



SAFETY CODES COUNCIL

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COUNCIL ORDER No. 0015416

ORDER

BEFORE THE BUILDING TECHNICAL COUNCIL

On May 23, 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 January 30, 2012 issued by an Accredited Municipality (Respondent) against a building owner (Appellant).

UPON REVIEWING the Order **AND UPON REVIEWING** the written submissions made on behalf of the Appellant, and the Respondent; **AND UPON HEARING** oral submissions on behalf of the Respondent, **THIS COUNCIL ORDERS THAT** the Order is **Varied**.

From:

“You are hereby ordered to complete all items 1 through 12 as outlined in the attached Consulting Engineering Firm’s Engineering report dated January 16, 2012, conducted on December 7, 2011, or remove and rebuild the superstructure as recommended in item 13, within 60 days of receiving of this order (on or before March 30th, 2012).”

To:

“You are hereby ordered to complete items 1 through 12 as outlined in the Consulting Engineering Firm’s Engineering report dated January 16, 2012, or to remove and rebuild the superstructure as recommended in item 4.0 (13) of the engineering report, **on or before September 14, 2012.**”

Preliminary Matters:

1. In response to the Appellant’s March 27, 2012, notice of appeal, the Safety Codes Council arranged a hearing for May 23, 2012. The Appellant was sent written notification of appeal hearing by registered mail on May 2, 2012, of the hearing date and time, and was requested to

confirm, in writing, their attendance for the hearing. Having not received written confirmation of attendance, the Safety Codes Council Coordinator of Appeals sent an e-mail on May 18, 2012, to the e-mail address that the Appellant provided in their notice of appeal and requested that the Appellant contact the Safety Codes Council, further the Coordinator of Appeals phoned and left voice mail for the Appellant at the phone number provided by the Appellant on their notice of appeal, regarding the appeal hearing, also requesting the Appellant to contact the Safety Codes Council. The Appellant did not respond to the e-mail or phone call from the Coordinator of Appeals. On May 23, 2012, the Appellant did not appear at the hearing. The Appeal Panel heard the appeal on May 23, 2012. The Respondent attended the hearing.

2. At the Appeal Hearing the Respondent objected to the Safety Codes Council allowing the Appellant to appeal the Order as the Respondent positioned that the Appellant's notice of appeal was initiated beyond the 35 days after the date the order was served on the person. The Respondent advised that the Order was issued on January 30, 2012, and sent the Order by registered mail to the Appellant on the same day. On February 21, 2012, the registered mail package was returned to the Accredited Municipality marked unclaimed. The Respondent arranged for a peace officer to personally serve the Order at the home address of the Appellant and at the project location. By notice of appeal, the Safety Codes Council Coordinator of Appeals was advised by the Appellant that the date of service was February 21, 2012, which was within the 35 days allowed by the Safety Codes Act. The Safety Codes Council accepted the Appellant's notice of appeal.

Issue:

3. The Appeal concerns a building project.
4. The issues on appeal are:
 - (a) Is the construction of the project compliant with the Alberta Building Code 2006?
 - (b) Does the project include professional involvement compliant with Sentence 2.4.3.1.(1) of Division C of the Alberta Building Code 2006?
 - (c) Does an unsafe condition exist?

The Record:

5. The Appeal Panel considered, or had available for reference, the following documentation:
 - a. Letter dated May 2, 2012 from the Safety Codes Council Coordinator of Appeals to the Appellant providing notice of the appeal hearing.
 - b. Letter dated March 28, 2012 from the Building Technical Council to the Appellant granting a stay of the order.
 - c. Letter dated March 28, 2012 from the Safety Codes Council Coordinator of Appeals to the Appellant acknowledging receipt of the Appellant's notice of appeal.

- d. Letter dated Mar 27, 2012 from the Appellant to the Safety Codes Council Coordinator of Appeals providing notice of appeal and requesting a stay of the order.
- e. Ten photographs received Mar 27, 2012 from the Appellant to the Safety Codes Council Coordinator of Appeals.
- f. The Appellant's responses to the engineer's report
- g. A copy of the Accredited Municipality's Order dated January 30, 2012, with attached engineering report from a Consulting Engineering Firm.
- h. Drawings, numbered A-101 to A-111 submitted by the appellant.
 - i. A-101 Site Plan Scale: 3/16" = 1'0", issued for construction July 29 / 2009
 - ii. A-102 Foundation Floor Plate Plan, revised for construction July 29 / 2009
 - iii. A-103 Main Floor Plate Plan, revised for construction July 29 / 2009
 - iv. A-104 Second Floor Plate Plan, revised for construction July 29 / 2009
 - v. A-105 Third Floor Plate Plan, revised for construction July 29 / 2009
 - vi. A-106 Roof Plan, revised for construction July 29 / 2009
 - vii. A-107 Exterior Elevations, issued for construction July 29 / 2009
 - viii. A-108 Sections A and B Scale: 3/16" = 1'0", issued for construction July 29 / 2009
 - ix. A-109 Sections C and D Scale: 3/16" = 1'0", issued for construction July 29 / 2009
 - x. A-110 Section E/E Scale: 1/4" = 1'0", issued for construction July 29 / 2009
 - xi. A-111 Details, no revisions or notes
- i. Exhibit #1 Respondent – Appeal Brief for the Respondent, a 5-page submission and a multi-section coiled document with 11 sections containing copies of Orders, affidavits of service, registered mail statements, peace officer continuation report, correspondence concerning the project, permit information, status updates, engineer's report, and photographs.

6. The Appeal Panel considered all materials comprising the record of this proceeding. References in this decision to specific parts of the record are intended to assist the reader.

Position of the Parties

Appellant

7. The Appellant's position is that: *(taken from their notice of appeal letter)*

- (a) The building is safe.

- (b) The order and the engineer's report provide the impression that the structure is ready to fall over. The structure has lasted through windstorms and there is no visible shifting in the structure.
- (c) To complete all that has been said is wrong would be impossible. Most can be done but to replace all flooring and sheathing is excessive and not reasonable.

Respondent

8. The Respondent's position is that: *(taken from their Appeal Brief, Statement of Position)*

- (a) The Appellant's response to the 6 concerns with the condition of the Foundation and Exterior Site and 6 concerns with the condition with the Superstructure and Building Framing noted in the engineering report, deny or minimize the engineer's observations, rather than address how these concerns would or could be remedied as soon as possible.
- (b) The Appellant does not express any willingness to work with a structural engineer to ensure that the project can be built in a compliant manner given that:
 - i. the building has gone unenclosed and without heat for 3 winters
 - ii. the foundation is showing signs of shifting, including cracks in the foundation, rotating support beams, and misaligned teleposts; and
 - iii. the structural sheathing and joists have been exposed to the elements for an extended length of time and is showing signs of significant delamination, deterioration and lifting at several locations.
- (c) The Appellant's disregard for the development process and non-compliance with the conditions placed upon him, together with his history of not following his construction schedule indicates that he will not be able to carry out the remedial work required to correct the project in a timely fashion.

Legislation, Regulations, and Codes

9. The Safety Codes Act provides:
50(1) A person to whom an order is issued may, if the person objects to the contents of the order, appeal the order to the Council in accordance with the Council's bylaws within 35 days after the date the order was served on the person.
10. The Safety Codes Act Administrative Items Regulation provides:
5(1) An order issued, confirmed, revoked, or varied under the Act and a written notice required by the Act to be issued must be served
- (a) In the case of an individual,
 - i. by personal service
 - ii. by leaving it for the individual with a person apparently at least 18 years of age at he individual's current or most usual dwelling place,

- iii. by sending it by registered mail to the individual's last known address, or
- iv. by sending it by facsimile or other form of electronic transmission to the individual's last known facsimile number or electronic address, if there is a record of so sending it

11. The applicable code is the Alberta Building Code 2006 (ABC 2006). Permit applications and work relevant to this appeal occurred after the ABC 2006 came into force. The Alberta Building Code 2006 provides:

Division A

1.4.1.2. Defined Terms

Project means any construction, *alteration* or demolition operation

Division C

Part 2 Administrative Provisions

2.2. Administration

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*.
- 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*.

Section 2.4. Professional Design and Review

2.4.1. Application

2.4.1.1.

- 1) The requirements of Subsection 2.4.3. apply to an *owner* who applies for a *building permit* for a *building* that falls within the scope of Sentence 2.4.2.1.(3) or (4). (See Appendix A)

2.4.2. Professional Involvement

2.4.2.1.

- 1) If drawings or specifications are required to be imprinted with the seals or stamps of a *registered architect* or a *professional engineer*, the seals or stamps must be signed and dated by the respective professionals in accordance with the enactments that govern their professions.

- 2) Except as required in Sentence (8), architect and engineer seals and stamps are not required on plans or specifications for a *building*
 - b) classified as a *residential occupancy* that is
 - i) a single family dwelling, or
 - ii) a multiple family dwelling that contains 4 *dwelling units* or less,
- 3) Plans and specifications must be imprinted with the seals or stamps of either a registered architect, or one or more professional engineers qualified to engage in the appropriate combination of those branches of professional engineering that are applicable to building design and construction for a building that is
 - a) 3 *storeys* or less in *building height* and classified as a *residential occupancy*, containing at least 5 but not more than 20 *dwelling units* in a single site,
 - b) classified as an *industrial occupancy* and the *occupant load* is 28 m² per person or greater, or
 - c) classified for more than one *occupancy group*, if
 - i) the *major occupancy* of the *building* is industrial,
 - ii) the *occupant load* is 28 m² per person or greater, and
 - iii) any *occupancy* other than the *major occupancy* does not exceed 400 m² in *building area*.
- 4) For *buildings* other than those described in Sentences (2) and (3), the *building* plans and specifications must be imprinted with seals and stamps of both
 - a) a *registered architect* in the case of architectural design, and
 - b) one or more *professional engineers* qualified to engage in the appropriate combination of those branches of *professional engineering* that are applicable to *building* design and construction in the case of engineering design.
- 8) If the size or complexity of a *project* may give rise to special safety concerns, the *authority having jurisdiction* may require
 - a) that all or part of the plans and specifications of a *building* be imprinted with a stamp or seal affixed by a
 - i) *professional engineer* where *engineering work* is involved
 - ii) *registered architect* where *architectural work* is involved
 - iii) both a *professional engineer* and *registered architect*, and
 - b) that *field reviews* during construction of a *building* be performed by a
 - i) *professional engineer* where *engineering work* is involved,
 - ii) *registered architect* where *architectural work* is involved, or
 - iii) both a *professional engineer* and *registered architect*.

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
 - 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).

Findings of Fact:

12. The project is a 3-storey four-plex under construction. The project is to construct residences on storeys 1 & 2 and a common area with an exercise room on the 3rd storey.
13. The Appellant applied for a development permit for the project on May 5, 2008. The permit was approved by the Municipal Planning Commission on June 16, 2008, subject to 30 conditions. (The Record, Item 5(i), Tab 11)
14. On July 4, 2008, the Subdivision and Development Appeal Board (SDAB) received an appeal of the development permit. On July 31, 2008, the SDAB upheld the development permit with an additional 5 conditions. (The Record, Item 5(i), Tab 11)
15. A building permit was issued to the Appellant on August 27, 2008, with conditions. (The Record, Item 5(i), Tab 11)
16. On February 23, 2011, the Appellant submitted to the Respondent a revised construction schedule for the project. This Appellant's schedule indicated a completion of October 31, 2011.
17. On March 2, 2011, the Appellant requested a building permit extension of 8 months to October 31, 2011. The Respondent approved the extension to October 31, 2011, with 12 conditions. ((The Record, Item 5(i), Tab 11 – letter dated March 2, 2011 from the Respondent)
18. The Conditions of the Building Permit Extension were not met and on November 17, 2011, the Respondent issued an Order requiring the Appellant to submit a detailed Engineer's Report respecting the condition of the structural integrity due to 2 full seasons with no heating, and to enclose the building and maintain temperatures above freezing. The Appellant was ordered to satisfy the two directives on the Order by December 5, 2011. ((The Record, Item 5(i), Section 4)
19. The Respondent did not receive an Engineer's Report from the Appellant or any indication that the directives of the November 17, 2011 Order had been satisfied.
20. On December 5, 2011, the Respondent issued a letter advising that the Respondent would hire a structural engineer to conduct an inspection of the structural integrity of the project.
21. On December 7, 2011, the Appellant provided to the Respondent security information for the Respondent to access the project site.
22. On December 8, 2011, an engineer from a Consulting Engineering firm undertook an investigation of the project. The purpose of the investigation was to review the foundation and

superstructure of the building, to document the installations and construction deficiencies, assess the nature and extent of construction deficiencies, to assess the structural condition of the foundation and superstructure completed to date, review drawings for compliance and Code requirements, to review background information, documents and drawings, and to establish the scope of work required to correct construction deficiencies, and provide findings and recommendations.

23. The engineer issued the results of the investigation on January 16, 2012. The results identified: construction deficiencies in the foundation, exterior site, superstructure and building framing; construction is not adhering to plans submitted; and that the drawings submitted do not provide detail for HVAC, plumbing, electrical, lighting, sprinklering, stand pipe, and fire alarm systems. (The Record Item 5 (g))
24. The engineer's report indicated that the construction deficiencies noted in the superstructure are major and that consideration for the removal and rebuilding of the superstructure is warranted.
25. The Appellant provided written responses to the engineer's report regarding the foundation and exterior site, the superstructure and building framing, and the discussion of results and conclusions. (The Record Item 5(f))
26. There is no indication that the written comments provided by the Appellant regarding the findings of the engineer's report were provided by an engineer or someone who is qualified to provide comment as an engineer.
27. In presentation the Respondent noted that the plans submitted by the Appellant with the notice of appeal are not the same plans submitted by the Appellant at the time of applying for permits for the project. (The Record, Item 5(h)(i)thru(xi), and The Record, Item 5(i) Section 11)

Reasons for Decision:

28. The complexity of this project has given rise to special safety concerns and requires professional involvement. The Appeal Panel cannot be certain that the project will be safe for occupancy. The evidence provided indicates that the project is not safe and is not constructed in compliance with the ABC 2006. The engineering report provided indicates that the building is not structurally sound and is not constructed according to plan. There is no assurance that the manufactured products, used in the construction of the project, have been installed according to plan. The project was not completed within the time permitted, nor the extended time permitted. Manufactured engineered products such as floor and wall sheathing and roof and floor trusses have been exposed to elements and there is no indication that they remain structurally sound as a result of the impact of the elements.

29. An abandoned construction or a slow-progression construction site is a fire hazard. A plan for safety during construction was not submitted as evidence. It is unclear what is planned for addressing safety.
30. The Appeal Panel, in reviewing the Appellant's responses to the Engineer's Report, noted that there is no evidence to indicate that the Appellant is an engineer or that he is able to comment as an engineer with regards to ensuring that the construction of the project is structural sound. (The Record, Item 5(f))
31. The Appellant has not provided the required documents and drawings to the Respondent as a requirement of the conditions imposed when permits were issued for development and building. The submission of these documents is necessary to ensure that the plans are Code compliant and that the construction is undertaken according to plan.
32. The Appeal Panel finds that this project has exceeded the intentions and requirements of a Part 9 building. The structure is complex using manufactured engineered products and requires the involvement of professional engineering.

Dated at Edmonton, Alberta this 23rd day of July, 2012

Chair, Building Technical Council Appeal Panel