Agenda - Council - September 24, 2008

Report - Standing Policy Committee on Property and Development - September 2, 2008

Item No. 17 City of Winnipeg Charter Changes - Reduction of timelines in Taking Title Provisions
File GL-5.1

STANDING COMMITTEE RECOMMENDATION:

On September 17, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the Province of Manitoba be requested to make changes to The City of Winnipeg Charter with respect to reducing the timelines associated with the taking title provisions, specifically:

    A. The time to bring the derelict property into compliance following a Preliminary Derelict Buildings Order should be reduced from 60 days to 31 days, to coincide with the appeal period provided to the property owner.

    B. The time to bring the derelict property into compliance after a satisfactory plan for redevelopment and a Derelict Building Order has been approved by the Standing Policy Committee on Property and Development be reduced to 30 days from the current 90 days.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report - Standing Policy Committee on Property and Development - September 2, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 17, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 2, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: City of Winnipeg Charter Changes

FOR SUBMISSION TO: STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT

ORIGINAL REPORT SIGNED BY: Director, Planning, Property and Development Department

REPORT DATE: August 20, 2008

RECOMMENDATION:
That the City of Winnipeg request the Province of Manitoba to make changes to the City of Winnipeg Charter with respect to reducing the timelines associated with the taking title provisions, specifically:

1. The time to bring the derelict property into compliance following a Preliminary Derelict Buildings Order should be reduced from 60 days to 31 days, to coincide with the appeal period provided to the property owner.

2. The time to bring the derelict property into compliance after a satisfactory plan for redevelopment and a Derelict Building Order has been approved by SPC on P&D, be reduced to 30 days from the current 90 days.

Report Summary

Key Issues:

- On July 1, 2004 City Council passed the Vacant and Derelict Buildings By-law No. 35/2004.

- The authority for the City to take title of a property without compensation to the owner is drawn from Division 4 of Part 5 of *The City of Winnipeg Charter*, supported by the provisions of The Vacant and Derelict Buildings By-law.

  The prerequisites to exercise this authority are:

  1. the building is not in compliance with the standards set out in the Vacant and Derelict Buildings By-law; and
  2. the owner has been convicted of a violation of the By-law and the property continues to be in a state of non-compliance with the By-law ; and
  3. the building has been declared derelict by the Standing Policy Committee on Property and Development; and,
  4. there is a satisfactory plan in place for redeveloping the property.
- The City of Winnipeg Vacant and Derelict Buildings By-law has been recognized as being “cutting edge” within Canada and contains some of the most stringent provisions

available to a municipal authority to compel owners of vacant buildings to maintain them at a minimum standard.

- In an overall sense the By-law has had a positive effect on property conditions in the City.

- To-date, the City is exercising the provision of Taking Title without Compensation for 11 properties and has begun the process for an additional 7 properties

- It is necessary to first inspect all buildings on the vacant buildings registry, issue compliance orders where necessary, allow appeals to run their course, lay charges and prosecute in Court and obtain a conviction before the taking title without compensation process can even begin.

- In order for Standing Policy Committee on Property and Development to consider an application by the Public Service to issue a Derelict Building Certificate, thereby declaring a non-compliant building as derelict, a satisfactory re-development plan must accompany the application.

- Recently the City of Winnipeg has exercised the Taking Title without Compensation process on several properties. During the process it has been identified that the timelines afforded to the property owners to bring the property into compliance even after the process has begun may be excessive when taking into consideration that the property owner has been given multiple chances to comply with the requirements of the by-law well in advance of the process.

- Sometimes seeking conviction through the courts can take up to a year along with an opportunity for the property owner to again appeal the conviction.

- The Winnipeg Public Service recommends that the City request the Province of Manitoba for changes to the City of Winnipeg Charter with respect to reducing the timelines associated with the taking title provisions Specifically, the City should:

    - Request that the time to bring a property into compliance after a Preliminary Derelict Buildings Order has been issued should be reduced from 60 days to 31 days, to coincide with the appeal period provided to the property owner.

    - Request that the time to bring a property into compliance after a satisfactory plan for redevelopment and a Derelict Building Order has been approved by SPC on P&D, be reduced to 30 days from the current 90 days.

Implications of the Recommendation(s):

General Implications

( ) None

( ) For the organization overall and/or for other departments

(X) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s):

- Use of the “taking title without compensation” provision will address buildings where owners have been convicted in Court but continue to remain non-compliant and allow the opportunity for individuals or community groups to acquire and rehabilitate vacant and derelict buildings.

Policy Implications

( ) No

(X) Yes

Comment(s): This report recognizes changes to The City of Winnipeg Charter.

Regulatory Implications

( ) None

(X) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

- This report recommends changes to the City of Winnipeg Charter with respect to reducing the timelines associated with the taking title provisions.
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Environmental Implications

(X) No

( ) Yes

Comment(s):

Human Resources Implications

(X) No

( ) Yes

Comment(s):

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s):

Report

REASON FOR THE REPORT:
The Standing Policy Committee on Property and Development has jurisdiction over the Vacant and Derelict Buildings By-law. Also, Organizational Bylaw #7100/97, 3 (1) (h) establishes Council as the authority for decisions on policies affecting intergovernmental relations, including requests for legislation.

HISTORY:
The City of Winnipeg Charter authorizes the City to pass by-laws to regulate the condition and maintenance of both residential and non-residential properties.

At the request of the City, the Province included in The City of Winnipeg Charter provisions that allow the City to take title to derelict properties without compensation and aside from the tax sale process where:

1. The owner has been convicted under a derelict buildings by-law;
2. The building remains in contravention of the by-law; and
3. There is a satisfactory plan for redeveloping the property in place.

On February 27, 2002, Council passed The Vacant Dwellings By-law No. 7983/2002, which dealt with vacant dwellings, but did not address non-residential buildings. On July 1, 2004 City Council passed the Vacant and Derelict Buildings By-law No. 35/2004, repealing the Vacant Dwellings By-law. The intent of the replacement By-law was to:

1. Create a specific and comprehensive regulatory system that addressed both residential and non-residential buildings in a consolidated fashion.
2. Impose standards of maintenance designed to reduce the impact of vacancy on the neighbourhood in which a vacant building was located, and ensure the interiors of vacant buildings were not conducive to fires and posed no threat to firefighter safety.
3. Require that owners obtain permits if they chose to secure a building by boarding it up to deter boarding as a long-term means of securing a vacant building under an escalating fee structure.
4. Require annual interior inspections with fees for the inspections, charged to the property owner.
5. Establish a process to use the power granted to the City in *The City of Winnipeg Charter* to take title to derelict buildings without compensation to the owner

The authority for the City to take title of a property without compensation to the owner is drawn from Division 4 of Part 5 of *The City of Winnipeg Charter*, supported by the provisions of The Vacant and Derelict Buildings By-law.

The prerequisites to exercise this authority are:

1. the building is not in compliance with the standards set out in the Vacant and Derelict Buildings By-law; and

2. the owner has been convicted of a violation of the By-law and the property continues to be in a state of non-compliance with the By-law ; and

3. the building has been declared derelict by the Standing Policy Committee on Property and Development; and,

4. there is a satisfactory plan in place for redeveloping the property.

A flow chart of the process is attached as Appendix 1 and an explanation of the sequential steps is attached as Appendix 2.

DISCUSSION:

The City of Winnipeg Vacant and Derelict Buildings By-law has been recognized as being "cutting edge" within Canada and contains some of the most stringent provisions available to a municipal authority to compel owners of vacant buildings to maintain them at a minimum standard. The By-law continues to serve its primary purpose, that is, to provide the necessary legislative basis on which to compel vacant properties be maintained at a minimally acceptable level and thereby diminish their negative impact on the communities in which they are located as well as lessening the dangers they pose to the public and emergency response personnel. Accordingly, there is consensus among both PP&D and WFPS that the By-law has had an overall positive effect on property conditions in the City.

Part of the challenge to the Public Service has been to dispel misconceptions about the provisions of the by-law. In particular, there is a widespread misconception that the By-law prohibits buildings from being vacant. The By-law does no such thing, but rather, requires that vacant buildings be minimally maintained.

The three main purposes of the Vacant and Derelict Buildings By-law have been to:

- **Promote Safety -** both for the public and emergency response personnel. Vacant buildings that are either not secured or improperly secured are a hazard to public safety, especially the safety of young children. They also serve as a target for break-ins and unauthorized use, often by criminal elements. Where they are not properly maintained, they pose a significant hazard to firefighters, especially where fire detection and suppression systems are either no longer working or have been stripped and when the buildings contain fuel materials that increase the severity of a fire. Discovery of a fire in a vacant building often takes much longer than an occupied building, increasing the severity of the fire, damage and likelihood of the fire spreading to surrounding structures.

- **Curb urban blight -** the type of properties that are targeted by this By-law are those which the owners have failed to maintain and have allowed to become an eyesore, nuisance, fire hazard or unsafe.

- **Lessen impact that vacant buildings have on neighbourhood stability –** when a building starts to look derelict, it is treated as derelict. This has a major negative impact on the surrounding community and on the City.

To-date, the City is exercising the provision of Taking Title without Compensation for 11 properties and has begun the process for an additional 7 properties. With several properties,

the City has reached the point of applying to the Standing Policy Committee on Property and Development for a Derelict Building Certificate (Step 7 in the Process set out in Appendix 2). In order to proceed to this point the following steps have to be completed:

1. Before the process can even begin, it is necessary to first inspect all buildings on the vacant buildings registry, issue compliance orders where necessary, allow appeals to run their course, lay charges and prosecute in Court and obtain a conviction. This routinely takes at least a year and sometimes considerably longer.

2. After further inspections, a Preliminary Derelict Building Order has to be issued, registered in Land Titles Office and served on everyone with an interest in the property. Anyone with an interest in the property can appeal this Order within 31 and has a further 60 days to bring the property into compliance with the By-law, thereby terminating the process.

3. In order for Standing Policy Committee on Property and Development to consider an application by the Public Service to declare a non-compliant building as derelict, a satisfactory re-development plan must accompany the application. Preparation of such a plan involves seeking proposals through an Expression of Interest (EOI).

As demonstrated by the steps outlined in Appendix 2, the mandatory process set out in the Charter is detailed and extensive and grants the owner or any other person with an interest in the property numerous and generous opportunities to bring the property into compliance, thereby terminating the process. In summary, after the City of Winnipeg registers and serves the Preliminary Derelict Building Order, the owner is allowed 31 days to appeal the order and/or bring the property into compliance within 60 days after being served. The City must first wait for the appeal period to end and if it is not appealed then must wait for 60 days to expire, before any process can be started to request for development proposals. An inspection must be carried out to verify that the property continues to be in contravention of the by-law. Once development proposals have been submitted and evaluated a report is submitted to SPC on P&D for application of a Derelict Building Certificate with a satisfactory plan for redevelopment of the property. After a Derelict Building Certificate is issued, the property owner is provided a further 90 days to bring the property into compliance. If the property is still not in compliance, the City can then provide evidence to the Winnipeg Land Titles Office (WLTO) that the property is still not in compliance and title is issued to the City of Winnipeg.

Recently the City of Winnipeg has been engaged in the Taking Title without Compensation process on several properties. During the process it has been identified that the timelines afforded to the property owners may be excessive when taking into consideration that the property owner has been given multiple chances to comply with the requirements of the by-law well in advance of the process. The Taking Title without Compensation process only begins after the City lays charges and secures a conviction in court.

In particular, the lengthy timeline and the multiple chances afforded to the property owner to terminate the process by bringing the property into compliance, have discouraged some potential proponents from submitting development proposals. Potential proponents have expressed concern at making efforts to prepare proposals with no guarantee of acquiring the property. In addition, potential proponents realize that, even if the property is acquired, the acquisition will take place many months into the future. In particular, the time provided for an appeal (31 days or 60 days to bring into compliance) along with the time provided as the last

chance (90 days after SPC on P&D issues Derelict Buildings Order) seems excessive, when taking into consideration the process that has been followed well in advance of the taking title provision.

Even before the taking title without compensation process begins, property owners are provided with an opportunity to voluntarily comply by way of Violation Notices, after which, formal orders are issued, which allow for an appeal to the Standing Policy Committee on Property and Development. If the property continues to be in violation of the By-law after the order has expired, the City lays charges and secures conviction in courts. Sometimes seeking conviction through the courts can take up to a year along with an opportunity for the property owner to again appeal the conviction. During this entire process the property owner can bring the property into compliance and negate the process.

To reduce the time frame for taking title to derelict properties, the Winnipeg Public Service recommends that the City request the Province of Manitoba for changes to the City of Winnipeg Charter with respect to reducing the timelines associated with the taking title provisions. Specifically, the City should:

1. Request that the time to bring the derelict property into compliance following a Preliminary Derelict Buildings Order should be reduced from 60 days to 31 days, to coincide with the appeal period provided to the property owner.

2. Request that the time to bring the derelict property into compliance after a satisfactory plan for redevelopment and a Derelict Building Order has been approved by SPC on P&D, be reduced to 30 days from the current 90 days.

Financial Impact Statement **Date:** August 15, 2008

Project Name:

City of Winnipeg Charter Changes

COMMENTS:

There are no direct financial implications associated with this report's recommendations.

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:
Legal Services Division

External Consultation With:
N/A

THIS REPORT SUBMITTED BY:
Department: Planning, Property and Development
Division: Development and Inspections
Prepared by: Deepak Joshi, Manager of Development and Inspections
PPD File No.

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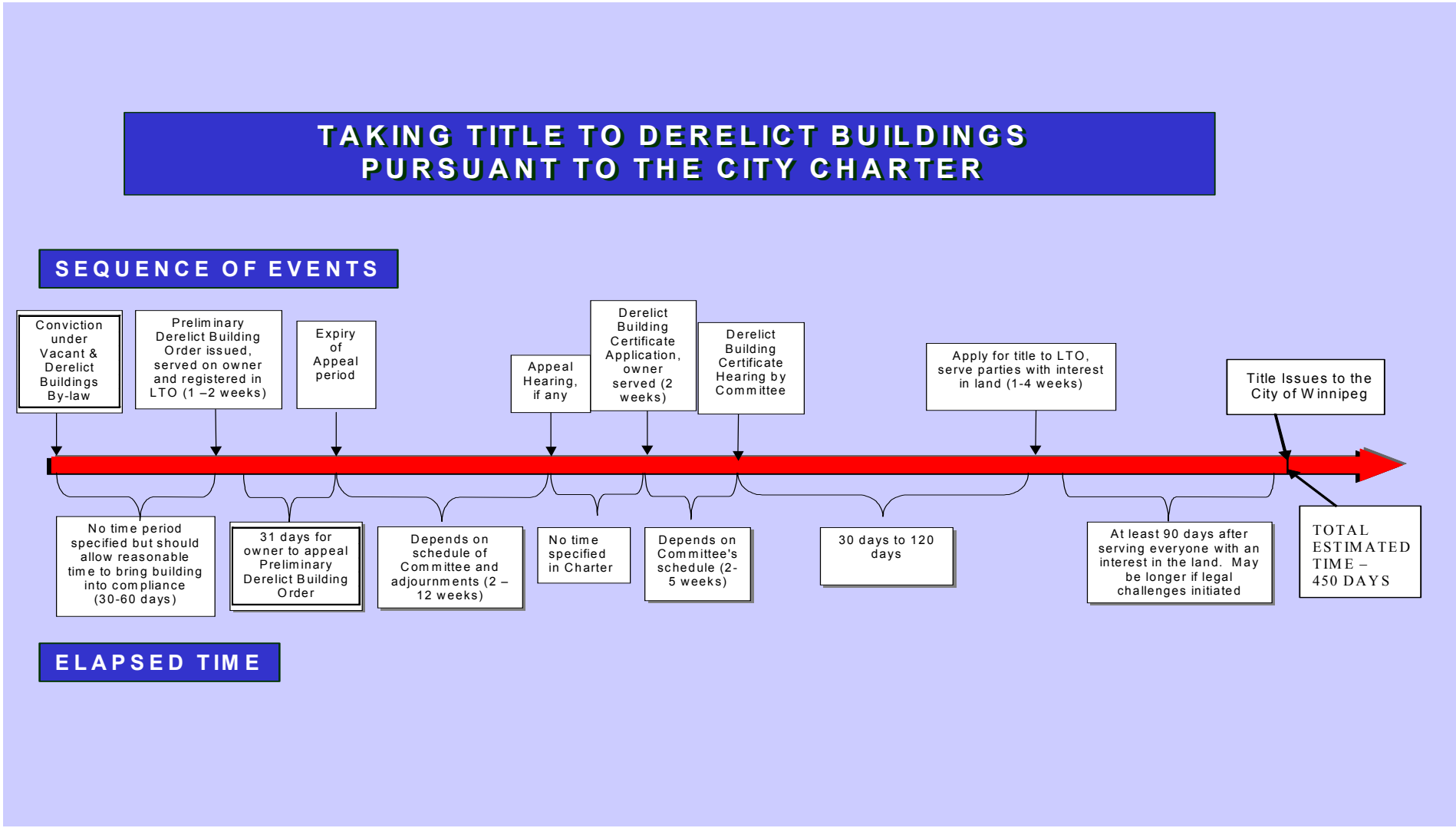
APPENDIX 1: Taking Title Overall Timeline



The time line focuses on the appeal period, which can extend the time even beyond the 60 day period..

APPENDIX 2: Taking Title Sequential Steps

STEPS REQUIRED TO TAKE TITLE WITHOUT COMPENSATION OF VACANT AND DERELICT BUILDINGS

Vacant & Derelict Buildings By-law No. 35/2004

PRECONDITION: The registered owner of property must have been convicted under the Vacant and Derelict Buildings By-law. (By-law s. 19(1)(a), Charter s. 190(2))

STEP 1: **Enforcement officer executes a Statutory Declaration in the form set out as Schedule "C" to the By-law.** (By-law s. 19(1)(b), Charter s. 190(2))

STEP 2: **Designated employee issues Preliminary Derelict Building Order in the form set out as Schedule "D" to the By-law.** (By-law s. 19(1), Charter s. 190(3))

STEP 3: **Registration of Preliminary Derelict Building Order.** (By-law s. 19(2), Charter s. 192) Preliminary Derelict Building Order must be promptly registered by way of caveat at Winnipeg Land Titles Office (WLTO).

STEP 4: **Service of Preliminary Derelict Building Order.** (By-law s. 19(2), Charter s. 192(1)(b)) Preliminary Derelict Building Order is served on the registered owner and every person who appears from the records in WLTO to have an interest in the property. Personal service is required unless a substitutional service order made by the district registrar at WLTO permits otherwise.

STEP 5: **Appeal period and compliance period.**

- Any person served with the Preliminary Derelict Building Order is entitled to appeal the Preliminary Derelict Building Order to the Standing Policy Committee on Property and Development. The appeal must be in writing and filed with the City Clerk within 31 days of the person having been served. (By-law s. 19(3), Charter s. 191(3)(a)(iii) and (iv))
- Any person served with the Preliminary Derelict Building Order has 60 days after being served to bring the property into compliance with the Vacant and Derelict Buildings By-law. (By-law Sch. D, Charter s. 191(3)(a)(ii))

STEP 6: **"Satisfactory plan for redeveloping the property" is prepared.** (By-law s. 20(3), Charter s. 193(3)) A plan for redeveloping the property must be developed which is "satisfactory", in the opinion of the Standing Policy Committee. Note: this step could take place after Step 7 or Step 8.

STEP 7: **Designated employee applies for Derelict Building Certificate to the Standing Policy Committee on Property and Development.** (By-law s. 20(1), Charter s. 193(1)) Note: this step can only be taken:

- 60 days after the Preliminary Derelict Building Order has been served on everyone with an interest in the property;
- if the property has not been brought into compliance; and

- if no appeal has been made or, where an appeal has been made, the appeal has upheld the Preliminary Derelict Building Order or has varied the Order but the varied Order has not been complied with.

STEP 8: **Notice of application served on registered owner in accordance with s. 117 of The City of Winnipeg Charter.** (By-law s. 20(2), Charter s. 114) Personal service is preferred but service can also be accomplished by sending it by registered mail or delivering it to the address maintained by the Taxation Branch for sending the tax bill in respect of the vacant building. The decision by the SPC on P&D (next step) can only be made 14 days after the owner is served

STEP 9: **Standing Policy Committee on P&D issues Derelict Building Certificate.** (By-law s. 20(3), Charter s. 193(3)) This is permitted only if the Committee receives evidence that the property continues to be derelict and if there is, in the opinion of the Committee, a satisfactory plan for redeveloping the property (see Step 6).

STEP 10: **Derelict Building Certificate is registered at WLTO.** (Charter s. 193(4)) This must be done "promptly".

STEP 11: **City applies for title to property.** (Charter s. 195) This can only be done between 30 and 120 days following the registration of the Derelict Building Certificate. If the City fails to act within this time frame, the Derelict Building Certificate is void.

STEP 12: **City notifies the registered owner and everyone who appears to have an interest in the property that an application to take title has been made.** (Charter s. 196) The Notification must allow the recipients a further 90 days to bring the property into compliance and therefore nullify the process. Notification must be by way of personal service or substitutional service as ordered by the WLTO Registrar.

STEP 13: **City provides evidence to the WLTO that service has been accomplished and that, 90 days after service the property is still not in compliance.** (By-law s. 21, Charter s. 199(1))

STEP 14: **Title issues to the City.** (Charter s. 199(1)