



SAFETY CODES COUNCIL

#1000, 10665 Jasper Avenue N.W., Edmonton, Alberta, Canada, T5J 389
Tel: 780-413-0099 / 1-888-413-0099 • Fax: 780-424-5134 / 1-888-424-5134
www.safetycodes.ab.ca

COUNCIL ORDER No. 0015432

**BEFORE THE BUILDING AND FIRE TECHNICAL COUNCIL
On October 22, 2013**

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

AND IN THE MATTER OF the Refusal to Issue Building Permit dated February 19, 2013 (the Building Permit Refusal) issued on behalf of an unaccredited municipality (the Respondent) by an accredited agency to the building owner, and an Order dated March 12, 2013 (the Order) issued on behalf of the Respondent by the Office of the Fire Commissioner to the business owners (the Appellants).

UPON REVIEWING the Building Permit Refusal and the Order **AND UPON HEARING** the Appellants and the Respondent; **THIS COUNCIL ORDERS THAT** the Building Permit Refusal is **CONFIRMED** and the Order is **VARIED**.

The Order is Varied

From:

THEREFORE, pursuant to Section 49 of the Safety Codes Act, in order to provide a reasonable level of safety on a temporary basis while the contraventions are corrected, the owners identified above are hereby ORDERED to:

- 1) **Fire Watch**, Effective 2359 hours MDT, March 12th, 2013, initiate an onsite fire watch consisting of a sufficient number of trained watch persons to complete building patrols at intervals of not more than one hour, every hour and who are capable of identifying fire and alerting occupants and communicating with the responding fire department. A written log of each patrol shall be maintained on site for inspection, **Section 2.8. – Division B, Alberta Fire Code 2006** (See Appendix A), **AND**
- 2) **Fire Safety Plan**. Within 7 days provide a fire safety plan acceptable to the responding fire department **Section 2.8. – Division B, Alberta Fire Code 2006** (See Appendix A), **AND**
- 3) **Water Supply**. Within 7 days provide a usable water supply for firefighting in accordance with the ABC 2006, **Article 3.2.5.7. Division B, Alberta Building Code 2006** or provide a

temporary acceptable solution approved by authority having jurisdiction and the responding fire department (See Appendix A), **AND**

- 4) **Access to Building**, Within 7 days provide access for fire apparatus, firefighters and their equipment, **Article 2.5.1.1. Division B, Alberta Fire Code 2006**, (See Appendix A), **AND**
- 5) **Maintenance of Fire Department Access**. Within 7 days ensure there is access for fire department vehicles, **Article 2.5.1.5. Division B, Alberta Fire Code 2006**, (See Appendix A), **AND**
- 6) **Portable Fire Extinguishers**, Within 7 days provide and have properly installed the required amount and type of certified portable fire extinguishers, **Sub Section 2.1.5. Division B, Alberta Fire Code 2006**, (See Appendix A), **AND**
- 7) **Exit Lighting, Exit Signs and Emergency Lighting**, Within 7 days provide proper exit signs, exit lighting and emergency lighting, **Article 2.7.3.1. Division B, Alberta Fire Code 2006**, (See Appendix A), **AND**
- 8) **Exit Doors and Release Hardware**, Within 7 days provide the required number and size of freely operating exit doors, **Article 2.7.2.1. Division B, Alberta Fire Code 2006**, (See Appendix A), **AND**
- 9) **Open Floor Areas**, Within 7 days ensure aisle ways and travel distance to exits are maintained, **Article 2.7.1.2. Division B, Alberta Fire Code 2006**, (See Appendix A), **AND**
- 10) Provide within **7 to 14 days**, written verification of the coordinating professional that has been engaged to provide all schedules of professional involvement of the entire building, **AND**
- 11) Provide within **60 days**, written verification of approved building permits for the entire building as referenced in the Safety Codes Act, Permit Regulations 204/2007 and building classification, **AND**
- 12) Provide within **120 days**, written verification of professional field review and compliance by the coordinating professional for the entire building,
OR
- 13) Evacuate all occupants from the building, pursuant to Section 49 (3) of the Safety Codes Act (Ch. S-1 RSA 2000) immediately if a fire watch as described above is not initiated by 2359 hours MDT, March 12, 2013 and items 2 through 10 are not in place within 7 days.

By:

- 13) Confirming the wording in the preamble and items 1-12 as set out above, deleting item 13 in its entirety and substituting therefore the following: **If directives one (1) through (12) are not complied with as stated above, evacuate all occupants from the building, pursuant to Section 49 (3) of the Safety Codes Act (Ch. S-1 RSA 2000) immediately.**

Issue:

1. The Appeal concerns a rural building.
2. The issues on appeal are:
 - (a) Whether, having regard, for the position of the Appellants, set out below, the Building Permit Refusal and Order were issued unreasonably;

- (b) Whether the occupancy of the building should be classified as Group F, Division 3 low hazard industrial use or as a Group E mercantile structure.

Appearances, and Preliminary, Evidentiary or Procedural Matters:

3. Appearing for the Appellants, the Appeal Panel heard from a legal representative for the Appellants, from the owners and directors of the business, the Managing Director of Fire and Safety Code Compliance with an architect's office, an architect, and an engineer.
4. Appearing for the Respondent, the Appeal Panel heard from the legal representative for the Respondent, from the building safety codes officer (SCO) with the accredited agency, from the fire SCO with the Office of the Fire Commissioner, and from a Senior Field Inspector, Alberta Municipal Affairs.
5. At the commencement of the hearing, the Appellants and Respondent confirmed that there were no objections to any members of the hearing panel, and that the Safety Codes Council in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
6. The Appeal Panel Chair read out a list of the written material before the panel, consisting of the documents listed below in paragraph 9 as items 3-12 in the Record. The Appellants and the Respondent confirmed that there were no objections to any of the written material submitted to the panel prior to the hearing.
7. At the beginning of the Respondent's presentation, the Respondent presented two new documents for consideration by the Appeal Panel. The two documents were shown to the Appellants. After reviewing the two submissions the Appellants' Legal Counsel indicated that there was no objection to the documents being provided to the Appeal Panel or to reference to these documents by the parties. The Appeal Panel Chair accepted into the Record two documents marked as Exhibit 1 – Respondent a decision of the Building Code Appeal Board of British Columbia and Exhibit 2 – Respondent a decision of the Ontario Building Code Commission.
8. During the Respondent's presentation the Appellants' legal representative objected to the Respondent's introduction of testimony to the effect that another architect was commissioned by the Appellants to inspect and provide opinion on the occupancy classification of the building and that this professional deemed the occupancy to be mercantile. The Appellants' legal representative objected to this introduction of testimony as the architect was not present to allow for an opportunity for him to be cross-examined by the Appellants or Respondent, and as such the Appeal Panel should disregard the Respondent's comments on this topic. The Appeal Panel considered the Appellants' objection and indicated that the Appeal Panel would determine what weight, if any, to give to the oral testimony provided by Respondent on this topic.

The Record:

9. The Appeal Panel considered, or had available for reference, the following documentation:

1. Exhibit 1 – Respondent - a decision of the Building Code Appeal Board of British Columbia dated March 27, 1991.
2. Exhibit 2 – Respondent - a decision of the Ontario Building Code Commission dated June 4, 2009.
3. Change of Date – Written Notification of Appeal Hearing dated July 8, 2013.
4. “Written Submissions of the Appellants” dated June 13, 2013; a plastic bound folder with 7 tabs and a binder labelled “Appellants’ Exhibits” with 38 tabs.
5. A plastic bound “Appeal Hearing Brief” from the Respondent; a plastic bound “Appeal Hearing Brief” submitted by the fire SCO on behalf of the Respondent, the “Written Submissions of the Respondent dated October 8, 2013, one stapled document consisting of a cover letter from the Respondent dated June 12, 2013, and seven attached pages containing excerpts from the Alberta Building Code 2006, and a letter from the responding fire department October 8, 2013.
6. Written Notification of Appeal Hearing dated May 16, 2013.
7. Appeal Hearing Brief Preparation Guide.
8. Stay Letter dated April 5, 2013.
9. Acknowledgement Letter dated April 5, 2013.
10. Copy of Notice of Appeal with attachments dated March 26, 2013
11. Acknowledgement Letter dated March 14, 2013
12. Copy of Notice of Appeal with attachments dated March 7, 2013

Provisions of the Safety Codes Act or Codes Referenced in the Order or By One or More of the Parties:

10. The Safety Codes Act (*Act*) provides:

Part 1 Responsibilities

Owners, care and control

- 5 The owner of any thing, process or activity to which this Act applies shall ensure that it meets the requirements of this Act, that the thing is maintained as required by the regulations and that when the process or activity is undertaken it is done in a safe manner.

Part 3 Standards

Permits Required

- 43(1) If this Act requires a person to have a permit to sell, construct, control or operate any thing or supervise, operate or undertake any process or activity, no person shall do so unless the person has the appropriate permit.

Permit issues

44(1) On receipt of any application, a safety codes officer or other person designated by an Administrator may issue a permit to a person who complies with the requirements of this Act or issue a permit with respect to a thing, process or activity if it complies with the requirements of this Act.

44(3) If a safety codes officer or other person designated by an Administrator refuses to issue a permit, the safety codes officer or other person designated by an Administrator shall serve the application with a written notice of the refusal.

Part 5 Orders, Appeals

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
- (b) Confirm a refusal or direct that a designation, certificate or permit be issued and direct the inclusion of terms and conditions in the designation, certificate or permit,

Provisions of the Alberta Building Code 2006 (ABC 2006):

11. The applicable and current code is the Alberta Building Code 2006 (ABC 2006).
12. The Alberta Building Code 2006 provides:

Division A

1.2. Compliance

1.2.1.1. Compliance with this Code

- 1) Compliance with this Code shall be achieved by
 - a) complying with the applicable acceptable solutions in Division B (See Appendix A), or
 - b) using alternative solutions that will achieve at least the minimum level of performance required by Division B in the areas defined by the objectives and functional statements attributed to the applicable acceptable solutions (see Appendix A).

1.4. Terms and Abbreviations

1.4.1.2. Defined terms

Major occupancy means the principal *occupancy* for which a *building* or part thereof is used or intended to be used, and shall be deemed to include the subsidiary *occupancies* that are an integral part of the principal *occupancy*.

Mercantile occupancy means the *occupancy* or use of a *building* or part thereof for the displaying or selling of retail goods, wares or merchandise.

Occupancy means the use or intended use of a *building* or part thereof for the shelter or support of persons, animals or property.

Division B

3.2. Building Fire Safety

3.2.2.6. Multiple Major Occupancies

1) Except as permitted by Articles 3.2.2.7. and 3.2.2.8., in a *building* containing more than one *major occupancy*, the requirements of this Subsection for the most restricted *major occupancy* contained shall apply to the whole *building*.

3.2.2.8. Exceptions for Major Occupancies

1) In a *building* in which the aggregate area of all *major occupancies* in a particular Group or Division is not more than 10% of the *floor area* of the *storey* in which they are located, these *major occupancies* need not be considered as *major occupancies* for the purposes of this Subsection, provided they are not classified as Group F, Division 1 or 2 *occupancies*.

Division C

Part 2 Administrative Provisions

2.2.9. Permits

2.2.9.8. Refusal to Proceed

1. The *authority having jurisdiction* may refuse to allow any *building, project, work or occupancy* that would not be permitted by the Safety Codes Act, this Code or other legislation.
2. The *authority having jurisdiction* may refuse to allow any *building, project, work or occupancy* if
 - a) incorrect information is submitted, or
 - b) the information submitted is inadequate to determine compliance with the provisions of the Safety Codes Act, this Code or other legislation.
3. A person who is refused a *permit* may appeal the refusal in accordance with the Safety Codes Act and regulations made pursuant to the Act.

Provisions of the Alberta Fire Code 2006 (AFC 2006):

13. The applicable and current code is the Alberta Fire Code 2006 (AFC 2006).
14. The AFC 2006 provides:

Division C

Part 2 Administrative Provisions

2.1.1. Application

2.1.1.1. Application

1. Except as permitted by Sentences (2) and (3), this Part applies to all *buildings* and facilities covered in this Code. (See Article 1.1.1.1. of Division A.)
2. Where a provision of this Code requires compliance with one or more requirements of the Alberta Building Code, the provision is deemed to be satisfied if
 - a) the *building* or fire protection measure was constructed or installed after April 1, 1974, and conforms with regulations in force under the Uniform Building Standards Act or the Safety Codes Act at the time of construction or installation, or
 - b) the *building* or fire protection measure does not conform to Clause (a) but
 - i) meets the requirements of an *approved* guideline issued for a specific *occupancy*, or
 - ii) where no *approved* guideline has been issued, the building or fire protection measure is constructed or installed in a manner that provides a level of life safety which is acceptable to the *authority having jurisdiction*.(See Appendix A.)
3. The *authority having jurisdiction* may accept alternatives to strict compliance with the Alberta Fire Code 2006 and Alberta Building Code 2006 as provided for in Clause 1.2.1.1.(1)(b) of Division A. (See Appendix Notes A-1.2.1.1.(1)(b) and A-1.1.1.1.(1) of Division A and Appendix Note A-1.1.1.2. of Division A of the Alberta Building Code 2006.)

Division B

Part 2 Building and Occupant Fire Safety

2.1.3. Fire Safety Installations

2.1.3.1. Fire Alarm, Standpipe and Sprinkler Systems

1. Fire alarm, standpipe and sprinkler systems shall be provided in all *buildings* where required by and in conformance with the Alberta Building Code 2006. (See Appendix A.)
2. When changes in the use of *buildings* or *floor areas* create a hazard exceeding the criteria for which the fire protection systems were designed, such fire protection systems shall be upgraded to accommodate the increased hazard.

Division B

Part 2 Building and Occupant Fire Safety

2.1.5. Portable Extinguishers

2.1.5.1. Selection and Installation

1. Portable extinguishers shall be installed in all *buildings* except *dwelling units*.
2. Except as otherwise required by this Code, portable extinguishers shall be selected and

installed in accordance with NFPA 10, "Portable Fire Extinguishers." (See Appendix A.)

3. Portable extinguishers in proximity to a fire hazard shall be located so as to be accessible without exposing the operator to undue risk. (See Appendix A.)
4. Portable extinguishers that are subject to corrosion shall not be installed in a corrosive environment unless they are provided with appropriate corrosion protection.
5. Portable extinguishers shall not be distributed, sold, leased, offered for sale or lease or installed unless the portable extinguisher is *listed* and *labelled*.

Division B

Part 2 Building and Occupant Fire Safety

2.5.1. General

2.5.1.1. Access to Building

1. Fire department vehicles shall have direct access to at least one face of every *building* by means of a *street*, yard or roadway in conformance with the Alberta Building Code 2006.

Division B

Part 2 Building and Occupant Fire Safety

2.7.1. Means of Egress

2.7.1.2. Open Floor Areas

1. Aisles in conformance with Sentences (2) to (4) shall be provided in every *floor area* that
 - a) is not subdivided into rooms or *suites* served by corridors giving *access* to *exits*, and
 - b) is required by the Alberta Building Code 2006 to have more than one egress doorway.
2. Every required egress doorway shall be served by an aisle that
 - a) has a clear width not less than 1100 mm,
 - b) has access to at least one additional egress doorway, and
 - c) at every point on the aisle, provides a choice of 2 opposite directions by which to reach an egress doorway.
3. A subsidiary aisle with only a single direction of travel to an aisle described in Sentence (2) is permitted provided it has a clear width not less than 900 mm and a length not greater than
 - a) 7.5 m in *business and personal services, mercantile and high-hazard industrial occupancies*,
 - b) 10 min *medium-hazard industrial occupancies*, or
 - c) 15 min *low-hazard industrial occupancies*.

4. Every individual work area in *business* and *personal services occupancies* shall be located adjacent to an aisle or subsidiary aisle.

Division B

Part 2 Building and Occupant Fire Safety

2.7.2. Doors and Means of Egress

2.7.2.1. Exit Doors and Door Release Hardware

1. Except as permitted by Sentences (2), (3) and (4), all doors forming part of a *means of egress* shall be tested at intervals not greater than one month to ensure that they are operable.
2. The safety features of revolving doors shall be tested at intervals not greater than 12 months.
3. Sliding doors that are required to swing on their vertical axes in the direction of egress when pressure is applied shall be tested at intervals not greater than 12 months.
4. When doors are equipped with electromagnetic locks, these locks shall be tested at intervals not greater than 12 months.
5. Door release hardware shall be installed on doors in conformance with the Alberta Building Code 2006.
6. Door release hardware, latches and locks shall be maintained in good working condition at all times.
7. An *exit* door shall not be bolted, barred or locked other than with a device that complies with Sentence (5).

Division B

Part 2 Building and Occupant Fire Safety

2.7.3. Exit Lighting, Exit Signs and Emergency Lighting

2.7.3.1. Installation and Maintenance

1. *Exit* lighting, *exit* signs and emergency lighting shall be provided in *buildings* in conformance with the Alberta Building Code 2006. (See Appendix A.)
2. *Exit* lighting and *exit* signs shall be illuminated during times when the *building* is occupied.
3. Emergency lighting shall be maintained in operating condition, in conformance with Section 6.5.

Position of the Parties

Appellants

15. The Appellants' position is that the Building Permit Refusal and Order were unreasonably issued because:
- (a) the building meets, exceeds, or provides an approximately equivalent level of safety to meet the Code's objectives for Group F, Division 3 low hazard industrial use.
 - (b) there has been no change in the major occupancy of the building with the new additions, which do not create a hazard exceeding the criteria for which existing fire protection systems were developed or pose an unacceptable risk to persons or property.
 - (c) acceptable solutions for a Group E mercantile structure would pose an unreasonable burden on the owners disproportionate to any benefit achieved in furtherance of the Code's objectives. The considerable cost of an alarm or sprinkler system is not justified where storage additions do not pose a new or unacceptable risk to persons or property. The Appellants will be forced to close their business should a sprinkler be required.
 - (d) a safety codes officer must exercise only those powers conferred by the Act in fulfilling their legislative function. It was beyond building SCO's mandate and jurisdiction to substitute his own judgement for that of registered professionals engaged to review the building for compliance with the Code.
 - (e) The building SCO's mandate was to assess any new or unacceptable risk posed by the building additions, not the use to which the building is put. He had already granted a permit for the building based on a Group F, Division 3 occupancy in 2009.
 - (f) in the case of an addition to an existing structure, an Officer's authority to refuse a permit must be based on a reasonable belief that the undertaking is unsafe or will reduce the level of safety below that intended by the Code. The officer does not have authority to reclassify a building where there has been no change in occupancy and proposed additions have no appreciable impact on safety.
 - (g) in issuing the Building Permit Refusal and Order, the Safety Codes Officers settle on a mercantile classification because goods are on display as one might see in a store. The *Code* does not speak to appearances, which are irrelevant in determining compliance with accepted or alternative solutions that meet the Code's objectives.
16. The Appellants request that the building permit be issued and the Order revoked.
17. Alternatively, the Appellants ask that Council vary the Order to allow for alternative solutions recommended by registered professionals engaged on their behalf.

Respondent

18. The Respondent's position is that:
- (a) The occupancy classification of the building prior to the construction of the additions is irrelevant.
 - (b) A building intended for use by more than one major occupancy is defined according to all major occupancies for which it is used

- (c) The building's major occupancy is Group E – mercantile.
- (d) The Order states that construction and occupancy of a mercantile building was carried out without the required building permits, and identifies eight separate contraventions of the *Fire Code*.
- (e) The Order is justified and the items and directions contained in the Order raise serious safety concerns that must be addressed.
- (f) The building SCO did not fetter his discretion in deciding to refuse the building permit. He made his own decision.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

19. The parties do not dispute the following facts, and the Appeal Panel finds them to be proven:
- i) Prior to the three additions the building was classified as a F-3 low-hazard industrial occupation. A building permit is required for the construction of three additions;
 - ii) The additions were constructed prior to obtaining or applying for a building permit;
 - iii) The Appellants applied for a building permit on October 22, 2012;
 - iv) The Appellants did not submit an engineer drawing of the additions with the building permit application;
 - v) The building permit application indicates the building use as agricultural, commercial, and mercantile;
 - vi) On November 16, 2012 the building SCO wrote to the Appellant requesting a building code review by an architect and professional engineer;
 - vii) Three professionals engaged by the Appellants classified the building as F-3 low-hazard industrial: on December 3, 2012, on April 1, 2013 and on June 13, 2013.
 - viii) The building is used for an internet business and as a sales floor for walk-in clients;
 - ix) Goods, wares, and merchandise are displayed and sold in the building;
 - x) The majority of the building area is accessible to the public.
20. The Appellants testified that:
- i) approximately 30-70 people come into the building each day. During rodeos and other public events on site that bring additional traffic to the site, there may be up to 70 people in the building in a day, otherwise it is closer to 30;
 - ii) the customer base is 50% online, 30-35% at tradeshow, and 15-20% walk-in retail.

This factual evidence was not contradicted by evidence from the Respondent nor was it challenged in the Respondent's submissions and the Appeal Panel accepts it as proven.

21. On the basis of the evidence presented by the parties, the Appeal Panel also makes the following additional findings of fact:
- i) The building is approximately 2787 m² (30 000 sq ft). More than one calculation of the building size was provided. One measure provided was 2768 m² (29 800 sq ft) and another was 3400 m² (36 600 sq ft).
 - ii) A fuel load calculation to measure the combustible content of the building was not undertaken nor provided by either the Appellants or Respondent;
 - iii) The Appellants did not submit a request for variance to the Respondent and did not provide an alternative solution to the Appeal Panel for their consideration;
22. The Appeal Panel finds that the building SCO exercised the authority granted to him by the *Act* when the SCO refused to issue the building permit and did not fetter his discretion when he sought opinion and information of other SCOs. The Appeal Panel accepts the SCO's direct evidence on this point, to the effect that he understood that the ultimate decision rested with him, and he made that decision himself, unfettered by the views of any other individual.
23. The Appeal Panel finds, based on pictures and testimony provided by the Appellants and the Respondent, that the major occupancy of the building is mercantile. The use of the building is for the displaying or selling of retail goods, wares or merchandise. As described by the Appellants and the Respondent most of the areas of the building are accessible by the public to view and purchase goods.
24. The Appeal Panel finds that only one occupancy exists. Based on the calculations provided in testimony by the appellant while reviewing the *Sketch* on page 188 of the Respondent's Appeal Hearing Brief dated June 25, 2013, the Appeal Panel was advised that customers have access to most areas of the building to choose something for purchase. The wares are on display throughout the building and not stored away in an area only accessible by the staff.
25. Alternatively, if it were found that more than one use exists in the building, Sentence 3.2.2.6.(1), Division B of the ABC 2006 provides that the most restrictive occupancy applies. For the Appellant's building the most restrictive occupancy is Group E mercantile.
26. The Appeal Panel disagrees with the Appellants' argument that the number of customers in the store on an average day of 30-70 people causes the occupancy to change from mercantile to low-hazard industrial. The number of customers (occupant load) expected to be inside the building viewing or purchasing goods, wares or merchandise is not what defines mercantile occupancy. It is the use. The ABC 2006 does not consider the success or popularity of a business in assigning mercantile occupancy.
27. Further the Appeal Panel finds that even if the average number of walk-in customers is only 15-20% of daily traffic or daily sales, once again the ABC 2006 prescribes that you must consider the most restrictive classification in determining major occupancy.
28. The Appeal Panel does not agree with the Appellants' argument that the occupancy classification should remain as F-3 low hazard industrial. The building is used as mercantile and should be

classified as such. If, when the building was inspected in 2009, the SCO deemed the occupancy to be F-3 that may have been an error on the SCO's part, or it may be that the building was presented as a storage facility. The Appeal Panel's jurisdiction is to render a decision based on the present use of the building and the fact that it may have been classified differently in the past, does not bind either a safety codes officer considering the present use of the building, or the Appeal Panel so as to compel them to ignore the proper classification. Further, the responsibility to ensure that all activities that take place on the site meet all requirements under the *Act*, remains with the owner.

29. The Appeal Panel finds that the scope of a safety codes officer's authority to issue an order under section 49 of the *Act* is very broad and contrary to the position taken by the Appellants, a safety codes officer is not bound by the judgment of the registered professionals engaged by the Appellants. Nor is the safety codes officer acting beyond his mandate in reclassifying the use of a building based on its existing use from a classification it may have been given previously.
30. The Appeal Panel finds that the Appellants did not comply with the ABC 2006 as provided in 1.2.1.1. of Division A of the ABC 2006. As stated in that provision, compliance with the Code is achieved by complying with the applicable acceptable solutions in Division B or using alternative solutions that will achieve at least the minimum level of performance required by Division B in the areas defined by the objectives and functional statements attributed to the applicable acceptable solutions.
31. The parties are free to consider alternative solutions. The Appeal Panel was not provided with any alternative solutions for their consideration. It is up to the Appellants to request a variance and to provide a proposed solution that is equal or better than the level of safety required by the ABC 2006. A possible solution may be to restrict the use of the building, but as no alternative solution was presented for consideration, the Appeal Panel is not in a position to vary the order to allow for an alternative solution.
32. With regards to the Order, the Appeal Panel did not receive verification from the parties that the Appellants have complied with the Order. The fire SCO indicated that he did not inspect the building after the Order was issued to determine compliance. The Appeal Panel finds that the fire safety requirements on the Order remain in effect. The Appeal Panel has varied the Order in directive #13 to indicate that if directives 1-12 are not complied with within the days allotted for each directive that the building is to be evacuated. The effective date of the Appeal Panel's order is upon service to the parties, and the days allotted for each directive are to be calculated accordingly.
33. The fire watch, directive number one in the Order, remains in effect until the authority having jurisdiction says it is no longer required or applicable.
34. With regards to the position provided in writing from both parties that the opposing party be ordered by the Appeal Panel to recover their costs and disbursements, the Appeal Panel asked both parties if they could identify what authority the Appeal Panel had to make such an order. They both confirmed they could not find any authority in the statute for the Appeal Panel to award costs.

35. The Appeal Panel finds that the Act does not provide the Appeal Panel with authority to order one party to pay costs and disbursements of the other party. Accordingly, the Appeal Panel declines to make any such order.
36. With regards to the Appellants' concern about the Respondent's testimony with regards to the inspection by another architect, the Appeal Panel did not give this testimony any weight in rendering a decision on the appeal.

Dated at Edmonton, Alberta this 23rd day of December 2013

Chair, Building & Fire Technical Council Appeal Panel