



Safety Codes Council

COUNCIL ORDER No. 0015474

BEFORE THE BUILDING SUB-COUNCIL

On August 16, 2017

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

AND IN THE MATTER OF the Order Pursuant to Section 49 of the Safety Codes Act, issued May 10, 2017 by an Accredited Municipality (Respondent) against business/property owner (Appellant).

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

FROM:

1. Structural alterations have occurred to the second floor without the required permits. A permit is required for the structural alterations of the second floor and a permit is required to occupy the building after alteration of the building.
2. Structural alterations to the interior and exterior of the building have occurred without the required permits and a change to interior floor plans of the existing structure has occurred without the required permits. A permit is required for the structural alterations to the interior and exterior of the building, the change to the interior floor plans of the existing structure, and to occupy the building after the alteration of the building.
3. Structural alterations and an addition to the rear garage have occurred without the required permits, a change to the existing structure has occurred without the required permits. A permit is required for the structural alterations and addition to the garage, the change to the existing garage structure, and to occupy the building after the alteration of the building.
4. Building systems components (plumbing, gas, ventilation, heating, and electrical) have been installed or altered without the required permits. A permit is required to install, alter, or add to an electrical system, heating and ventilation system, gas system, or plumbing system.

THEREFORE YOU ARE HEREBY ORDERED TO:

1. **Obtain the required permits for all alterations and/or additions to the interior and exterior of the building and detached garage structure(s) by June 26, 2017.**

TO:

1. **This item from the original Order is revoked.**
2. **This item from the original Order is varied and should read:**

Alterations to the interior and exterior of the building have occurred without the required permits in place at date of Order. A permit is required for the alterations to the interior and exterior of the building and to occupy the building after the alteration of the building.

3. **This item from the original Order is revoked.**
4. **This item from the original Order is upheld.**

Building systems components (plumbing, gas, ventilation, heating, and electrical) have been installed or altered without the required permits. A permit is required to install, alter, or add to an electrical system, heating and ventilation system, gas system, or plumbing system.

THEREFORE YOU ARE HEREBY ORDERED TO:

Apply for the required permits for all alterations and/or additions to the interior and exterior of the building within 30 days of receiving this Order.

Issue:

1. The Appeal concerns a residence in Alberta which has undergone alterations and additions without the required permits.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. Appearing for the Appellant, the Appeal Panel heard from the legal counsel for the Appellant and the Appellant themselves.
3. Appearing for the Respondent, the Appeal Panel heard from the legal counsel for the Respondent, and the Respondent themselves.
4. Attending as observers were individuals who accompanied the Appellant, and other individuals who attended the hearing for educational purposes.
5. Present was also a Technical Advisor to the Appeal Panel.
6. At the commencement of the hearing, the Appellant and Respondent confirmed 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.
7. The Appeal Panel Chair (the “Chair”) then explained the process to be followed in hearing this appeal, and read out a list of the written material before the Appeal Panel, consisting of the documents listed below in The Record, paragraph 9 as items 1 to 7. The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.
8. New documents were submitted during the hearing by both parties, identified below in The Record as items 8, 9 and 10. After deliberation, there were no objections to this evidence being received by the Panel.

The Record:

9. The Appeal Panel considered, or had available for reference, the following documentation:
 1. Notice of Appeal (pages 1 and 2)
 2. Request for a Stay of the Order (page 3)
 3. Acknowledgment Letter dated May 29, 2017 (page 4)
 4. Stay of Order Letter dated May 29, 2017 (page 5)
 5. Appeal Hearing Brief Preparation Guide (page 6)
 6. Appeal Hearing Brief submission from the Appellant (paperback binder)
 7. Appeal Hearing Brief submission from the Respondent (hard cover binder)
 8. Exhibit 1 - Appellant
 9. Exhibit 2 - Appellant
 10. Exhibit 1 - Respondent

Provisions of the Safety Codes Act:

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

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 proper permit.

(2) If any thing to which this Act applies is approved by the regulations for a certain use or purpose, no person shall use that thing for any other use or purpose unless a safety codes officer issues a permit for that other use or purpose or it is an innocuous use or purpose.

(3) If the regulations require that any thing be approved before it is installed or operated, no person shall install or operate that thing unless a safety codes officer issues a permit for it.

(4) A permit under this Act does not authorize a person to do any thing, implement any process or engage in any activity that does not comply with any other enactment.

Order

49(3) An order

- (a)** shall set out what a person is required to do or to stop doing in respect of the thing, process or activity and a reasonable time within which it must be done or stopped;
- (b)** may direct a method of work, construction, manufacturing, operation, maintenance, use or relocation that must be followed;
- (c)** may direct that the use of the thing, process or activity be stopped in whole or in part in accordance with the order;
- (d)** may direct that a design be altered;
- (e)** may direct that an altered design be submitted to an Administrator for review or for registration;
- (f)** may direct compliance with this Act, a permit, a certificate or a variance;
- (g)** shall meet the requirements of the regulations on format and contents.

Provisions of the Alberta Building Code 2014 (ABC 2014):

11. The Alberta Building Code 2014 provides, *inter alia*:

Division A

1.1.1.2 Application to Existing Buildings

1) This Article applies to a *building* that has been legally built, occupied and used before 01 May 2015.

2) If a *building* is altered, rehabilitated, refurbished, renovated or repaired, the level of life safety and *building* performance shall not be decreased.

4) A change in *occupancy* or *alteration* of any *building* constructed before 01 May 2015 shall be permitted if the level of safety and *building* performance proposed are acceptable to the *authority having jurisdiction*.

Division C

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)** 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.

2.2.11. Occupancy

2.2.11.1. Occupancy Permit

- 1)** If required by the *authority having jurisdiction*, an *owner* shall obtain an *occupancy permit* or permission in writing to occupy from the *authority having jurisdiction*, before any
 - a) *occupancy* of a *building* after
 - i) construction,
 - ii) relocation,
 - iii) partial demolition, or
 - iv) *alteration* of that *building*, and
 - b) change in the *occupancy* of a *building*.
- 2)** An *occupancy permit* or permission to use a *building* issued under the Safety Codes

Act shall not be construed to be a licence to operate or engage in any business.

2.4.2. Professional Involvement

2.4.2.1. General

- 9) 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
 - i) a *registered engineering professional* where *engineering work* is involved,
 - ii) a *registered architectural professional* where *architectural work* is involved, or
 - iii) both a *registered engineering professional* and *registered architectural professional*, and
 - b) that *field reviews* during construction of a *building* be performed by
 - i) a *registered engineering professional* where *engineering work* is involved,
 - ii) a *registered architectural professional* where *architectural work* is involved, or
 - iii) both a *registered engineering professional* and *registered architectural professional*.

Position of the Parties

It should be noted, that at the commencement of the hearing both parties agreed that concerns regarding the rear garage (alterations and an addition) have been resolved and no longer form part of the Order.

Appellants

From the Appellants' submissions and testimony, and in response to questions posed by the Panel, the Appellants' position may be summarized as follows:

- 12.** When the Appellant acquired the property in 2011, a second floor addition had already been constructed without a permit.
- 13.** The work being done in 2011 when the property came to the Municipality's attention did not involve any structural alterations. However, as a result of direction received from the Municipality with respect to the already existing structural alterations, the Appellant applied for and ultimately was granted a building permit with respect to such alterations. Reference Tab 4 of the Appellant's submission.
- 14.** While there remains a difference of opinion about what the permit that was issued was intended to encompass beyond "reconfiguration of the roofline", the Appellant proceeded on the understanding it encompassed all of the structural alterations to the second floor as outlined in the Engineering Company's Drawings. Reference Tab 5 of the appellant's submission.
- 15.** In support of this conclusion, the Appeal Panel was asked to note the Conditions of Issuance section of the September 8, 2011 building permit stating, "As per notes and drawings by P. Engineer...", which drawings include all of the structural alterations to the Property that had been undertaken at that time.
- 16.** The Panel was also asked to note that within a short time of the Appellant's successful appeal to the Subdivision and Development Appeal Board, the building permit was issued, and since the project number on that document is identical (except for the suffix) to the number identified on the Development Appeal Board decision, the only logical conclusion is that the building permit was intended to encompass all of the structural alterations to the second floor as outlined in the Engineering Company's Drawing.
- 17.** This conclusion was apparently shared by the safety codes officer (SCO) at the time of their May 2, 2016 inspection wherein they report that a "follow up inspection was conducted on outstanding building permits", with no suggestion the Appellant lacked the required permits for any of the structural alterations that had occurred to the property. Reference Tab 7 of the Appellant's submission.
- 18.** In an e-mail sent to the engineer (P. Eng.) on March 16, 2017, the SCO acknowledges that development and building permits were "both obtained after the process was well under way", making it apparent that the safety codes officer considered the

building permit to apply to all of the structural alterations which had been identified. Reference yellow highlight on page 6 of Tab 8 of the Appellant's submission.

- 19.** There was a significant and unreasonable further delay during attempts by both parties to confirm the credentials of the P. Eng. who had assumed responsibility for the project after the death of the original engineer.
- 20.** Finally, the Appellant's representative expressed concern with the timing of issuing the Order. On May 8, 2017, the SCO wrote the appellant stating that "permit applications must be submitted within 30 days", and that "a record of the required permits must be in place by June 7, 2017 or an Order may be issued. Yet only two days later, on May 10, 2017 the Order under appeal was issued.
- 21.** A period of six years elapsed before the Municipality advised the Appellant more permits were needed.
- 22.** The Order, as it was written did not clearly state what must be done; it simply said to obtain the required permits. This should have been explained in more detail. Section 49(3) of the Safety Codes Act requires this.
- 23.** If the Municipality believed further permits were required (gas, electrical, plumbing etc.), for work done prior to the appellant purchasing the property, this was never made clear in subsequent communication.
- 24.** If the Order was intended to include the secondary suite, this was never made clear to the Appellant and if so, the Appellant should have been given the opportunity to decommission the suite. This did not happen.
- 25.** Certain permits were cancelled without explanation or for reasons such as non-payment of fees or simply expired, in which case, should the Municipality not have contacted the Appellant to let them know.
- 26.** While the February 2011 report from the engineer says the basement of the residence was "reserved totally for essential services such as heating, laundry and storage", it was confirmed during the hearing that a secondary suite was constructed in the basement prior to 2011 but was not being used as such at the time of the engineer's report.
- 27.** Throughout the hearing the Appellant's legal counsel expressed concerns that the SCO's actions were an unreasonable exercise of discretion and that he did not have reasonable and probable grounds to issue the Order which he did in May 2017. It was suggested the SCO's decision to issue the Order when they did was in part in retaliation for bringing the Appellant's concerns to the attention of their supervisor.
- 28.** It is suggested the SCO's actions were also motivated by factors outside of the safety codes system. The property had originally been thought to belong to an individual which the Appellant states, is not true. However the Appellant is satisfied the landlord referred to by the Municipality's Councillor in their August 9, 2016 Facebook post was indeed the afore-mentioned individual who was also present during the hearing. The post confirms their particular landlord was being

targeted.

29. The Appellant's representative expressed further concern regarding the SCO's reliance on direction from Alberta Health Services (AHS) regarding unfounded concerns about an engineer's qualifications, stating AHS employees "lack the authority or the expertise to provide" such direction and that it was inappropriate for an SCO to take such direction.
30. The hearing Chair had to repeatedly remind the Appellant's representative that concerns regarding the actions of the SCO **other than the need for and appropriateness of an Order**, were not something the Panel could or would consider, and that such concerns could be brought to the attention of the Administrator of Certification or Administrator of Accreditation at the Safety Codes Council, whose role it is to investigate such complaints.

Respondent

From the Respondent's submissions and testimony, and in response to questions posed by the Panel, the Respondent's position may be summarized as follows:

31. New information (Exhibit 1 - Respondent) was introduced during the hearing. It is a series of photographs showing the property in question at various stages. On questioning, it was confirmed that one photograph had incorrectly been identified (in a handwritten note) as having been taken in 2017 when it was in fact taken February 17, 2011. The photographs were submitted to confirm the likelihood that there are code issues that need to be addressed and that there was work in progress in May 2011 despite a stop work order.
32. The Respondent's representative submitted, there are really only two issues the Appeal Panel needs to consider. These are: has there been work done to which the Safety Codes Act applies, and if so, are there permits in place for that work.
33. That work has been done is not disputed by either party. The issue then is whether necessary permits are in place.
34. The Appeal Panel is not here to determine whether the SCO's actions were reasonable or whether this particular property was treated differently than other properties.
35. There is a 2011 building permit for "reconfiguration of roof line" and nothing since.
36. If a person on whom an Order is served believes it is unclear or misleading, it is up to that person to seek clarification. While the Appellant has argued that the 2011 permit should cover all work done, it is up to the Appellant to ensure no other work, beyond that for which permits have been issued, is going on.
37. It is the SCO's opinion that the only permits issued were/are for the rear lower deck and the altered roof line.
38. The March 10, 2011 Residential and Building Application (Tab 18, page 240) is clear

in stating the application is to “modify roof to add additional insulation.”

- 39.** The P. Eng. looked into the basement to assure the building was structurally sound, not to inspect the secondary suite. That is a separate process, being managed by another SCO. The permit that was issued for the secondary suite was marked “complete” due to no access or address. The permit was valid but has since expired.
- 40.** The SCO referred the Panel to the chronological series of events set out on page 154 of his submission. The February 2011 Engineering Inspection and Report refers to roof insulation only. Drawings show rear and front decks. Permits were applied for, for both the decks and the roof line. No permits were applied for, for the exterior and second floor additions. It was never intended that the secondary suite be part of this Order. The SCO conducted a joint inspection with Alberta Health Services as a courtesy to them.
- 41.** At the time of inspection the SCO noted work completed that far exceeded what was permitted at the time including an addition to the rear garage, now resolved.
- 42.** The deck permit was closed as non-compliant.
- 43.** In May 2016 the SCO requested a report from the P. Eng. to make sure the building was safe. When they learned the original P. Eng. was in bad health and ultimately died, the SCO asked for a report from the associate who took over responsibility. The only concern at the time with the deck was the grade of lumber and the fact it was resting on plywood (no footing).
- 44.** The SCO was not granted access to the second floor so could not inspect the second floor alterations.
- 45.** In response to a question from their legal counsel, the SCO said they included reference to gas, electrical, plumbing and HVAC because they noted a new plumbing stack and a chimney exit situated below and too close to the soffit. The SCO noted new electrical fixtures and couldn't test the furnace to determine if it had capacity to maintain adequate heating given the additional square footage of the second storey addition. A 2011 photograph shows electrical fixtures roughed in.
- 46.** The SCO received no direction to target the individual's properties, but became involved in response to complaints received. Each job is determined on its own merits.
- 47.** The Respondent's legal counsel said they do not have an issue if the Appeal Panel believes the Order should be more specific, their concern is that the Order not be thrown out entirely. The Panel was referred to an e-mail dated May 5, 2017 (page 281) which provides specific information on what is needed to resolve this matter. The May 8, 2017 letter from the SCO (page 201) also provides clarification of what action is required.
- 48.** The Order says to obtain the required permits for all alterations and/or additions to the interior and exterior of the building, so specificity in this case is not necessary. The SCO simply wanted the Appellant to obtain permits for work that had already

been done, and since it was not clear exactly what work had been done (having not been granted access to the inside), the open ended nature of the Order was appropriate.

- 49. This is a classic example of asking forgiveness, not permission; and although this happens on occasion, the Respondent would hope the Panel will leave the Order as is. Just because there were no permits and considerable time has elapsed is not reason to let the issue drop.
- 50. The Respondent would ask that the Panel let the Order stand, albeit with the removal of point three, referencing the attached garage.
- 51. The SCO has not been to the address recently.
- 52. When asked if the SCO had given consideration to the building envelope and setbacks, he replied that such consideration would be part of the permit process once a permit has been applied for.
- 53. When asked why he chose to issue the Order two days after the letter which suggested the Municipality would wait 30 days, the SCO said the situation had gone on so long and if the letter was ignored, the Order would still stand but if complied with, the letter could easily be rescinded.
- 54. The SCO acknowledged, the Municipality has accepted the January 20, 2017 P. Eng. opinion that the building is structurally safe. No “shifting” has been observed so the SCO has no concern that the building isn’t safe.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

- 55. As noted above, the Appellant’s representative made numerous allegations of bad faith on the part of the SCO, and was advised by the Chair that these would not be considered as part of the Panel’s deliberations. The safety codes system is concerned with the safety of the public and the safety of individuals living in residences such as the one that is the subject of the appeal. The application of judgement and discretion in decisions are part of a safety codes officer’s job, and notwithstanding that a person believes a decision has been made without reasonable and probable grounds for any of a number of reasons, the Appeal Panel’s only concern is whether the decision that was made, in this case to issue an Order, was an appropriate and correct thing to do. The Panel is satisfied in this case, that there are reasonable and probable grounds to believe there are code issues that need to be addressed to confirm necessary permits and inspections take place.
- 56. Regarding the concern that the Order should have been more clear in its demands, the Panel recognizes there are cases, where because there is uncertainty as to what work has been done, or what has been covered up by later construction, it is often necessary to be non-specific so as not to limit what can be achieved by the

Order. The SCO did encourage the Appellant to contact him if further information was required. While section 49(3) of the Safety Codes Act is quite extensive in what MAY be included in an order, the only mandatory provision, besides that the Order must meet the requirements on format and content, states the order shall set out what a person is required to do (or to stop doing) and the Panel is satisfied it does this as best as the circumstances allowed.

57. Regarding the May 10, 2017 Order, which is the subject of this appeal, the Appeal Panel would modify the information beginning on page 1 of the Order.
58. Under the heading “THIS ORDER CONCERNS THE FOLLOWING”, four contraventions of the Safety Codes Act are identified.
59. Number 1, which deals with **structural** alterations to the second floor is **revoked**. On the basis of evidence presented at the hearing, while the Appeal Panel doesn’t know if this permit was intended to encompass all of the **structural** alterations to the second floor, the Appeal Panel heard from the Municipality that they are satisfied that the **structural** alterations are acceptable and safe. It should be noted, this only applies to the **structural** alterations and not any plumbing, gas, ventilation, heating and electrical alterations, installations or additions which may have been part of the second floor alterations, whether in place at the time the property was acquired by the Appellant or completed after.
60. Number 2 is **varied** and should read: Alterations to the interior and exterior of the building have occurred without the required permits in place at date of Order. A permit is required for the alterations to the interior and exterior of the building and to occupy the building after the alteration of the building.
61. Number 3, which deals with the rear garage has been **resolved** and should no longer be part of the Order.
62. Number 4, which deals with building systems components is **upheld** as per the May 10, 2017 Order.
63. While the SCO said the Order was not intended to address any issues that may exist with a secondary suite in the basement, it remains unclear to the appeal Panel whether alterations have occurred in the secondary suite since the property was acquired by the Appellant. The Panel was advised this was a separate process being managed by a different SCO and is not part of the Order or the appeal thereof.
64. The Panel also believes it is likely based on the Appellant’s written submission and testimony, that in addition to the **structural** alterations, already acknowledged by the Panel to potentially be included in the building permit issued on September 8, 2011, the work done before and since that date would give rise to reasonable questions regarding building system components, as set out in the Order, including possible plumbing, gas, ventilation, heating and electrical systems which do require separate permits and should be pursued by the SCO.
65. The panel members believe that there was a communication breakdown on the part of both parties involved. The time lapse from 2011 to 2016 without

communication appears to be the crucial time period. It was difficult for the assigned SCO and the appellant in 2016, to interpret the actions of a previous engineer and SCO from 2011.

- 66.** The Panel considered the requirements for building permits under the provisions for the application of the building code to existing buildings which balances the level of safety with recognition that some conditions are existing.

Signed at the City Edmonton)
in the Province of Alberta)
this 28th Day of August A.D. 2017)

Chair, Building Sub-Council Appeal Panel