



INFORMATION REPORT

TO: Chair and Members Economic Development and Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: April 20, 2010	
SUBJECT/REPORT NO: Conversion Without Building Permits of Single Detached Houses to Student Houses (PED10097) (City Wide) (Outstanding Business List Item)	
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SIGNATURE:	

Committee Direction:

The Economic Development and Planning Committee, at its meeting of November 17, 2009 approved the following regarding “conversions without building permits of single detached houses to student houses”:

- (a) That staff be requested to prepare a report on best practices in other municipalities geared towards creating substantive deterrence when constructing without a building permit (i.e. different policies, larger fines, writing tickets) and,
- (b) That staff require removal of construction work in situations where a building permit has not been obtained, when it is clear that the proponent never intended to obtain said permit.”

Information:

Building Permit Requirements

It is not necessarily the case that changes to a ‘typical’ single family dwelling to a ‘student rental’ property would require a building permit. Changes to non-structural building components, cosmetic changes and other minor renovation work (such as new flooring, painting, replacement kitchen cupboards and replacement plumbing fixtures) do not require a Building Permit. However, according to the Ontario Building Code, when significant material changes are made to a building, Building Permits are required

SUBJECT: Conversion Without Building Permits of Single Detached Houses to Student Houses (PED10097) (City Wide) - page 2 of 6

to allow the work to commence and to initialize the inspection process. Work, such as the removal or construction of walls, the construction of additional bathrooms and kitchens, major structural work and the creation of new window and door openings, would all require permits. When Building Inspectors investigate at a building and find non-permitted material changes underway, they take immediate action. The best action to take will be the focus of this report.

Best Practices

Several Southern Ontario Municipalities, similar to Hamilton with Colleges or Universities, were surveyed to determine what their practices are and to compare their effectiveness in limiting the number of illegally converted homes. Toronto, Oshawa, St. Catharines, Kitchener, Kingston, Barrie and Mississauga were surveyed. Some of the highlights of the survey are as follows:

- ⇒ Only one of the municipalities surveyed issues tickets for constructing without a permit, which is Kitchener
- ⇒ Only Toronto and Kitchener issue tickets for violating Stop Work Orders
- ⇒ Oshawa and Barrie have enacted by-laws that regulate rental housing
- ⇒ All municipalities ask for Professional Engineer's report verifying the acceptability of work completed without a permit

Comments:

Kitchener started issuing tickets two years ago. Building Inspectors issue approximately six tickets per year in Kitchener for constructing without a permit. Ticketing is primarily used when dealing with smaller projects such as decks and additions built without permits. According to Building Department personnel, it is difficult to quantify the deterrent effect of ticketing when only a few tickets are issued each year. Kitchener Building Inspectors still rely heavily on issuing Order to Comply notices first and obtaining compliance in more traditional ways.

Barrie enacted a "Boarding, Lodging, Rooming House By-law" in 2007. This By-law requires single family dwelling owners who convert their homes to lodging homes to have them licensed, (a home with more than four bedrooms equipped with lockable doors would be considered a lodging house). Property owners are informed by enforcement personnel that before a licence can be issued, the homes must be officially converted to a 'lodging home' via the Building Permit process. This process is often considered onerous, involving the creation of fire separations, installing fire rated doors, proper exiting facilities and other associated health and safety items which can often cost tens of thousands of dollars. The annual licence fee is approximately \$135 which is a reasonable amount. However, annual licence renewal requires an inspection by City By-law enforcement personnel, which has associated costs of approximately \$1,000. This By-law acts as an indirect deterrent, as many property owners who learn of the construction cost to convert their properties, coupled with the ongoing annual

SUBJECT: Conversion Without Building Permits of Single Detached Houses to Student Houses (PED10097) (City Wide) - page 3 of 6

licensing and inspection fees, choose to rent their homes to four or less students, who reside in the home in bedrooms with unlockable doors (i.e. as a 'family').

Upon analyzing the collected data relating to limiting the number of 'student rental' homes in typical residential neighbourhoods, it would appear that there is no real 'best practice' among the surveyed municipalities. However, there are indicators that a stand-alone rental housing licensing by-law could be, over time, effective in limiting the proliferation of student home conversions.

Issuing Tickets vs. Court Prosecutions

There are two enforcement methods used to respond to Provincial offences: The laying of an Information and ticketing.

According to the Provincial Offences Act, ticketing currently has a maximum fine of \$500. Consequently the approach generally realizes lower fines, not higher. In most cases, the City achieves substantially higher fines when successfully prosecuting for 'building without a permit' and 'failure to stop work when ordered', rather than ticketing. The fines outlined in the Ontario Building Code Act for a person who is convicted of an offence is liable to a maximum fine of \$50,000 for a first offence and to a fine of not more than \$100,000 for a subsequent offence. If a corporation is convicted of an offence, the maximum penalty that may be imposed is \$100,000 for a first offence and \$200,000 for a subsequent offence. Note that fines are at the discretion of the court and deterrence is not the only factor they consider.

Although these penalties seem high, maximum fine amounts are rarely levied upon conviction. Fines imposed in Hamilton in the year 2008 for successful prosecutions ranged from \$600 to \$1,000 (average fine was \$800). In 2009, fines ranged from \$800 to \$5000 (resulting in an average fine of \$2,614 being imposed upon guilty convictions). This increase in fine amounts reveals the ongoing trend that the courts are awarding more substantial fines for Ontario Building Code Act violations. More importantly, the courts have been more agreeable to imposing Prohibition Orders to offenders, thereby prohibiting them from repeating the offence. For example, to re-offend and construct without a permit would not only be contrary to the Ontario Building Code Act, but would be an act of defiance to a Court imposed Order, which could result in additional fines or incarceration for the offender if found guilty. The primary reason the Building Division charges by Information, rather than by ticket, is that the City can sometimes convince the court to issue these prohibition orders (usually for a repeat or flagrant offender) to deal with the lack of permit or other violations. This remedy is not available if the charge is laid through a certificate of offence (i.e. a ticket).

Additionally, the removal of construction by court order against the person who is in contravention can be requested and approved by the Courts. The court will consider the facts of each case and may not necessarily require the person to remove the construction as a remedy in every case, but the deterrent is significant.

SUBJECT: Conversion Without Building Permits of Single Detached Houses to Student Houses (PED10097) (City Wide) - page 4 of 6

Comments:

Although issuing tickets is an instant means of imposing a fine, they are somewhat problematic. The recipient may choose to withhold his/her name, which makes writing the ticket impossible. The fines associated with tickets are relatively small, and do not pose a significant deterrent to property owners who engage in non-permitted construction, and would most likely view the associated fines as “the cost of doing business”. Prosecuting via the courts allows for substantial fines, and since court orders can be issued along with any fines imposed, this enforcement method is the most effective and will prove to be an effective deterrent.

Restraining Orders

Section 38 of the Building Code Act states “where it appears to a Chief Building Official that a person does not comply with this Act, the regulations or an order made under this Act, despite the imposition of any penalty in respect of the non-compliance and in addition to any other rights he or she may have, the Chief Building Official may apply to the Superior Court of Justice for an order directing that person to comply with the provision”. The said Act provides for further enforcement procedures namely, a “Restraining Order” pursuant to Section 38.(1) of The Building Code Act, S.O. 1992, Chapter 23. The Building Division has recently started to use these authorities on a more regular basis and have found that the mere threat of such action has been effective. It is therefore our intention, when executing our authority under Section 38.(1) of the Building Code Act, S.O., 1992, Chapter, 23, to continue to require the removal of the illegally constructed structure whenever possible.

Current Enforcement Practices

The report to the Economic Development and Planning Committee (PED09083) on March 16, 2009, outlined the proposed enforcement initiatives and operational protocol to be implemented by the Building Inspection Section of the Building Services Division to deter non-permitted construction of buildings and other designated structures in Hamilton. These initiatives have all been implemented.

Listed below are the summarized six steps that have been taken to minimize the number of instances of ‘building without a permit’ in Hamilton:

1. Issuance of Orders to Comply for no permit, and other orders such as “Stop Work” or “Orders Not to Cover” as necessary.
2. Ensure surcharges are imposed to their full extent. NOTE: For the information of the Committee, this By-Law has been challenged and is before the Court of Appeal on Friday, April 9, 2010 at 10:30 a.m.
3. Prosecute for disobeying Stop Work Orders and apply a progressive enforcement strategy whereby repeat and chronic offenders are prosecuted immediately.

SUBJECT: Conversion Without Building Permits of Single Detached Houses to Student Houses (PED10097) (City Wide) - page 5 of 6

4. Discontinue the practice of inspecting construction work where building permits have not been issued and thereby remove the perception that continued construction without the required permits is condoned. Where permits have not been issued, Inspectors will visit properties to collect evidence only, and not inspect the quality or acceptability of the work underway.
5. Require builders to uncover/demolish to allow proper City inspections. Where uncovering portions of the building is not feasible, require Professional Engineer reviews verifying that all construction that has taken place without inspections meets the requirements of the Ontario Building Code.
6. Public education, such as relevant in-house promotional material, helpful newspaper advertisements and modified Hamilton Home Show instructive material.

In addition to these more stringent enforcement practices, the execution of Search Warrants to gather evidence has been a successful tool in preparing for prosecutions.

Comments:

Item (b) listed in the Committee's November 17, 2009 direction is an enforcement protocol that has already been initiated and is proving to be effective as an enforcement tool. As time progresses, it is anticipated that the deterrent effect will be fully recognizable via trend analysis.

Effectiveness of Enforcement Practices

According to enforcement statistics, the new and improved enforcement practices listed above are proving to be effective.

In the year 2008, there were 59 Action Requests received by the Building Division regarding construction being carried out without a permit in Ward 1. This resulted in 27 Enforcement Folders being created.

From January 1 to December 31, 2009, there were 91 Action Requests received regarding construction being carried out without a permit in Ward 1. This resulted in 46 Enforcement Folders being created.

In 2008, there were only eight proactive action requests (i.e. non-permitted construction activity identified by Building Inspectors monitoring proactively). In 2009, the total number of Action Requests inflated to 91, as there were a total of 29 proactive action requests. This stepped up proactive enforcement has proven to be effective. As in most cases of proactive investigations, compliance was achieved.

SUBJECT: Conversion Without Building Permits of Single Detached Houses to Student Houses (PED10097) (City Wide) - page 6 of 6

Comments:

The new enforcement protocol began one year ago and the Building Division Management Team has yet to fully determine the deterrent effect of enforcement and associated court cases. It is anticipated that within the next two years, through the enforcement efforts of Building Inspectors and the outcome of court cases that include Prohibition Orders, that the full deterrence of our enforcement will be easily identified through trend analysis.

Conclusion

Upon researching the enforcement techniques of similar municipalities, one of the most promising practices identified to curtail the conversion of traditional single family dwellings to student rental units appears to be the stand-alone by-law that requires landlords to license their properties as “Boarding, Lodging, Rooming Houses” (similar to the Barrie By-law). The associated costs and ongoing licensing fees would likely prove to be unpalatable to landlords who will abandon the notion of overcrowding their homes with students, thereby reducing the student density in single family dwelling neighbourhoods. Further monitoring of Barrie’s successes should be conducted and further reviews of other municipalities who implement such By-laws should also be taken into consideration.

Ticketing would not be an effective deterrent, as lower fines would be achieved, and the opportunity of obtaining court orders would be lost when tickets are issued. Larger fines can and are being obtained via prosecution through the courts, which will prove to be the best deterrent.

The Building Division’s current enforcement practices (which were enhanced last year) are proving to be an effective means of removing the construction work in situations where a Building Permit has not been obtained.

JS:JWL