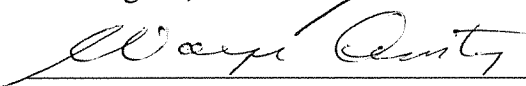


Halifax Regional Council
May 1, 2007

TO: Mayor Kelly and Members of Regional Council

SUBMITTED BY:


Dan English, Chief Administrative Officer


Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: April 13, 2007

SUBJECT: Project 00856: Derelict Buildings Program

ORIGIN:

- June 26, 2001-- Council requests a staff report clarifying the time frame that a building can remain boarded up and the feasibility of creating a by-law to deal with derelict buildings.
- May 20, 2003 -- Council requests an information report on revisions to the MGA.
- December 2, 2003 -- Council approves a staff recommendation to amend the MGA.
- May 5, 2004 -- the Provincial Legislature adopts amendments to the MGA but refuses Council's request to for powers to expropriate derelict buildings without compensation.
- October 25, 2005 -- Council approves a staff recommendation to amend the MGA.
- February 10, 2006 -- The Provincial Legislature adopts additional amendments to the MGA to permit the expropriation of derelict buildings with compensation.

RECOMMENDATION

It is recommended that Halifax Regional Council approve in principle By-law D-300 "Respecting Derelict Buildings" as shown in Attachment A, and schedule a public hearing.

EXECUTIVE SUMMARY

Council has requested a program to manage derelict buildings that would enable the Municipality to encourage the remediation of vacant buildings in a blighted condition. To facilitate this objective, amendments to the MGA to permit council to expropriate vacant buildings with compensation were approved on February 10, 2006. Accordingly, staff has prepared a program based on these recent amendments and existing legislation to achieve council's objective to deal with derelict buildings. This program as well as the draft Derelict Buildings By-law has been reviewed by the Dangerous and Unightly Premises Committee.

BACKGROUND:

Council has requested the preparation of a derelict building program to enable the Municipality to place restrictions on building owners who allow their buildings to remain vacant for prolonged periods. Minor amendments to the MGA approved in 2004, the Residential Occupancy Standards By-law (M-100) and the Dangerous or Unightly legislation have to date been considered insufficient to alleviate the problem of derelict buildings.

Initially HRM requested the Province grant the Municipality authority to expropriate vacant buildings without compensation, a request that was modelled after a derelict buildings program in the City of Winnipeg. The Province was not prepared to confer this power, as expropriation without compensation is considered a drastic infringement on property rights. Consequently, Council directed staff to proceed with a request to make additional amendments to the MGA for the purpose of providing municipal authority to expropriate vacant buildings with compensation. These amendments were ultimately approved on February 10, 2006.

Expropriating buildings with compensation is considered a very expensive option for the Municipality. Accordingly, a subcommittee of the By-law Rationalization Group (BRG) was formed to consider a new derelict building by-law and to identify constraints in the preparation of a program to deal with derelict buildings. Subsequent analysis of existing legislation was also undertaken as part of this process. This report will identify the rationale for the recommended approach to manage derelict buildings in HRM.

DISCUSSION:

A Dangerous or Unightly Buildings (DUB) program with Derelict Buildings By-law (shown in Attachment A) has been drafted for Council's consideration. The DUB program seeks to provide outcomes that are aligned with Council's objectives to:

- remove sources of blighting and danger to the community; and,
- to achieve residential occupancies through building remediation where possible.

The proposed Derelict Buildings By-law (which further clarifies the Municipality's power of expropriation with compensation) is one of five pieces of legislation that comprise the legal authority of the proposed DUB program.

The Five Legislative Pieces of the proposed DUB Program

1. *Nova Scotia Building Code Regulations*
2. *Nova Scotia Fire Safety Act*
3. *M100 -- Respecting Residential Property Standards*
4. *Dangerous or Unsightly Legislation*
5. *Proposed By-law D-300 "Respecting Derelict Buildings" (Attachment A)*

Nova Scotia Building Code Regulations

As a protective standard for building occupants, the Building Code addresses new and renovated buildings. This legislation covers all aspects of the Structural Sufficiency, Fire Protection, Health, Safety, and Accessibility aspects of the buildings. It establishes standards, leaving the onus on the building owner to comply.

Nova Scotia Fire Safety Act

The Fire Code imposes a minimum Fire Safety standard for occupancy of existing buildings. Owners must maintain buildings to a minimum habitable standard.

M100 -- Respecting Residential Property Standards

This legislation was implemented to provide specific standards of maintenance for residential occupancies, the "warm, safe, and dry" aspects in addition to the Fire Safety standards and Nova Scotia Building regulations as well as new standards for rooming houses.

Dangerous or Unsightly Legislation

The Dangerous and Unsightly legislation is intended to protect community character, appearance and safety. It primarily addresses the visual aspects of a property in the community including yard maintenance, garbage accumulation, derelict vehicles, and poor exterior building maintenance, etc. It is intended to address buildings and properties which present a safety hazard, depreciated property values or properties that are inconsistent with community maintenance standards. Buildings deemed "Dangerous or Unsightly" can be ordered demolished under this legislation.

Proposed By-law D-300 "Respecting Derelict Buildings" (Attachment A)

The proposed by-law will expand upon the dangerous or unsightly powers in the MGA. An order pursuant to the by-law may dictate that a derelict building be boarded up pursuant to the standards set out in the by-law. An order may also dictate that the owner must bring the derelict building up to a habitable standard within 120 days or the building will be demolished. This is an important new procedure that has not been pursued before. In the past buildings have remained

boarded up and derelict for prolonged and indefinite periods of time. Demolition has only occurred where the building presents an imminent public safety hazard.

The proposed *Derelict Building By-law* defines a *Derelict Building* as a building that is unattended, neglected, poorly maintained, and unsuitable for occupancy. It also defines a *Habitable* building as one which conforms with the Fire Safety Act and in the case of a residential building, one which must also meet the minimum standards for all residential occupied buildings in HRM.

Additionally, there are certain exemptions to the proposed *Derelict Building By-law* which include the following :

- (a) cottages and other recreational dwelling units and their accessory buildings;
- (b) other temporary recreational facilities; and,
- (c) agricultural or other resource facilities.

The effectiveness of the proposed DUB program is dependent upon the collective application of the five program pieces that comprise the program. This is in large part because some of the deficiencies that exist in the individual legislative parts are offset by the other powers. For example, if the *Proposed By-law D-300 "Respecting Derelict Buildings" (Attachment A)* legislation was the sole legal basis of the DUB program, the expropriation power with compensation could potentially promote blighting. Such a condition could be created if a property owner permitted a building to decline, in the hope that it would be expropriated.

When the *Dangerous or Unightly Legislation* is also considered the property owner no longer has an incentive to allow a property to go into a blighted state. This is because this legislation authorizes the Dangerous or Unightly Committee to order the building demolished. The Municipality would then bill the property owner for the costs. In addition to eliminating the blighting effect, this action reduces the level of financial uncertainty because the Municipality is not taking title of the property and therefore does not have to provide compensation.

Proposed DUB Program

As stated the DUB program is intended to promote occupancy where possible, however, it is acknowledged that a building may continue into decline. To bring that building into compliance with program objectives the Municipality may:

- fine a property owner,
- order a building demolished; or,
- expropriate a derelict building with compensation.

The Municipality has ordered the demolition of derelict structures in the past. However it should be noted that while this approach would be less costly for the Municipality, it could have the effect of creating lots that might remain vacant for prolonged periods and which also negatively affect community character.

The draft DUB program process as shown in Attachment B, is comprised of two streams – *Process A – Building Not Derelict* and *Process B – Building Derelict*. Entry into each subsequent stage is triggered through subsequent inspections.

Program Process

Identification – Stage One Inspection

The property is identified for program entry and a determination is made as to its derelict status.

Process Stream A – Building Not Derelict

The building is deemed Not Derelict and the case is closed. Alternatively, the property can be deemed Not Derelict but may still be unsightly and would enter into the existing Dangerous or Unsightly Premises process without going on to Stream B: Building Derelict.

Process Stream B -- Building Derelict

The building is deemed to be a derelict structure that meets the definition of a Derelict Building under the proposed by-law (Attachment A). An Order is issued to secure the building (in compliance with Boarding Standards as set out the Derelict Building By-law – Attachment A) within seven (7) days. The property owner is notified to demolish or remediate the building to an acceptable standard within one hundred and twenty (120) days. There is a seven (7) day appeal period in which the order can be Appealed (and would enter into the existing Dangerous or Unsightly Premises appeal process). The Dangerous or Unsightly Premises Committee can either Uphold the Order or grant the Appeal. Alternatively, the Order may not be appealed.

Stage 2 Property Inspection

After the seven (7) day appeal period expires the Stage 2 Property Inspection is undertaken to ensure that boarding standards are in compliance with the Order. The one hundred and twenty (120) day remediation period commences from the date of the Stage 2 inspection. If the building is not secured within 7 days or if the building is not in compliance after one hundred and twenty (120) days the Municipality can prosecute.

Stage 3 Property Inspection

Demolition/Remediation or Derelict Status

After one hundred and twenty (120) days a records check is completed as part of the Stage 3 Property Inspection. If the building has been demolished, is secured and is not unsightly, or the

building has been remedied to suitable occupancy standards (in compliance with Bylaw M100), the case is closed.

Stage 4 -- Remedy

If the building is still deemed to be in a derelict condition a report is sent to the Dangerous or Unightly Committee with one of the following recommendations:

1. issue a thirty (30) day order after which the building would be demolished,
2. charge the owner and levy a substantial fine for non-compliance with the Bylaw ; (fine could reoccur every one hundred and twenty (120) days); and/or,
3. seek a recommendation for Council to acquire the property

Financial Constraints of the Expropriation Option

In the case of expropriation with compensation, the Municipality would reduce the amount of compensation to a property owner according to the amount that was owed in taxes or other charges. Despite this tax recovery, staff consider "expropriation" an option of last resort given the anticipated expense to the Municipality. Expropriation is generally an expensive option because a favourable valuation of the property is given to the owner and because the Municipality pays all of the appraisal and legal expenses.

In past cases of expropriation, the final cost of acquiring a property has typically increased by an average of 40% - 60% of the property value. The two appraisals alone that are required under the MGA cost an estimated \$15,000 to \$60,000. The Expropriation Act also provides for reasonable legal expenses incurred by the owner which could easily exceed \$90,000. Further, there is no meaningful ability to negotiate the purchase price of a derelict building under the current legislation placing the Municipality in a weak bargaining position. Given these profound limitations it is unlikely that staff would propose the expropriation of buildings to council except in exceptional circumstances.

Accordingly, the current view of "expropriation" powers in this program is that expropriation is a tool of deterrence against blighting and building decline and is to be used only in very exceptional circumstances. For these reasons, "expropriation" is not illustrated in the program flow, as shown in Attachment B. Further, it is anticipated that program administration and inspections can be folded into existing processes. Accordingly, there are no financial implications anticipated for this program.

CONCLUSION:

There are various methods of dealing with derelict buildings in other municipalities. The City of Winnipeg has sought and received the power to expropriate buildings without compensation. Other municipalities have adopted property tax programs or alternative incentives to address the issue of blighting. It is clear that no single strategy can provide the solution to blighting in urban municipalities across North America. Similarly, the proposed DUB program should not be

considered the solution to blighting and derelict buildings in all circumstances in HRM. However, by collectively applying the relevant and proposed legislation to form a new DUB program, Council will have an additional tool to address derelict buildings in HRM.

Accordingly, it is recommended that Council approve the proposed By-law D-300 “Respecting Derelict Buildings” as shown in Attachment A.

BUDGET IMPLICATIONS:

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN:

This report complies with the Municipality’s Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES:

- Council could adopt the proposed By-law D-300 “Respecting Derelict Buildings”. If this is done, staff will take steps to institute administrative protocols to initiate a revised Dangerous and Unsightly Buildings program as described in this report. This is the staff recommendation
- Council could choose not to adopt the above referenced by-law and program. This course of action is not recommended.

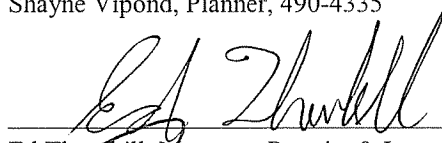
ATTACHMENTS:

- Attachment “A”-- Proposed By-law D-300 “Respecting Derelict Buildings”
- Attachment “B” -- Draft Dangerous or Unsightly Buildings program process
- Attachment “C” -- Legislation in the Municipal Government Act to authorize a “Derelict Buildings” by-law in HRM.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Shayne Vipond, Planner, 490-4335

Report Approved by:



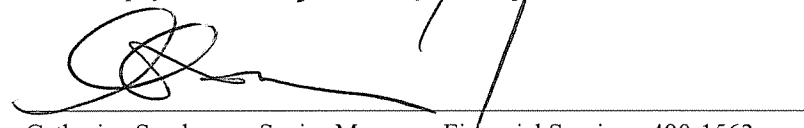
Ed Thornhill, Manager- Permits & Inspections, Community Development

Report Approved by:



Paul Dunphy, Director of Community Development

Financial Review:



Catherine Sanderson, Senior Manager, Financial Services, 490-1562

Attachment "A"
Draft Derelict Building By-law

HALIFAX REGIONAL MUNICIPALITY

BY-LAW NUMBER D-300

RESPECTING DERELICT BUILDINGS

BE IT ENACTED by the Council for the Halifax Regional Municipality pursuant to section 172 of the Municipal Government Act as follows:

Title

1. This by-law may be cited as By-law D-300, "Derelict Building By-law".

Definitions

2. In this By-law:
 - (a) "Administrator" means the administrator appointed pursuant to section 345(1) of the *Municipal Government Act*.
 - (b) "Council" means the Halifax Regional Council.
 - (c) "Dangerous or Unsightly Premises Committee" means a committee of Council that administers buildings deemed to be Dangerous or Unsightly under provisions as set out in the *Municipal Government Act*.
 - (f) "Derelict Building" means a building that is unattended, neglected, poorly maintained, and unsuitable for occupancy.
 - (g) "Habitable" means a building which is in conformance with the Nova Scotia Fire Safety Act and Regulations, and in the case of a residential building, is also in compliance with Bylaw M100.
 - (h) "Municipality" means the Halifax Regional Municipality.
 - (i) "Owner" means the owner of the property as they appear on the assessment role.

Designation as a Derelict Building

3. When a building is deemed to be derelict, the municipality may direct the owner to remedy the condition as specified in an order.

Service of Order

4. The order may be served by being posted in a conspicuous place upon the property or may be served upon the owner.

Right of Appeal

5. An owner may appeal the order to the Dangerous or Unsightly Premises Committee of the Municipality within seven days after the order is served by submitting their appeal in writing to the Municipal Clerk's Office.

Performance Standards

6. Upon issuance of an order, an owner must within one hundred and twenty (120) days :
 - (a) bring the building up to a habitable standard; or
 - (b) demolish the building.

Standards for Securing and Maintaining a Derelict Building

7. An order may direct the owner to secure the building to meet the following minimum standards:
 - a) panel type material not less than 3/4" must be used to secure all openings within 10' of the adjacent grade;
 - b) panels used to secure openings must be secured with not less than 2" #8 screws spaced a minimum of 16" on centre around the perimeter of the panel;
 - c) panels used to secure openings must be tightly fitted and painted or otherwise "treated" so as to prevent deterioration;
 - d) the remainder of the building and property must be maintained so as not to be "dangerous or unsightly" pursuant to section 344 of the *Municipal Government Act*.

Failure to Secure a Derelict Building

8. Where an owner fails to secure and maintain the building in compliance with this by-law, the Municipality may enter upon the property and carry out the work necessary to ensure compliance with this by-law.
9. Where the Municipality carries out the work required to secure and maintain the building in compliance with this by-law, the Municipality may charge and collect the costs thereof as a first lien on the property affected.

Right of Access

10. In order to determine compliance with this by-law:

- a) a municipal administrator may enter in or upon land or premises at a reasonable time without a warrant;
- b) except in an emergency, a municipal administrator shall not enter a room or place actually being used as a dwelling without the consent of the occupier, unless the entry is made in daylight hours and written notice of the time of the entry is given to the occupier at least twenty-four hours in advance; and
- c) where a person refuses to allow a municipal administrator to exercise, or attempts to interfere or interferes with the municipal administrator in the exercise of a power granted pursuant to this By-law, the municipal administrator may apply to a judge of the Supreme Court of Nova Scotia for an order,
 - (i) to allow the municipal administrator entry to the building, and
 - (ii) restraining a person from further interference.

Exemptions

11. Buildings actively used for seasonal purposes shall not be subject to the provisions of this by-law including:

- (a) cottages and other recreational dwelling units and their accessory buildings,
- (b) other temporary recreational facilities,
- (c) agricultural or other resource facilities.

Compliance with Other Laws

12. Nothing contained in this by-law relieves an owner from their obligation to comply with any other Act, Regulation, or by-law.

Penalties

13. (1) Every person who contravenes any of the provisions of this By-Law, or who fails to comply with the terms or conditions of any permit issued under the authority of this By-Law is guilty of an offence and shall be liable, upon conviction, to a

penalty of not less than One Thousand Dollars (\$1,000.00) and not more than Ten Thousand Dollars (\$10,000.00).

- (2) In default of the remedying of the contravention described in the Order within the one hundred and twenty (120) day time period, every day during which the violation continues, after expiration of the one hundred and twenty (120) day time period, is deemed to be a fresh offence.

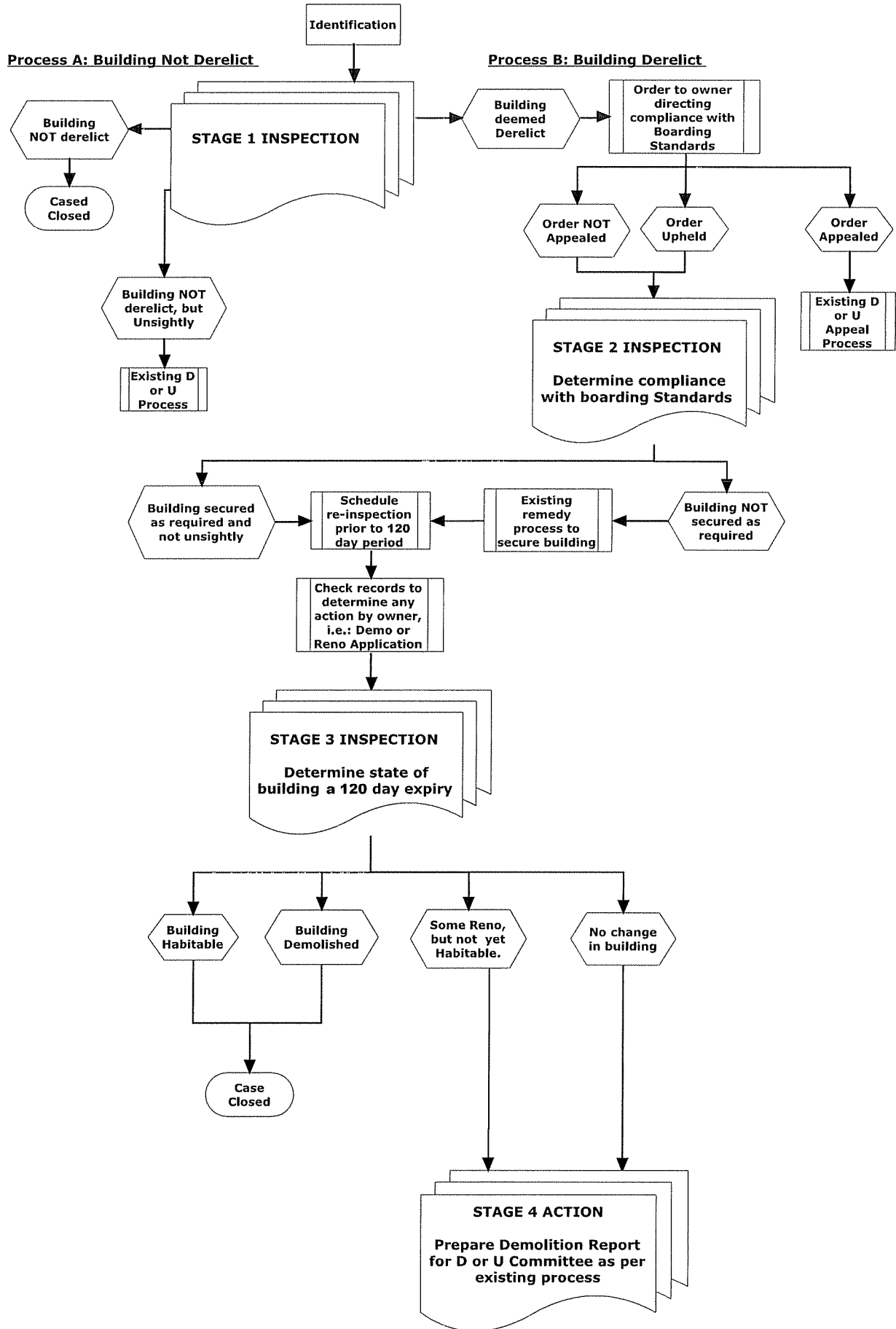
- (3) In the case of a violation of this By-law of a continuing nature, in addition to any other remedy and to any other penalty imposed, Council may direct the Clerk to apply to a Judge of the Trial Division of the Supreme Court, by way of action or originating notice for an injunction ordering the person violating to cease the violation and the Judge may make any order that in the Judge's opinion the justice of the case requires.

Done passed on this day of , 2007

Mayor

Jan Gibson, Municipal Clerk

Attachment "B" Dangerous or Unsightly Building Process



Attachment "C"

Legislation in the Municipal Government Act to authorize a "Derelict Buildings" by-law in HRM

Expropriation

52 (1) Where the council considers it necessary to acquire real property, including real property outside the municipality, for a purpose for which it may spend money, the council may expropriate the real property, but this power to expropriate does not authorize a municipality to expropriate property of another municipality.

(2) Where real property is proposed to be expropriated,

(a) the municipality shall survey the property and prepare a description of it;

(b) municipal employees and agents of the municipality may enter upon the property to survey or examine it; and

(c) the municipality may make borings or other excavations in the property and shall reimburse the owner for any damage done if the expropriation is not completed.

(3) The Expropriation Act applies to expropriation proceedings by a municipality or a village. 1998, c. 18, s. 52.

Power to expend money

65 The council may expend money required by the municipality for

(x) lands and buildings required for a municipal purpose;

Power to make by-laws

172 (1) A council may make by-laws, for municipal purposes, respecting

(ja) the condition or maintenance of vacant buildings, structures and properties and, without restricting the generality of the foregoing, may

(i) adopt property maintenance and performance standards,

(ii) prescribe the manner in which buildings or structures must be secured by owners or the municipality, and

(iii) limit the length of time that buildings or structures may remain boarded up;

Vacant buildings

536C (1) In this Section, "vacant building" does not include a seasonal dwelling.

(2) The Council of the Halifax Regional Municipality may acquire a property that contains a vacant building if the building is boarded up for a period of time that exceeds the length of time that it may be boarded up under a by-law made pursuant to subclause 172(1)(ja)(iii).

(3) Before deciding to acquire a property under subsection (2), the Council shall provide seven days' notice in writing to the owner, setting out the date, time and place of the meeting at which the decision to acquire the property will be discussed, and the owner must be given an opportunity to appear and be heard before any order is made.

(4) Notice under subsection (3) must be provided by service upon the owner or by posting the notice in a conspicuous place upon the property.

(5) Where the owner refuses to sell the property, the Council may exercise the power of expropriation under Section 52 to acquire the property.

(6) The Council may spend money under Section 65 to acquire the property and improve it. 2005, c. 55, s. 11.