

Objectives

The following objectives were identified by Planning & Development during consideration of an updated security policy:

- i) Continue to minimize the risk to Parkland County;
- ii) To develop criteria that is fair to developers and reasonable in relation to surrounding municipalities;
- iii) To develop Parkland County's position on the amount of security required under bareland condominium developments; and
- iv) To develop standardized criteria to increase efficiency of staff by reducing time spent analyzing, setting and reducing Letters of Credit and reducing the need for amending development agreements and security and maintenance agreements;

History

Securities, typically Letters of Credit, are a necessary part of a Development Agreement as they are used to secure the developers' obligations outlined in the agreement. The County is authorized to require securities by its authority under Section 655(1)(b)(ii)(vi) of the Municipal Government Act. The current method of determining the security amount is meant to serve as a performance incentive, enable the County to secure the construction site if required and, in some cases, secure funds to complete the construction of certain municipal improvements should the developer not fulfil their obligations. The current criteria for determining the security amount during a construction project was last reviewed by Council in 2007. The amount is calculated as:

Prior to execution of the Agreement and prior to construction:

- i) \$10,000.00 per development agreement until Final Acceptance (FAC) is issued, and;
- ii) Approximately 25% of the estimated value of all external municipal improvements, if applicable.

Prior to endorsement:

- iii) 150% of the estimated value of all remaining incomplete local improvements, both internal and external, and deficiencies as outlined in the security and maintenance agreement.

Most notably is that the \$10,000.00 to ensure to the County full compliance by the Developer with the conditions of the Agreement has not been increased since this format of security was original introduced by the County in 1992. There have been notable changes in the development and legal industry since 1992. Primarily the cost of construction in addition to legal costs has increased significantly since 1992 and the ten thousand dollar amount based on the current criteria is no longer sufficient to cover the legal costs to enforce the agreement.

Over the past few years, there have been instances where a developer has been unable or unwilling to fulfil the obligations under the Development Agreement and the security amount was insufficient to complete the work. Furthermore, the County held only a small amount of security (\$10,000.00) to commence legal action. Additionally, the number of developers that are developing for the first time within the County has also increased, especially between 2007 and 2009 during the boom in the development industry. These developers are considered higher risk as they have no established history with Parkland County and little or no experience with the County's Subdivision and Design Standards or its practices or procedures. Conversely, there are many developers who have a well established history with the County. Therefore, the current security criteria may not be applicable for all instances. As such, Planning & Development Services completed a review of the criteria to determine security amounts.

Discussion

Part of the security amount review involved surveying surrounding and comparable municipalities for their criteria. A comparison of the participating municipalities is provided at the end of this report. As shown in the table, almost **all municipalities polled use a percentage of the total construction costs (both external and internal improvements)** as their basis for determining security amounts, ranging from 10% to 150% of the estimated construction costs with varying conditions and circumstances. Of interest, was the notion that some municipalities in the survey are also collecting securities based on the previous track record of the developer, and whether the developer is new to their municipality or not. The majority of the municipalities in the survey are prepared to issue endorsement of a subdivision/condominium prior to completion of the local improvements, which is inconsistent with Parkland County's historical approach to this matter.

The results of the survey identify that of all the municipalities included in the survey, **Parkland County requires the least amount of securities up front and prior to the execution of a development agreement.** The significant difference is that the County requires no security for internal local improvements other than the ten thousand (\$10,000.00) dollars, where others in the survey are requiring 10% to 100% of estimated construction costs for both internal and external local improvements. The County is tied for the second lowest with Sturgeon County based on an initial 25% of certified construction cost estimates for external local improvements. Strathcona County requires only 10%, but it is for both internal and external improvements and therefore likely a combined higher security amount is required.

Many of the rural municipalities in the survey have recently identified security requirements regarding the construction of bareland condominiums, which was historically primarily an urban form of development. These municipalities are requiring 100% to 150% of gross estimated construction costs, including the private improvements not turned over to the municipality to ensure the work is completed. **Parkland County's current policy PD 001 does not address security requirements for bareland condominiums.** Therefore, Staff recommends that any revised policy considered by Council identify the County's position and Developer's requirement in this regard.

In contrast, **Parkland County is the best prepared of all the municipalities identified in the survey against the protection of rising construction costs and inflation as the County requires 150% security** for all incomplete work and minor deficiencies on both internal and external improvements prior to endorsement of the subdivision. All other municipalities are at 100% of construction costs or less, with the exception of Strathcona which requires 115% and Leduc County at 125%.

Parkland County currently has the lowest security requirement (5%) of the rural municipalities surveyed to cover any deficiencies that may arise during the warranty period between the issuance of the Construction Completion Certificate (CCC) and the Final Acceptance Certificate (FAC). All other rural municipalities surveyed are requiring between 10% and 25%. The urban municipalities typically had higher security rates during the warranty period when compared to rural municipalities. This rate has not been increased by the County since first introduced also in 1992.

It was also noted in our research of past files that the County has had difficulty with certain developers and not others. Experience has shown that a first time developer has been more likely to default on their development agreement than a developer with an established history and relationship with the County. Therefore **a system of determining the Letter of Credit amount that will secure the obligations of first time developers without penalizing those developers with a reputable record of completing Development Agreements may be considered.** Some municipalities in the survey do give Developer's with good track records certain security reductions, however municipalities who have offered this reduction identified that increased staff time and resources were required to track a Developer's record over time. It has also lead to additional conflicts at times with the municipality with Developer's when they have fallen out of a good track record.

Recommended Updated Policy:

The following provides a breakdown of the standards within the updated draft policy, identifies recommended changes to current policy, and provides alternative options for Council's consideration:

1) **General Security Requirements**

The draft policy has been updated with a number of general statements and requirements regarding securities. Recommended updates include: defining what forms of security are/are not acceptable, securities will be based on a percentage of approved certified cost estimates and cost estimates may be subject to third party review. Draft Administrative Procedure PD01-P1 has been developed regarding the processing of Irrevocable Letters of Credit, in accordance with current practice, as has been suggested by the County's Auditors; a copy of the draft procedures is attached for Council's information. Administration is also recommending that Council define how long a Developer has to complete a project before possibly forfeiting all remaining securities. Administration is recommending a five (5) year period consistent with the majority of comparable municipalities.

Alternative: Council could define the acceptable forms of security accepted by the County other than only irrevocable letters of credit, cash, certified cheque, or bank draft.

Alternative: Council could define the amount of time the Developer forfeits all remaining securities if the Developer has not acted in a reasonable manner to completing all remaining work other than five (5) years.

2) **Security Amounts for Subdivision**

Administration is recommending that the minimum amount of security required under a development agreement be increased from ten thousand (\$10,000.00) dollars to twenty-five thousand (\$25,000) dollars to acknowledge notably changes in the construction and legal industries since 1992 and reduce the risk to the County for a developer who fails to comply with the conditions of an executed development agreement. This recommended increase is consistent with many of the comparable municipalities in the completed survey. The Manager of Planning & Development Services is proposed to have the discretion to reduce this amount for minor non-multi parcel projects, or increase this amount for projects where the gross estimated construction costs are in excess of two million dollars.

Alternative: Council could define the general amount of security required under a development prior to execution of the development agreement until Final Acceptance Certificate (FAC) other than twenty-five thousand (\$25,000) dollars.

Administration is not recommending a change to the amount of security required prior to execution of the agreement, calculated as twenty-five (25%) of the estimated cost to complete the external local improvements only. As noted above, most of the comparable municipalities require a percentage of both external and local improvements.

Alternative: Council could define the amount of security required prior to execution of the agreement and prior to construction other than twenty-five percent (25%) for external improvements only.

Administration is not recommending changes to the amount of security required for any acceptable incomplete work and/or deficiencies as permitted by the Manager of Engineering Services prior to endorsement. As noted above, Parkland County is the best prepared of the surveyed municipalities to protect for rising construction costs and inflation.

Alternative: Council could define the amount of security required prior to endorsement other than one-hundred and fifty (150%) percent.

The draft policy has been updated to identify the amount of security required during the warranty period between the issuance of the Construction Completion Certificate (CCC) and the Final Acceptance Certificate (FAC) consistent with the County's precedent development agreement. This amount is not identified within current Policy PD 001.

Alternative: Council could define the amount of security required during the warranty period other than five (5%) percent of the improvement costs.

3) **Security Amounts for Bareland Condominiums**

As previously noted, current Policy PD 001 does not address the security requirements that a Developer must submit as part of a Development Agreement for a Bareland Condominium project in Parkland County. Council reviewed the process for developing bareland condominiums at the May 29, 2012 workshop. Administration is recommending that a Developer be required to undertake the same endorsement/security processes as traditional subdivisions for any external local improvements (improvements to be transferred to the County) constructed as part of a bareland condominium. Further, the Developer is encouraged to complete all of the internal condominium improvements (improvements to be operated by the condominium corporation) to a stage similar to that of a Construction Completion Certificate even though no Certificate is actually issued. However, in the instance that a Developer of a bareland condominium wishes to receive endorsement of the condominium plan prior to completion of the internal condominium improvements, Administration is recommending that the security amount be one-hundred (100%) percent, which was the lowest amount of the majority of the comparable municipalities polled in the updated survey attached at the end of this report.

Administration withdraws its previous recommendation under prior drafts that had the Manager of Engineering Services confirming the viability of the condominium corporation and its ability to take over maintenance of any completed infrastructure prior to endorsement of the condominium plan.

Alternative: Council could define the amount of security required for a Bareland Condominium project prior to endorsement other than one hundred percent (100%) as identified under Standard 3 of the Policy.

4) **Security Amounts for Development Permits**

This section of the policy has been updated with changes consistent with the County's Land Use Bylaw that was significantly updated in 2009. The County's Land Use Bylaw identifies the amount of security required by a Developer for such items as landscaping, etc. For a development permit that requires the construction or installation of off-site improvements, the County requires the same amount of security (\$25,000.00 prior to execution of agreement, and 150% prior to endorsement) as subdivision.

Alternative: Council could define the amount of security required under a development permit application (Standard 4) other than the same as a subdivision development agreement (Standard 2).

5) **Release of Security**

The draft policy has been developed consistent with the County's precedent Development Agreement identifying the times and conditions when security, typically a letter of credit, shall be released in full or part back to the Developer. The policy has also been expanded to identify when security may be released/reduced under a bareland condominium project. The policy has been developed to increase efficiency of staff by reducing time spent analyzing, setting and reducing Letters of Credit and reducing the need for amending development agreements and security and maintenance agreements while acknowledging that security releases will be completed at relevant steps during the project.

6) **Variance to this Policy**

Administration is recommending a NEW section be added to the updated draft policy identifying that only Council may vary the amount of security required by a Developer under a Development Agreement as defined under this policy. Such requests shall be initiated through a written request to the Chief Administrative Officer (CAO). The process is consistent with a couple of recent requests to the County. The Manager of Engineering Services, or designate, shall remain responsible for approving all certified construction cost estimates submitted to the County.

Alternative: Council could define a process other than identified under the draft policy for varying the amount of security required under a development agreement, or identify that no such variances will be considered by the County.

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June 13, 2012

Survey: Comparison of Development Agreement Security by Municipality – Fee Simple

(completed by Planning & Development Services between November 1 & December 15, 2011)

	Question # 1	Question # 2	Question # 3
Municipality	Security policy?	How is Security calculated in your municipality?	Does your policy consider different security charges depending on the track record of the Developer?
Leduc County	Yes	100% of construction costs, plus GST for Country Residential and Industrial Subdivisions. For Urban Residential subdivisions: 15% of construction costs, prior to endorsement and 125% after endorsement. The security can be reduced upon the completion of the CCC inspection. The reduced security is equal to 100% of the costs of the costs to repair the deficiencies, plus 15% of the original security, plus GST.	No
Sturgeon County	Yes	25% of all construction costs from all developers regardless of their track record	No
Strathcona County	Yes	10% of estimated construction costs for both internal and external improvements prior to commencement of construction. Prior to registration, an additional amount equal to 115% of the estimated construction costs to complete is required.	No
County of Grande Prairie	Yes	50% of all construction costs which includes 15% for contingency and engineering from all developers regardless of their track record for larger projects. 100% for larger projects to ensure work is actually completed.	No
Municipal District of Rocky View	Yes	150% of construction costs for country residential and all bareland condominiums; \$7,500 per lot within Hamlets; \$10,000 per acre for resource industry; maximum \$2 million security limit	No
Brazeau County	No	100% of construction costs from all developers regardless of their track record prior to commencement. This may be reduced to 10% for the warranty period upon completion of CCC inspection	No
City of Spruce Grove	Yes	10% of levies up-front, plus the following: based on a sliding scale, it varies from 10% of construction value to 100% of construction value	No
Town of Stony Plain	Yes	50% of all construction costs from all developers regardless of their track record	No
City of Edmonton	Yes	Ranges from 100% of construction costs for new developers to 10% for developers with 2 completed agreements in the past 5 years. Minimum \$20,000	Yes (up to 90% reduction when 2 successful projects completed in last 5 years)
City of Calgary	Yes	100% of construction costs for new developers. 50% for developers with 3 completed agreements. \$3,715/lot plus \$17,500/ha multi-family or commercial land for developers with at least 5 completed agreements. Minimum \$150,000	Yes (50% reduction when more than 3 consecutive successful projects)
City of St. Albert	Yes	20% of construction costs, plus 100% of landscaping costs. 50% release at construction completion, remaining 50% at final acceptance. \$15,000 for as-built drawings. Policy currently under review.	No
City of Red Deer	Yes	25% of construction cost from all developers regardless of their track record. These letters of credit can be partially reduced upon completion of construction and final acceptance.	No
City of Fort Saskatchewan	Yes	50% of construction costs. May be reduced at construction (CCC). At least 10% is held until final acceptance (FAC).	No
Parkland County Existing Policy PD-01 (2007)	Yes	\$10,000 plus 25% of estimated construction costs for external improvements only prior to execution of development agreement. Prior to registration, replacement of 25% security equal to 150% of the estimated incomplete work and deficiencies is required.	No

Note 1: Although it may appear that each municipality's security fee fits nicely within the above chart, no two municipalities administer their security calculations in exactly the same manner, and therefore straight across comparison is not possible.

Note 2: Parkland County's current security policy is most similar to Leduc County, Strathcona County, and County of Grande Prairie.

Note 3: Red Deer County, Lac Ste Anne County, and Yellowhead County did not respond to the original survey. Information for these municipalities was not readily available from their website. Information for these municipalities related to bare land condominiums was sought in March 2012 (refer below)

Survey: Bareland Condominium Security

(originally completed by Planning & Development Services between November 1 & December 15, 2011)

	Question # 1	Question # 2	
Municipality	Does your security policy separate out bareland condos from fee simple subdivisions	If no to Question #1, then how do you handle security regarding bareland condos	Security Percentage
Leduc County	No	Same as fee simple requirements.	100%
Sturgeon County	N/A	Do not allow bareland condominiums within the County.	N/A
Strathcona County	No	Same as fee simple	10% prior to commencement of construction, 115% for incomplete/deficient work prior to registration
County of Grande Prairie	No	Same as fee simple.	100%
Rocky View County	Yes	N/A Example - CottageClub at Ghost Lake	150% of construction costs bareland condominiums; maximum \$2 million security limit.
Brazeau County	No	Same as fee simple.	100%
Mountain View County	No	Same as fee simple requirements. Coyote Creek Golf & R.V. Resort – very similar to Trestle Creek	100% for off-site improvements. On-site - a reclamation security of \$16,500/ha
(Follow-up with municipalities that previously didn't respond to original survey between March 8 to March 21, 2012)			
Lacombe County	No	Same as fee simple requirements. 100% of all off and on-site improvements.	100%
Red Deer County	No	Same as fee simple. Early phases of Gleniffer Lake did not require security. Current phases require minimum 100% for communal water/sewer systems and landscaping.	100%
Yellowhead County	No	LUB was updated in 2006. Both the Resort Recreational District and Mountain Park Resort Recreational District permit RV use in bareland condo setting. No security taken for small existing projects with private on-site services (cistern/well and holding tank). Number of larger projects being considered west of Hinton. County not sure where security requirements will go as they are proposed to be serviced via large communal systems.	Under review 100% Off-site 0% On-site
Lac Ste Anne County	No	Same as fee simple requirements. Examples - Water's Edge / Windmill Harbor (security taken for roads, water and sewer systems and playground amenities)	100%
Parkland County Existing Policy PD-01 (2007)	No	10 existing bareland condominiums in the County: <ul style="list-style-type: none"> - Mistik Ridge – Div1 - Acheson (x4) – Div2 - Country Squire – Div2 - Century Estates –Div3 - Harbor Terrace – Div6 - Trestle Creek Golf Course & RV – Div 6 - Pineridge Golf Course & RV – Div6 Historically all were treated same as fee simple with exception of Trestle Creek as approved by Council:	Prior to DA \$25% off-site, 0% on-site Prior to registration 150% for incomplete/deficient work