



SAFETY CODES COUNCIL

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COUNCIL ORDER No. 0015433

**BEFORE THE BUILDING TECHNICAL COUNCIL
On May 17, 2013**

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

AND IN THE MATTER OF the Order dated February 19, 2013 issued by an Accredited Municipality (Respondent) against Residential Home Owners (Appellant).

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

Issue:

1. The Appeal concerns the construction of an accessory green house building and walkway on the property of the Appellant's single family dwelling. The Appellant was ordered by the Respondent to take safety precautions to ensure no one is exposed to undue risk and to obtain a building permit for the construction of the greenhouse structure and walkway or to remove them entirely. At issue are whether the accessory greenhouse structure as a proposed building and proposed covered walkway is compliant with the Alberta Building Code 2006 (ABC 2006), whether a permit is required, and whether the alterations to the accessory greenhouse structure undertaken by the Appellant have caused the structure to be unsafe.

The Record:

2. The Appeal Panel considered, or had available for reference, the following documentation:
 - (a) Exhibit #1- Appellant received at table May 17, 2013 (17 pages).
 - (b) The Respondent's Statement dated May 8, 2013 (27 pages)
 - (c) A Written Notice of Hearing dated April 25, 2013 from the Coordinator of Appeals.
 - (d) Appeal Hearing Brief Preparation Guide.
 - (e) Acknowledgment of a Notice of Appeal dated April 5, 2013 from the Coordinator of Appeals.
 - (f) Stay Letter dated April 5, 2013.

- (g) Request for a Stay of the Order dated March 28, 2013.
- (h) A Notice of Appeal from the Appellant, dated March 18, 2013.
- (i) A Copy of the Order issued February 19, 2013.

Position of the Parties

Appellant

- 3. The Appellant's position is that:
 - (a) The structure is compliant with the ABC 2006.
 - (b) What appears to be one dome type structure in reality consists of two symmetrical parts. The two parts are not attached and the roof is not supported beyond the structure.
 - (c) The garden is divided into three sections. Two sections are proposed as greenhouses with a cross-section between the two greenhouses. Each section is less than 10 m² in building area.

Respondent

- 4. The Respondent's position is that:
 - (a) A permit is required to construct an accessory building with a building area of more than 10 m².
 - (b) The Appellant's accessory building is more than 10 m² in building area.
 - (c) In an attempt to separate the accessory greenhouse building into two buildings, to comply with the ABC 2006, the Appellant made modifications to the structure and caused the structure to be unsafe.
 - (d) The Appellant must apply for a permit to ensure that the accessory greenhouse building and walkway is built in compliance with the ABC 2006, or remove the structures entirely.
 - (e) The accessory greenhouse building is currently in an unsafe condition.

Provisions of the Safety Codes Act:

- 5. The Safety Codes Act provides:

Part 1 Responsibilities

Owners, care and control

5 The owner of anything, 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.

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 (ABC 2006):

6. The applicable and current code is the Alberta Building Code 2006 (ABC 2006). The accessory buildings must be constructed under the current code.
7. The Alberta Building Code 2006 provides:

Division A

1.1.1.1. Application of this Code

5) This Code does not apply

f) to an accessory *building* not greater than 10 m² in *building area* that does not create a hazard

1.4.1.2. Defined Terms

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Building Area means the greatest horizontal area of a *building* above *grade* within the outside surface of exterior walls or within the outside surface of exterior walls and the centre line of *firewalls*.

Division B

9.4.1.1. General (See Appendix A.)

1) Subject to the application limitations defined elsewhere in this Part, structural members and their connections shall

a) conform to requirements provided elsewhere in this Part,

b) be designed according to good engineering practice such as that provided in the “Engineering Guide for Wood Frame Construction,” published by the Canadian Wood Council, or

c) be designed according to Part 4 using the loads and deflection and vibration limits specified in

i) Part 9, or

ii) Part 4.

Division C

2.2.9.1. General

1) A permit is required for the construction, alteration, installation, repair, relocation, demolition, or change in occupancy of any work to which this Code applies in accordance with regulations made pursuant to the Safety Codes Act.

2) In addition to a permit that is required by Sentence (1), other permits may be required for the installation of related building services.

3) An owner shall ensure that all permits required in connection with proposed *work* are obtained before starting the *work* to which they relate.

2.2.14. Unsafe Condition

2.2.14.1. Correcting an Unsafe Condition

1) If a *building* is in an *unsafe condition*, the *owner* shall forthwith take all necessary action to correct the condition

2) The *authority having jurisdiction* may order the *owner* of any *building* to correct any *unsafe condition*.

Summary of the Hearing:

8. At the commencement of the hearing, the Appellant and the Respondent each confirmed their agreement that there were no objections to any members of the Appeal Panel, and that the Safety Codes Council and the Appeal Panel had the jurisdiction to hear and decide the appeal.
9. The Chair of the Appeal Panel listed the written material before the Appeal Panel. The Appellant and the Respondent each confirmed that there were no objections to any of the written material before the panel. The Appellant mentioned a concern with a date of an inspection within the Respondent's Statement dated May 8, 2013 and the concern was discussed in the appeal hearing during the Appellant's and Respondent's presentations.
10. Appearing for the Appellant, the Appeal Panel heard from the home owner. The Appellant provided further evidence at the commencement of the Appellant's case presentation. Eight (8) copies of *Exhibit 1 – Appellant*, a seventeen (17) page document. All materials are listed in paragraph 2 above, "The Record".
11. Appearing for the Respondent, the Appeal Panel heard from two Building Safety Codes Officers (SCO).

The Appeal Panel heard from the Appellant:

12. The Appellant presented further evidence, *Exhibit 1 – Appellant*, and the Chair allowed time for the panel and the Appellant and Respondent to read the documentation. When all parties indicated they had read the documentation and did not require any further time to review, the Chair asked the Appellant if the Appellant wished to comment about the documentation and then the panel asked questions of the Appellant.

The Appeal Panel heard testimony from the Appellant on several points:

13. The 6.1 metre diameter indicated on the drawing is the diameter of the garden. Page five of *Exhibit 1 – Appellant*.

14. The accessory greenhouse structure is in the shape of a dome. It was designed by the Appellant and built as one structure. The structure covers the garden area and was built to protect the garden from weather, birds, and animals.
15. The entire greenhouse structure and walkway structure is intended to have a roof covering consisting of polyethylene or netting or a combination of the two, extending over all sections as confirmed by the appellant.
16. Referencing Picture 1 and Picture 3 of the Appellant's evidence, the Appellant indicated that the pictures show the structures in their current state. *Exhibit 1 – Appellant* page 8 of 17.
17. The greenhouse structure was built as one structure and then was separated (cut) into two by the Appellant. The Appellant made cuts to the structure to try to achieve compliance with the ABC 2006 by making two smaller structures less than 10 m² each so that a permit would not be required. Clause 1.1.1.1.(5)(f) of Division A of the ABC 2006 states that the ABC 2006 does not apply to an accessory *building* not greater than 10 m² in *building area* that does not create a hazard.
18. The diagram on page six of *Exhibit 1 – Appellant* provides that the Appellant plans to have the garden divided into three sections. Each section is less than 10 m². Sections one and three are intended to become accessory buildings less than 10 m² each and section two is intended to be an area that separates the two accessory buildings. The entire garden under the greenhouse structure is less than 30 m².
19. The Appellant's position is that the saw cuts to the structure separates the structure and causes the structure to become two accessory buildings.
20. The Appeal Panel asked the Appellant if a discussion occurred with the Respondent about separating the structure into two accessory buildings. The Appellant indicated that it did not occur and that the Respondent never gave the Appellant an opportunity to discuss it.
21. When asked by the Appeal Panel about the saw cuts the Appellant indicated that if the Appeal Panel wanted the separation to be more the Appellant would make further cuts to the structure.
22. The Appellant stated that Respondent did not inspect the structure on February 6, 2013.

The Appeal Panel heard from the Respondent:

23. The Respondent's representative, an SCO, indicated that he received a complaint about the Appellant's greenhouse structure and went to investigate the building on July 16, 2012. At this time pictures were taken of a structure alongside the garage and of a dome-shaped greenhouse.
24. The Appellant constructed a dome-shaped greenhouse and a fenced walkway. A building permit was not obtained for the construction of either structure.

25. The site was inspected as a complaint was received that a greenhouse was being built without permit.
26. If the Appellant had obtained a permit, plans examination would have reviewed the plans and advised the Appellant of any non-compliance with the ABC 2006.
27. It appears that the Appellant has built a fenced walkway with the intent to cover it to form a covered walkway from the house to the greenhouse. The walkway appears to be attached to the greenhouse.
28. The building design is not a pre-manufactured structure.
29. The Appellant was advised on more than one occasion to obtain a building permit.
30. At the inspection on July 16, 2012, the Appellant agreed to stop work and get a building permit for the greenhouse. The Appellant was advised to get a permit by July 24, 2012.
31. Sometime after July 16, 2012, the Respondent heard from the Complainant that the Appellant was still building the greenhouse.
32. At a later visit to the Appellant's property it appeared that the Appellant was still trying to construct a covered walkway.
33. On July 19, 2012, the Respondent returned to the Appellant's home as a permit had not yet been applied for. At this meeting the Respondent and Appellant agreed that if the work on the side of the garage was removed and if the greenhouse was not greater than 10 m² then a permit would not be required for the greenhouse.
34. After the meeting on July 19, 2012, the Appellant applied for a building permit to change a window to a door in the garage (July 24, 2012) and a permit to install a roof to be supported off the garage wall (July 30, 2012).
35. In a follow-up phone call on August 27, 2012, the Respondent asked the Appellant when a building permit for the greenhouse would be obtained. The Appellant indicated, "Sometime this year". The Appellant was told to get one by September 7, 2012.
36. In a phone call on September 10, 2012, the Appellant advised that the greenhouse would be built in compliance with ABC 2006 and would not exceed 10m².
37. On February 6, 2013, the site was inspected and new pictures were taken.
38. On February 19, 2013, the Order was issued.
39. At the Appellant's property on March 5, 2013, the Respondent observed that the structure had been cut and that it appeared that the structure started to fall down because of the cuts.

40. The Appeal Panel asked the Respondent if there were any ABC 2006 code requirements for a limiting distance between two accessory buildings. The Respondent indicated that the Municipal Bylaw requires a 1 metre limiting distance and that the ABC 2006 indicates that the accessory building cannot be greater than 10 m² in building area.
41. The Appeal Panel asked that Respondent about the second reference of an accessory building in paragraph #3 of the Respondent's order, the Respondent indicated the first reference is the greenhouse and the second reference is the covered walkway.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel finds the following:

42. The Appeal Panel finds that the Appellant designed and constructed a structure intended to be one accessory building covered with polyethylene and/or netting.
43. The Appeal Panel finds that to comply with the ABC 2006, the Appellant requires a permit for the accessory buildings as they are greater than 10 m² and currently in an unsafe condition.
44. As presented by both the Appellant and Respondent, the accessory building has been altered by the Appellant in an attempt to comply with the requirements of clause 1.1.1.1.(5) (f) of Division A of the ABC 2006. The Appeal Panel finds that the Appellant's alterations attempt to separate the greenhouse structure into two stand-alone accessory buildings, may have rendered the accessory building to be unsafe. The saw cuts have affected the structural integrity of the building.
45. Further, the Appeal Panel finds that the alterations made by the Appellant do not cause the greenhouse structure to be two separate accessory buildings. There is no clear separation; the two sections, one and three, are attached together at the foundation and the walkway enclosure appears to be braced to the greenhouse structure. *Exhibit 1 – Appellant, Picture 1.*
46. The Appeal Panel finds that an inspection was conducted at the Appellant's property by the Respondent on or about February 6, 2013. The photographs provided by the Respondent are dated February 6, 2013. The SCO indicated in testimony and on page 2 of *The Respondent's Statement* that pictures were taken of the site and structure from the neighbouring property. Regardless of the location from which the photographs were taken, there are photographs of the Appellant's building and yard and the automatic dating on the photographs indicates February 6, 2013. In comparing the Respondent's photographs dated February 6, 2013 to photographs presented by the Appellant the Appeal Panel finds that the photographs are of the same structures.
47. In interpreting the *Safety Codes Act* and the ABC 2006, the legislative objective must be borne in mind. The object of the legislation is to address safety. With this overall objective in mind, the Appeal Panel finds that the Appellant's efforts to reduce the building area of the accessory building area to less than 10 m² by cutting separations into the structure may have created an

unsafe condition. The structure is a self-supporting geo design and cutting into the structure affects the integrity of the structure.

48. With regards to the Appellant's request for commentary from the Appeal Panel in the questions on the Appellant's "Opinion Sheet", (Exhibit #1 – Appellant, page 17) the Appeal Panel does not provide commentary through an opinion sheet. In accordance with Section 52 of the *Safety Codes Act* the Appeal Panel may confirm, revoke or vary an order appealed to it, and the form of decision of this Appeal Panel is an Order.

Dated at Edmonton, Alberta this 11th day of June 2013

Chair, Building Technical Council Appeal Panel