



SAFETY CODES COUNCIL

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COUNCIL ORDER No. 0015428

**BEFORE THE BUILDING TECHNICAL COUNCIL
On September 5, 2012**

IN THE MATTER OF the Safety Codes Act, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order dated July 23, 2012 issued by an Accredited Agency (Respondent) on behalf of Alberta Municipal Affairs against a Registered Company (Appellant).

UPON REVIEWING the Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **CONFIRMED**.

Issue:

1. There are five directives on the Order. The issue at appeal is item one of the order, the requirement to provide schedules of professional involvement in accordance with Article 2.4.3.1. of Division C of the Alberta Building Code 2006 (ABC 2006). In testimony the Appellant indicated that he is able to comply with all requirements of the Order except the requirement of professional involvement of an architect and coordinating registered professional and the required submission of architectural schedules and coordinating registered professional schedules.
2. The five directives are:
 - (a) Submit the ABC 2006 Schedules A1, A2, B1 and B2 (Architectural, Structural, Mechanical, Electrical & Geotechnical disciplines) in accordance with Article 2.4.3.1. of Division C of the ABC 2006, to the Accredited Agency's Building Safety Codes Officer ("Authority Having Jurisdiction") by no later than 12:00 hours on the 1st day of August 2012; and
 - (b) Complete the construction of the building to comply with the requirements of the ABC 2006 as identified in the above "What is being contravened" section of this

document by no later than 12:00 hours on the 15th day of August 2012 and to notify the Authority Having Jurisdiction and arrange for a final inspection of the building, by no later than 12:00 hours on the 15th day of August 2012; pursuant to Article 2.2.12.5 of Division C of the ABC 2006; and

- (c) To forthwith prevent any additional occupancy to the Residential Dwellings to parties other than those named as current owner(s) identified within this Order and such occupancy and use is to remain stopped until such time as permission in writing for the occupancy of this building has been obtained from the Authority Having Jurisdiction; pursuant to Article 2.2.9.8 Division C of the ABC 2006; and
- (d) To forthwith prevent any occupancy of the Storage Garage and such occupancy and use is to remain stopped until such time as permission in writing for the occupancy of the storage garage has been obtained from the Authority Having Jurisdiction; pursuant to Article 2.2.9.8. of Division of the ABC 2006; and
- (e) Forthwith take precautions to ensure that no person is exposed to undue risk pursuant to sentence 8.1.2.2.(1) of Division B of the ABC 2006.

The Record:

- 3. The Appeal Panel considered, or had available for reference, the following documentation:
 - a. Stay of the Order, dated August 15, 2012, from the Building Technical Council to the Appellant.
 - b. Written notification of appeal hearing, dated August 10, 2012, from the Coordinator of Appeals to the Appellant.
 - c. Acknowledgement of notice of appeal, dated August 8, 2012, from the Coordinator of Appeals to the Appellant.
 - d. Notice of Appeal dated August 3, 2012, from the Appellant to the Coordinator of Appeals.
 - e. Request for Review of the Order, dated July 31, 2012, from the Appellant to the Acting Chief Building Administrator.
 - f. Order dated July 23, 2012 issued by the Accredited Agency to the Appellant.
 - g. Exhibit #1 Respondent – Appeal Briefing Binder with seven tabbed sections including; Order Documents, Compliance Monitoring, Professional Schedules, Verification Reports, Architect’s Review, Correspondence, and Joint Communication & Inspection Reports.

Position of the Parties

Appellant

4. The Appellant's position is that:
- (a) The requirement to provide Architectural Schedules is not achievable. The originating architect has provided notice of a termination of services and is unwilling to return to the site.
 - (b) Other Architects have been contacted and are unwilling to validate another professional's work.
 - (c) Other professionals were retained to comply with the requirements of ABC 2006 and to conduct field reviews and testing of mechanical, electrical and structural systems. These professionals indicated that an Architect is only needed for one outstanding item, that being fire stopping of the attic space.

Respondent

5. The Respondent's position is that:
- (a) According to the Alberta Architects Association, if the originating architect abandons a project, a new architect taking over the project is required to assume responsibility from the beginning of the project.
 - (b) Schedules of Professional Involvement are required to ensure life safety systems are functioning properly.

Provisions of the Safety Codes Act:

6. The Safety Codes Act provides:

Council considers appeal

52(2) The Council may by order

- (a) Confirm, revoke or vary an order, suspension or cancellation appealed to it and as a term of its order may issue a written variance with respect to any thing, process or activity related to the subject-matter of the order if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act

Provisions of the Alberta Building Code 2006 (ABC2006):

7. The applicable code is the Alberta Building Code 2006 (ABC 2006). The ABC 2006 is the current Alberta Building Code and the building was constructed while the ABC 2006 was in force.

8. The Alberta Building Code 2006 provides:

Division C

2.4.3. Schedules of Professional Involvement

2.4.3.1. Owner

1) Before beginning construction, the owner shall

a) retain a coordinating registered professional to coordinate all design work and field reviews of the registered professionals required for the project in order to ascertain that

- i) the design will comply with this Code and other regulations made pursuant to the Safety Codes Act, and
- ii) the construction of the project will substantially comply with this Code and other regulations made pursuant to the Safety Codes Act,

b) retain registered professionals of record to complete design work and field review required for the project, and

c) provide the authority having jurisdiction letters in the forms set out in Schedules A-1, A-2, B-1 and B-2 (see Appendix A).

2.4.3.2. Authority Having Jurisdiction

1) Before issuing an occupancy permit or giving permission to occupy, the authority having jurisdiction shall receive assurance in the form set out in Schedule C-1 from the coordinating registered professional that the building or portion of the building to be occupied substantially complies with the requirements of this Code. (See Appendix A.)

2.4.4. Responsibilities

2.4.4.1. Registered Professional

1) The coordinating registered professional for the project shall ensure that

a) the design requirements are coordinated and comply with the requirements of this Code,

b) any corrective actions taken as a result of a field review are recorded and available to the authority having jurisdiction on their request, and

c) the authority having jurisdiction is provided with a letter in the form set out in Schedule C-1 stating that the project for which registered professionals were retained substantially complies with this Code.

2) A registered professional of record shall

a) sign and seal the drawings required in support of the building permit application,

- b) ensure that drawings comply with the requirements of this Code,
- c) ensure that field reviews that are necessary to comply with Clause (b) are completed, and
- d) provide a letter to the coordinating registered professional in the form set out in Schedule C-2 stating that components of the project for which the registered professional is responsible are constructed so as to substantially comply with
 - i) the plans and supporting documents, and
 - ii) the requirements of this Code.

Findings of Fact:

9. The Appeal concerns a four-storey multifamily residential occupancy building and storage garage located within a Municipality. The building is 1142 m². The first storey is a parkade and the three upper floors contain twenty-two (22) residential units ranging from 102m² (1100 square feet) to 167m² (1800 square feet) for each unit.
10. The building is classified in the ABC 2006 as a Group C residential occupancy under article 3.2.2.45.
11. A building permit was issued to the original owner in 2008 for the building.
12. In 2011 the Appellant purchased the building from foreclosure. The Appellant testified that at that time of purchase, the architect's Site Visit Reports indicated that the building was 85% complete. The Appellant further indicated that since purchasing the building it has become apparent that the building was not 85% complete given the amount of work and resources needed to bring the building into compliance with the ABC 2006.
13. The originating architect provided a notice of termination of services by letter dated December 1, 2011, that the building was no longer under the architect's care and control.
14. The Appellant was advised by the Respondent that a new architect would have to accept responsibility for the entire life of the project and not just from the point of the new architect's engagement.
15. The Appellant indicated in testimony that he has not been able to retain the services of an architect to assume responsibility for the work completed on the building since commencement of construction.
16. The Appellant indicated in testimony that other professionals, including engineers, have provided assurances of the building's sound structure and safety.

17. The ABC 2006 requirements indicate that each registered professional of record for the project is to ensure that the components of the project for which they are responsible for are constructed so as to substantially comply with the plans and supporting documents and the requirements of the ABC 2006.

Reasons for Decision:

18. The submission of Schedules for all Professional Involvement is required to comply with the ABC 2006. Providing the schedules assures the owners and residents and the Authority Having Jurisdiction that the regulatory requirements are met and that each required professional has provided assurance of design and commitment for field review. Residents need to know that the building is safe for occupancy.
19. A coordinating registered professional is required to ensure the building as a whole substantially meets the requirements of the ABC 2006. The coordinating registered professional is to obtain, from all professionals of record, assurance that their responsibilities have been met and verify that cross-disciplinary connections function to meet requirements of Code. The requirement is met only when the schedules are provided from each professional discipline as indicated in ABC 2006.
20. While an owner might be willing to assume responsibility for the safety of a building the ABC 2006 requires that confirmation is provided from each professional discipline who are the experts in their field. This sign off provides assurances that the building is safe for occupancy.
21. While the requirement that professionals be retained, stamps and seals be placed on drawing and verifications be provided is contained in the ABC 2006, the method of retention and the contractual relationship for services provided that exists between an owner or contractor and the professional is done in accordance with the enactments that govern the respective profession.

Dated at Edmonton, Alberta this 9th day of October, 2012

Chair, Building Technical Council Appeal Panel