

**NC Department of Insurance
Office of State Fire Marshal, Engineering Division**

RE: Appeal of the August 31, 2021)
 Decision by the Town of North)
 Topsail Beach Fire Department)
 to Require Removal of)
 Obstructions from Egress)
 Balconies)

NCDOI DECISION

In accordance with GS 160D-1127, Dennis Burgard, has appealed the Town of North Topsail Beach Fire Department decision regarding obstructions in the path of egress on exterior egress balconies of a Group R-2 condominium complex.

GS 160D-1127 allows appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws to the Commissioner of Insurance or his designee.

PARTIES

Appellant: Dennis Burgard
 526 Rock Creek Dr. N.
 Jacksonville, NC 28540

Appellee: Chad Soward, Fire Chief
 Town of North Topsail Beach
 North End Fire Station
 2049 New River Inlet Road
 North Topsail Beach, NC 28460

BACKGROUND

1. The subject of the appeal is a condominium complex named "Topsail Dunes" and will be referred to as "the complex" in the remainder of this document.
2. On August 31, 2021 the appellee issued an annual inspection report item noting that the complex had failed inspection for "Numerous storage boxes blocking egress and beach equipment are in egress paths." The report item did not reference a code or ordinance.

3. On October 4th the appellant appealed the appellee's determination in the August 31, 2021 report to the NC Department of Insurance, Engineering Division (NCDOI) by means of email. No NCDOI response to that appeal was included with the current appeal.

4. On October 6, 2021 the appellant again appealed the appellee's determination in the August 31, 2021 report to NCDOI by means of email. Based on the NCDOI response that appeal questioned the application of 2018 NC Fire Code (NCFC), Section 1003.6. The October 7, 2021 NCDOI reply confirmed that NCFC, Section 1003.6 would not apply to items located outside the minimum egress width required by the code.

5. On November 6, 2021 the appellant sent a request for formal appeal to NCDOI.

ISSUE RAISED IN APPEAL

1. Town of North Topsail Beach ordinance 8-1 indicates that the town adopts the current edition of NC State Fire Prevention Code fully and thus Town of North Topsail Beach ordinance 8-9 has no effect on limitations of combustibles on the exit access balconies of the complex.

FINDINGS

1. The appellant references Town of North Topsail Beach ordinance 8-1 as justification for enforcing NCFC, Section 1003.6 instead of Town of North Topsail Beach ordinance 8-9.

2. GS 160D-1127 allows appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws to the Commissioner of Insurance or his designee.

3. No North Carolina State Statutes were found that allow appeal of a local building ordinance to the Commissioner of Insurance or his designee.

4. 2018 edition of the North Carolina Administrative Code and Policies (NCAC), Section 202.9.1 states:

202.9.1 Engineering Division. A written technical interpretation shall be provided as specified in Section 203.1.2.1.2. Any person may appeal in writing an order, decision, or determination pertaining to the code or any state building law by filing written notice with the Commissioner of Insurance or his designee within ten (10) days after the order, decision, or determination. A copy of the appeal shall be furnished to each party. (General Statutes 143-140 and 160D-1127)

5. The request for formal appeal was not submitted to NCDOI within 10 days of the ruling made by the Town of North Topsail Beach in the August 31, 2021 annual inspection report or within 10 days of an informal email ruling made by NCDOI.

CONCLUSIONS

Based on the forgoing findings of fact, the following conclusions are made:

1. NCDOI has no statutory authority to address local ordinances; NCDOI can only address appeals regarding application of NC State Building Codes and State building laws.
2. Pursuant to NCAC, Section 202.9.1, the request for appeal is invalid because it was not submitted within 10 days of the ruling made by the Town of North Topsail Beach or subsequent informal rulings (emails) by NCDOI.

APPEAL DECISION

Based on the above findings and conclusions:

NCDOI has no authority to provide a decision in this matter.

This 9th day of December 2021.



Carl Martin, RA
Deputy Commissioner
Division Chief of Engineering
North Carolina Department of Insurance

Cc:

Chad Soward, Fire Chief, Town of North Topsail Beach
Nathan Childs, Special Deputy Attorney General – NCBCA
Dan Johnson, Special Deputy Attorney General, NCDOI