



COUNCIL ORDER No. 0015456

**BEFORE THE PLUMBING SUB-COUNCIL
On December 18, 2015**

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 10, 2015 issued by an Accredited Agency on behalf of a Municipality (the Respondent) against a local hotel (the Appellant).

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

The Order is varied.

FROM:

You are hereby ordered to disconnect the private water system (well) from the buildings water system. This action is to be completed by 8:00 PM MST June 17, 2015.

On appeal by the Appellant, the Chief Plumbing Administrator revised the compliance deadline from June 17, 2015 to July 15, 2015.

TO:

You are hereby ordered to disconnect the private water system (well) from the buildings water system. This action is to be completed on or before February 5, 2016.

Issue:

1. The appeal concerns an interconnection of a private well system and the municipal water supply system.

Appearances, and Preliminary, Evidentiary or Procedural Matters:

2. Appearing for the Appellants, the Appeal Panel heard from the owner of the local hotel.

3. Appearing for the Respondent, the Appeal Panel heard from Legal Counsel, for the Municipality, the Deputy CAO, for the Municipality, the Plumbing SCO, from the accredited agency and a witness.
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 9 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.
6. The Appeal Panel was forwarded on December 17, 2015 a written presentation of the Respondents submission from the Deputy Chief Administrative Officer (the panel accepts the submission as exhibit A). At the commencement of the hearing, the Respondent presented the same submission which included the tabs for their exhibits (the panel accepts the submission as exhibit B).
7. The Appellant at the hearing presented additional documents to his prior submission (the panel accepts the submission as exhibit C).
8. The Appellant, as the hearing progressed, expressed a concern with the Respondent's submission (listed as exhibit B), pointing out he has not had sufficient opportunity to review the submission. The panel suggested a recess to allow the Appellant the opportunity to review the submission; following which the Appellant stated he reviewed the submission and had no objection to it and he was prepared to proceed. At the conclusion of the hearing, the Appellant stated he was satisfied he had the opportunity to present his case.

The Record:

9. The Appeal Panel in addition to the submissions presented at the hearing, considered, or had available for reference, the following documentation:
 - a) The Notice of Appeal dated July 15, 2015 (Pages 1 to 11)
 - b) Acknowledgement Letter Dated July 20, 2015 (Page 12)
 - c) Stay of Order Letter dated July 20, 2015 (Page 13)
 - d) Legal Counsel Representation Letter for Respondent dated July 24, 2015 (page 14)
 - e) Appeal Hearing Brief Preparation Guide (Page 15)
 - f) Brief of the Appellant (pages 51 to 75)
 - g) Brief of the Respondent (pages 200 to 264)

Provisions of the Safety Codes Act:

10. 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

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 National Plumbing Code 2010 (NPC 2010):

11. The National Plumbing Code 2010 provides, *inter alia*:

Division B

Part 2 Plumbing Systems

2.6.2. Protection from Contamination

2.6.2.5. Separation of Water Supply Systems

- 1) No *private water supply system* shall be interconnected with a public water supply system.

Position of the Parties

Appellants

The Appellants' position is summarized as follows:

12. The hotel has been in operation before the year of 1983 with well water. In 1983 the municipality provided water services. The municipal water was connected with the well water according to the Plumbing and Safety Codes in 1983. All plumbing and safety codes were approved by the Municipality.
13. The hotel was purchased by a holding company in 1998; the hotel was operating on well water and municipal water at the time. All plumbing for the building was up to the National Plumbing Code. The hotel did not receive any notice about the plumbing code until the Municipality passed the bylaw #12-07 in the year 2012, when they were asked to shut the well.

14. Correspondence from water company dated April 2, 2001 showed a recommendation to control the cross connection of the well to municipal water by installing a backflow prevention valve to ensure no contamination of the municipal water supply. The backflow system was already installed since 1983.
15. According to the National Standard Plumbing Code of 2006 the cross connection control shall be provided at individual outlets where required by containment of the premises. The Deputy Chief Administrative Officer for the Municipality acknowledged the presence of a backflow prevention system at the hotel. This is the best system to protect contamination to the municipal water because the hotel is a moderate to low risk facility. This system has one backflow prevention valve and a reduced pressure valve.
16. A journeyman plumber was contacted to examine the plumbing system and advised that the hotel fell under a minor to moderate risk, which only requires a double check valve assembly. This was done as the Municipality requested they seek advice from an independent qualified professional in cross connections to examine the National Plumbing Code
17. The journeyman plumber came to the conclusion that the system already has check valves and the reduced pressure device installed off the meter tree upstream of the interconnection. This means that if there ever was a backflow to happen, the water would go directly back into the well, which the water is tested for weekly.
18. The hotel is a minor to moderate risk and has more than sufficient prevention of contamination to the municipal water by operating the backflow prevention system.
19. The Municipality brought an agency to check the plumbing code for the well connection. After this agency gave an order that stated the well was crossed connected to the municipal supply according to the National Plumbing Code year 2010 Clause 2.6.2.5. This new code should not be applicable to the existing plumbing as referenced in A-1.1.1.2 of the Alberta Building Code 2006 Volume 1.
20. The application of the new plumbing code should not be applied to the existing building unless there was a change of use, rehabilitation of the building, or build an addition. The National Plumbing Code of 2010 Clause 2.6.2.5 should not apply to the hotel.
21. There is a permit service report from the year 2007 that shows all plumbing work complies with the Safe Codes Act.
22. Whenever the Alberta Health Service Inspector arrived on site for an inspection of the property they were asked to provide a water sample for lab testing. They always provided such on request and there have been no issues with any sample since their ownership in 1998. Within the last year Alberta Health Service asked for a weekly sample which they have complied, with no issue. Therefore, their water supply is healthy and safe to drink.
23. The original 1 inch meter was replaced by the 3 inch meter in 2002 when they took permits for the addition to the 3rd floor. *(This statement was in the Appellants written submission, the panel believes the correct reference to be a 3 inch meter was replaced by a 1 inch meter).*

The reason for changing the meter back was that 1 inch on the well was sufficient for all water services for the building. They went to the Municipality to ask for permission to switch the 3 inch meter back down to the original 1 inch meter and were told by the Municipality that all meters greater than 5/8 inch x 3/4 inch shall be supplied and installed by the customer at their own cost. The meter size does not matter, since water consumption is measured in cubic meters.

24. When they were planning out the 3rd floor addition in 2002, the Municipality acknowledged and approved use of well water for the building consumption. The well water supply system was approved by the Municipality in 2002 and again in 2007. This is the same cross control system that was installed before they took ownership of the building.
25. Upon questioning by the panel the Appellant stated he does not know if the well is capped and locked; the casing extends about 2.5 feet out of the ground. The well water is not chlorinated. The building is electrically heated, thus there is no hot water boilers cross connection potential. Coolers and compressors operate by air cooling, not water cooling as in the past, making less demand for water.

Respondent

The Respondent's position is summarized as follows:

26. The hotel has had a private water well located on the property since it was first built in 1978. This was permitted by the Municipality at the time as water and sewer services were not available to the site. However, later the same year water and sewer lines were installed adjacent to the property. It was a condition of the original development permit at that time that the hotel connect to municipal water when the services became available.
27. Temporary use of the well was only provided on condition that the hotel connect with the municipal water supply when it became available to the site.
28. In 1978 the hotel connected to the municipal main water and sanitary line located adjacent to the property. However the hotel continued to use the private water well on the property as the primary source of potable water for the hotel. At the same time, the hotel used the sanitary sewer line.
29. The hotel has a cross connection with the municipal water supply. It is not in compliance with the National Plumbing Code, Clause 2.6.2.5, which clearly states that no private water supply shall be interconnected with a public water supply system.
30. The operator of the hotel has stated that he has the water tested in compliance with Alberta Health. The Municipality has received information this is not in fact the case.
31. The Appellant has stated that water is tested by Alberta Health Service as required and the water is healthy. The evidence indicates that the Appellant has not followed the direction of Alberta Health. Any compliance that did take place was when and after legal action was started. In any event, this is an irrelevant consideration.

32. The Municipality is concerned that should this appeal counsel order disconnection so that the Appellant may only use well water, then there will be insufficient fire protection as the hotel will not have access to municipal water to build up the appropriate pressure, or provide sufficient water.
33. The Appellant argues the hotel has a cross connection control program approved by the Municipality. Even if, for the purpose of argument one assumes this is true, an Order of a Safety Codes Officer takes precedence. The Appellant has in no way been misled and neither does a “cross connection program” with the municipality exist.
34. The Appellant has indicated the hotel wants to improve the cross control program, but the Safety Codes Officer has not given any direction. Contrary to this statement, the Appellant hired a plumber to address the cross connection, but nothing came of it. It is reasonable to assume that the Appellant hires plumbers as a regular part of the conduct of his business and is well aware of how to address the Order.
35. There are legal proceedings whereby the Municipality has sought the assistance of the Court of Queen’s Bench to enforce the municipality’s *Water Utilities Bylaw*, in order to compel the Appellant’s hotel to use the municipal water services.
36. There is a documented history of the hotel regarding water usage, from the time the hotel was constructed. In the minutes of the Municipal Planning Commission dated May 9, 1977 the document demonstrated that the original plans for the hotel were approved at that time; there is reference to a Counsel discussion related to water and sewer services to the property. An August 15, 1997 letter with attached Letter of Approval, Notice of Decision and a certified true copy of plans noted that approval was subject to Development Officer’s approval of plans submitted. The plans submitted by applicant, depict a 6 inch sanitary line leaving the building and incoming 6 inch domestic water line. An April 20, 1978 letter from the solicitor for the owner of Inn (as the hotel was called at that time), requested the Municipality to confirm a date for the availability of water and sewer connections; the response from the Municipality was that services would be available to the site on or about May of 1978.
37. The Appellant states that at the time of the inspection given rise to the Order, he showed the Safety Codes Officer a letter from a service provider. The person from the service provider who wrote the letter is not a Plumbing Safety Codes Officer or a journeyman plumber; he is an employee of the service provider, who operates the municipality’s waste water facility.
38. The Appellant refers to a letter from the person who describes himself as a journeyman plumber. This person also notes there was an interconnection between a private water supply and the municipality’s supply. However, he gives an opinion which is wrong, that the hotel should be “grandfathered”. The 1972 Plumbing Code (AR 381/72) indicates that cross connections are not permitted.
39. The 1972 Plumbing Code (AR 381/72) indicates that cross connections are not permitted. This code requirement predates the construction of the hotel and states “no private water supply shall be interconnected with a public water supply system”.

40. The Appellant says that there was only 1 permit issued in 2007 and it states that all the plumbing work complied with the Safety Codes Act. That permit only applied to the installation of a toilet, sink and bathtub.
41. The Appellant refers to a “cross control programme”. There is a reference to this term in the Bylaw but it is only for standing water in a fire suppression system, for refrigeration or for a laundry system. This has nothing to do with a violation of a Plumbing Safety Codes Order such as this.
42. The Plumbing Safety Codes Officer, from the agency appeared as a witness and advised the panel the code requirement which is the law addresses the issue, which is possible contamination.
43. The witness for the Respondent advised his company was retained by the Appellant’s hotel in about November of 2014, at which time the owner expressed disagreement with the opinion the backflow preventer was required only for the sprinkler system and otherwise there was a cross connection. His company forward a letter to the Municipality in November of 2014 referring to issues breaching multiple codes, including a fire backflow preventer (cross connection device) not being tested since 2008.

Evidentiary Findings and Reasons:

The Appeal Panel makes the following findings:

44. The Appeal Panel notes the Appellant is presently in litigation with the Respondent for enforcement of the Municipality’s Water Utilities Bylaw, in order to compel the hotel to connect to the Municipality’s water supply. The Appeal Panel finds the court proceeding to be unrelated to the Order under appeal dated June 10, 2015, which specifically addresses compliance with the National Plumbing Code 2010 Clause 2.6.2.5.
45. The Appeal Panel finds it specifically relevant that the requirement of “*no private water supply system shall be interconnected with a public water supply system*”, as stipulated in the National Plumbing Code 2010 Clause 2.6.2.5 to have been in force prior to the property being constructed in 1978.
46. The Appeal Panel places significant weight on the evidence presented that the Plumbing Code requirement in 1972 (exhibit C of the respondents submission) stated the same warning as the National Plumbing Code 2010 Clause 2.6.2.5 was applicable prior to the construction of the building in 1978. The Plumbing and Drainage Regulations, Alberta Regulation 381/72 under SUBSECTION 6.2 PROTECTION OF POTABLE WATER SUPPLY FROM CONTAMINATION stated:
 - 6.2.1. (1). No connection, cross connection, or condition may be installed, or be allowed to exist which could, under any conditions, cause or allow a potable water supply system to be contaminated, polluted, or infected.
 - 6.2.14. No private water supply shall be interconnected with a public water supply system.

47. The Appeal Panel finds no basis to consider a grandfather component with respect to the Order. The applicable code requirement has been in place prior to the construction of the hotel in 1978.
48. The Appeal Panel notes that irrespective of who currently owns the property, any code compliance requirements are inherent with the transfer of ownership of the property. The Appeal Panel further notes that the Appellant's reference to the National Standard Plumbing Code of 2006 refers to the Plumbing-Heating-Cooling-Contractors Association from the United States and invalid reference; whereas the appropriate reference would be the National Research Council of Canada's code.
49. The Appeal Panel also notes that should the well not be properly sealed there is potential for any person to take the cap off and pour something in the well making not only the well water non potable, but could get into the municipal water; there is a potential for flooding in the area which could contaminate the well and ground water.
50. The Appeal Panel notes the evidence supports there was an agreement between the owner of the property and the Municipality prior to construction with respect to connecting to the municipality's water supply. The development permit issued in July of 1977 was subject to approval of a plan submitted, which depicted a six inch sanitary line leaving the building and an incoming six inch domestic water line. The solicitor for the hotel under construction in correspondence dated April 20, 1978 enquired when the water and sewer services would be available for connection, pointing out it was imperative that they knew the date these services were available; in a response dated April 25, 1978 the Municipal Manager advised that the services would be available for connection in approximately 30 days. Irrespective of agreement the applicable code requirement specifies that "*no private water supply system shall be interconnected with a public water supply system*".

Decision:

The order is varied.

The June 10, 2015 Order of the Municipality is supported, with a varied compliance date.

Dated at Edmonton, Alberta this 4th day of January 2016

Chair, Plumbing Sub-Council Appeal Panel