

**PROVISIONS GOVERNING THE
PROCEDURE AND OPERATION
OF THE VILLAGE OF BATH
SUBSTANDARD PROPERTIES APPEAL
COMMITTEE**

Recitals

1. WHEREAS, subsection 190.01(3) of the Municipalities Act provides that an officer appointed by 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 by an officer appointed by Council with respect to a dwelling or dwelling unit that does not comply with the minimum property standards set out in the Village of Bath Maintenance and Occupancy Standards Bylaw or in the Residential Properties Maintenance and the Occupancy Code Approval Regulation – Municipalities Act or in both. The appointed officer 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, subsection 190.021(1) of the Municipalities 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 Village of Bath Maintenance and Occupancy Standard Bylaw also provides a similar right of appeal from a Notice issued under said Bylaw.

NOW THEREFORE BE IT RESOLVED that the Village of Bath Substandard Properties Appeal Committee is hereby created.

AND FURTHER BE IT RESOLVED that the provisions herein shall apply to the order and dispatch of business of the Village of Bath Substandard Properties Appeal Committee.

A. Definitions

1. 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 Village of Bath Substandard Properties Appeal Committee.
 - (b). “Architect” means a professional architect registered in the Province of New Brunswick.
 - (c). “Business Day” means a day other than a Saturday, Sunday or statutory holiday in the Province of New Brunswick.
 - (d). “Business Hours” means 9:00 a.m. to 4:30 p.m. of any Business Day.
 - (f). “Clerk” means the Clerk of the Village of Bath.
 - (g). “Council” means the elected municipal council of the Village of Bath.
 - (h). “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.
 - (i). “Inspection Officer” means an inspection officer appointed under the Village of Bath Maintenance and Occupancy Standards Bylaw and designated by resolution of Village Council.
 - (j). “Notice” means a Notice to Comply prescribed by New Brunswick Regulation 2007-22 under the Municipalities Act, issued under subsection 190.01(3) of the Municipalities Act or under Section 4 of the Village of Bath Maintenance and Occupancy Standards Bylaw.
 - (k). “Subject Property” means the property for which a Notice of Appeal has been sent to and received by the Clerk pursuant to the Municipalities Act.
 - (l). “Vice-Chairperson” means the Vice Chairperson of the Appeal Committee.

B. Interpretation

1. Headings: The captions, article and section names and numbers appearing in these Provisions are for convenience of reference only and have no effect on its interpretation.
2. Gender, Number: These Provisions are to be read with all changes of gender or number required by the context.
3. Legislation References: Where the name of the statute does not include a year, the reference is to the Revised Statutes of New Brunswick , 1973 edition. Where the name of the statute does include a year, the reference is intended to include all applicable amendments to the legislation, including successor legislation and regulations. Where these Provisions reference other bylaws of the Village of Bath, the term is intended to include all applicable amendments to that bylaw, including successor bylaws.
4. Severability: If any section, clause or provision of these Provisions, is for any reason declared by a court or tribunal of competent jurisdiction to be invalid, the ruling shall not affect the validity of the Provisions as a whole, nor any other part of it.

C. Composition of the Village of Bath Substandard Properties Appeal Committee and Vacancies

1. There shall be an Appeal Committee composed of the following persons:
 - (a) the Appeal Committee shall consist of one (1) member of Council and three (3) persons who are not members of Council; and
 - (b) 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, 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.

D. Terms of Office

1. Village Council shall determine the length of time that a member will be appointed to the Appeal Committee.
2. The Chairperson shall be appointed by Council for a term determined by Council, or until he ceased to be a member of the Appeal Committee.

E. Revocation of Appointment

1. Any appointment to the Appeal Committee may be revoked by Council at any time.
2. A member may resign at any time by submitting his resignation in writing to Council.
3. In the event that the membership of the Appeal Committee is increased, Council shall appoint such additional members(s) and amend the Provisions Governing the Procedure and Operation of the Appeal committee accordingly.
4. In the event that the membership of the Appeal Committee is decreased, Council shall remove the necessary number of member(s) and amend the Provisions Governing the Procedure and Operation of the Appeal Committee accordingly.

F. Rules of Procedure

1. When he receives a Notice of Appeal that has been issued in accordance with subsection 190.02(1) of the Municipalities Act, the 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 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). Retain and file the original Notice of Appeal and all documents submitted by the Appellant;
 - (e). 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.

2. The Appeal Committee shall hold a hearing during normal Business Hours within thirty (30) calendar days after being advised by the Village Clerk that a Notice of Appeal has been sent to, and received by the Clerk, in accordance with subsection 190.021(1) of the Municipalities 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 Maintenance and Occupancy Standards Bylaw.
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 counsel is authorized to accept service, serve a copy of the Notice of Hearing with his counsel; and
4. Prior to hearing the submissions of the parties, the Chairperson shall ask the Appellant:
 - (a). To review the Notice received from the Clerk; and
 - (b). Confirm that the Notice received from the 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 a Building Inspector in support of the Notice; and
 - (c). Offer the Appellant a chance to rebut the representations of and evidence from the Inspection Officer.

6. Should the Appellant wish to abandon his appeal, he shall file with the Clerk a Notice of Abandonment or provide written confirmation to the Clerk stating that he abandons his 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.

G. Duties and Powers

1. The hearing of an appeal shall be heard by three(3) members of the Appeal Committee and one of such shall be the Chairperson.
2. A quorum of the Appeal Committee shall consist of three (3) members.
3. 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 190.07 of the Municipalities 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.
4. 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 subsection 190.01 (1) of the Municipalities 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 Applicant or his counsel.
5. 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 Maintenance and Occupancy Standards Bylaw.
 - (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.
6. 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:
- (a). 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:
 - (i). Hear representations and evidence presented by the Inspection Officer in support of the Notice that is being abandoned;
 - (ii). Return the Notice of Appeal and all documents submitted by the Appellant to the address shown on the Notice of Appeal; and
 - (iii). 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 counsel.

J. Records of the Proceedings

1. The Appeal Committee shall keep records of its proceedings and shall use audio recording technology to record its appeal hearings.
2. The audio recording of a hearing may be destroyed one(1) calendar year after the hearing of the appeal if the Appellant has not exercised his right under the Municipalities 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 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 himself 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). Chairperson - \$75.00 per day; or part thereof
 - (b). Non Council Appeal Committee Members - \$50.00
 - (c). Member of Council – no remuneration

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

1. The Village of Bath shall provide funding for the Appeal Committee's activities through its normal budgeting procedure.
2. The Village of Bath shall provide the following to the Appeal Committee:
 - (a). A venue where the hearings shall take place;
 - (b). Audio recording equipment which is sufficient to record the hearing;
 - (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:

Village of Bath Substandard Properties Appeal Committee
Village of Bath
161 School Street
Bath, NB
E7J 1C3

P. Matters Not Provided For

1. Any matter of procedure or practice not expressly provided for in the Provisions Governing the Procedure and Operation of the Appeal Committee shall be left to the members of the Appeal Committee to decide.