Agenda - Standing Policy Committee on Property and Development - April 8, 2003

REPORTS

Item No. 13 Outstanding Items List - Proposal for a Vacant and Boarded Up Commercial / Industrial Buildings By-law
File EB(Vol. 3)

On September 10, 2002, the Standing Policy Committee on Property and Development deferred consideration of a proposed by-law to establish a system to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings until March 31, 2003.

The Planning, Property and Development Department has been requested to provide a verbal update on the status of this matter.

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On September 10, 2002, the Standing Policy Committee on Property and Development concurred in the recommendation contained in the administrative report dated August 30, 2002, and deferred consideration of a proposed by-law to establish a system to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings until March 31, 2003.

On May 27, 2002, the Standing Policy Committee on Property and Development granted the Administration an extension of time to August 2002 to report back on the matter.

On March 5, 2002, the Standing Policy Committee on Property and Development passed the following resolution:

> WHEREAS Council has recently passed the Vacant Dwellings By-law which establishes a system to regulate the condition and maintenance of vacant dwellings;
>
> AND WHEREAS there is a need to establish similar regulations for other buildings, such as commercial, industrial, etc;
>
> THEREFORE BE IT RESOLVED that the Administration be directed to investigate and research other municipal jurisdictions with a view to drafting a by-law to establish a system to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings, and provide a (status) report to the Standing Policy Committee on Property and Development in sixty (60) days.

Re: **A By-law to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings**

For submission to: **Standing Policy Committee on Property and Development**

Original report signed by: **Director of Planning, Property and Development**

Report date: August 30, 2002

In camera item: **No**

Recommendation:

That consideration of a proposed by-law to establish a system to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings be deferred until March 31, 2003.

REPORT SUMMARY

KEY ISSUES:

- Standing Policy Committee on Property and Development directed the Administration to investigate and research other municipal jurisdictions with a view to drafting a by-law to establish a system to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings.

- Deferral until March 31, 2003 is recommended to allow for the following:
  a) Consultation with stakeholders in the private and public sectors
  b) Evaluation of programs adopted in other communities
  c) Collection and evaluation of comprehensive data pertaining to the administration of the Vacant Dwellings By-law No. 7983/2002
  d) Evaluation and resolution of financial and human resource issues associated with enactment of a vacant buildings by-law

IMPLICATIONS

General implications

X	None
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment:

- A subsequent report will deal with the implications of the adoption of a vacant buildings by-law.

Policy implications

X	No (*There are no policy implications if the report is asking for a one-time decision.)*
	Yes *(There are policy implications if the recommendation(s) is/are asking for a decision that will be used to guide decisions over time.)*

Comment:

- A subsequent report will deal with policy implications.

Financial implications

	Within approved current and/or capital budget
	Current and/or capital budget adjustment required
X	No financial implications

Comment:

- A subsequent report will deal with financial implications.

REPORT

RECOMMENDATION:

That consideration of a proposed by-law to establish a system to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings be deferred until March 31, 2003.

REASON FOR THE REPORT:

At its meeting on March 5, 2002, the Standing Policy Committee on Property and Development directed the Administration to investigate and research other municipal jurisdictions with a view to drafting a by-law to establish a system to regulate the condition and maintenance of vacant and boarded-up commercial, industrial and other buildings not designated as dwellings.

HISTORY:

In December 1999, Council adopted the recommendations of "Action Against Arson"; a Report developed by the Anti-Arson Interdepartmental Task Force. The Report recommended, among other things, that the Province grant the City extensive by-law powers over vacant and boarded-up dwellings. In August 2000, the Province amended The City of Winnipeg Act to allow the City to establish "a system to regulate the condition and maintenance of vacant dwellings or non-residential buildings", including the explicit authority to impose requirements regarding securing of buildings, to inspect the interior of vacant buildings and to limit the length of time buildings could remain boarded-up.

At its meeting held on February 27, 2002, City Council enacted The Vacant Dwellings By-law No. 7983/2002. This By-law establishes a system to regulate the condition and maintenance of vacant dwellings. A "dwelling" is considered to be all or part of a building, trailer, mobile home or other covering structure that is used for the purposes of human habitation.

The Vacant Building Registry maintained by the Fire Paramedic Service lists approximately 160 known commercial/industrial buildings and there may likely be others. These buildings range from small single tenant buildings to large structures such as the Manitoba Cold Storage building and the former Ogilivie Mills building. The City currently has by-laws which can be used at least partially to address the health, safety and accessibility of all buildings including commercial, industrial and other buildings not designated as dwellings. These by-laws are not specifically targeted at vacant and boarded-up commercial and industrial buildings. However, by-laws such as the Winnipeg Building By-law and the Untidy and Unsightly By-law are used to ensure a minimum level of safety for such vacant buildings e.g. reducing the risk of personal injury, fire and vandalism.

On August 8, 2002, the Manitoba Legislature enacted The City of Winnipeg Charter. When it takes effect on January 1, 2003, this legislation will give the City the power to take ownership of properties that fail to comply with the Vacant Dwellings By-law and any future by-law provisions that would address non-residential derelict properties.

DISCUSSION:

The problem of vacant commercial and industrial buildings is complex due to the wide range of types, and locations of these buildings. Therefore, creation of appropriate and effective policies and procedures is dependant on a thorough identification of the issues and input from various stakeholders in both the private and public sectors.

Investigation and research has been undertaken to determine if other municipal jurisdictions have enacted legislation which specifically addresses vacant and boarded-up commercial, industrial and other buildings not designated as dwellings. Information obtained from Regina, Saskatoon, Calgary, Edmonton, Vancouver, Toronto and Worcester, Massachusetts indicates that no specific by-law typically exists for vacant and boarded-up commercial and industrial buildings. The Canadian cities generally rely on Maintenance and Occupancy and Untidy and Unsightly by-laws for all buildings with the objective being to eliminate the danger caused by unoccupied buildings. The cosmetic appearance of a building is not addressed. For example, an official of the City of Edmonton states that Edmonton's "building permit by-law would be used to enforce an unsafe condition that may arise such as a vacant building being open to unauthorized people or subject to vandalism but as long as the building is secure, it can stay that way indefinitely."

On December 3, 1999 six firefighters died after a seemingly routine fire erupted into an inferno in the Worcester Cold Storage and Warehouse building in Worcester, Massachusetts. This building was vacant and abandoned at the time of the fire. As a consequence of this fire a Community Task Force on Vacant and Abandoned buildings was formed to develop recommendations on overhauling how the city deals with vacant and abandoned buildings. The task force's 200 page report contained 26 specific recommendations and resulted in Worcester City Council adopting, on February 27, 2001, an "Ordinance Relative to Vacant and Abandoned Buildings". The thrust of the task force's report, and the Ordinance, is to ensure that abandoned/vacated buildings are properly secured to protect the public and emergency services personnel.

NOTE: Just prior to submitting this report, information was received that the United States Fire Administration has released a new publication titled "Abandoned Building Project Tool Box". This Tool Box is targeted toward city or town administrators, fire prevention officials and law enforcement officials. The publication includes examples of communities with successful abandoned buildings programs.
This publication has been ordered but not yet received.

In the course of investigating other Canadian and American cities, a number of issues have emerged that would have to be addressed in developing a by-law focused on vacant non-residential buildings:

1. **What are the problems that the by-law is intended to solve?**
A by-law could try to deal with one or more of several potential problems, including:

Security of Vacant Buildings. The problem of preventing unauthorized entry to vacant buildings is the main if not the exclusive thrust of municipal legislation elsewhere. Security of vacant buildings is currently addressed by the Winnipeg Building By-law No. 4555/87 in that a vacant building, unguarded or open, to which entry can be gained, shall be deemed unsafe. In order to guard, the building must meet the requirements of Appendix "A" of the Winnipeg Building By-law (Requirements For Boarded-Up And Securing Vacant Buildings).

Internal Condition of Vacant Buildings. The integrity of floors and stairs, the operational condition of sprinkler systems, and the storage of combustible materials in vacant buildings are of significant concern to firefighters. This problem is only partially and inadequately addressed by the Winnipeg Building By-law and the Fire Prevention By-law.

Appearance of Vacant Buildings. Vacant buildings have a negative effect on the buildings around them and the City generally. They give the impression of decline and tend to reduce the value of neighbouring properties. This negative effect is particularly evident when vacant buildings are boarded-up, when they are allowed to deteriorate physically and when the surrounding grounds are not maintained. The Untidy and Unsightly By-law No. 762/74 might be used to require that owners keep weeds in check and ensure that the appearance of a vacant building is maintained to some extent. However, no by-law currently prevents non-residential buildings from being boarded-up or addresses the negative effect on the neighbourhood and the City caused by virtue of the fact that a building is vacant.

Entry for Inspection Purposes. Current by-laws only permit entry for inspection purposes with the consent of the owner or when there is reason to believe that the by-law is being contravened. Is there a need for routine inspections of the interior of vacant buildings?

2. **If property owners fail to do so, is the city prepared to bring vacant buildings into compliance with the standards set out in a by-law?**

Where a property owner fails to comply with an order, the current City of Winnipeg Act as well as the new City of Winnipeg Charter give the City authority to take steps to bring the property into compliance and to collect the costs of doing so from the owner. The City is entitled to add these costs to the real property taxes of the building.

However, there are significant financial implications for the City if it becomes involved in the maintenance and repair or demolition and, possibly, the ownership of vacant commercial and industrial buildings. Several factors should be taken into account.

First, the rate of non-compliance with orders made by enforcement officials is likely to be relatively high. The fact these buildings are vacant suggests the likelihood that their owners will be unwilling or financially unable to undertake the repairs or the demolition and environmental clean-up costs required by an order.
Second, in many cases, the expenses associated with bringing a building into compliance will be significant. Some of the buildings that are currently or will become vacant are of substantial size. Some undoubtedly require environmental remediation. If the City chooses to do the work itself, at a minimum, it must budget for sufficient funds to pay for the work at the time the work is carried out.

In addition, owners that are unable or unwilling to comply with an order are likely to be equally unable or unwilling to reimburse the City for bringing a building into compliance. Even adding these costs to the property taxes may not prove an effective solution for the recovery of these costs. If the owner defaults on payment of property taxes, the City could ultimately assume ownership of the property through the tax sale process.

However, the costs of repair or demolition and site remediation costs could exceed the market value of the property. In other words, the City may never recover all of the costs of bringing certain properties into compliance with a by-law.

3. **Recovery of the City's costs.**
Aside entirely from the costs of repairing or demolishing buildings, the City currently incurs costs and runs risks as a result of vacant buildings. These include the costs of inspecting and securing buildings. They also include risks to City staff, particularly firefighters, as a result of the greater dangers associated with vacant buildings. If a by-law is passed, the costs of enforcing it will also be borne by the City. Worcester, Massachusetts has an ordinance that requires owners of vacant buildings to maintain liability insurance on the building and file a minimum $5000 bond with the city to compensate the city for these sorts of costs. Is this a useful model for Winnipeg? Are there other ways of recouping these costs on behalf of city taxpayers?

4. **Property rights vs. interests of the neighbourhood and the city.**
The tension between the rights of property owners and the interests of the broader community is present in many of the issues associated with vacant buildings. There may be broad agreement that property owners should be obliged to ensure that their buildings are not a danger. But to what extent is the broader community entitled to require that the owner of property maintain the appearance of a vacant building? To go even further, is it legitimate at some point for the broader community to insist that a property owner must develop his/her property or have buildings occupied on the grounds that vacant buildings may reduce property values and discourage development in the area.

To this point, no consultations with relevant stakeholders has taken place in which these and other issues associated with vacant buildings have been discussed. Ideally, consultations should include:

- Representatives of commercial and industrial property owners
- Business groups
- Neighbourhood and other local "grassroots" organizations
- CentreVenture
- Others

CONCLUSION

This report has identified the following:

a) The approach taken in a number of other cities, primarily Canadian cities, in dealing with vacant commercial and industrial buildings.
Further information has been requested from the U.S. Fire Administration which provides examples of successful abandoned building programs in the other communities.

b) A preliminary identification of issues.
The research and evaluation conducted for preparation of this report has revealed that this subject is one of considerable complexity.

It is recommended that the consideration of a by-law to establish a system to regulate the conditional maintenance of vacant and/or boarded-up commercial and industrial buildings be deferred until March 31, 2003 to allow for the following:

- Consultation with stakeholders in the private and public sectors
- Evaluation of programs adopted in other communities
- Collection and evaluation of comprehensive data pertaining to the administration of the Vacant Dwellings By-law No. 7983/2002
- Evaluation and resolution of financial and human resource issues associated with enactment of a vacant buildings by-law

Financial Impact Statement **Date:** 30-Aug-02

COMMENTS:

The financial Implications related to the enforcement of any proposed by-law will be dealt with in a subsequent report.

Gord Courage, Manager
Support Services Division

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

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