



***SAFETY CODES COUNCIL***

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**COUNCIL ORDER No. 0015439**

**BEFORE THE BUILDING TECHNICAL COUNCIL  
On July 30, 2014**

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

**AND IN THE MATTER OF** the Order dated May 23, 2014 issued by an Accredited Municipality (the Respondent) to the Property Owners' and a Home Rental Agency (the Appellants').

**UPON REVIEWING** the Order **AND UPON HEARING** the Appellants' and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **VARIED**.

**FROM:**

You are hereby ordered to:

Vacate the dwelling located on the property by no later than June 20, 2014,

AND

- To ensure no person occupies the dwelling located on the property until such time as the site has been deemed safe, AND
- To provide ALL of the following information immediately such that your Building Permit can be issued;

Item 1

As the work was done without permits, please provide a real property report to verify the exact size and location of the retaining structure.

Item 2

The information provided is inadequate to confirm compliance with the Alberta Building Code requirements. Please provide a detailed slope stability study prepared by a qualified geotechnical engineer. Due to past history of bank subsidence on adjacent lots, this report must be peer reviewed by a consultant with extensive knowledge of this site.

Item 3

Please have your geotechnical consultant confirm that they will provide on site review of any additional site work to confirm that the inferences made in the slope stability study hold true, and verify that they will provide any changes to this office.

Item 4

As the retaining structure was installed prior to an appropriate geotechnical review being done, please provide in situ testing report of the existing structure by a qualified structural engineer.

Item 5

Please provide drawings of the existing structure and any required buttressing prepared by a qualified structural engineer, to confirm compliance with all these requirements.

**TO:**

You are hereby ordered to:

1. Continue to provide a caution tape barrier at a suitable distance, determined by the Safety Codes Officer, back from the edge of the retaining structure so that the area retained is not used and does not become a potential danger to persons in the yard areas adjacent to the retaining structure, until such time as a valid Building Permit has been completed AND
2. Provide ALL of the following information by December 1, 2014 such that your building permit may be issued:

Item 1

As the work was done without permits, please provide a real property report to verify the exact size and location of the retaining structure.

Item 2

The information provided is inadequate to confirm compliance with the Alberta Building Code requirements. Please provide a detailed slope stability study prepared by a qualified geotechnical engineer. Due to past history of bank subsidence on adjacent lots, this report must be peer reviewed by a consultant with extensive knowledge of this site.

Item 3

Please have your geotechnical consultant confirm that they will provide on-site review of any additional site work to confirm that the inferences made in the slope stability study hold true, and verify that they will provide any changes to this office.

Item 4

As the retaining structure was installed prior to an appropriate geotechnical review being done, please provide in situ testing report of the existing structure by a qualified structural engineer.

Item 5

Please provide drawings of the existing structure and any required buttressing prepared by a qualified structural engineer, to confirm compliance with all these requirements.

**Issue:**

1. The Appeal concerns the construction of a retaining structure on a top of bank site, existing without a building permit and the continued occupancy of the adjacent dwelling on the same site.
2. The issues on appeal are:
  - a) Whether imminent danger exists requiring the tenants to vacate the adjacent dwelling;
  - b) Whether the requirements for a building permit application were met.

**Appearances, and Preliminary, Evidentiary or Procedural Matters:**

3. Appearing for the Appellants', the Appeal Panel heard from two representatives of the home rental agency and from an engineering company.
4. Appearing for the Respondent, the Appeal Panel heard from a Building Safety Codes Officer, from the Accredited Municipality.
5. At the commencement of the hearing, the Appellants' and Respondent confirmed that there were no objections to any members of the Appeal Panel, and that the Safety Codes Council (Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
6. The Chair then explained the process to be followed in hearing this appeal, and read out a list of the written material before the panel, consisting of the documents listed below in The Record, paragraph 8 as items a) to g) in the Record. The Appellants' and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.
7. At the beginning of the Appellants' presentation, the Appellants' presented a new document for consideration by the Appeal Panel. The document was a paper copy of a power point presentation that the Appellants' wished to present. The document was shown to the Respondent. After reviewing the submission the Respondent indicated that there was no objection to the document being provided to the Appeal Panel but indicated that the year 2014 was present on some of the page headings and as some of the dates were into the future and had not yet occurred that likely there was an error. (Pages 64, 68, 69, 70, and 71). The Appellants' acknowledged the dates were in error and that the correct dates would be identified during the presentation. The Appeal Panel Chair accepted into the Record the submission marked as Hearing Exhibit 1 – Appellant.

## **The Record:**

8. The Appeal Panel considered, or had available for reference, the following documentation:
  - a) Copy of Notice of Appeal dated June 12, 2014 (pages 1 to 6)
  - b) Acknowledgement Letter dated June 17, 2014 (page 7)
  - c) Stay Letter dated June 19, 2014 (page 8)
  - d) Copy of the Respondent's order dated May 23, 2014 (pages 9 to 16)
  - e) Appeal Hearing Brief Preparation Guide (page 17)
  - f) Written Notification of Hearing dated June 26, 2014 (pages 18 & 19)
  - g) "Appeal Hearing Brief" from the Appellant consisting of 7 tabs (pages 20 to 50)
  - h) Hearing Exhibit 1 – Appellant: power point presentation (pages 51 to 78)

## **Provisions of the Safety Codes Act:**

9. The Safety Codes 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.

### Part 5 Orders, Appeals

#### 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 Safety Codes Act Building Code Regulation**

10. Code in Force
  1. The *Alberta Building Code 2006*, as established by the Safety Codes Council and published by the National Research Council of Canada, is declared in force with respect to

buildings, with the variations set out in the Schedule.

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

11. The Alberta Building Code 2006 Division B thereto provides, *inter alia*:

Division B

Part 4 Structural Design

4.2.2.1. Subsurface Investigation

1) A *subsurface investigation*, including *groundwater* conditions, shall be carried out by or under the direction of a *professional engineer* having knowledge and experience in planning and executing such investigations to a degree appropriate for the *building* and its use, the ground and the surrounding site conditions. (See Appendix A.)

4.2.2.3. Field Review

1) A field review shall be carried out by the *designer* or by another suitably qualified person to ascertain that the subsurface conditions are consistent with the design and that construction is carried out in accordance with the design and good engineering practice. (See Appendix A.)

4.2.4.1. Design Basis

1) The design of *foundations*, *excavations* and *soil-* and *rock-*retaining structures shall be based on a *subsurface investigation* carried out in conformance with the requirements of this Section, and on any of the following, as appropriate:

- a) application of generally accepted geotechnical and civil engineering principles by a *professional engineer* especially qualified in this field of *work*, as provided in the Section and other Sections of Part 4,
- b) established local practice, where such practice includes successful experience both with *soils* and *rocks* of similar type and condition and with a foundation or *excavation* of similar type, construction method, size and depth, or
- c) in situ testing of *foundation units*, such as the load testing of *piles*, anchors or footings, carried out by a person competent in this field of *work*.

(See Appendix A.)

2) The *foundations* of a *building* shall be capable of resisting all the loads stipulated in Section 4.1., in accordance with limit states design in Subsection 4.1.3.

3) For the purpose of the application of the load combinations given in Table 4.1.3.2., the geotechnical components of loads and the factored geotechnical resistances at ULS shall be determined by a suitably qualified and experienced *professional engineer*. (See Appendix A)

4) Geotechnical components of service loads and geotechnical reactions for SLS shall be determined by a suitably qualified and experienced *professional engineer*.

5) The foundation of a building shall be designed to satisfy SLS requirements within the limits that the building is designed to accommodate, including total settlement and differential settlement, heave, lateral movement, tilt or rotation. (See Appendix A)

Table 4.1.3.2

Load Combinations for Ultimate Limit States

Forming Part of Sentence 4.1.3.2.(2)

Case	Load Combination <sup>(1)</sup>	
	Principal Loads	Companion Loads <sup>(2)</sup>
1	1.4D	
2	(1.25D <sup>(3)</sup> or 0.9D <sup>(4)</sup> ) +	0.5S <sup>(6)</sup> or 0.4W
3	1.5L <sup>(5)</sup>	0.5L <sup>(6)(7)</sup> or 0.4W
4	(1.25D <sup>(3)</sup> or 0.9D <sup>(4)</sup> ) + 1.5S	0.5L <sup>(7)</sup> or 0.5S
5	(1.25D <sup>(3)</sup> or 0.9D <sup>(4)</sup> ) + 1.4W 1.0D <sup>(4)</sup> + 1.0E <sup>(8)</sup>	0.5L <sup>(6)(7)</sup> + 0.25S <sup>(6)</sup>

12. The Alberta Building Code 2006 Division C thereto provides, *inter alia*:

Division C

Part 2 Administrative Provisions

2.2.2.2. Site Plans

1) If requested by the *authority having jurisdiction*, the *owner* shall submit an up-to-date plan of survey or real property report, prepared by a registered Alberta Land Surveyor, containing sufficient information regarding the site and the location of the *building*

- a) to establish before construction starts that all requirements of this Code in relation to the information will be complied with, and
- b) to verify upon completion of the *work* that all such requirements have been complied with.

2.2.14. Unsafe Condition

2.2.14.1. Correcting an Unsafe Condition

3) If immediate measures must be taken to avoid an imminent danger of fire or risk of accident, the *authority having jurisdiction* may take any action deemed necessary to reduce the danger of fire or risk of accident, without notice, and at the expense of the *owner*.

**Position of the Parties**

*Appellant*

*From the Appellants' submissions and testimony:*

13. When the Appellants' purchased the property they were advised that a riverbank movement association oversees the shifting of the bank. The association limits its purview to the overlay if there are any issues. If an owner wants to do something to insure the stability of their own property, the riverbank movement association does not get involved in that and the owner is on their own to attend to it.

14. A few years ago owners in the area put together four to five million dollars to attend to riverbank movement in the area.
15. There are four or five properties in the area that are sitting over the riverbank.
16. Another neighbour has a caveat on their own property that in order to remain in the dwelling, they must have an annual engineering report done.
17. An adjacent property was slowly going into the riverbank and the Appellants' did not want that to happen to their property.
18. The Appellants' put in a retaining structure on the property in September 2013.
19. The Appellants' did not submit drawings of the retaining structure to the Respondent or to the Appeal Panel.
20. Through questions from the Appeal Panel, the Appellants' indicated that the retaining structure was designed with help of a civil engineer who is a family member and is registered as an engineer.
21. The Appellants' indicated that the retaining structure has 16 feet of rebar, Pex pipes providing drainage through the structure, a drainage layer of a type of sand mix underneath, and that they are satisfied that the work was done well.
22. The Appellants' indicated that pictures were taken of the retaining structure while it was being built. The Appellants' did not provide or submit the pictures to the Appeal Panel.
23. The Appellants' indicated that the property was not safe prior to the installation of the retaining structure. Since purchasing the property and prior to the installation, eight feet of the property dropped.
24. The Appellants' advised that the Safety Codes Officer first noticed the retaining structure while canoeing the river.
25. Following the siting by the Safety Codes Officer, the Appellants' approached the Respondent to get a building permit for the retaining structure on the property. The Appellants' advised the Appeal Panel that they were told by the Respondent that building permits would not be issued to any properties on the riverbank.
26. The Appellants' did not receive a letter or other documentation stating that the Respondent would not issue building permits to properties on the riverbank.
27. On October 1, 2013, the Appellants' were ordered by the Respondent to cease the construction of the retaining structure.

28. On October 26, 2013, an engineering company provided an engineering property inspection report to the Appellants’.
29. On October 29, 2013 the Appellants’ submitted an application to the Respondent for a Building Permit.
30. On November 20, 2013 the Respondent sent a letter to the Appellants’ requesting a geotechnical report.
31. The Appellants’ provided submissions and testimony about the efforts they have made to secure a professional engineer to undertake a geotechnical report. They contacted several engineering firms. The evidence presented by the Appellants’ indicates that the Appellants’ began contacting engineers in October 2013, and have continued to do so up to July 2014. (The Record, paragraph 8, item g), page 42 of the record)
32. In December 2013 the Appellants’ understood that they had secured the services of an engineering company and expected that as soon as weather allowed that the geotechnical report would be done. In the spring of 2014, the Appellants’ discovered that the professional engineer they were previously in contact with had left the engineering company. The Appellants’ continued to contact the engineering company but were unsuccessful in getting another engineer to undertake a geotechnical report for them.
33. The Appellants’ further testified that since filing the appeal that they have located the engineer that was formerly with the engineering company and that the Appellants’ plan to work with this engineer to get the geotechnical report.
34. The Appeal Panel heard from an engineer of an engineering company who indicated that:
  - a) He is a civil engineer
  - b) He was asked to look at the dwelling and retaining structure after it was built
  - c) The dwelling on the property is stable and in no imminent danger.
  - d) The retaining structure has not bulged or cracked.
  - e) The dwelling is stable and does not show any signs of stress.
  - f) The retaining structure as an entity has not moved down the riverbank
  - g) He can see no reasons that the existing retaining structure will slip but recommends that the owner engage a specialist to install ground anchors as outlined in his engineering property inspection report (The Record, paragraph 8, item g), page 27 of the record), and to install drainage holes in the existing retaining structure.
  - h) These recommendations are similar to work that was done to secure a Conference Centre within the municipality and houses on a riverbank in a neighbouring municipality.
35. The retaining structure was last examined professionally in October 2013. The Appellants’ examined it on July 28, 2014 and noted that there is no evidence of the structure shifting, nor are there any cracks in the structure.
36. The Appellants’ intention is to make the property safe and have not ignored the requests made by the Respondent but rather have made great attempts to get the geotechnical report.



37. The Appellants' are concerned that the Respondent will not issue a building permit even if the Appellants' satisfy all of the building permit application requirements.

*Respondent*

*From the Safety Codes Officers' testimony:*

38. The Safety Codes Officer asserted that it was an abundance of caution that after eight months of negotiations without permit application requirements in place that there came a point of caution for the occupants that they should evacuate the dwelling.
39. As stated by the Appellants' there was danger to the property when it was bought.
40. In response to the assertion that the Respondent will not issue permits for riverbank properties, the Safety Codes Officer stated that he cannot speak to the Development department, but that there is no notes in the Safety Codes Officer's files to indicate that the Appellants' were told that the Respondent would not issue a building permit to a riverbank property.
41. The Safety Codes Officer's Order was issued because there was reason to believe there was danger on the site and further that the Appellants' did not satisfy the requirements of their building permit application; they have not submitted the required reports.
42. When the Order was issued, the Respondent did not have the engineer's letter indicating that there is no imminent danger to the dwelling. This letter was provided after the Order.
43. The Respondent did receive an application for Building Permit prior to the Order. However, several months went by and information required to complete the permit was not received.
44. All five building permit requirements listed on the Order remain outstanding.
45. The retaining structure was built without required permits.

**Reasons for Decision (Findings of Fact and Law):**

The Appeal Panel makes the following findings:

46. The Appeal Panel restricts its decision within the confines of the authority of the *Safety Codes Act* and disregards any evidence or issues stated pertaining to development under the *Municipal Government Act*. The Appeal Panel finds the authority of *Safety Codes Act* and the jurisdiction of the Appeal Panel are concerned with permits issued under the *Safety Codes Act*, not permits considered under other legislation.
47. The Appeal Panel in considering the testimony and evidence provided regarding the building permit application process finds that the Appellants' have not satisfied the requirements of the building permit application.

48. The Appeal Panel accepts the evidence submitted by the Appellants' from the engineering company (The Record, paragraph 8, item g), page 36 of the record), that no imminent danger exists to the dwelling and the residents, and thus the Appeal Panel varies the Order to remove the directive to evacuate the dwelling and directs that the Appellants' maintain warning barriers adjacent to the retaining structure until a valid Building Permit has been completed.
49. The Appeal Panel accepts the evidence submitted by the Appellants' from the engineering company (The Record, paragraph 8, item g), page 36 of the record), that it is possible to make good the existing retaining structure without the need for replacement of the structure.
50. The Appeal Panel accepts the testimony of the Appellants' that they have tried to acquire a geotechnical report and in determining the date of compliance of the Appeal Panel's Order, have allowed a reasonable time provision for the Appellants' to satisfy the requirements of the building permit application as listed on the Order.

Dated at Edmonton, Alberta this 8th day of August 2014

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Chair, Building Technical Council Appeal Panel