, once the municipal engineer certifies that the installed improvements are “adequate to adequate to avoid potential threat to public safety.”
Maintenance Guarantee

Prior to the release of a performance guarantee, a municipality may require a developer to post a maintenance guarantee in an amount not to exceed 15% of the cost of installation of the improvements to be released. In addition, “upon the inspection and issuance of final approval by the municipal engineer, a Maintenance Guarantee may be required not to exceed 15% of the cost of a private storm water management basin, in-flow and water quality structures with the basins, and out-flow pipes and structures of the storm water management system. The term of the Maintenance Guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

Failure to Complete the Bonded Improvements

c. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the municipality for the reasonable cost of the improvements not completed or corrected and the municipality may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the “Local Public Contracts Law,” P.L.1971, c. 198 (C.40A:11-1 et seq.).
Completion of Bonded Improvements

(2) The list prepared by the municipal engineer shall state, in detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the municipal engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section.
Completion of Bonded Improvements

The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the municipal engineer, or reject any or all of these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the municipal engineer.

Sections (e) thru (j) should be carefully reviewed

Storm Water Management Training

The New Jersey Department of Environmental Protection has mandated continuing education requirements for Board members. An interactive training tool developed by Rutgers University must be completed by current Board members by July 1, 2018 and new members within 6 months of commencing duties. The interactive training tool is designed to provide a general understanding of the post construction section of the permit so that they can “Ask the Right Questions” during their review. The program takes about 45 minutes to complete. A link to the program is provided below: http://www.water.rutgers.edu/Projects/MunicipalOfficialTraining/E-Tool%20(FINAL)/story.html?usp=send_form.

The program includes links to several checklists that Board members are recommended to use when reviewing site plan applications.
TRENDING

STEALTHING

STEALTHING

COMPLETE ROOF TOP
WINE AND CARDS 2022
WIRELESS SMALL CELL

GREEN ROOFS
REQUESTS

THERE’S NO SKYPING IN ZONING
Both Zoning and Planning Board Members can be removed for cause by the governing body. NJSA 40:55D-23 and 69

Affordable Housing Update

In the Matter of the Application of the Municipality of Princeton In the Matter of West Windsor Township
SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY (Mount Laurel) Mar 7, 2018
On the Horizon

Marijuana Zoning

Hey, Man!

We heard it's pot luck day today!

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11. (New section) Local governmental entity regulation or ordinance.
   a. Not later than one year following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), each local governmental entity shall enact an ordinance or regulation specifying the entity within the local governmental entity that is responsible for processing applications submitted for a license to operate a marijuana establishment within the boundaries of the local governmental entity and for the issuance of such licenses should the issuance by the local governmental entity become necessary because of a failure by the Division to adopt regulations or because of a failure by the Division to process and issue licenses.
   b. A local governmental entity may enact ordinances or regulations, not in conflict with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill):
      1. governing the time, place, manner, and number of marijuana establishment operations;
      2. establishing procedures for the issuance, suspension, and revocation of a license issued by the local governmental entity;
      3. establishing a schedule of annual operating, licensing, and
application fees for marijuana establishments, provided, the
application fee shall only be due if an application is submitted to a
local governmental entity in accordance with the provisions section
12 of P.L. , c. (C. ) (pending before the Legislature as this bill) and
a licensing fee shall only be due if a license is issued by a local
governmental entity; and
(4) establishing civil penalties for violation of an ordinance or
regulation governing the time, place, and manner of a marijuana
establishment that may operate in such local governmental entity.
c. A local governmental entity may prohibit the operation of
marijuana cultivation facilities, marijuana product manufacturing
facilities, marijuana testing facilities, or marijuana retailers through
the enactment of an ordinance. The failure of a local governmental
entity to enact an ordinance prohibiting the operation of a marijuana
establishment within one year following the effective date of
P.L. , c. (C. ) (pending before the Legislature as this bill)
shall thereby permit the operation of a marijuana retail
establishment within the local governmental entity for a period of
five years, at the end of which five year period, and every five year
period thereafter, the local governmental entity shall again be
permitted to prohibit the operation of a marijuana establishment.
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