TO: Chair and Members Economic Development and Planning Committee  
WARD(S) AFFECTED: City-Wide  

COMMITTEE DATE: May 18, 2010  

SUBJECT/REPORT NO: Process Review - Vacant Building Protocol (PED09031(b)) (City Wide)  

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning and Economic Development Department  

PREPARED BY: Marty Hazell  
905-546-2424 ext.4588  

SIGNATURE:  

RECOMMENDATION:  

a) That Report PED09031(b) titled “Process Review - Vacant Building Protocol” be received.  

b) That staff be directed to conduct a comprehensive investigation into the creation of a Vacant Building Registry By-Law, including an assessment of the staff resources required and appropriate fees for cost-recovery.  

EXECUTIVE SUMMARY:  

The Vacant Building Protocol was approved by City Council in January 2009 to provide a comprehensive and consistent process to ensure vacant buildings whether unsafe, abandoned, fire damaged, etc are dealt with in a proactive and consistent manner, in an attempt to mitigate further deterioration.  

This report provides an overview of the Vacant Building Protocol including improvements being initiated by staff, and includes a response to improvements suggested by Mr. Matt Jelly at Economic Development and Planning Committee on February 16, 2010.
In staff’s opinion, vacant buildings throughout the City are now being monitored effectively. However, should additional efforts be deemed necessary, staff could explore the feasibility of creating a Vacant Building By-Law Registry.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

While there are no financial, staffing or legal implications associated with this report, it should be noted that the proactive monitoring of vacant buildings throughout the City is much more labour intensive than originally indicated in report PED09031, and has placed a considerable burden on staff resources, particularly those of Municipal Law Enforcement Officers who monitor the Vacant Building List. The Vacant Building List has grown from 76 (June 2009) to 107 at the time this report was written, and has remained at over 100 since September 2009. As a result, Municipal Law Enforcement Officers are spending more time monitoring vacant buildings, and other violations such as zoning infractions are receiving a less attention which could result in a negative budget variance at year-end.

Any additional attention/effort being directed at vacant buildings would result in new staff requirements or further re-directing of staff away from other enforcement activities.

**HISTORICAL BACKGROUND** (Chronology of events)

With respect to vacant building enforcement, the long-standing reactive (complaint-driven) approach to Property Standards enforcement in Hamilton meant that, except in extreme cases of building deterioration (i.e. blatant unsafe conditions), buildings were inspected only upon complaint. As a result, many vacant buildings had significant Property Standards and/or Building Code deficiencies that went unnoticed, and many sat and deteriorated to an unsafe condition and in some cases to a state beyond repair.

Committee of the Whole, at its meeting of January 12, 2009, approved Report PED09031 (a copy of which is appended hereto as Appendix “A” to this report) which recommended approved inspection procedures including a proactive approach to Property Standards enforcement of vacant buildings. The Vacant Building Protocol was implemented by staff in June 2009.

Information Report PED09031(a), dated September 28, 2009, provided the Economic Development and Planning Committee with an update on the efficiency and effectiveness of the proactive approach to Property Standards enforcement of vacant buildings, and concluded that, while process improvements were continuing to be implemented, the new proactive process provides for more effective monitoring of vacant buildings against continuing deterioration. A copy of Report PED09031(a) is included as Appendix “B” to this report.
The Economic Development and Planning Committee was verbally informed at the January 19, 2010 meeting that staff would be reporting back on improvements to the Vacant Building Protocol, including a better tie-in with Heritage Permits.

On February 16, 2010, Mr. Matt Jelly addressed Committee and expressed concern about how vacant buildings are handled by the City, and presented three suggestions to improve the effectiveness of the Vacant Building Protocol which were referred to staff for investigation and inclusion in the Vacant Building Protocol Review/Report.

POLICY IMPLICATIONS

The Vacant Building Protocol provides a comprehensive and consistent procedure for monitoring unsafe and vacant buildings to protect them against continued deterioration. The Vacant Building Protocol also designates which departmental staff should have carriage of the vacant building file depending on the nature of the issues associated with a property.

RELEVANT CONSULTATION

Municipal Law Enforcement and Building Services staff both have responsibilities under the Vacant Building Protocol, and collaborated in the review and preparation of this report.

Public Works (Transportation, Energy and Facilities) was consulted with respect to the monitoring of vacant city-owned buildings. Community Services (Culture) was consulted with respect to city-owned properties with heritage designations. Fire Prevention was consulted with respect to populating and reconciling the Vacant Building List.

At the Economic Development and Planning Committee meeting of February 16, 2010, Councillor Brian McHattie advised that he would facilitate a meeting between Mr. Matt Jelly, staff and himself, and that meeting took place on March 24, 2010.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The Vacant Building Protocol applies to all vacant buildings in the City including buildings:

- actively being readied for re-occupation for the same or for a different use
- under renovation but at a stand-still
- completely abandoned (i.e. no activity of any kind taking place)
The Vacant Building List is a standardized list between all agencies which allows Municipal Law Enforcement and Building staff to perform proactive inspections of vacant buildings to ensure they are conforming to the Property Standards By-law (with respect to conditions that would contribute to continued deterioration) and the **Building Code Act**, (with respect to “unsafe” conditions).

The common Vacant Building List is populated from the list which the Fire Division of Emergency Services monitors to ensure vacant buildings are maintained in a secure condition (Fire immediately notifies Municipal Law Enforcement of any building identified as open to trespass), proactively by Building/MLE staff and by public complaint. The common Vacant Building List is updated and regularly reconciled with Fire’s list.

At the time this report was written, there were 107 buildings on the Vacant Building List being monitored by staff under the relatively new (2009) Vacant Building Protocol which includes:

- new improved procedures related to investigations of vacant buildings
- regular (every three months) inspections to ensure the **Building Code Act** and the Property Standards By-law are being complied with
- using progressive powers under the By-Law to properly and effectively secure buildings where repeat violations continue to occur

Municipal Law Enforcement staff is responsible for initiating inspections and assumes responsibility for Property Standards issues while Building Services' Building Inspectors are responsible for possible unsafe conditions including structural concerns. No building can be removed from the list unless/until it either becomes occupied or it is demolished. The flowchart included in Appendix “C” to this report outlines the process/staff responsibilities.

Staff has undertaken a comprehensive process review of the Vacant Building Protocol and the findings are highlighted as follows:

**PROCESS IMPROVEMENTS**

While the Vacant Building Protocol has resulted in improved monitoring of vacant buildings and the mitigation of continued deterioration, as with most things, there is always room for improvement. Staff has reviewed the protocol in detail and are/have implemented the following process improvements for more efficient and effective monitoring and actions taken with respect to vacant buildings:

- policies and procedures now require investigating staff to take photos of a building’s condition at the point it is added to the vacant building list to document/benchmark any evidence of deterioration or concern
- letters are now being sent to property owners notifying them that their building has been added to the City’s Vacant Building List and subject to regular monitoring so they may be subject to Fees for Inspections/Services if any violations are found.

- staff are launching an on-line complaint form in May 2010 to make it easier for the public to make a complaint and to provide a more efficient and effective format for staff to process complaints.

- policies and procedures now require more integrated and effective interaction between Building Inspectors and MLE Officers and better application of the Property Standards By-law in terms of Unsafe Orders/Open to Trespass matters.

- procedures have been implemented to ensure both Fire and Municipal Law Enforcement are aware of newly added properties to the Vacant Building List and to ensure that the list is reconciled between the two departments on an on-going basis.

- a standardized “checklist” has been developed for use by all MLE Officers to ensure standardized, comprehensive and consistent inspections of vacant buildings.

- staff is currently developing recommendations to expedite and apply more effectively the hierarchal measures used to secure vacant buildings under Property Standards, and to eliminate repeated enforcement actions required to secure vacant buildings. Staff intends to report to the Committee soon on this and other Property Standards By-law amendments.

**VACANT BUILDINGS WITH HERITAGE ATTRIBUTES**

As part of the Vacant Building Protocol process review, staff also examined the treatment of vacant buildings with heritage attributes. City Council, on October 15, 2008 amended the Property Standards By-law to prescribe minimum standards for the maintenance of heritage attributes of designated heritage buildings under Parts IV & V of the Ontario Heritage Act. To-date, staff has had little/no experience dealing with vacant buildings with heritage designations. However, while the practice has been in place, written policies and procedures now require the involvement of Heritage staff to provide guidance and assistance to MLE Officers and Building Inspectors in conducting inspections and in the wording of Orders to Comply and in re-inspecting following the issuance of an Order to Comply.

Also, staff are improving the data entry process in Amanda to better “flag” for properties designated under Parts IV & V of the Ontario Heritage Act for enforcement/inspection staff.
CITY-OWNED VACANT BUILDINGS (with/without Heritage Attributes)

Another area that was examined as part of the Vacant Building Protocol process review was the oversight of vacant city owned buildings including those designated under Parts IV & V of the Ontario Heritage Act to ensure that city buildings are under the same levels of scrutiny as public buildings.

City-owned heritage buildings are managed by the Culture Division of Community Services. The Director of Culture advises that these buildings are subject to visits and inspections regularly for which detailed records are kept. With respect to city-owned vacant buildings (without heritage designations), the Manager of Corporate Facilities (Public Works) advises that these buildings are visited weekly by city staff so they can attend to issues such as property maintenance and open to trespass in a timely manner. Therefore, it would appear that there is no need or advantage to include these buildings on the city’s Vacant Building List such they would be subject to additional inspections by MLE Officers every three months.

The following three suggestions of Mr. Matt Jelly were referred to staff for investigation and inclusion in the vacant building protocol review/report:

- **Suggestion #1:** “Create a team of students to be the eyes and ears of Property Standards, similar to the team of students in Property Maintenance. This is a cost-effective way to more regularly inspect problem buildings, and does not divert attention from regular By-Law officers”.

Municipal Law Enforcement staff initiated a project over the summer of 2009 using four students to assist in public education and enforcement of the Yard Waste and Maintenance By-Law; primarily long grass/weed and garbage/debris complaints. Students assisted MLE Officers by investigating complaints and issuing Orders to Comply. However, where a violation continued, the file was assigned to an MLE Officer for whatever action was necessary to obtain compliance. All costs were recovered and the program was very successful in obtaining improved compliance.

Students could be used to provide additional monitoring of vacant buildings, but there is a threshold of training and/or experience required which would limit their enforcement actions and there would be little in the way of cost recovery, not to mention possible liability issues associated with consequence of error. Enforcement staff would be required to follow up with any necessary actions, and MLE Officers are already overcommitted with other enforcement priorities. Thus, while it is productive to have students responding to the easily discernible and relatively numerous yard maintenance offences, it is not for vacant buildings.
- **Suggestion #2:** “Order a review of the complaints process, to ensure that citizen complaints are responded to and acted upon in a timely manner. More citizens will be encouraged to engage with the process if they know their feedback is being received”.

Staff would welcome any independent review of “the complaint process”. However, as noted earlier in this report, improvements are being put in place to improve the complaint process, as follows:

When complaints are received by email (mle@hamilton.ca), there is generally not enough detailed information to allow staff to conduct an investigation. The improved online form will require certain information that is critical to an effective investigation including:

- the address/closest intersecting streets of the potential violation
- detailed information on where the potential violation is located on the property (the more detailed the easier it will be for the Officers to find the violation)
- what type of violation (to assist referral to the appropriate enforcement team)
- the person’s contact information/email address so staff can follow up in the event they have any questions about the initial complaint

**Suggestion #3:** “Revise the Vacant Building Protocol to require more regular inspections of vacant buildings - perhaps on a monthly basis, especially in cases where the building/property is an ongoing concern and infractions are repeating”.

While this is certainly a worthy suggestion, MLE staff could not possibly conduct more regular inspections with current staff unless adjustments were made to other enforcement priorities. In any event:

- Fire Prevention advises that they visit all properties on the vacant building list every three to six weeks for open to trespass/security issues and they would also report any other blatant safety concerns to the Municipal Law Enforcement section for investigation
- problem properties are more likely to have Orders to Comply issued and therefore MLE officers would be re-inspecting for compliance at the order’s expiry.
- the 18 month pilot proactive enforcement program approved by City Council on March 31, 2010 will result in the hiring of six temporary part-time officers focusing on various enforcement matters in Wards 1 to 8 and they might be of some assistance in this regard

**SUMMARY**

Staff concludes that the current Vacant Building Protocol (along with the reported improvements being implemented) is effective in providing adequate monitoring of vacant buildings throughout the City. However, should additional oversight be deemed
necessary, staff suggest that a detailed and comprehensive investigation could be conducted into creating a Vacant Building Registry By-Law. The City is not obligated to have such a by-law, but does have the statutory (Municipal Act, 2001) authority to enact a stand-alone by-law which could include such requirements as:

- providing more “regulation” of the non-structural issues associated with abandoned buildings (structural issues would still be regulated through the Property Standards By-Law and the Ontario Building Code Act)
- requiring the registration of a vacant building with the city
- requiring regular inspections by the city and establishing fees to recover the costs
- posting contact information on the building for emergency/enforcement purposes

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

No further investigation into creating a Vacant Building Registry By-Law.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


**Healthy Community** - Public and Safety is protected

**Growing Our Economy** - Support/protection of ongoing maintenance of buildings contributes to property values, including the surrounding neighbourhood

**APPENDICES / SCHEDULES**

Appendix “A” to Report PED0931(b) - Report PED09031
Appendix “B” to Report PED0931(b) - Report PED09031(a)
Appendix “C” to Report PED0931(b) – Flow Chart

Attachs.(3)

MH/hb
SUBJECT: Improved Inspection Procedures for Vacant and Derelict Buildings and Other Properties that are Potentially Unsafe (PED09031) (City Wide)

RECOMMENDATION:

(a) That the Building Services and the Parking and By-law Services Divisions of the Planning and Economic Development Department adopt a proactive approach to Property Standards enforcement of vacant/derelict buildings as set out in Appendix “A” attached to Report PED09031.

(b) That Parking and By-Law Services continue to monitor workloads associated with this initiative and report back to Committee if this presents any significant impact on work plans or staffing.

(c) That the item related to “improved inspection procedures related to vacant buildings and other properties that are potentially unsafe” be identified as completed and removed from the Committee of the Whole’s Outstanding Business List.
SUBJECT: Improved Inspection Procedures for Vacant and Derelict Buildings and Other Properties that are Potentially Unsafe (PED09031) (City Wide) - Page 2 of 11

EXECUTIVE SUMMARY:

In order to achieve the City of Hamilton’s Vision: “To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities” part of our efforts should concentrate on ensuring the quality of our neighbourhoods. Vacant and derelict buildings that are not maintained contribute to the decline of our neighbourhoods, have negative effects on property values, and detract further investment. Accordingly, as part of making the City of Hamilton a “best place”, vacant and derelict buildings must be dealt with more proactively. Vacant and derelict buildings are often referred to as ‘blights’ in neighbourhoods because of their unkempt exteriors and their propensity to be accessed by vagrants and other undesirables who may choose to engage in illicit activities on the properties. In the most dangerous examples of deteriorated vacant/derelict buildings, structural deficiencies can develop and progress to severe structural failures resulting in full building collapses. These instances of severe deterioration, although relatively rare, can put in jeopardy the health and safety of nearby residents and the general public at large.

This report focuses on the following:

- Existing methods of various City of Hamilton enforcement agencies in investigating and acting upon vacant and derelict buildings and how processes can be enhanced and improved.
- The compilation of Best Practices of other Ontario Municipalities in dealing with vacant and derelict buildings that confirms that the City of Hamilton’s policies, procedures and by-laws are keeping up with other municipalities.
- A review of the City of Winnipeg’s “Vacant and Derelict Buildings By-law 35/2004” that reveals that this type of stand-alone by-law is not a suitable approach for the City of Hamilton.
- The recommendation that the Property Standards By-Law be used to its fullest extent and aggressive enforcement be implemented, working together and strategically with the Building Services Division.

The report concludes that by improved, regularly scheduled, proactive investigations of vacant/derelict buildings (that are carried through to an acceptable resolution), chronic deterioration can be dealt with in a more effective manner within the City of Hamilton.

BACKGROUND:

As a result of the King William Street building collapse in April of 2008 the Committee of the Whole, in review of the related staff report, requested that staff report back on improved inspection procedures relating to vacant buildings and other properties that are potentially unsafe.
SUBJECT: Improved Inspection Procedures for Vacant and Derelict Buildings and Other Properties that are Potentially Unsafe (PED09031) (City Wide) - Page 3 of 11

In March 2003, Council approved a coordinated agency approach to address vacant/abandoned buildings. Legislatively, vacant unsecured buildings could be secured utilizing the proposed Property Standards By-law (subsequently enacted). Buildings deemed ‘unsafe’ under the Building Code Act could be secured utilizing the powers under the Act allowing immediate measures to be taken. As a final component to the coordinated approach, buildings secured under the Property Standards By-law or the Building Code Act would be monitored for continued security by Hamilton Emergency Services (HES)-Fire.

For the most part, this protocol has been effective in dealing with these concerns. It has, however, become increasingly evident that actions taken to make a building safe or to secure a building against access while addressing safety concerns of the moment do not provide protection against continued deterioration. The results can sometimes be buildings that are secure, (no unsafe conditions), but vacant. These vacant buildings often then deteriorate to conditions where they become unsafe.

The intent of this report is to review existing processes/procedures with a view to identify means to protect vacant and/or damaged buildings from continued deterioration and therefore mitigate the risk of structural failure in the future. Further, the report includes the review of other Municipal Best Practices and the recommendation of a new, proactive inspection protocol for such buildings.

ANALYSIS/RATIONALE:

Buildings Damaged by Fire, Explosion, Wind, Vehicle Impact, etc.

Currently, when Building Services Division staff (Building Inspectors) respond to and deal with an unsafe building, they take all necessary actions within the authorities of the Building Code Act to bring the building to a “safe” condition. Once a building is made safe the file is closed with the assumption that the owner(s) will follow up with their insurance companies and carry out the necessary repairs to remediate the building or, in some more drastic cases, demolish the building.

Although enforcement of the Property Standards By-law is presently only carried out on a complaint basis, in the case of a previously unsafe or partially damaged building a continued and proactive Property Standards investigation would be extremely beneficial. The resulting Property Standards enforcement, (which may include the provision/replacement of a roof or weatherproofing a deteriorated roof and securing/repairing of openings that would otherwise allow the entry of water or snow for example), would address conditions that currently leave a structure open to continued deterioration.

Enforcement of such requirements to the full extent of the Property Standards By-law will result in the protection of the building from the elements and ultimately protect the public from the possibility of future unsafe conditions. Should the owner(s) fail to...
comply with such an order the City has the authority to undertake the necessary repairs on behalf of the owner(s) or, if conditions warrant, demolish the building. It should be recognized and understood that under the Property Standards By-law the owner(s) (or the City when acting on their behalf) has the option to either carry out the required repairs or to demolish the building and clear and level the site.

Vacant/Abandoned Buildings

Presently within the City of Hamilton, there are numerous buildings that are considered vacant. These buildings may be vacant for several reasons. They may be:

- awaiting conversion to another type of occupancy;
- under renovation but have been abandoned or simply at a stand-still;
- completely abandoned; and,
- in the process of being marketed for the same occupancy as the previous use.

In all cases however, there is no triggering mechanism that would advise the City when a building becomes vacant.

In an effort to address vacant buildings, HES-Fire in-service suppression crews monitor approximately 70-75 vacant buildings to ensure they are maintained in a secure condition. The monitoring is conducted at various frequency levels based on the status of the building including previous activity and general fire concerns. The monitoring of these buildings has proven effective in identifying problems immediately. Once buildings are identified as open to trespass, HES-fire notifies Property Standards (MLE) initiating legislative action under the By-law to ensure timely compliance by the owners.

In addition to the monitoring conducted by the HES-Fire, another option would be to maintain a standardized 'Vacant Buildings’ list between all agencies to allow Building Services Division and Parking and By-law Services Division staff to perform their own proactive inspections to ensure that the buildings are conforming to the Property Standards By-law (with respect to conditions that would contribute to continued deterioration) and the Building Code Act, (with respect to “unsafe” conditions). This would ensure that buildings that are not meeting the minimum requirements of the Property Standards By-law/Building Code Act would be investigated and the deterioration of the buildings would drastically decline as the result of continued, follow-up enforcement processes.

In that all of these subject buildings are vacant/abandoned, access to the interiors is generally not available therefore requiring inspections to be carried out from the exterior only. Although the Building Code Act does contain authorities for entry into buildings to determine if they are unsafe, there must be reasonable grounds identified to believe that a building may be unsafe and that entry into the building or requiring a Professional Engineer’s review will reveal or provide evidence of such a violation. The mere fact that a building is vacant or abandoned does not, in itself, afford such justification. To insist
entry be gained for inspection purposes without adequate justification would most likely be considered an abuse of power by the Courts.

In order to address this limitation, the exterior inspections of these buildings will include a thorough assessment of any conditions that would indicate the likelihood or possibility that the structure is unsafe, or, based on the extent of exterior deterioration, that there is a probability that the interior or roof structure is similarly or likely to also be unmaintained. In these circumstances, the authorities under Section 15.9(1)(a)\(^1\) and/or 18.(1)(c)\(^2\) of the Building Code Act can be utilized. These authorities allow for entry into the building to determine if it is unsafe and for requiring a Professional Engineer’s report regarding the structural stability of the building.

When reviewing the vacant building protocols of various municipalities in southern Ontario, the results were conclusive and supportive of the conclusion that; by efficient Property Standards By-law/Ontario Building Code enforcement, the task of dealing with unwanted derelict and vacant buildings can effectively be addressed, (see Table below for comparators).

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\(^1\) 15.9 (1) **Inspection of Unsafe Buildings.** An inspector may enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting a building to determine, (a) whether the building is unsafe;

\(^2\) 18. (1) **Powers of Inspector.** For the purposes of an inspection under this Act, an inspector may, (c) require information from any person concerning a matter related to a building or part thereof;
As indicated in the Table, none of the surveyed municipalities engage in proactive inspections of vacant/derelict buildings and none of them have enacted by-laws that specifically deal with vacant/derelict buildings. Also, only half of the municipalities have a formal procedure/policy that address unsafe buildings.
Enforcement

The Building Code Act, (in which the authority of the Property Standards By-law is derived), is a very powerful piece of legislation that gives both Building Inspectors and Property Standards Officers powers. Some of these specific powers, (as they relate to investigating and remedying vacant and derelict building issues), include:

- unrestricted powers of entry of Building Inspectors when investigating buildings that are believed to be unsafe;
- the ability of Building Inspectors to order Professional Reviews and Reports of suspected unsafe buildings;
- the ability of Building Inspectors to order property owners to ‘make safe’ their buildings and properties;
- the generous powers of Property Standards Officers to inspect properties to investigate possible Property Standards infractions;
- the ability of Property Standards Officers to order building owners to secure/repair their damaged buildings;
- the ability of Property Standards Officers to order ‘progressive measures’ to ensure buildings are rendered inaccessible, (‘progressive’ meaning building openings to be sealed off using plywood hoarding on first offences, to steel panels on subsequent offences, to full concrete block window and doorway infills on final offences);
- the ability of Property Standards Officers to order property owners to provide Professional Reviews and Reports, verifying the structural sufficiency of buildings;
- the exceptional powers of Property Standards Officers to cause a non-compliant building to be repaired (if feasible) or completely demolished, (if necessary), all at the expense of the land owner; and,
- the ability for both Officers and Inspectors to lay charges and collect fines under the powerful authority of the Building Code Act.

All these investigative and enforcement tools are already at the disposal of Property Standards Officers/Building Inspectors, (currently buildings are being secured using the ‘progressive measures’ as outlined in the Property Standards By-law). Utilizing these powers and abilities to their full potential needs to be part of any initiative that will deal with vacant and derelict buildings.

At present, Property Standards enforcement in Hamilton is complaint driven only. In some instances, there have been sporadic ‘proactive’ enforcement programmes...
approved by Council to address various Property Standards issues in selected geographic areas within the City. This investigation/enforcement philosophy means that buildings are only inspected when a member of the public chooses to lodge a complaint with the City regarding the state of those buildings. As a result, many vacant buildings simply sit and deteriorate, sometimes to a state that is beyond repair, or, in some cases, to conditions that may be considered unsafe. Since Building Inspectors only respond reactively to complaints as well, and are only proactive in extreme cases of building deterioration, (i.e. blatant unsafe conditions), the result can be that many buildings that are vacant/derelict within the City have significant Property Standards and/or Building Code deficiencies that go unnoticed.

Getting these buildings on the “radar” for both enforcement groups is critical in addressing and improving the vacant and derelict buildings situation in the City of Hamilton.

As previously mentioned, HES-Fire maintains a ‘Vacant Buildings’ list of properties within Hamilton and monitors these buildings at regular intervals. Utilizing a common list provides Building Services and Parking and By-law Services Divisions current and accurate information regarding vacant and derelict buildings. Property Standards Officers and Building Inspectors would no longer be dependent on the general public to file complaints regarding vacant building in order to generate investigation inspections. This information sharing would be reciprocal wherein actions taken by any of the three agencies would be shared amongst themselves. The fundamental goal of this arrangement would be to maintain current information on building status between agencies and undertaking appropriate action as necessary.

It would be expected that when vacant buildings are inspected on a regular basis (every three months) building defects (including structural deficiencies), will be observed and acted upon. Since major structural problems and unsafe conditions are rare, most of the follow-up work will rest on the shoulders of the Property Standards Officers who will be called upon to deal with building exterior maintenance issues and open to trespass conditions.

In addition to this ongoing proactive initiative, (which only deals with defect detection), Property Standards enforcement in Hamilton will be required to change. Some of these changes have already begun to take place under the direction of the recently established Management Team of the Parking and By-law Services Division. Historically, non-complied with Property Standard Orders in Hamilton have, for the most part, been left ‘registered on title’ and not fully enforced. This passive enforcement style works only when properties are bought and sold and registered Orders are discovered by the new prospective owner’s lawyers via registry office searches. This leads to a situation where required maintenance work is, in some cases, not performed for many years after orders are issued. Or, in the worst case scenario, when properties never change hands, the required work is never completed. A more aggressive enforcement philosophy is needed within the Parking and By-law Services Division. This has already
commenced in 2008. Non-complied Orders must be addressed either by court action or by the City doing the work necessary to bring a building/property into compliance with the minimum standards of the by-law (which includes demolition in extreme cases).

**ALTERNATIVES FOR CONSIDERATION:**

In order to determine how to improve inspection procedures relating to vacant and derelict buildings, a search was conducted of other Canadian municipalities’ protocols and by-laws relating to this subject. This review of other municipal best practices revealed that the City of Winnipeg recently enacted a by-law entitled: “The Vacant and Derelict Buildings By-law No. 35/2004”, which came into effect on July 1st, 2004. A Building Department representative from Winnipeg was interviewed via telephone and the following, relevant information was communicated:

- The goal of the by-law is to ensure that vacant buildings meet basic standards of maintenance so that they do not detract from neighbourhoods, the City as a whole, and do not pose an undue hazard for firefighters and the general public;
- The by-law requires that buildings that are vacant, (as defined by the by-law), must be kept in a secured condition;
- In the event that buildings are not maintained in a secured condition, they must be boarded up;
- Any vacant building that is boarded up must be done so under the auspices of a permit, issued by the City’s Building Department;
- Board-up permits must be renewed on a half-year basis (residential buildings) or on a yearly basis (commercial building), and each renewed permit fee is exponentially higher than the previous permit fee;
- Permits fees range from a low $10.00 for first-time board-ups of residential buildings, to $800.00 for the third and final board-up of the building;
- Permit fees range from $200.00 for first-time board-ups of commercial buildings to a high of $3,000.00 for the fourth a final board-up;
- These graduated fees, (which are exorbitantly high for the third and fourth board-ups), are meant to be deterrents, encouraging property owners to rehabilitate and occupy their buildings or demolished the buildings rather than pay ongoing permit renewal fees;
- The by-law has been moderately effective; and,
- The by-law receives its authority from the City of Winnipeg Charter, which gives the Municipality special sweeping powers to create and enact various by-laws.
Although this Derelict Buildings By-law seems to be an ideal solution for Hamilton, we do not have a Municipal Charter that would give us the legislative authority to enact such a by-law. However, the Ontario Municipal Act does give municipalities the ability to enact by-laws that relate to “nuisances”. The question then becomes: are vacant and derelict building considered as “nuisances” as defined in the Act? Should vacant buildings be considered to be in the same category as:

- stagnant water;
- long grass and weeds; and,
- garbage and debris.

The Municipal Act also allows municipalities to issue permits and licenses for various things. Board-up permits could therefore be issued. However, according to the Municipal Act, fees collected for these permits cannot be revenue generators. We can only recover our costs as part of permit fees. Therefore, since enforcing this by-law could not be a money making enterprise, the escalating fee schedule could not be utilized. Accordingly, the deterrent factor would not be as compelling or an effective persuasion tool. Although pursuing the idea of creating a stand-alone derelict building by-law has merit, its effectiveness would be somewhat limited and would overall be a poor choice (when compared to the City’s existing by-laws). Simply put, the City of Hamilton’s existing Property Standard By-law contains adequate requirements for progressive stages of securing (boarding-up) of buildings as well as other related minimum standards. If used effectively, in concert with the Building Code Act powers, the Property Standards By-law would address the same goals of the Winnipeg Model.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial** –
Monitoring and securing vacant buildings under the proposed procedure, will have limited financial impact given that it is the owner's responsibility for securing a building. There is no cost impact to the corporation beyond the staff resources to conduct inspections and proceed to prosecution if and as necessary.

There are some costs associated with completing work on the owner's behalf under the authorities of the current Property Standards By-law (securing a fire damaged building) and/or the Building Code Act. These costs can however be recovered by applying them to the tax rolls of the property in question.

**Staffing** –
There is minimal impact to staffing for either the HES-Fire or the Building Services Division, and a moderate impact to staffing in the Parking and By-law Services Division (Property Standards). As part of the new Community Based Enforcement Priorities approved by City Council on November 26, 2008, Property Standards violations are directly related to public health and safety and therefore are considered a priority. However a more proactive enforcement with the adoption of this new protocol for
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vacant/derelict buildings may reduce response time to other property standards issues in the community.

**POLICIES AFFECTING PROPOSAL:**

Policies and Procedures under the Building Code Act and Property Standards By-law. Council’s approved “Community Based Enforcement Priorities”

**RELEVANT CONSULTATION:**

This information was compiled through consultation with HES-Fire and various Parking and By-law Services and Building Services staff.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No

The effectiveness of the Division’s service has a direct impact on the quality of life within the City through delivery of services that ensure public safety and protection.

Environmental Well-Being is enhanced. ☑ Yes ☐ No

Human health and safety are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No

Processes and services that support the ongoing maintenance of buildings contribute to the property values of both the subject property and the surrounding neighbourhood.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

JS:NA:fd

Attach. (1)
As a follow-up to Report PED09031, the purpose of this report is to update Council on the efficiency/effectiveness of the proactive approach to Property Standards enforcement of vacant/derelict buildings as set out in Appendix “A” to Report PED09031.

**Background:**

Council, at its meeting of January 12, 2009, endorsed a staff report on Improved Inspection Procedures for Vacant and Derelict Buildings and other Properties that are Potentially Unsafe. The report recommended that the Building Services and the Parking and By-law Services Divisions of Planning and Economic Development Department adopt a proactive approach to Property Standards enforcement of vacant/derelict buildings as set out in Appendix "A" to Report PED09031.

This enforcement protocol utilized existing legislation (Property Standards By-law) to a fuller extent than previously administered procedures. It goes beyond securing buildings against access or just making them safe; it also protects the buildings from continued deterioration and encourages the renovation and re-use/occupancy of vacant buildings. Further, it provides an opportunity to identify buildings that are potentially unsafe, or to at least reduce the chances of a building becoming unsafe.

After Council's approval of the Vacant Building Protocol, staff from Building Services and Municipal Law Enforcement (MLE) had several meetings to discuss the most effective methods to capture these types of properties in our database system (AMANDA).
SUBJECT: Proactive Approach of Vacant/Derelict Buildings (PED09031(a)) (City Wide) - Page 2 of 3

Through these meetings, means to highlight, categorize and monitor vacant buildings were established. This new process ensures that staff have the ability and opportunity to more effectively monitor vacant buildings.

With the Policy and Procedure in place we currently have approximately 113 files categorized as vacant properties within the City. The number of buildings categorized as vacant will fluctuate as properties are removed (i.e. demolished or rehabilitated) and added.

Municipal Law Enforcement staff are responsible for the initiation of inspections as discussed in the Policy and Procedure. MLE Officers assume the responsibility of Property Standards issues while Building Services' Building Inspectors are responsible for possible unsafe conditions.

Current Statistics:

Proactive inspections were commenced during the week of June 15, 2009. Results of inspections between June 15, 2009 – September 15, 2009 are noted below. On June 15, 2009 there were 76 buildings categorized as vacant and as of September 15, 2009 there are 99 buildings categorized as vacant.

<table>
<thead>
<tr>
<th>Number of Buildings</th>
<th>Building Status</th>
<th>Next Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>75</td>
<td>Received inspections from MLE and Building Services staff.</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Properties deemed secure at time of inspection and no violations of the Property Standards By-law were found.</td>
<td>These buildings will remain on the list and continue to be monitored.</td>
</tr>
<tr>
<td>18</td>
<td>Demolished + 2 demos applied for</td>
<td>Removed from list.</td>
</tr>
<tr>
<td>6</td>
<td>Occupied</td>
<td>Remove from list.</td>
</tr>
<tr>
<td>7</td>
<td>Buildings were secure; however, Property Standards Enforcement or Backyard By-law enforcement was commenced.</td>
<td>Properties received Orders to Comply (OTC) and will remain on the list for monthly monitoring.</td>
</tr>
<tr>
<td>23</td>
<td>Properties were not secure and Property Standards or Building Code Act was commenced.</td>
<td>Properties received Orders to Comply (OTC) and will remain on the list for monthly monitoring.</td>
</tr>
<tr>
<td>37</td>
<td>New properties categorized as vacant through proactive enforcement or complaints.</td>
<td></td>
</tr>
</tbody>
</table>

Effectiveness:
Statistics gathered through to September 15 of 2009 clearly indicate the proactive approach has been effective in dealing with 74 of the now 113 identified vacant/derelict properties to a condition where further deterioration is mitigated.

It should also be noted that Building Services, Municipal Law Enforcement and Fire Prevention continuously monitor the City to flag any new vacant/derelict buildings.

Communication/Updates:

General Manager’s Office will continue to provide confidential updates to individual Councillors regarding any major enforcement issues or public inquiries in their Wards with respect to vacant buildings.

Efficiency and Consistency:

To ensure that Building Services, Municipal Law Enforcement and Fire Prevention Divisions are maintaining accurate records of which buildings are being considered vacant/derelict, a procedure and subsequent standardized form ‘Vacant Building Notification Sheet’ was created where in each Division can notify each other as they are made aware of any new vacant/derelict buildings. This new form will assist all parties to ensure that the information is shared in an efficient and consistent manner.

Conclusion:

While all agencies continue to identify and correct minor inconsistencies in the process, it is evident from the results noted above that 18 properties have been demolished, there are two (2) active applications for demolition and six (6) are now no longer vacant. Perhaps more importantly, are the 30 properties that were found to be in violation of the Property Standards By-law and on which enforcement actions have commenced to stimulate repairs and thereby reduce the likelihood that they will deteriorate to an unsafe condition.

_____________________
Tim McCabe
General Manager
Planning and Economic Development Department

JS:NA:fd
VACANT BUILDING PROTOCOL PROCESS*

Building added to Vacant Building List

MLE Officer Inspects/every 3 mos**

Violation or Concern?

YES

Property Standards or Structural?

Property Standards

MLE Officer issues OTC (Heritage?)

Compliance?

YES

NO

City performs work and/or lays charges

Bldg Inspector inspects

Issue?

NO

YES

Bldg Insp issues BCA or PS OTC (Heritage?)

Compliance?

NO

YES

City performs work and/or lays charges

* Building/MLE investigations/actions could also run concurrently

** Buildings cannot be removed from vacant building list until occupied or demolished