



Safety Codes Council

COUNCIL ORDER No. 0015461

BEFORE THE BUILDING SUB-COUNCIL

On November 24, 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, R.S.A 2000, c. S-1*, issued October 8, 2015 by the Accredited Municipality (Respondent) against 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:

Alternative “A” (in part)

Retain a Professional Engineer, acceptable to the *authority having jurisdiction* and registered in the Province of Alberta, to provide a structural certification report on the structural integrity of the building...and to be the registered professional of record to complete all design work and field review of all structural repair work required to the building...Comply with Conditions 1-6 above by November 1, 2015.

OR:

Alternative “B” (in part)

Obtain a permit to demolish and provide the writer notice in writing that a demolition permit has been obtained prior to any demolition.

Demolish the building, remove the foundation, and clear and level the site to adjacent grades by November 1, 2015.

TO:

ALTERNATIVE “A”

- 1. Immediately cease occupancy of this building until occupancy approval is granted by the *authority having jurisdiction*.**
- 2. Maintain the building in a secure state.**
- 3. Retain a Professional Engineer, acceptable to the *authority having jurisdiction* and registered in the Province of Alberta, to provide a structural certification report on the structural integrity of the building on the above noted property and to be the registered professional of record to complete all design work and field review of all structural repair work required to the building in full compliance with article 2.4.3.1, Division C of the Alberta Building Code 2014.**
- 4. Provide a copy of this Order to the Professional Engineer at the time of such retainer.**
- 5. Instruct the Professional Engineer that the structural certification report shall:**
 - a) Acknowledge that the Engineer was provided with a copy of this Order prior to the inspection of the subject building and preparation of the report.**
 - b) Acknowledge that the Engineer was not restricted in performing inspection of the subject building including any invasive testing required to ascertain the structural integrity of the building’s components and prepare the structural certification report.**
 - c) Provide the Engineer’s professional opinion on the structural integrity of the entire building, with specific comment on the individual components thereof (including the foundation, support structure, ceilings, floor and roof).**
 - d) Be affixed with the Engineer’s signature and professional seal.**
 - e) Be accompanied by the Engineer’s detailed design repair method, complete with drawings and plans in full compliance with the Alberta Building Code 2014 (including but not limited to article 2.2.2.1 (1), (2), (3) & (4), Division C) for all repairs required to ensure that the building is structurally safe in compliance with the Alberta Building Code 2014, and also be affixed with the Engineer’s signature and professional stamp and seal.**
 - f) Be accompanied by completed Schedules A-2, B-1 and B-2 required by article 2.4.3.1, Division C of the Alberta Building Code 2014 confirming the Engineer has been retained as the registered professional of record for all design work and field review.**
 - g) Be forwarded a copy directly from the Engineer to the owner of the subject property.**
- 6. Provide the original certification report, conforming with all requirements of Condition 5 to the *authority having jurisdiction*.**
- 7. Obtain written approval and directions from the *authority having jurisdiction* prior**

to making any application for a building permit for repairs to the building, to the Building Permitting section of the Planning and Development Department of the Accredited Municipality or prior to commencing any repairs.

8. Comply with Conditions 3-7 by 25 January 2018.
9. Comply with Article 2.2.13.3, Division C of the Alberta Building Code 2014 by providing the *authority having jurisdiction* with written confirmation from any prospective purchaser of the property prior to any disposition or transfer of the property that the prospective purchaser has been provided with a copy of this Order and acknowledges that they will be subject to the conditions, obligations and deadlines imposed by this Order.

OR:

ALTERNATIVE “B”:

10. Comply with conditions 1 and 2 of Alternative “A” immediately.
11. Obtain a permit to demolish on or before 25 January 2018 and provide the *authority having jurisdiction*, notice in writing that a demolition permit has been obtained prior to any demolition.
12. Demolish the building, remove the foundation, and clear and level the site to adjacent grades within one month of the date of issuance of the demolition permit or as per expiry conditions imposed on the demolition permit by the *authority having jurisdiction, whichever is greater*.
13. Comply with Article 2.2.13.3, Division C of the Alberta Building Code 2014 by providing the *authority having jurisdiction* with written confirmation from any prospective purchaser of the property prior to any disposition or transfer of the property that the prospective purchaser has been provided with a copy of this Order and acknowledges that they will be subject to the conditions, obligations and deadlines imposed by this Order.

CONSEQUENCES FOR NON-COMPLIANCE WITH THIS ORDER:

If you do not comply with this Order by the deadlines specified, the Accredited Municipality is authorized, by Section 55 (1) of the *Safety Codes Act* to enforce this Order at your expense, and by Section 55 (2), to add all costs incurred in doing so on the tax roll.

Therefore, if you fail to comply with either Alternative “A” or Alternative “B” by the dates set out in this Order the Accredited Municipality may take action at its election to enforce the Order by either retaining the appropriate professionals to carry out the structural investigation and/or attending at the property to demolish the structure and clear and level the site to adjacent grades. All incurred costs will be added to the tax roll of the property.

Issue:

1. The Appeal concerns a building in the Accredited Municipality, Alberta.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. Appearing for the Appellant, the Appeal Panel heard from the Property Owner.
3. Appearing for the Respondent, the Appeal Panel heard from a lawyer representing the Accredited Municipality, and a Safety Codes Officer (SCO) with the Accredited Municipality.
4. Attending as observer was the Manager of Safety Codes with the Accredited Municipality.
5. A representative from Alberta Municipal Affairs attended as Technical Advisor to the Appeal Panel.
6. At the commencement of the hearing, the Appellant stated that not knowing any of the Members of the Appeal Panel, they could not say for certain if they might have an objection to any of the members, but the hearing was allowed to proceed with that proviso. The Respondent confirmed there were no objections to any members of the Appeal Panel, and both parties agreed that the Safety Codes Council (Council) in general and the Appeal Panel (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 Panel, consisting of the documents listed below in The Record, paragraph 8 as items 1) to 7). The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Panel prior to the hearing. At the commencement of the hearing the Appellant submitted new documents as listed next under in the Record. The Respondent **objected** to the introduction of this material on the basis of “**relevance**” but after considering the matter *in camera* the Panel allowed them to be received, noting that if they were not relevant to the issue before the Panel, they would not be given any weight when the Panel considered its decision.

The Record:

8. The Panel considered, or had available for reference, the following documentation:
 1. Notice of Appeal
 2. Request for a Stay of the Order
 3. Acknowledgment Letter dated November 26, 2015
 4. Stay of Order Letter dated November 26, 2015
 5. Appeal Hearing Brief Preparation Guide
 6. Appeal Hearing Brief submission from the Appellant

7. Appeal Hearing Brief submission from the Respondent
8. Letter from Alberta Housing and Public Works dated June 1, 1978
9. Excerpt from a newspaper circa September 1975, including notice to close a portion of the lane between two Avenues in the Accredited Municipality, beside which was an advertisement encouraging voters to elect the Appellant to the Town Board
10. Newspaper article dated July 10, 1984
11. Letter to the Appellant dated March 30, 1984
12. Undated Plan of Lease Site
13. Copy of the June/July 1990 edition of **The Trapper**, containing an article written by the Appellant
14. Undated letter to the Appellant
15. Undated series of colour photographs, numbered 7-13
16. 2011 update from the Accredited Municipality on the Urban Infrastructure Rehabilitation Program
17. Undated aerial views of the Waterways and other properties
18. Undated contractor drawings
19. 2017 corrected Tax Assessment sent to the Appellant
20. 2017 Official Receipt from the Accredited Municipality
21. Undated Aerial photograph of the property showing damage from fire and recent activity to roads in the area
22. 2017 Tax Summary
23. December 2012 Court Order relating to land not including those belonging to the Appellant

The Panel allowed introduction of the additional documents as part of the Appellant's submission, and while some of the documents seem unrelated to the issue before the Panel, they are all connected in the bigger picture, and are part of a larger story the Appellant wanted the Panel Members to hear.

The Panel Members also agreed this matter should be considered in accordance with provisions of the 2014 Alberta Building Code.

Provisions of the Safety Codes Act:

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

Inspections

34(2) For the purpose of ensuring that this Act and any thing issued under this Act are complied with, a safety codes officer may, at any reasonable time and on reasonable notice, enter a private dwelling place that is in use as a dwelling in which the officer has reason to believe there is something to which this Act applies and, using reasonable care, may carry out an inspection and review designs

- (a) with the consent of the owner or occupant, or
- (b) with a warrant from a justice.

Enforcement of order

55(1) An Administrator or a safety codes officer appointed under section 33(1) or referred to in section 33(2) or (3), together with a police officer, a peace officer or any other person as the safety codes officer considers appropriate, may enter, at any reasonable time, any premises or place for the purpose of carrying out an order unless the owner refuses to allow or interferes with the entry or the carrying out of an order

- (a) if a person to whom the order is issued under section 49, 52 or 53 with respect to any thing, process or activity under the administration of an accredited municipality or accredited regional services commission does not commence an appeal of the order within the time set out for the commencement of the appeal and the order is not carried out within the time set out in the order, and
- (b) if the owner of the land concerned as registered under the *Land Titles Act* or, in the case of Metis patented land, the settlement member registered in the Metis Settlements Land Registry as owner of the Metis title, provisional Metis title or an allotment in the land has been given written notice of the intention of the accredited municipality, the accredited regional services commission or the Authority to carry out the order.

(2) When an order is carried out under subsection (1) in respect of land that is not Metis patented land, the local authority may place the amount of the expenses incurred in carrying out the order on the tax roll as an additional tax against the land concerned, and that amount

- (a) forms a lien on the land in favour of the municipality, and
- (b) is, for all purposes, deemed to be taxes imposed and assessed on the land and in arrears under the *Municipal Government Act* from the date the amount was

placed on the tax roll, and that Act applies to the enforcement, collection and recovery of the amount.

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

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

Division C

2.2.15. Unsafe Condition

2.2.15.1. 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*.

2.4.2. Professional Involvement

2.4.2.1. General

- 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, or
 - 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

- 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).

2.2.13.3. Change of Ownership

- 1) The *owner* shall give notice in writing to the *authority having jurisdiction* of an impending change in ownership.
- 2) A new *owner* shall provide assurance that compliance with Subsection 2.2.10. and Sentence 2.4.3.1.(1) will continue under new ownership.

Provisions of the Administrative Items Regulation (AR 16/2004):

11. The Administrative Items Regulation (AR 16/2004) provides, *inter alia*:

18(2) If, in the opinion of a safety codes officer, the size or complexity of a project may give rise to special safety concerns, the safety codes officer may require that the construction of any or all of the project's

- (a) buildings,
- (b) electrical systems,
- (c) elevating devices,
- (d) gas systems,
- (e) plumbing and private sewage disposal systems, or
- (f) repealed AR 49/2006 s47;
- (g) fire protection systems and equipment,

be reviewed during construction in accordance with the *Engineering and Geoscience Professions Act* for engineering work, or the *Architects Act* for architectural work.

Position of the Parties

Appellant

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

12. The new photographs that were submitted, were included to put a human face to their concerns, in particular for the district of the Accredited Municipality where the property in question is located. The Appellant shared the family story of their background in the Accredited Municipality and the neighborhood. Note their removing a berm erected by the municipality, and a trench dug to drain water from the property of the previous

owners.

- 13.** A culvert had been reinstalled but at a much higher level than previously, resulting in a wetland.
- 14.** Other documents were submitted to confirm that there is documentation of his long standing interest in not only the future progress in Waterways, but in the environment, concern with over population in the animal (thus his work as a trapper) and human world and population collapse.
- 15.** The “Plan of Lease Site” shows (upper left) the location of a dwelling of another property owner, who was told they were a squatter but given a one year lease which should confirm their ownership.
- 16.** When asked by the Chair what the relevance of all this was to the property in question, the Appellant said there is a “bigger game” happening and the Safety Codes Council is a pawn in that game. They are concerned for their safety but as a citizen of the Accredited Municipality and a loyal Albertan, if something is wrong, it must be pointed it out.
- 17.** For a time it looked as though the development plan for Waterways was going well but certain activity by the Accredited Municipality resulted in property damage and the Appellant wonders if perhaps the municipality has a hidden agenda to make this property worthless. The Appellant continues to pay taxes (including penalties) and insurance. Because their income is limited to pension, they have no means to pay, and the municipality “chased all their tenants out.” There was no means to protect the property during the fire, and resources were understandably spread thinly.
- 18.** The Accredited Municipality could have done more to prevent the flooding which has affected the Appellant’s property, and other actions on the part of the Accredited Municipality have negatively impacted Waterways properties. The Appellant believes an attempt is being made to push them and their family and other members of the community, from Waterways.
- 19.** Waterways is now in a distressed state and not able to rebuild. The Accredited Municipality is critical of equipment parked on the Appellant’s property but store their own equipment on a nearby property.
- 20.** The Appellant was hoping Waterways might get some relief from the new Municipal Government Act but it did not happen.
- 21.** The Appellant acknowledges issues with the property in question, but wonders why it is entirely their responsibility to address those issues, when certain actions on the part of the Accredited Municipality have contributed to the problems.
- 22.** Even were they to try to move forward, the Appellant is not confident the Accredited Municipality would grant them the necessary permits.
- 23.** The Appellant said they object to the process, which they feel favours the rich and powerful and by design, against the uneducated, poor and elderly. They were concerned that the hearing would proceed without their lawyer being present. The Appellant did indicate that they were in contact with their lawyer via text message on their phone. The

Chair acknowledged that communication is between them and their lawyer and that the proceedings could continue.

- 24.** The building in question has not “failed”, nor are there health and safety risks of significance to the community.
- 25.** Although the residents of Waterways were promised that a good future would be coming to their neighbourhood, with a plan and zoning changes that would ensure a prosperous and amenable community future, it was a lie.
- 26.** Without notice, the promised prosperous future for the residents of Waterways has been overthrown by a process of selective persecution. The Appellant themselves have been persecuted by the powerful in the Accredited Municipality and Alberta.
- 27.** The legal demands of the past twenty-three years have required that the appellant lives in financial distress. The necessity of maintaining security at two properties before the fire destroyed one of the Appellant’s properties, has meant not leaving town at the same time and not having quality time with family, in terms of illness, funerals and celebrations.
- 28.** To maintain security at the other property of the Appellant, a family friend lived there from 2012 to 2015, at no cost, an expense for which they were never compensated. They could not rent the building because the street level had been reduced and the sewer line crushed by the municipality during street modifications, which also eliminated street parking.
- 29.** The residence in question is subject to flooding, service freeze-up, and a cracked foundation but one that has not “failed” as the Accredited Municipality says. This is a systematic assault on the value and viability of the Appellant’s home, and to have the building demolished, removed and the hole filled at their own expense effectively deprives the Appellant and their spouse of the use of the property.
- 30.** The value of the property has been assessed at \$550,000 (in 2015). Utilizing the safety codes process rather than expropriation, the Accredited Municipality will have acquired their property for essentially no compensation or retail value.
- 31.** The actions of Alberta Health Services, in placing a caveat on the property, was the Appellant believes, intended to deny his family access to financial assets that would allow them to pay for these proceedings. This has resulted in additional stress on the Appellant and their spouse.
- 32.** The Appellant has been informed the “Not for Human Habitation” caveat applies to tenants and not the owner.
- 33.** The Appellant said they have a trailer they can live in over the winter, although the Appellant acknowledged they had been living at the property in question over the summer. The Appellant has several sea-cans available should they need to remove their personal property from the building. If the Accredited Municipality would pay to demolish the building they could get all their personal property out of the building to keep it safe from flooding.

- 34.** The Appellant said, while they are not in favour of demolishing the building, they would like some assurance from the Accredited Municipality that whatever action is decided on (repair or demolish) they would like some confirmation of a working relationship with the Accredited Municipality and that they would be granted the necessary permits. The Respondent acknowledged that if the Appeal Panel upholds the Order, they would grant the necessary permits. They remain concerned however that it will not happen in a reasonable time.
- 35.** The Appellant suggested they might get a bank loan or second mortgage to make this building an asset again.
- 36.** They said the second floor is not drywall but one-eighth to one-quarter inch plywood. The outside is shiplap, attached with nails and seems to be in good condition. They said the stucco has not settled and the parging on the foundation has not moved. There is no vapour barrier between the stucco and the frame.
- 37.** Since the basement is lower than the service from the street, a sump pump is required.
- 38.** The Appellant also said there is absolutely no chance of the building imploding or collapsing, although they did acknowledge there is no rebar in the foundation and a middle support beam in the basement that will require a new footing and telepost jack.
- 39.** The Appellant asked that if the Panel upholds the Order, they be given more time. The Appellant said they are old, with limited resources and would like to travel to B. C. where their spouse is now living, and perhaps return to Alberta in “construction season” to begin the work. The Respondent said while they do not expect the Appellant will be able to get an engineer’s report within 30 days; they do want to see some evidence of action within a “short period of time”, as they have an obligation to act.
- 40.** In response to a question from the Panel, the Appellant said they were not really satisfied that they had had ample opportunity to present their case during the hearing. The Appeal Panel members are satisfied however that the Appellant did.

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:

- 41.** The Respondent said that the Appellant has had ample opportunity to ensure legal representation at the hearing. The Order was originally issued, and the appeal submitted in August 2015. The original appeal was scheduled to be heard March 16, 2016 and three days before the hearing the Appellant asked for a delay as they had obtained the services of a lawyer. The need for rescheduling of all parties, and the understandable delay caused by the fire which led to the evacuation during which there was no risk of injury to anyone, meant the hearing was not rescheduled until November 6, 2017, the Appellant then said they were unable to attend and the hearing was again rescheduled until November 24, 2017. The Respondent has been in regular contact with the Appellant’s lawyer and they do not know why the lawyer was not able to attend this

hearing.

42. More than two years have elapsed since this possible unsafe condition was identified, and people have been moving back and lots of construction has been happening in the area.
43. The original Order included the other property of the Appellant which was unfortunately destroyed in the fire so is no longer an issue.
44. Safety codes officers are normally involved with new construction projects, but will as necessary respond to complaints or to matters that they identify while driving around the city.
45. In the case of the property in question, there was a complaint received that resulted in the SCO visiting the property. As the Appellant would not grant the SCO access to the building the latter conducted a visual inspection from the outside. The building in question is on a corner lot so the SCO was able to view all 4 sides of the building from the street.
46. The SCO observed a number of concerns with the structural integrity of the building, including a crack in the foundation, access and egress hazards and 2 walls which have “substantially failed.”
47. Photographs submitted by the Respondent, including one identified as page 238 of the Respondent’s submission show there has been an additional foundation poured, possibly for a front porch, leaving a large hole making evacuation that way, hazardous.
48. Although hard to see in the photograph, the wall on the right side of the photo is separated from the front wall.
49. Photographs identified as pages 240 and 241 seem to show that the southwest wall is failing, having shifted inward. Other photos (pages 251 - 254) show the foundation is cracking.
50. The photograph on page 248 shows a sliding door on the second level, opening onto nothing.
51. The Panel was referred to page 255; a Land Title Certificate dated November 12, 2015, confirming Alberta Health Services served notice of a Health Hazard.
52. When a second request to gain access to the building was refused, the SCO issued the Order in the hope of getting a structural engineer inside to determine if the building was safe and any repairs needed. The alternative was to demolish the building.
53. Without seeing the inside of the building, the SCO can’t say for certain, how serious the problem is.
54. The Accredited Municipality knows little of the history of the building. There may have been a permit issued circa 1971 to relocate an existing building and place it on a new foundation. The Appellant has acknowledged that flooding has impacted the condition of the building and as the owner, the Appellant has an obligation to maintain the property and ensure it is done in a safe manner. Having little or no money is not reason to not act when a property appears unsafe.

- 55.** The Respondent asked that based on the evidence before it, the Panel either determine that the building is not in compliance with the Alberta Building Code (ABC), or themselves Order that a structural engineer be brought in to inspect it.
- 56.** The Accredited Municipality is not in the business of paying the cost of bringing buildings into compliance with the ABC, and determined therefore, that an Order was their only option.
- 57.** The SCO acknowledged the short timeline allowed to satisfy the Order. The Order does not suggest all recommended repairs need be completed by November 1, 2015, only that it should be ample time to arrange for a structural engineer to assess the condition of the building and identify necessary repairs and obtain any required permits to allow work to begin. When the Appellant commented that they did not believe the Accredited Municipality would ever give them a permit, the municipality responded saying, they want the Appellant to get a permit.
- 58.** Not having been granted access to the building, the SCO cannot say whether remediation was even possible and at what cost. Perhaps an engineer would find the building could be remediated inexpensively.
- 59.** The Order is not an order to demolish the building, that is simply an alternative should the Appellant choose not to pursue the first option. The Accredited Municipality is not expecting the Appellant to “build a luxury palace”, only do what is necessary to ensure the building is safe.
- 60.** Given their experience dealing with the Appellant, the Accredited Municipality has no reason to believe they will comply with this or any other Order, and they are concerned, that if the Panel is not definitive in its ruling, including identified deadlines to satisfy the various components of the Order, it could take years, and further Orders to achieve the safety the Accredited Municipality desires.
- 61.** In response to a question from the Panel, the SCO confirmed he last visited the property on October 11, 2017 and that there has been no obvious deterioration since the original Order was issued. The condition of the building has not however improved. It is the same as before based on external observation. The utilities have been shut off, at least since the fire which may have compromised the building’s condition.
- 62.** The fire itself may have damaged the building although none is visible to the naked eye. It may have been shielded by the neighbouring stucco clad building.
- 63.** The SCO said he drives by the building regularly and has seen no activity. Whether the building received damage from water bombing activity during the fire is not known. Many property owners only discover such damage upon moving back in.
- 64.** Several buildings in the area were flooded and the Alberta Health Services (AHS) notice was in response to damage that occurred during the flooding. The Appellant did allow AHS to conduct an interior inspection of his property. While the SCO was allowed to accompany AHS during its inspection, it involved talking to tenants on the second floor and they did not go down to the basement.
- 65.** The Order that was issued, deals with structural matters only, not other matters such as

the second floor sliding door. The SCO was of the opinion that since tenants were no longer living in the building he felt a little better and believes any report from a structural engineer will address unsafe conditions other than structural.

- 66. In closing, the Accredited Municipality again asked the Panel to clearly identify the date on which an engineer's report must be obtained, and once obtained, a definite date for the Appellant to achieve compliance with that report. Otherwise the Respondent fears they will be back before the Council in the future on the same issue.
- 67. Regarding the Appellant's assertion that a municipally contracted Bobcat caused damage to their property, there are ways to address this through other means. This is not a matter that the Council can address. Similarly, any damage due to water being diverted onto the property is not a matter for the Council. The Accredited Municipality is not aware however that it caused such damage.
- 68. If the exterior of the building has not been modified since it was moved to its current location, the municipality can still require the owner to correct any unsafe conditions such as the sliding door and missing or unsafe handrails.
- 69. The Panel asked the SCO if it was possible that the structure had not failed but that it was just the parging and stucco that had moved. The SCO responded that they believe the foundation has failed but they would need an engineer inside to confirm this one way or the other. The Safety Codes Act puts that responsibility on the owner.
- 70. The Respondent expressed concern upon learning that the Appellant has been living in the building, which is contrary to both the Alberta Health Services and Safety Codes Orders. They believe this reinforces their belief that there will be no action on the part of the Appellant.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

- 71. The issue before the Panel is the structural integrity of the building in question. While the Appellant expressed many other indirect or unrelated concerns, the Panel, as stated earlier, agrees with the Respondent that they are not relevant to the issue before the Panel.
- 72. The Panel believes that notwithstanding the major roadblock presented by the fire, the Appellant has had ample opportunity to address the conditions of the Safety Codes Order issued in September 2015 both before and since the fire.
- 73. Whether the building in question presents an imminent serious danger remains uncertain, however the evidence presented satisfies the Panel that the actions of the SCO in issuing the Order that they did, were a reasonable course of action having been denied access to the building. The Panel agrees with the Respondent that there are reasonable and probable grounds to believe an unsafe condition exists.
- 74. The Panel understands the Appellant's aversion to demolishing the building. That would be an extreme measure without more information, but to date the Appellant has not

allowed the Accredited Municipality to obtain that additional information by granting access to the building and having a structural engineer inspect the basement and other areas of the building and report.

- 75.** Section 34 (2) of the Safety Codes Act gives safety codes officers the authority to enter a private dwelling, at a reasonable time and on reasonable notice, either with the consent of the owner or with a warrant from a justice. Having obtained such a warrant, the safety codes officer may be accompanied by a police officer or peace officer when so doing.
- 76.** In response to the Safety Codes Council Order contained herein and given the history of this matter, it may be necessary for the *authority having jurisdiction* to seek such a remedy.
- 77.** If the safety codes officer is granted access by the owner, or through a warrant, the Panel expects the Appellant to complete any work recommended by the structural engineer in a reasonable period of time as set out in the Safety Codes Council Order or as determined by the *authority having jurisdiction*.
- 78.** When a Stay of Order was issued prior to this hearing, the Safety Codes Council was not aware that the Appellant had been living in the building, which is contrary to both the Order and the Stay which was granted.
- 79.** The Appellant is cautioned that any non-compliance with the terms of this Order including not meeting the imposed deadlines, will result in the Municipality taking appropriate action to address the unsafe condition and which may include demolition. Should the Appellant hope to salvage the building in question, they must retain a professional engineer as set out in Alternative “A” by the deadline imposed.
- 80.** The Appellant’s opinion of whether the building presents an imminent serious danger, in the Panel’s opinion should not be given any weight. While this may turn out to be true, the Panel agrees with the *authority having jurisdiction*, that neither they nor the Panel can reach such a conclusion without further evidence from a structural engineer.

Signed at the City Edmonton)
in the Province of Alberta)
this 8th Day of December A.D. 2017)

Chair, Building Sub-Council Appeal Panel