



COUNCIL ORDER No. 0015468

**BEFORE THE BUILDING SUB-COUNCIL
On September 15, 2016**

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

AND IN THE MATTER OF the Order dated June 13, 2016 issued by the Accredited Municipality (the Respondent) against the Architecture Engineering Company (the Appellant).

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

FROM:

1. **YOU ARE HEREBY ORDERED** to obtain the necessary permits immediately.

TO:

1. **YOU ARE HEREBY ORDERED** to obtain the necessary permits on or before **November 1, 2016**.

Issue:

1. The appeal concerns the construction of a Crane-way without the necessary building permit.

Appearances, and Preliminary, Evidentiary or Procedural Matters:

1. Appearing for the Appellants, the Appeal Panel heard from the representatives from the Architecture Engineering Company.
2. Appearing for the Respondent, the Appeal Panel heard from the Safety Codes Officer with the Accredited Municipality.
3. Attending as observers were several individuals for process education purposes. A safety expert from the Accredited Municipality attended as Technical Advisor.
4. At the commencement of the hearing, the Appellant and Respondent confirmed that there were no objections to any members of the hearing panel, and that the Safety Codes Council

(Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.

5. 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 6 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.

The Record:

6. The Appeal Panel considered, or had available for reference, the following documentation:
 - a) Notice of Appeal (pages 1 to 17)
 - b) Request for a Stay of Order (page 18)
 - c) Acknowledgement Letter dated June 24, 2016 (page 19)
 - d) Stay of the Order Letter dated June 28, 2016 (pages 20 to 21)
 - e) Appeal Hearing Brief Preparation Guide (page 22)
 - f) Written Notification of Hearing (pages 23 to 24)
 - g) Written Brief of the Appellant (pages 50 to 63)

Provisions of the Safety Codes Act:

7. The *Safety Codes Act* (S-1, RSA 2000), as amended provides, *inter alia*:

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 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 177/2007, as amended

8. 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):

9. The Alberta Building Code 2006 provides, *inter alia*:

Division A

Part 1 Compliance

Section 1.1. General

1.1.1.1. Application of this Code

1) This Code applies to any one or more of the following:

- a) the design of a *new building*,
- b) the construction of a *new building*,
- c) the *occupancy* of any *building*,
- d) the change in *occupancy* of any *building*,
- e) an *alteration* to any *building*,
- f) an addition to any *building*,
- g) the demolition of any *building*,
- h) the reconstruction of any *building* that has been damaged by fire, earthquake or other cause,
- i) the correction of an *unsafe condition* in or about any *building* or property,
- j) all parts of any *building* affected by a change in *occupancy*,
- k) the *work* necessary to ensure safety in parts of any *building* that
 - i. remain after demolition, or
 - ii. are affected by, but that are not directly involved in, additions or *alterations*,
- l) the installation, replacement, or *alteration* of materials regulated by this Code,
- m) the installation, replacement, or *alteration* of equipment regulated by this Code,
- n) the *work* necessary to ensure safety in a relocated *building* during and after relocation, and
- o) safety during construction of a *project*, including protection of the public and neighbouring properties.

5) This Code does not apply to

- a) a building of low human occupancy associated with the operation of the farm or acreage on which it is located, where the building is used for the
 - i. housing of livestock,
 - ii. storage or maintenance of equipment, or
 - iii. storage of materials or produce,
- b) utility towers and poles, television and radio or other communications antennas or towers, except that loads resulting from those located on or attached to a *building* shall be included in the *building* design,

- c) water conveyance and control structures, except for an associated *building* provided for *occupancy*,
- d) highway and railway bridges,
- e) mechanical process equipment and appliances in an *industrial occupancy* that are not required for *building* services and are not specifically regulated by this Code,
- f) an accessory *building* not greater than 10 m² in *building area* that does not create a hazard, or
- g) the category of elevating devices and amusement rides regulated under other regulations made pursuant to the Safety Codes Act, except for ramps, stairs, platforms and associated *buildings*.

Section 1.4 Terms and Abbreviations

1.4.1. Definition of Words and Phrases

1.4.1.2. Defined Terms

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

Division C

Part 2 Administrative Provisions

2.2.10. Permits

2.2.10.1. General

- 1) A *permit* is required for the construction, *alteration*, installation, repair, relocation, demolition, or change in *occupancy* or any *work* to which this Code applies in accordance with regulations made pursuant to the Safety Codes Act.
- 2) An *owner* shall ensure that all *permits* required in connection with proposed *work* are obtained before starting the *work* to which they relate.

Position of the Parties

Appellant

From the Appellant's submissions and testimony the Appellant's position may be summarized as follows:

10. The project in question consists of seven industrial buildings in the Accredited Municipality's jurisdictions, built as vacant spec buildings. Each of the buildings are now leased to tenants and all were permitted.
11. Building F is the unit in question and Tenant improvements within the space were conducted under an approved building permit.
12. A Development Permit for the Crane-way in question was applied for on January 21, 2014 and released on July 30, 2014. Crane-way construction was completed in early August 2014 and Occupancy granted on August 27, 2014. The Crane-way was present and ready for operation at the time.
13. A "Field Officer" visited the site as part of the occupancy permit process and no objections were noted.

14. Only later (March 15, 2016), was the Appellant advised of the need for a building permit for the Crane-way. The Appellant advised the City they would not comply with the permit request; therefore the City issued an Order. An immediate appeal was submitted by the appellant.
15. The Appellant does not believe a building permit is required for the Crane-way.
16. To their knowledge, the manufacturer of the Crane-way has received CSA approval for the structure.
17. The Appellant believes the Crane-way is no different from a fork-lift or any other equipment for off-loading which should be considered “process equipment”.
18. The Crane-way in question is free-standing, set on engineered pilings, and completely isolated from the building (Building F) itself.
19. The Appellant believes the Accredited Municipality’s requirement that they obtain a building permit is a vague and subjective misinterpretation of the definition of “*building*” as set out in the Alberta Building Code (ABC).
20. The Appellant acknowledges the applicability of the ABC to all *buildings* described in Article 1.1.1.1. of the ABC, but does not believe the Crane-way satisfies the definition.
21. The ABC defines a *building* as “any structure used or intended for supporting or sheltering any use or *occupancy*.”
22. While the Respondent has expressed the opinion that the definition of a *building* can be limited to include “any structure used or intended for supporting...any use...”, the Appellant believes the structure is the use and not independent of the use.
23. The ABC defines *occupancy* as “the use or intended use of a building or part thereof for the shelter or support of persons, animals or property”.
24. Article 1.1.1.1. (5) (e) acknowledges the code is not applicable to “mechanical process equipment and appliances in an industrial *occupancy* that are not required for building services and are not specifically regulated by the ABC”. The Appellant believes the Crane-way is “mechanical process equipment” and therefore the ABC does not apply.
25. Article 1.1.1.1 (5) (g) notes, the ABC does not apply to “the category of elevating devices and amusement rides regulated under other regulations made pursuant to the SCA”.
26. The Appellant is concerned that nearly two years after occupancy was granted, the requirement for a building permit for the Crane-way will mean the client will have to stop operations while the matter is resolved.
27. The Panel Members were referred to the photographs on pages 54 and 57 of the Appellant’s written submission showing the Crane-way as free-standing and not attached to the adjacent building.
28. The Appellant also directed the Panel Members’ attention to photographs on page 58 of their written submission showing Crane-ways at other locations that did not, to their knowledge, require a building permit.
29. In response to questions from the Appeal Panel, the Appellant said they did not know off-hand who manufactured the Crane-way or to what Standard but could obtain this information as necessary.
30. The Appellant said that while they had hoped to obtain a ruling from Alberta Municipal Affairs (AMA) on this matter, they will await the outcome of the appeal hearing before deciding further on this. The Appeal Panel confirmed their decision was applicable only to this project and not precedent setting.

31. The Appellant said that to their knowledge, the 2006 ABC was in force when the Crane-way was installed but did not know whether the 2014 ABC would apply to the request for a building permit.
32. Referring to the e-mail exchange between the Accredited Municipality and Safety Services in March/April 2014 on pages 9 and 10 of the Appellant's written submission and concluding with the opinion that "all three scenarios would require a building permit," the Appeal Panel asked the Technical Advisor if that was AMA's official position. The Technical Advisor said that while he agreed with the opinion expressed, it was not applicable to other situations and the Authority Having Jurisdiction (AHJ) has the authority to disregard it.
33. In concluding their submission the Appellant said a Crane-way is not a *building* and therefore specifically excluded from the ABC.
34. The Accredited Municipality had ample time to bring this matter up in 2014 and did not do so, and there are several examples, including those contained in their written submission, of similar structures constructed in Edmonton and throughout the province which have not required a building permit.
35. In response to a question from the Appeal Panel, the Technical Advisor said he was not aware of any sort of statute of limitations which would apply to the need for a building permit.

Respondent

From Safety Codes Officer's submissions and testimony, the Respondent's position may be summarized as follows:

36. The Respondent said that while he does not agree with the Appellant that the Accredited Municipality's logic is "flawed", he agrees the matter before the Appeal Panel is confusing, and that the Accredited Municipality would appreciate clarification as well.
37. The respondent acknowledged that historically there were examples of building permits being required and not required in other similar situations.
38. Both the Appellant and Respondent agreed with the decision to issue an Order to allow for an appeal to get clarification on this matter.
39. The Respondent remains of the opinion expressed in the e-mail exchange between the Accredited Municipality and Safety Services that the definition of *building* in the ABC can be interpreted to include, "any structure used or intended for supporting...any use...", and is not limited to "sheltering or occupancy."
40. Regarding the Appellant's submission that Article 1.1.1.1. (5) (e) is applicable to the matter before the Appeal Panel, the Respondent pointed out that this Article refers to "mechanical process equipment" but only when such equipment is "**in** (emphasis the Respondent's) an industrial *occupancy*" which is not the case here.
41. In response to a question from the Appeal Panel, the Respondent was not able to say why there was a nearly two year delay between when the Crane-way was constructed and the need for a building permit identified. Development Permits expire after two years and that may have been the trigger that prompted a review in March 2016.
42. The Respondent said he had no knowledge of whether there were inspection reports on the Accredited Municipality's files which included comments on the need (or not) for a building permit prior to March 2016.

43. The Respondent acknowledged that while traditionally a *building* is considered a structure with walls and a roof, Safety Services agrees that a Crane-way outside of a *building* and structurally independent of the *building*, can itself be considered a *building* even when it does not have walls and a roof.
44. The Respondent said if the Appeal Panel determines that a building permit is required for the Crane-way, the Accredited Municipality would likely require a site plan, structural drawings and a geo-technical assessment to consider any application.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

45. The Appeal Panel decision is limited to the crane supporting structure (Crane-way) only, and does not have application to the movable overhead crane apparatus which travels along the Crane-way.
46. Any reference to Elevating Devices in Article 1.1.1.1.(5) (g) is not applicable to this matter as a Crane-way is not included in the definition of an Elevating Device as prescribed in the Elevating Devices, Passenger Ropeways and Amusement Rides Administration Regulation 76/2011.
47. The Appeal Panel accepts, that while the crane itself may be considered “mechanical process equipment”, the stationary Crane-way (including piles, columns and running beams) should not be so considered.
48. The Appeal Panel understands there is no provision in the SCA or ABC that would limit the time period within which the AHJ could ask that a building permit be applied for, and as such the Appellant’s concern with the nearly two year delay is not a factor in the Appeal Panel’s decision.
49. The Appeal Panel accepts the Respondent’s interpretation of the definition of *building* found in the ABC, Division A, to include “a structure used or intended for supporting...any use...” As such, the Appeal Panel is satisfied the Crane-way in question is considered a *building*.
50. Since the ABC applies to the design and construction of new *buildings*, a building permit is required.
51. The Appeal Panel acknowledges that these code provisions may have been inconsistently applied in the past, and further clarification from Alberta Municipal Affairs to code users in the province may be useful.

Dated at Edmonton, Alberta this 29th day of September, 2016

Chair, Building Technical Council Appeal Panel