

# CITY OF HAMILTON PROPERTY STANDARDS COMMITTEE

## APPEAL PROCESS<sup>1</sup>

### PROPERTY STANDARDS BY-LAW NO. 10-221<sup>2</sup>

#### COMPOSITION AND FUNCTION OF THE PROPERTY STANDARDS COMMITTEE

1. The Property Standards Committee hears appeals from Orders issued under the Property Standards By-law No. 10-221 respecting properties that do not meet minimum property standards set out in the By-law.
2. The Committee is composed of five citizens who are not members of City of Hamilton Council or officers or employees of the City.
3. When conducting a hearing, the members of the Committee act as an autonomous and independent administrative tribunal. The City is one of the two adversarial parties before the Committee in any hearing, the other being the owner who may be the registered owner, the person receiving rent, or an occupant responsible for repair and maintenance.
4. After holding a hearing, the Committee may confirm, modify or quash the Order and/or extend the time for complying with the Order issued under the Property Standards By-law.

#### APPEAL NOTICE

1. An Appeal Notice may be filed by a property owner, an agent authorized by the property owner or an occupant. A copy of the Appeal Notice is available online at <https://www.hamilton.ca/home-neighbourhood/house-home/property/property-use-by-laws> or in person at the Office of the City Clerk, 71 Main Street West, First Floor.
2. An Appeal Notice must be sent by registered mail or personally delivered to the Legislative Coordinator (Secretary to the Property Standards Committee) on or before the appeal deadline date set out in the Order to Comply. The appeal deadline requires that the Notice of Appeal be filed within 14 days after being served with the Order (being within 14 days

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<sup>1</sup> This document is intended to provide an outline of the appeal process before the Property Standards Committee for Appellants. It is not a comprehensive description of the appeal process and the appeal process for each hearing may vary depending on the circumstances.

<sup>2</sup> In addition to the Property Standards By-law No. 10-221, the appeal process is governed by the *Building Code Act, 1992*, the *Statutory Powers Procedure Act* and the attached Rule enacted by the Property Standards Committee.

- after the Order is served personally or within 19 days after the Order is sent by registered mail).
3. A non-refundable appeal fee of \$172.00 (\$152.21 plus HST \$19.79) must accompany the Appeal Notice. Please make all cheques or money orders payable to the City of Hamilton. Do not send cash in the mail.

### **LATE OR INCOMPLETE APPEAL**

1. Where the Legislative Coordinator determines that the Appeal Notice is incomplete (e.g. missing reasons for the appeal or the fee), the Legislative Coordinator will not accept the appeal.
2. Where the Legislative Coordinator determines that the Appeal Notice is late, the Legislative Coordinator will not accept the appeal.
3. Where the Appeal Notice is late and the appeal not accepted, Motion to the Property Standards Committee seeking an extension of time for filing the appeal will only be accepted by the Legislative Coordinator in circumstances where section 27 of the *Building Code Act*, 1992 applies.

### **HEARING NOTICE**

1. Upon receipt of an Appeal Notice, the Legislative Coordinator will send a Hearing Notice to the Appellant by registered mail at least 21 days prior to the hearing.
2. The Hearing Notice includes the date, time and location of the hearing, and advises the Appellant that the matter may be heard and decided by the Committee in their absence if they do not attend the hearing.
3. Hearings are held at the Hamilton City Hall on the first Monday of the month as needed (may vary). The start time is 9:30 a.m. unless otherwise indicated on the Hearing Notice.

### **DISCLOSURE**

1. At least 14 days in advance of the hearing, the City of Hamilton Representative, who attends the hearing in support of the Order, will send a disclosure package to the Appellant, which may include the following:
  - A copy of the title search showing ownership of the property.
  - A copy of the signed order.
  - A copy of the signed courtesy letter sent to the Appellant (if applicable).

- A copy of the witnesses' notes.
  - A copy of the photographs taken by the witnesses during inspections.
  - A copy of any relevant maps, drawings or other documents.
  - A list of any additional material that may be used at the hearing such as additional photographs of the property.
  - A request for disclosure from the Appellant including a deadline date.
2. If the Appellant has any material, such as documents or photographs, that they wish to use during the hearing, the Appellant will disclose the information/document(s) to the City of Hamilton Representative at least 14 days in advance of the hearing, or as requested in the disclosure package.
  3. Despite section 1 and 2, if either the City of Hamilton Representative or the Appellant brings forward material that has not been disclosed to the other party in accordance with those sections, the Chair of the Committee may recess the hearing to allow the other party to review the material. When the hearing resumes, the other party will be given the opportunity to state any objections to the use of the material during the hearing. The Committee will decide, based on the submissions of the parties, whether or not the material may be referred to or introduced into evidence.

## **COMMITTEE AGENDA**

An Agenda is available to the public at the hearing or at the Office of the City Clerk, 71 Main Street West, 1<sup>st</sup> Floor, City Hall, 3 business days in advance of the hearing.

## **LEGAL COUNSEL**

The Appellant may choose to be represented by a lawyer or an agent (who, in accordance with the *Law Society Act* and its regulations may provide representation), or may be self-represented.

## **THE HEARING**

1. All Appellants and/or their representatives must sign in.
2. The Chair will call the meeting to order and ask if there is anyone in attendance wishing to record/broadcast the hearings. In accordance with the Committee's Recording and Broadcasting Policy, a hearing before the Committee may not be recorded/broadcast unless prior permission has been given by the Committee or any exemptions listed in the Policy apply.

3. The Legislative Coordinator will advise of any changes to the Agenda. The Committee will approve the Agenda.
4. The Chair will ask Committee members if they have any conflicts of interest.
5. The Chair will ask the City of Hamilton Representative, who sits at one of two tables facing the Committee, whether there are any requests for adjournment or Orders that have been complied with. The Committee may deal with these matters first.
6. The Chair will state the municipal address of the property for which the appeal is being heard and the Appellant will take a seat at the unoccupied table facing the Committee.
7. Hearings of the Committee are open to the public and documents which are submitted to the Committee will form part of the public record. If you will be providing any information about intimate personal or financial matters, advise the Committee at the start of the hearing. The Committee will decide, having regard to both the interests of any person affected and the principle that hearings be open to the public, whether or not the hearing will be open or closed to the public.
8. The City of Hamilton Representative will present its case first. An opening submission may be made.
9. The City of Hamilton Representative will call their witness(es). Once called, a witness is seated at the witness table and is affirmed.
10. At the conclusion of the testimony of each of the City of Hamilton Representative's witness(es), the Appellant and then the Committee may ask their own questions of the witness(es).
11. After the City of Hamilton Representative has called all of their witnesses, the Appellant may make an opening submission and call their witnesses who may be the Appellant themselves and/or other witnesses. Again, once called, a witness is seated at the witness table and affirmed.
12. At the conclusion of the testimony of each of the Appellant's witness(es), the City of Hamilton Representative and then the Committee may ask their own questions of the witness(es).
13. The Appellant and then the City of Hamilton Representative will make final submissions. The final submissions should include what each party is requesting of the Committee with respect to confirming, modifying or rescinding the Order and/or extending the time for complying with Order.

14. The Committee may retire to deliberate in the absence of the public, the City of Hamilton Representative and the Appellant. The Legislative Coordinator will retire with the Committee to record its decision.

## **THE DECISION**

1. The Committee renders its decision on the matter in the presence of the public, the City of Hamilton Representative and/or designate and the Appellant. If the Committee determines that additional information is required to render a decision, it may adjourn the matter to a future meeting date.
2. In its decision, the Committee may confirm, modify or quash the Order and/or extend the time for complying with Order.
3. A copy of the decision including the reasons for the decision of the Committee will be sent to the Appellant by Registered Mail.

**Property Standards Committee Rule****Rule 001-2002: Review of Whole or Part of Decisions or Orders**

Pursuant to section 21.2 of the *Statutory Powers Procedure Act*, R.S.O. 1990 c. S.22 as amended, the Committee adopts the following rule:

Purpose: The intent of this rule generally is that it should aid the Property Standards Committee in carrying out its statutory mandate with a fair, open and accessible process for conducting reviews of decisions and orders, and in particular to help avoid errors or injustice to the parties as might occur in the whole or part of orders or decisions previously made by the Committee whether by reason of errors, misunderstanding of evidence or submissions, new evidence or such other sufficient reason as might be brought to the attention of the Committee after conclusion of a hearing.

- (a) Where the Property Standards Committee considers it advisable, the Committee may upon notice to the parties of a hearing, hold a review into all or part of its prior decision or order, and may confirm, modify, suspend or cancel its own decision or order.
- (b) Subject to paragraph (n) of this rule, any party to a decision or order may request a review.
- (c) A request for a review by a party shall be in writing, and shall state the reasons for requesting a review, specify the relief or decision requested, and where practical attach evidence in support of the request.
- (d) Where the Property Standards Committee decides to schedule a review hearing, the Legislative Coordinator shall cause notice of a review hearing to be sent to the original parties, and the notice may attach a party's request for a review, or state grounds or issues for review as proposed by the Property Standards Committee, as the Committee may consider helpful to assist the parties in identifying the purpose of the review.
- (e) A review under this rule shall take place within a reasonable time after the decision or order is made.
- (f) For the purpose of this rule, a reasonable time shall be deemed to be three months from the date of the Committee's prior decision or a time within the period for compliance with the order under review whichever period is longer, in the absence of evidence to the contrary.
- (g) Unless there has been a change of membership or availability of Committee members resulting from illness, death, disqualification, resignation, or replacement of one or more of the members of the Committee, the composition of the Property Standards Committee for a review hearing under this rule shall be the same members who heard the appeal which resulted in the decision or order under review.
- (h) Subject to paragraph (i) of this rule, at a review hearing under this rule the Property Standards Committee shall give the parties an opportunity to present evidence, be represented and otherwise participate in the same

- manner as in an appeal of an order, as to whether the decision or order made at a prior hearing should be upheld, varied, suspended or cancelled, and shall have the same powers to conduct or continue a hearing and make a decision in the absence of the parties.
- (i) The Property Standards Committee may limit the review hearing to a particular part or parts of its decision or order that is under review, and further, the Committee may decide to conduct the review hearing in two parts:
    - (1) Firstly, to hear the parties present and consider their evidence as to whether the review is being conducted in a reasonable time, and based on their finding on that issue decide whether or not to carry out the review; and
    - (2) Secondly, where the Committee has decided to continue the review under sub-paragraph (1) above, to hear the parties present and consider their evidence as to whether the prior order or decision should be confirmed, modified, suspended or cancelled.
  - (j) The parties to a review or the Property Standards Committee may refer to the record of a prior hearing for the purpose of this rule.
  - (k) Subject to paragraph (l) of this rule, the decision or order of the Property Standards Committee at a review hearing under this rule, is subject to appeal to a court under the Building Code Act, S.O. 1992, c. 23 as amended.
  - (l) The failure of the Property Standards Committee to conduct a review under paragraph (a) of this rule or the decision of the Committee not to continue a review under sub-paragraph (i)(1) of this rule, shall not be a decision subject to appeal.
  - (m) Nothing in this rule pertains to or affects the ability of the Property Standards Committee to exercise its powers to correct errors under section 21.1 of the Statutory Powers Procedure Act.
  - (n) The Property Standards Committee will consider only one request to review a decision or order per party.

**Règle du Conseil de la standardisation des propriétés****Règle 001-2002 : Révision d'une partie ou de tous les arrêts et décisions**

Selon l'article 21.2 de la *Loi sur l'exercice des compétences légales*, L.R.O. 1990 c. S-22 tel que modifié, le Conseil adopte la règle suivant :

But : L'intention de cette règle est d'assister le Conseil de la standardisation des propriétés dans son mandat réglementaire de révision des arrêts et décisions selon un procédé équitable, transparent et accessible, et plus particulièrement pour éviter que certaines parties soient lésées par des erreurs ou des injustices causées en tout ou en partie par des arrêts ou des décisions rendus au préalable par le Conseil dus à des erreurs, à la mauvaise interprétation d'une preuve, à de nouveaux faits ou à toute autre raison suffisante qui pourrait être portée à l'attention du Conseil après la conclusion d'une audience.

- (a) Le Conseil de la standardisation des propriétés peut, lorsqu'il le considère opportun et sur avis aux parties impliquées dans l'audience, procéder à une révision de la totalité ou d'une partie d'une décision ou d'un arrêt antérieur, et peut confirmer, modifier, suspendre ou annuler sa propre décision ou son propre arrêt.
- (b) Sous réserves du paragraphe (n) de la présente règle, toute partie impliquée dans une décision ou un arrêt peut demander une révision.
- (c) Toute partie faisant une demande de révision doit le faire par écrit, doit spécifier les raisons pour lesquelles il fait cette demande et quelle est la redressement ou la décision demandée, et peut, si possible, inclure des preuves pour appuyer sa demande.
- (d) Lorsque le Conseil de la standardisation des propriétés décide de prévoir une audience de révision, le secrétaire du Conseil doit faire en sorte qu'un avis d'audience de révision soit envoyé aux parties impliquées dans la première décision, ou de spécifier les motifs ou les questions soumis à cette révision tel que proposé par le Conseil de la standardisation des propriétés, puisque le Conseil peut vouloir aider les parties à identifier le but de cette révision.
- (e) Sous cette règle, une révision doit avoir lieu dans un délai raisonnable après que la décision ou l'arrêt ait été rendu.
- (f) Pour l'application de cette règle, un délai raisonnable équivaut à trois mois après la date de la première décision ou une période de temps inférieure au délai de conformité de l'arrêt en révision, quel ue soit la période la plus longue, en l'absence de preuves du contraire.



- (g) Sous cette règle, les membres du Conseil de la standardisation des propriétés qui seront présents à une audience de révision seront les mêmes qui auront entendu l'appel ayant abouti à la décision ou à l'arrêt sous révision, sauf lorsqu'il y a changement de membres ou de disponibilité de membres du Conseil dû à une maladie, au décès, à la disqualification, à la démission ou au remplacement d'un ou de plusieurs membres du Conseil.
- (h) Sous réserves du paragraphe (i) de la présente règle, le Conseil de la standardisation des propriétés donnera aux parties la possibilité de présenter des preuves, d'être représenté ou autrement participer de la même manière lors d'une audience de révision sous cette règle.
- (i) Le Conseil de la standardisation des propriétés peut limiter l'audience de la révision à une ou des parties spécifiques de sa décision ou de son arrêt en révision, et de plus le Conseil peut décider de procéder à l'audience en deux parties :
- (1) En premier lieu, d'entendre les parties présenter et considérer la preuve afin de déterminer si l'audience de révision est tenue dans un délai raisonnable; et
  - (2) En second lieu, lorsque le Conseil a décidé de poursuivre l'audience selon le sous--paragraphe (1) ci-dessus, d'entendre les parties présenter et considérer la preuve afin de déterminer si la première décision ou le premier arrêt devrait être confirmé, modifié, suspendu ou annulé.
- (j) Les parties impliquées dans une révision ou le Conseil de la standardisation des propriétés peuvent consulter le dossier d'une audience précédente pour l'application de cette règle.
- (k) Sous réserves du paragraphe (l) de la présente règle, la décision ou l'arrêt du Conseil de la standardisation des propriétés étant soumis à une audience de révision sous cette règle est sujet à un appel à la cour sous le *Loi de 1992 sur le code du bâtiment*, L.O. 1992, c. 23, tel qu'il est modifié.
- (l) L'inobservation du Conseil de la standardisation des propriétés de procéder à une révision sous le paragraphe (a) de la présente règle ou le décision du Conseil de ne pas poursuivre une révision sous le sous-paragraphe (i)(1) de la présente règle ne seront pas des décisions sujettes à un appel.
- (m) Il n'existe rien dans la présente règle qui peut être du ressort ou qui peut affecter la capacité du Conseil de la standardisation des propriétés d'exercer ses pouvoirs de corriger des erreurs sous l'article 21.1 de la *Loi sur l'exercice des compétences légales*.

- (n) La *Loi sur l'exercice des compétences légales* ne considérera qu'une demande de révision de décision ou d'arrêt par partie.