

THE TOWN OF ST. STEPHEN

BY-LAW NO. S-12.1


A BY-LAW TO AMEND BY-LAW NO. S-12, BEING A BY-LAW RESPECTING
DANGEROUS OR UNSIGHTLY PREMISES

BE IT ENACTED BY THE COUNCIL OF THE TOWN OF ST. STEPHEN AS
FOLLOWS:

1 The "Provisions Governing the Procedure and Operation of the St. Stephen Substandard Properties Appeal Committee" (Terms of Reference) approved by resolution of Council on January 28, 2013 and thereafter revised shall be attached as "Schedule A".

IN WITNESS WHEREOF the Town of St. Stephen has caused the corporate seal of the said Town to be affixed to this By-Law the 27th day of May, 2013.

FIRST READING:	April 22, 2013
SECOND READING:	May 27, 2013
THIRD READING AND ENACTMENT:	May 27, 2013



John Quartermain, Mayor



Joan Flewelling, Town Clerk

SCHEDULE "A"

**Provisions Governing the
Procedure and Operation
Of the St. Stephen Substandard
Properties Appeal Committee**

Approved: January 28, 2013
Revised: May 27, 2013

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 WHEREAS a Notice to Comply may also be sent by an officer appointed by Council 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 *St. Stephen Minimum Property Standards By-Law* or in the *Residential Properties Maintenance and Occupancy Code Approval Regulation - Municipalities Act* or in both. The appointed officer may, in his Notice to Comply, 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 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 to Comply 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 to Comply. The *St. Stephen Minimum Property Standards By-law* also provides a similar right of appeal from a Notice to Comply issued under said By-law.

NOW THEREFORE BE IT RESOLVED that the *St. Stephen 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 *St. Stephen Substandard Properties Appeal Committee*.

A. Definitions

1. Wherever a word is used in these Provisions with a first letter capitalized, the term is being used as 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 St. Stephen Substandard Properties Appeal Committee.
- (b) “*Architect*” means a professional architect registered in the Province of New Brunswick.
- (c) “*Building Inspector*” means a person appointed pursuant to subsection 74(3) of the *Municipalities Act*.
- (d) “*Business Day*” means a day other than a Saturday, Sunday or statutory holiday in the Province of New Brunswick.

- (e) “*Business Hours*” means 9:00 AM to 5:00 PM of any Business Day
- (f) “*By-Law Enforcement Officer*” means the By-Law Enforcement Officer appointed by the Council under the authority of Section 14 of the *Police Act*, S.N.B. 1977, Chapter 9.2
- (g) “*Chairperson*” means the Chairperson of the Appeal Committee.
- (h) “*Clerk*” means the Clerk of The Town of St. Stephen or a person designated by the Clerk.
- (i) “*Council*” means the Council of The Town of St. Stephen.
- (j) “*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) “*Municipalities Act*” means the *Municipalities Act*, R.S.N.B. 1973, c. M-22, and amendments thereto, including any Regulations hereunder.
- (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 the *St. Stephen Minimum Property Standards By-law*.
- (k) “*Officer*” appointed by Council means the By-Law Enforcement Officer.
- (l) “*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*.

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: Each reference to legislation in these Provisions is printed in Italic font. 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 to the Statutes of New Brunswick for that year. In every case, the reference is intended to include all applicable amendments to the legislation, including successor legislation and regulations. Where these Provisions reference other by-laws of the Town of St. Stephen, the term is intended to include all applicable amendments to that by-law, including successor by-laws.

4. Severability: If any section, clause or provision of these Provisions, is for any reason declared by a court or tribunal of a competent jurisdiction to be invalid, the ruling shall not affect the validity of the Provisions as a whole, nor any part of it.

C. Composition of the St. Stephen Substandard Properties Appeal Committee and Appointments

2(1) There shall be an Appeal Committee composed of the following persons:

- (a) The Appeal Committee shall consist of five (5) members all appointed by Council.
- (b) One member of the Appeal Committee shall be a solicitor who is a member of the Law Society of New Brunswick, who shall be the Chairperson of the Appeal Committee.
- (c) Council shall appoint a solicitor who is a member of the Law Society of New Brunswick to be an alternative member of the Appeal Committee to temporarily serve in the place of the solicitor appointed under subsection 2(1)(b) in such cases as the solicitor appointed under subsection 2(1)(b) is unavailable to serve.
- (d) Council shall appoint a solicitor who is a member of the Law Society of New Brunswick and who is able to understand, without the assistance of an interpreter or any process of simultaneous translation or consecutive interpretation, the French language to be an alternate member of the Appeal Committee to temporarily serve in the place of the solicitors appointed under subsections 2(1)(b) and 2(1)(c) in the event an appellant exercises his or her right to be heard in French under section 9.
- (e) Council shall appoint four individuals who are able to understand, without the assistance of an interpreter or any process of simultaneous translation or consecutive interpretation, the French language to be alternate members of the Appeal Committee to temporarily serve in the place of the members appointed under subsection 2(1)(a) in the event an appellant exercises his or her right to be heard in French under section 9.
- (f) Council shall appoint all members and alternate members who serve on the Appeal Committee.

2(2) Should a member or alternate 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 or alternate member shall hold office for the remainder of the term of the member or alternate member he replaces.

D. Terms of Office:

3(1) Council shall determine the length of time that a member or alternate member will be appointed to the Appeal Committee.

- 3(2) The Chairperson shall be appointed by Council for a period determined by Council, or until he ceases to be a member of the Appeal Committee, whichever comes first.

E. Duties of Chairperson

- 4(1) The Chairperson shall determine the time, date and place of hearings of the Appeal Committee.
- 4(2) The alternate member appointed by council under subsection 2(1)(c) is authorized to act as Chairperson in the event of the Chairperson's absence or his inability to act, or in the case of a vacancy in the chairmanship and, when so authorized, such member shall have all the powers and duties of the Chairperson.
- 4(3) The alternate member appointed by council under subsection 2(1)(d) is authorized to act as Chairperson in the event an appellant exercises his or her right to be heard in French under section 9.

F. Revocation of Appointment

- 5(1) Any appointment to the Appeal Committee may be revoked by Council at any time.
- 5(2) A member may resign at any time by submitting his resignation in writing to Council.
- 5(3) In the event that the membership of the Appeal Committee is increased, Council shall appoint such additional member(s) and amend the Provisions Governing the Procedure and Operation of the Appeal Committee accordingly.
- 5(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.

G. Rules of Procedures

- 6(1) When he receives a Notice of Appeal that has been issued in accordance with subsection 190.021(1) of the *Municipalities Act*, the Clerk shall:
- (a) Obtain from the By-Law Enforcement Officer 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) 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 Appeal Committee;
 - (g) Forward a copy of the Notice of Appeal and all documents submitted by the Appellant to the By-Law Enforcement Officer;
- 6(2) Where a Notice of Appeal has been filed and the appellant has indicated thereon that he or she wishes to proceed in the French language, the Clerk shall forward a copy of the Notice of Appeal and all documents submitted by the Appellant, including the Notice, to those alternate members appointed under subsections 2(1)(d) and 2(1)(e) and, notwithstanding anything herein contained, the Appeal Committee shall consist only of those alternate members appointed under subsections 2(1)(d) and 2(1)(e).
- 6(3) The Appeal Committee shall hold a hearing during normal business hours within sixty (60) calendar days after being advised by the 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 minimum property standards set out in the *St. Stephen Minimum Property Standards By-law* or *Residential Properties Maintenance and Occupancy Code Approval Regulation – Municipalities Act* or in both of them.
- 6(4) The Appeal Committee shall, at least ten (10) 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
 - (c) Advise the By-Law Enforcement Officer of the date, time and place of the hearing.
- 6(5) 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.
- 6(6) 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 to Comply; and
 - (c) Offer the Appellant a chance to rebut the representations of and evidence from the Building Inspector.
- 6(7) 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.
- 6(8) 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.

H. Duties and Powers

- 7(1) The hearing of an appeal shall be heard by three (3) members of the Appeal Committee, one of whom shall be the Chairperson.
- 7(2) Where an Appellant has exercised his or her right under section 9 to be heard in the French language, the appeal shall be heard by three (3) alternate members of the Appeal Committee appointed under subsections 2(1)(d) and 2(1)(e).
- 7(3) A quorum of the Appeal Committee shall consist of three (3) members.
- 7(4) The Appeal Committee shall, when making its decision in an appeal involving an allegedly hazardous 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.
- 7(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 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 Appellant or his counsel.
- 7(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 *St. Stephen Minimum Property Standards By-law* and the *Residential Properties Maintenance and Occupancy Code Approval Regulation – 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(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:
 - (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 representation and evidence presented by the Building Inspector 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 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 of the decision of the Appeal Committee.

I. Hearings to be Public

8(1) All hearings before the Appeal Committee shall be open to the public.

J. Right to Counsel and to be Heard in Either Official Language

9(1) A person who brings an appeal shall be heard by the Appeal Committee and may be represented by counsel.

9(2) A person who brings an appeal shall have the right to use the official language of his or her choice in any matter before the Appeal Committee, including all proceedings, or in any pleading or process issuing from the Appeal Committee.

9(3) Where a person brings an appeal, the municipality shall use, in any oral or written pleadings or any process issuing from the Appeal Committee, the official language chosen by the Appellant.

K. Records of the Proceedings

10(1) The Appeal Committee shall keep records of its proceedings and shall use audio recording technology to record its appeal hearings.

10(2) The audio recording of a hearing may be destroyed one (1) 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.

L. Decisions

11(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.

11(2) The Appeal Committee's decision shall be dated and such date shall be the date of the decision.

- 11(3) All decisions of the Appeal Committee shall be written by the person who acted as the Chairperson.
- 11(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.
- 11(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.

M. Conflict of Interest

- 12(1) Any member must excuse himself from participating in a hearing in circumstances where he has a conflict of interest.

N. Remuneration and Expenses

- 13(1) Members of the Appeal Committee will be remunerated as follows:

- (a) Chairperson - \$600 per day;
- (b) Member of council – No remuneration; and
- (c) Other members – No remuneration.

- 13(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.

O. Funding

- 14(1) The Town of St. Stephen shall provide funding for the Appeal Committee's activities through its normal budgeting procedure.

- 14(2) The Town of St. Stephen 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.

P. Office of the Appeal Committee

13(1) The address of the Appeal Committee shall be as follows:

St. Stephen Substandard Properties Appeal Committee
C/o Town Clerk, Town of St. Stephen
73 Milltown Blvd., Suite 112
St. Stephen, NB
E3L 1G5

Q. Matters Not Provided For

14(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.