TOWN OF SUSSEX POLICY

Subject		Number
PROCEDURE & OPERATION OF THE SUSSEX MAINTENANCE & OCCUPANCY STANDARDS APPEAL COMMITTEE		C-8
Date JULY 21, 2020	*Approved by* COUNCIL [X] OTHER(S) [ ]	*Date* MARCH 19, 2012
Signature	*Date of Revision* JULY 13, 2020	PAGE 1/14

RECITALS

1. **WHEREAS**, Section 132(1) *of the Local Governance Act* provides that an officer appointed by the Town of Sussex Council may notify the owner or occupier of a premises, building or structure when such premises is in an unsightly condition because of specified items being upon it, and when the building or structure presents a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength; and

2. **WHEREAS**, a Notice may also be sent the Building Inspector appointed by the Town of Sussex with respect to a dwelling or dwelling unit which is being leased to another person and does not comply with the minimum property standards set out in the *Town of Sussex Maintenance and Occupancy Standards for Residential Properties By-Law* or in the *Residential Properties Maintenance and Occupancy Code Approval Regulation – Municipalities Act* or in both. The appointed Building Inspector may, in his Notice, require that the unsightly and/or hazardous condition be remedied, or may require that the dwelling or dwelling units be brought into compliance with minimum property standards; and

3. **WHEREAS**, Section 134(1) *of the Local Governance Act* provides that an owner or occupier of a premises, building or structure who has been given a Notice and who is not satisfied with the terms or conditions set out therein and may appeal to the appropriate committee of council by filing a Notice of Appeal by registered mail to the clerk of the municipality within fourteen (14) days after having been given the Notice. The *Town of Sussex Maintenance and Occupancy Standards for Residential Properties By-Law* also provides a similar right of appeal from a Notice issued under said By-law.

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NOW THEREFORE BE IT RESOLVED that the *Sussex Maintenance and Occupancy Standards Appeal Committee* is hereby created.

AND FURTHER BE IT RESOLVED that the provisions herein shall apply to the Order and Operation of Business of the *Sussex Maintenance and Occupancy Standards Appeal Committee*.

A. DEFINITIONS

Wherever a word is used in these Provisions with its first letter capitalized, the term is being used as it is defined in this Section A. Where any word appears in ordinary case, its regularly applied meaning in the English language is intended.

(a) "***Appeal Committee***" means the *Sussex Maintenance and Occupancy Standards Appeal Committee*;

(b) "***Architect***" means a professional architect registered in the Province of New Brunswick;

(c) ***"Building Inspector"*** means an officer appointed by Council as Building Inspector;

(d) "***Business Day***" means a day other than a Saturday, Sunday or statutory holiday in the Province of New Brunswick;

(e) "***Business Hours***" means 8:30 a.m. to 5:00 p.m. of any business day;

(f) "***Chairperson***" means the Chairperson of the Appeal Committee;

(g) ***"Clerk"*** means the Clerk of the Town of Sussex;

(h) ***"Council"*** means the Council of the Town of Sussex;

(i) ***"Engineer"*** means a professional engineer or a consulting engineering firm who is currently licensed to practice within the Province of New Brunswick to carry out engineering services;

(j) ***"Municipality"*** means the Town of Sussex;

(k) ***"Notice"*** means a Notice to Comply prescribed by the *Local Governance Act, S.N.B 2017, c.18, s. 132(2) Form 4 – Notice to Comply Dangerous or Unsightly Premises*, or under Section 5 of the " *Sussex Maintenance and Occupancy Standards for Residential Properties By-Law*;

(l) ***"Property"*** includes premises, a building or structure;

(m) ***"Subject Property"*** means the property for which a Notice of Appeal has been sent to and received by the Town Clerk pursuant to Section 134(1) of the *Local Governance Act*.

(n) ***"Treasurer"*** means the Treasurer of the Town of Sussex.

(o) ***"Vice-Chairperson"*** means the Vice-Chairperson of the Appeal Committee.

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B. COMPOSITION OF THE TOWN OF SUSSEX MAINTENANCE AND OCCUPANCY STANDARDS APPEAL COMMITTEE

1. There shall be an Appeal Committee composed of the following persons:

   (a) The Appeal Committee shall consist of three (3) persons, who are not members of the Town of Sussex Council;
   (b) are not staff or appointed officers of the Town of Sussex;
   (c) an Appeal Committee member must be a resident within the municipal boundaries of the Town of Sussex; and
   (d) Town of Sussex Council shall appoint all members who serve on the Appeal Committee.

2. Should a member of the Appeal Committee die, resign, become ineligible to be a member or be removed from office, the Town of Sussex Council shall, as soon as reasonably possible, appoint another person to replace such member, and such newly appointed member shall hold office for the remainder of the term of the member he replaces.

C. TERM OF OFFICE

1. The Town of Sussex Council shall determine the length of time that a member will be appointed to the Appeal Committee.

2. The Chairperson shall be appointed by the Town of Sussex Council for a term determined by Council, or until he/she ceases to be a member of the Appeal Committee, whichever comes first.

3. The Town of Sussex Council shall appoint all members of the Appeals Committee.

4. The Vice-Chairperson shall be appointed by Appeal Committee for a term one (1) Calendar Year and determined at the first meeting of the Appeal Committee in any Calendar by the Appeal Committee, or until he/she ceases to be a member of the Appeal Committee, whichever comes first.

D. DUTIES OF THE CHAIRPERSON/VICE-CHAIRPERSON

1. The Chairperson shall determine the time, date and place of hearings of the Appeal Committee.

2. The Vice-Chairperson is authorized to act as Chairperson in the event of the Chairperson's absence or his/her inability to act, or in the case of a vacancy in the chairmanship and, when so authorized, the Vice-Chairperson shall have all the powers and duties of the Chairperson.

E. REVOCATION OF APPOINTMENT

1. Any appointment to the Appeal Committee may be revoked by The Town of Sussex Council at any time.

2. A member may resign at any time by submitting his/her resignation in writing to Town of Sussex Council.

3. In the event that the membership of the Appeal Committee is increased, Sussex Council shall appoint such additional member(s) and amend the Policy for the Procedures & Operation of the Sussex Maintenance & Occupancy Standards Appeal Committee accordingly.

4. In the event that the membership of the Appeal Committee is decreased, Sussex Council shall remove the necessary number of member(s) and amend the Policy for the Procedures & Operation of the Sussex Maintenance & Occupancy Standards Appeal Committee accordingly.

F. RULES OF PROCEDURE

1. When the Town Clerk receives a Notice of Appeal that has been issued in accordance with Section 134 of the *Local Governance Act*, the Town Clerk shall:

   (a) obtain from the Building Inspector a copy of the Notice to which the Notice of Appeal relates;

   (b) promptly notify the Chairperson or the Vice-Chairperson of the Appeal Committee;

   (c) enface the original copy of the Notice of Appeal and all documents submitted by the Appellant with the date upon which it was received;

   (d) assign and enface the Notice of Appeal and all documents submitted by the Appellant with a file number;

   (e) retain and file the original Notice of Appeal and all documents submitted by the Appellant;

   (f) forward a copy of the Notice of Appeal and all documents submitted by the Appellant, including the Notice, to the Chairperson of the Appeal Committee; and

(g) forward a copy of the Notice of Appeal and all documents submitted by the Appellant to a Building Inspector.

2. The Appeal Committee shall hold a hearing within sixty (60) calendar days after being advised by the Town Clerk that a Notice of Appeal has been sent to, and received by the Town Clerk, in accordance with *Section 134 of the Local Governance Act*, with respect to:

(a) premises which are allegedly unsightly;

(b) buildings or structures which are allegedly a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength; or

(c) buildings that allegedly do not meet the minimum property standards set out in the *Town of Sussex Maintenance and Occupancy Standards for Residential Properties By-Law* or *Residential Properties Maintenance and Occupancy Code Approval Regulation84-86 – Municipalities Act,* or the *Local Governance Act* or in both.

3. The Appeal Committee shall, at least ten (10) calendar days before the hearing:

(a) cause the original copy of the Notice of Hearing, to either be personally served on the Appellant or posted in a conspicuous place on the premises, building or structure;

(b) in the event that the Appellant is represented by counsel and his/her counsel is authorized to accept service, serve a copy of the Notice of Hearing with his counsel; and

(c) advise the Building Inspector of the date, time and place of the hearing.

4. Prior to hearing the submissions of the parties, the Chairperson or Vice-Chairperson shall ask the Appellant:

(a) to review the Notice received from the Town Clerk; and

(b) confirm that the Notice received from the Town Clerk is the Notice that the Appellant is appealing.

5. The following order shall be followed by the Appeal Committee when hearing any representations and evidence:

(a) firstly, hear the representations and evidence presented by the Appellant in support of his Notice of Appeal;

(b) secondly, hear the representations and evidence from the Building Inspector in support of the Notice; and

(c) offer the Appellant a chance to rebut the representations of and evidence from the Building Inspector.

6. Should the Appellant wish to abandon the appeal, he/she shall file with the Town Clerk a Notice of Abandonment or provide written confirmation to the Town Clerk stating that he/she is abandoning the appeal.

7. A Notice of Appeal is deemed to have been abandoned when the Appellant or his counsel does not appear at the time, place and date set out in the Notice of Hearing.

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G. DUTIES AND POWERS

1. The hearing of an appeal shall be heard by the three (3) members of the Appeal Committee, and subject to paragraph 3, one of such shall be the Chairperson or Vice-Chairperson.

2. A quorum of the Appeal Committee shall consist of at least two (2) members.

3. In the event that either the Chairperson or Vice-Chairperson are unable to be present at a scheduled hearing, the remaining member appointed by Town of Sussex Council present shall act as the Chairperson, and such person shall have all the powers and duties of the Chairperson.

4. The Appeal Committee shall, when making its decision in an appeal involving an allegedly dangerous building or structure, give due consideration to the following:

   (a) Section 138 of the *Local Governance Act*, which provides that a report from an Architect, an Engineer, a Building Inspector or the Fire Marshall stating that a building or structure is dilapidated or structurally unsound is proof in the absence of evidence to the contrary that a building or structure is dilapidated or structurally unsound;

   (b) Other representations and evidence presented in support of the Notice that is being appealed; and

   (c) Other representations and evidence presented by the Appellant or his counsel.

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5. The Appeal Committee shall, when making its decision in an appeal involving allegedly unsightly premises, give due consideration to the following:

   (a) whether the items involved are enumerated in Section 131(1) of the *Local Governance Act*;

   (b) the location from which the items involved are clearly visible;

   (c) the location and use of the property;

   (d) any representations and evidence presented in support of the Notice that is being appealed; and

   (e) any representations and evidence presented by the Appellant or his counsel.

6. The Appeal Committee shall, when making its decision in an appeal involving a building or structure which allegedly does not meet the minimum property standards, give due consideration to the following:

   (a) the provisions of the *Town of Sussex Maintenance and Occupancy Standards for Residential Properties By-Law* and the *Residential Properties Maintenance and Occupancy Code Approval Regulation 84-86– Municipalities Act*;

   (b) any representations and evidence presented in support of the Notice that is being appealed; and

   (c) any representations and evidence presented by the Appellant or his counsel.

7. If the Appellant abandons his appeal or if neither the Appellant nor his counsel appears at the date, time and place fixed for hearing of the appeal or at a rescheduled date, the Appeal Committee shall upon proof of service of the Notice of Hearing on the Appellant or his counsel, or upon proof that the Notice of Hearing was posted in a conspicuous place on the premises, building or structure in relation to the proceedings, carry out the following:

   (a) hear representations and evidence presented by the Building Inspector in support of the Notice that is being abandoned;

   (b) return the Notice of Appeal and all documents submitted by the Appellant to the address shown on the Notice of Appeal; and

   (c) notify the Appellant in writing at the address shown on his Notice of Appeal of the decision of the Appeal Committee.

H. HEARINGS TO BE PUBLIC

1. All hearings before the Appeal Committee shall be open to the public.

I. RIGHT TO COUNSEL

1. A person who brings an appeal shall be heard by the Appeal Committee and may be represented by legal counsel.

J. RECORDS OF THE PROCEEDINGS

1. The Appeal Committee shall keep records of its proceedings and may use audio recording technology to record its appeal hearings.

2. An audio recording of a hearing may be used by the Appeals Committee at their absolute discretion. If used the recording may be destroyed one (1) calendar year after the hearing of the appeal if the Appellant has not exercised his right under the *Local Governance Act* to appeal the Appeal Committee's decision to The Court of Queen's Bench of New Brunswick.

K. DECISIONS

1. The Appeal Committee shall provide a copy of its decision to the Appellant within fourteen (14) days after making its decision. The decision may confirm, modify or rescind the Notice or extend the time for complying with the Notice.

2. The Appeal Committee's decision shall be dated and such date shall be the date of the decision.

3. All decisions of the Appeal Committee shall be written by the person who acted as the Chairperson

4. Each member of the Appeal Committee who participates in a hearing shall indicate in writing his concurrence with or dissent from the decision of the Appeal Committee.

5. Should a decision of the Appeal Committee not be unanimous, the dissenting reasons of the member that disagrees with the decision of the majority of members shall be expressed in writing in the decision of the Appeal Committee.

L. CONFLICT OF INTEREST

1. Any member must excuse his/her self from participating in a hearing in circumstances where he has a conflict of interest.

M. REMUNERATION AND EXPENSES

1. Members of the Appeal Committee will be remunerated as follows:

   (a) Appeals Committee Member - $100.00 per day while on Committee business during business hours;

2. Members of the Appeal Committee will be reimbursed for necessary expenses, reasonably and actually incurred by virtue of their participation in Appeal Committee hearing.

N. FUNDING/ BUDGET

1. The Town of Sussex shall provide funding for the Appeal Committee's activities through its normal budgeting procedure in any given calendar year.

2. The Town of Sussex shall provide the following to the Appeal Committee:

   (a) a venue or meeting area where the hearings shall take place;

   (b) audio recording equipment which is sufficient to record the hearing, if so required;

   (c) secretarial services, as required;

(d) official stationary, as required; and

(e) such other incidental services or resources that are necessary for the proper functioning of the Appeal Committee.

O. OFFICE OF THE APPEAL COMMITTEE

1. The address of the Appeal Committee shall be as follows:

   Sussex Maintenance and Occupancy Standards Appeal Committee
   524 Main Street
   Sussex, NB
   E4E 3E4

   Attention: Town Clerk

P. MATTERS NOT PROVIDED FOR IN THIS POLICY

1. Any matter of procedure or practice not expressly provided for in the Policy for the Procedure and Operation of the Sussex Maintenance and Occupancy Standards Appeal Committee shall be left to the members of the Appeal Committee to decide.