



SAFETY CODES COUNCIL

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COUNCIL ORDER No. 0015438

**BEFORE THE BUILDING TECHNICAL COUNCIL
On May 22, 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 November 19, 2013 issued by an Accredited Municipality (the Respondent) against a Home Owner (the Appellant).

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

ORDER:

1. FORTHWITH take action to ensure that no person or property is exposed to undue risk because of the aforesaid construction pursuant to Sentence 8.1.2.2.(1) of division B, Part 8 of the Alberta Building Code 2006, and
2. FORTHWITH obtain a valid and subsisting Demolition/Building Permit for the removal of all the aforesaid illegal construction and for the remediation of the house to original condition as per the Building Permit issued on August 19th 1980, on or before 16:00 hours on the 29th day of November 2013, AND
3. Remove all of the aforesaid illegal construction of the ADDITION the ENCLOSURE and the DECK mentioned in the above schedule by no later than 16:00 hours on the 31st day of January 2014.

Issue:

1. The Appeal concerns: an addition, a covered deck, and the enclosure of the covered deck (the “three additions”) constructed at a building. The construction projects exist without building permits or any other permits issued pursuant to the *Safety Codes Act*. A permit is required for the construction, alteration, installation, repair, relocation, demolition, or change in occupancy of any work to which the Building Code, Electrical Code or Gas Code applies in accordance with regulations made pursuant to the *Safety Codes Act*. The issue, pursuant to subsection 52 (2) (a) of the *Safety Codes Act* is whether the Order under appeal is and remains appropriate in these and all other circumstances as put before the

Appeal Panel, and should therefore be confirmed, or whether the Order should be varied or revoked.

2. The building to which the three additions are attached is a single-family residence of wood platform frame construction built in 1980.

Appearances, and Preliminary, Evidentiary or Procedural Matters:

3. Appearing for the Appellant, the Appeal Panel heard from the Appellant's representative who lives at the building in question.
4. Appearing for the Respondent, the Appeal Panel heard from the Building Safety Codes Officer, for the municipality and Legal Counsel, for the municipality.
5. At the commencement of the hearing, the Appellant and Respondent confirmed that there were no objections to any members of the hearing panel.
6. The Appeal Panel heard submissions from the Respondent and Appellant on two Preliminary Jurisdictional Issues raised by the Respondent, as stated in pages 89 and 90 of the Record. (The Record item 14). The Respondent asked:
 - A. Does the Appellant have a right to appeal an order issued against another person?
 - B. Has the appeal been filed on time?
7. With regard to Preliminary Jurisdictional Issue A, the Respondent indicated that after raising this preliminary issue in its Appeal Hearing Brief (The Record, item 16), the Appellant provided a General Power of Attorney (GPOA), effective November 1, 2013 from the home owner appointing the Appellant as Power of Attorney, in relation to "all matters relating to the municipal property (Appellant's Appeal Hearing Brief, Record item # 13, first four pages). The Respondent further stated that provided the Appellant confirms that the GPOA has not been revoked, the Respondent is prepared to accept that the representative can appeal the order issued to the home owner. The Appellant was asked to speak to the matter and in doing so stated that the GPOA is in effect and is not revoked. The Respondent accepted the testimony and withdrew any objection regarding Preliminary Jurisdictional Issue A which was therefore dismissed by the Chair.
8. With regard to Preliminary Jurisdictional Issue B, the Respondent indicated that the Safety Codes Council bylaw section 14.3 provides that a notice of appeal shall include the appropriate fee and given that the fee was received by the Council more than 35 days after the Order was served, the Respondent took the position that the appeal was not filed on time. For the convenience of all parties and the Appeal Panel, the Coordinator of Appeals read into the record section 14(3) of the Safety Codes Council Bylaw.

9. In response to the Respondent's testimony and submissions regarding Preliminary Jurisdictional Issue B, the Appellant referred to an e-mail exchange of December 24th, 2013 (The Record Item 13 pages following a letter dated September 05 2012 behind Tab 5), between the Appellant and the Coordinator of Appeals. The e-mail exchange provided proof that the Appellant had already sent a cheque for \$500 to the Safety Codes Council by registered mail and the Appellant offered to provide an electronic payment if necessary to ensure the fee arrived in time. In an e-mail response the Coordinator of Appeals advised that the cheque sent via registered mail is acceptable. Canada Post did not deliver the registered document on December 24th as expected. In investigation it was discovered that Canada Post advised that the Council had placed a hold on receiving mail. This was not the case; the Council did not place a hold on receiving mail. The Council was unable to investigate the matter further as the Appellant, as the client of Canada Post, was the only one who could request an investigation. Given the seasonal holidays, the Council office was closed for a few days. Canada Post delivered the cheque on January 2, 2014, as alluded to in a letter from the Coordinator of Appeals to the Appellant dated January 3, 2014 found at page 8 of the Record. (The Record, Item 24).
10. After hearing from the Appellant and Respondent on Preliminary Jurisdictional Issue B, the Appeal Panel convened in-camera to consider the arguments presented on the preliminary jurisdictional issue. When the Appeal Panel reconvened, the Chair of the Appeal Panel asked the panel, "Having heard and considered the arguments respecting jurisdiction, is the panel agreed we have jurisdiction to hear this appeal?" The Appeal Panel agreed that they did have jurisdiction and the Chair advised that the reasons would be provided in the written decision.
11. 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 14, Items 3-25. The Appellant and the Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.
12. At the beginning of the Appellant's presentation, the Appellant presented a package of documents containing e-mails, drawings, revised plans, structural engineering report, field reviews, and photos. There were 50 pages in total. The package of documents was shown to the Respondent. After reviewing the submission the Respondent's Legal Counsel indicated that there was no objection to the documents being provided to the Appeal Panel or to reference these documents by the parties. The Appeal Panel Chair accepted into the Record the submission marked as Hearing Exhibit 1 – Appellant.
13. The Coordinator of Appeals presented into the record a paper copy of a letter issued on May 16, 2014 in response to an e-mail received by the Appellant. The letter and e-mail was provided previously to the Appellant, Respondent and Appeal Panel by e-mail. This exhibit was marked Hearing Exhibit 2 – Council. Neither party objected to the entering of this exhibit into the Record.

The Record:

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

1. Hearing Exhibit 1 Appellant - a package of 50 pages containing e-mails, drawings, revised plans, structural engineering report, field reviews, and photos.
2. Hearing Exhibit 2 Council – a letter from Coordinator of Appeals to Appellant in response to e-mail requesting how to proceed with appeal dated May 16, 2014 (pages 189 & 190)
3. Letter and drawings from Respondent to the Appellant dated May 13, 2014 (pages 174 to 188)
4. E-mails from the Appellant requesting documentation dated May 9 and 11, 2014 (pages 157 to 173)
5. Additional submissions and documentation provided by the Respondent dated May 6, 2014 (pages 119 to 156)
6. Letter from a legal firm stating termination of representation for the Appellant (page 118)
7. Letter from Coordinator of Appeals to Appellant in response to request for immediate emergency hearing (pages 105 to 117)
8. Change of Date Written Notification of Appeal Hearing dated March 28, 2014 (pages 103 & 104)
9. Hearing Adjourned letter dated March 20, 2014 (pages 91 to 93)
10. E-mail from the Coordinator of Appeals to all parties notifying the parties of Hearing Adjournment (page 94)
11. E-mailed letter to and response from the Respondent in regards to Hearing Adjournment request dated March 19, 2014 (pages 95 to 98)
12. E-mail request from Appellant’s legal counsel for adjournment of hearing dated March 19, 2014 (pages 99 to 102)
13. “Appeal Hearing Brief” from the Appellant consisting of 5 tabs
14. Letter to hear preliminary issues at onset of hearing dated March 5, 2014 (pages 89 & 90)
15. Letter of Representation from the Appellant (page 88)
16. “Appeal Hearing Brief” from the Respondent consisting of 11 tabs
17. Change of Date Written Notification of Appeal Hearing dated February 4, 2014 (pages 86 & 87)
18. Postponement Letter dated January 31, 2014 (page 85)
19. Written Notification of Appeal Hearing dated January 21, 2014 (pages 1 & 2)
20. Appeal Hearing Brief Preparation Guide (page 3)
21. Copy of the Accredited Municipality order dated November 19, 2013 (pages 4 & 5)
22. Stay Letter dated January 6, 2014 (page 6)

23. Request for Stay dated January 3, 2014 (page 7)
24. Acknowledgement Letter dated January 3, 2014 (page 8)
25. Copy of Notice of Appeal dated December 20, 2013 (pages 9 to 84)

Provisions of the Safety Codes Act:

15. The Safety Codes Act provides:

Interpretation

1(1) in this Act,

(v)“owner” includes a lessee, a person in charge, a person who has care and control and a person who holds out that the person has the powers and authority of ownership or who for the time being exercises the powers and authority of ownership;....

1(2)... a reference to “this Act” includes the regulations and bylaws made under this Act and any code, standards or body of rules declared to be in force pursuant to this Act.

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

Appeal of Orders

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.

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

16. 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):

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

Division C

Part 2 Administrative Provisions

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.

2.2.9.8. 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*.

2.2.14. 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*.

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

Division B

Part 9 Housing and Small Buildings

9.10.3.1 Fire-Resistance and Fire-Protection Ratings

1) Where a *fire-resistance rating* or a *fire-protection rating* is required in this Section for an element of a *building*, such rating shall be determined in conformance with the test methods described in Part 3, A-9.10.3.1. in Appendix A or Appendix D.

9.10.3.3(2) Fire Exposure

- 1) Floor, roof and ceiling assemblies shall be rated for exposure to fire on the underside.
- 2) Exterior walls shall be rated for exposure to fire from inside the *building*, except that such walls need not comply with the temperature rise limitations required by the standard tests referred to in Article 9.10.3.1. if such walls have a *limiting distance* of not less than 1.2m, and due allowance is made for the effects of heat radiation in accordance with the requirements in Part 3.
- 3) Interior vertical *fire separations* required to have *fire-resistance ratings* shall be rated for exposure to fire on each side.

Part 8 Safety Measures at Construction and Demolition Sites

8.1.2.2.(1) Protection from Risk

- 1) Precautions shall be taken to ensure that no person is exposed to undue risk.

19. Safety Codes Council Bylaws thereto provides:

14 Appeals

14(3) A notice of appeal shall be in writing and signed by the appellant. It shall contain a copy of the Order or written notice being appealed and a concise statement setting out the grounds for appeal. It shall include contact information (mail, telephone, and where applicable, e-mail address and facsimile) for the appellant and shall be accompanied by the appropriate fee as set in *Council* policy.

Position of the Parties

Appellant

From the Appellant's submissions and testimony:

20. In an attempt to complete the four items listed on the request for adjournment at pages 99 to 102 of the Record (The Record, Item 12) the Appellant is pursuing a building permit from the Respondent for the three additions.
21. Portions of the construction were removed by the Appellant in an effort to bring the construction projects to a state of a previous development permit.
22. Stone and oriented strandboard (OSB) have been removed from the deck.
23. The Appellant had holes dug and added concrete pilings on the May long weekend in 2014 with the intention to check and reinforce the stability of the structure.
24. The Appellant advised through his representative that he is working with the Respondent to obtain compliance. A history of these efforts was recounted to the Appeal Panel.
25. The Appellant indicated in testimony that whatever the Respondent requires to be done to bring the additions into compliance with the *Safety Codes Act* will be done.
26. The Appellant said that he has not delayed anything.

27. The Appellant took the position that a statute of limitations must exist for any construction that has been there for a number of years.

Respondent

From the Respondent's submissions and testimony:

28. On July 31, 2013, the Respondent did a site visit of the building in response to a citizen's inquiry. It was observed that construction work was done to the building. Additions totalling an approximate area of 550 square feet (51 square metres) were observed to be constructed at the rear of the building.
29. A search of the municipal records indicated that no building permits were issued since the initial building permit to construct the building, issued in 1980.
30. Permits are required for building additions.
31. The Respondent submits that the Building Regulations and Development Departments have been more than reasonable and have assisted the Appellant with the permit process. The Respondent has engaged in meetings, site visits, phone calls with the Appellant and has granted extensions of compliance deadlines when requested.
32. Dating back to September 1, 2010, subsequent inspections reiterated the requirement for permits. The Appellant has had substantial time to obtain a permit.
33. The Respondent is concerned that there have been numerous times that construction has continued throughout the duration, including recently. The appellant's representative indicated in his presentation before the Appeal Panel at the hearing of this appeal that he had construction work done on the May long weekend of excavating holes and adding concrete piles, once again without required permits.
34. Permits are essential to ensure the safety of occupants and permit processes have not been followed.
35. Previous inspections (prior to July 31, 2013) indicated that the interior of the enclosed deck had a gas fireplace installed as well as electrical lights and ceiling fans. Permits are required for the electrical and gas work and again, there is no record or evidence that any such permits were obtained.
36. As permits were not obtained for the construction of the addition, covered deck, and enclosure of covered deck, an inspection of the work has not been done by the Respondent.
37. Without inspection of the work the Respondent is concerned about the structure of the covered deck and has serious concerns relating to how the room is attached to the house.
38. The Respondent is concerned about the additions. The Respondent does not know how the additions are constructed or attached to the house. It is not apparent whether the wall is appropriately flashed or whether there is insulation under the floors.
39. There is a concern for infiltration of water causing a deterioration of the structure and mould growth.
40. Light fixtures have been installed without any electrical permits.
41. The vertical roof of the addition has potential for ice damming.
42. There are gas fireplaces installed without required permits.
43. There are concrete piles and there is no indication of their depth.
44. The work is determined to be illegal construction and an unsafe condition pursuant to 2.2.14.1.(1) of ABC 2006.

45. The Appellant has shown a lack of regard for the neighbour's rights to allow them use of their back yard. The neighbours are unable to get to the back yard because of soil piled in the side yard.
46. The Appellant has been told since 2010 that permits are required and the Appellant has ignored this requirement.
47. It is unlikely that the Appellant will continue to pursue the required permits, if the Appeal Panel revokes or varies the Order.
48. The Respondent is concerned with the safety of the construction. Engineer reports have not been provided to verify structural soundness or assuage concerns.
49. In its current state the additions are not believed to be a safe construction.
50. The safest approach is to demolish the additions and build new in compliance with the *Safety Codes Act* and Codes.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

51. Given the state of the existing additions, and the lack of proper permits and inspections the safety of the occupants of the building and the adjacent properties is at risk.
52. Extensive construction encompassing over 550 square feet (51 square metres) was undertaken by the Appellant without required permits and inspections.
53. Fourteen notices over a three-year period, including two orders under the *Safety Codes Act* were issued to the Appellant (The Record, item 16, page 2 of 9). During this time, the Appellant had more than sufficient time to correct any deficiencies and comply with the *Safety Codes Act*, Regulations, and Code. More than enough time was provided to obtain required permits. This suggests an ongoing disregard for compliance with the *Safety Codes Act*.
54. The extensive additions has potentially increased the difficulty and compromised fire-fighting effectiveness to protect the Appellant's building and adjacent properties. By increasing the area of the building the space around the building is reduced limiting access for firefighting should a fire occur.
55. In the Appellant's submitted notice of appeal, page 18 of the Record (The Record, Item 25) the Appellant noted that "there has to be a statute of limitations for any construction that has been there for a number of years". A legislative statute of limitations on code violations does not exist, nor was one cited by the Appellant. Where a building has lawfully existed in Alberta prior to the adoption of the current Alberta Building Code, the Authority Having Jurisdiction shall accept the construction. The three additions at issue do not exist lawfully. From the onset of construction without required permits, the construction was non-compliant.
56. The Appellant indicated that the electrical for the additions was signed off by a Master Electrician, but there is no evidence that an electrical permit was issued, nor did the Appellant produce a permit or a copy of a permit.

57. With regards to the fireplace the Appellant mentioned that the plumbing/gas installer said they were compliant, but again there is no evidence that a permit was issued, nor did the Appellant produce a permit or a copy of a permit.
58. With regards to the Appellant's position that someone else was required to obtain permits as indicated in the Appellant's Notice of Appeal (The Record, item 25) the Appeal Panel finds that it is the Appellant's responsibility of care and control. (*Safety Codes Act* Section 5)
59. With regards to submissions about whether or not the Appellant has obtained some form of development approval the panel cannot say for certain, but finds that to be irrelevant to the issues before it. 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 issued under other legislation.
60. The Appellant provided submissions and testimony about the efforts he has made in discussions with the Respondent. The Appeal Panel finds that no evidence exists that the Respondent has been obstructive in regard to any of the Appellant's efforts to get permits. To the contrary when the Appeal Panel reviews the submissions and testimony the Appeal Panel finds on the evidence that the Respondent has been reasonable, and forthcoming with lists to assist the Appellant in complying with the permit application requirements. And further, the Appeal Panel finds that the Respondent has allowed more than sufficient time for the Appellant to comply with notices and a previous order issued in 2012. The Respondent has provided instruction and a list of requirements.
61. The scheme of the legislation, regulations, and codes provides that permits are required prior to commencement of construction. This scheme engages a process of interaction with the applicant and the authority having jurisdiction, where plans are reviewed and approved prior to construction, and inspections are undertaken at appropriate stages of construction to ensure the safety of occupants and adjacent properties.
62. In his testimony the Appellant indicated that he undertook construction work on the May long weekend to determine the structural integrity of the deck. In response to questions from the Respondent regarding whether permits were acquired for this work, the Appellant stated that the engineer did not advise him that a permit was necessary. Once again, the Appeal Panel stresses that it is the owner's responsibility to ensure that any thing, process or activity to which the Act applies is maintained as required by the regulations and that the process or activity is undertaken in a safe manner. It is the owner's responsibility to ensure compliance with the *Safety Codes Act*. Further, in undertaking this work to determine the structural integrity of the deck, it is possible that the work may have undermined the foundation and potentially caused the structure to be less safe than before.
63. The Appeal Panel finds, on the basis of the submissions of the parties and all the evidence before it that the Order under appeal was correct, reasonable, and appropriate, and in keeping with the scheme of the *Safety Codes Act* as defined in subsection 1 (2) of that statute.

64. Finally, the Appeal Panel notes that it is for the authority having jurisdiction, in this case, the Respondent to enforce the Order as it sees fit, including, if it so chooses, to continue to work with the Appellant to achieve an acceptable level of safety and issue permits for work already completed. Alternatively, as the Order under appeal has been confirmed, the Respondent can, if it so chooses, take steps to ensure that the additions are demolished.

Reasons for the Appeal Panel's Ruling in Response to Preliminary Jurisdiction Issue B

65. With regard to Preliminary Jurisdiction Issue B raised by the Respondent, the Appeal Panel confirmed the Appeal Panel's jurisdiction to hear this appeal for the following reasons:
- a. In providing a faxed and electronic copy of the Notice of Appeal to the Safety Codes Council within the 35 day requirement of section 50(1) of the *Safety Codes Act*, and providing a faxed copy of the cheque for the appeal fee, and a faxed copy of the Canada Post tracking number for the hard copy of the documents and the appeal fee cheque, the Appellant's intent to appeal the Order was evident.
 - b. In the e-mail exchange of December 24, 2013, the Appellant offered to transfer the money electronically if required. This further supports the Appellant's intent to appeal the order.
 - c. The Coordinator of Appeals was satisfied that the Appellant had provided the required notice and that the Appellant was exercising his natural justice rights to be heard in this matter.
 - d. The Appeal Panel considered the intent of the legislation of section 50 of the *Safety Codes Act*. In interpreting the legislation, the Appeal Panel finds that the Appellant's Notice of Appeal is in keeping with the legislative intent. The Act is intended to allow for a person to appeal an order. It is not intended to make the application unduly restrictive, technical or difficult.
 - e. The Appeal Panel finds that the steps taken by the Appellant to appeal constituted substantial and sufficient compliance with the steps necessary to appeal the Order consistent with the legislative intention of the *Safety Codes Act*.
 - f. The Appeal Panel noted that the *Safety Codes Act* itself does not require the fee to be paid within 35 days. The Appeal Panel finds that the requirement as set out in section 14.3 of the Safety Codes Council bylaw that the fee accompany the Notice of Appeal is intended to be directory only, and not mandatory, in the sense that a failure to pay the fee within 35 days after the date the order was served is fatal to the appeal.

Dated at Edmonton, Alberta this 20th day of June 2014

Chair, Building Technical Council Appeal Panel