



Safety Codes Council

COUNCIL ORDER No. 0015473

BEFORE THE BUILDING SUB-COUNCIL

On April 20, 2018

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

AND IN THE MATTER OF the Order of Safety Codes Officer Pursuant to Section 49(1) of the Safety Codes Act, R.S.A. 2000, c.S-1, issued February 1, 2017 by an the Accredited Municipality (Respondent) against a Business Owner (Appellant).

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

FROM

“You are hereby ordered to:

-Backfill the open excavation by February 28, 2017.”

TO

“You are hereby ordered to:

-Backfill the open excavation by October 20, 2018.

AND

Business Owner shall maintain the existing fencing and ensure that it remains intact and in good condition at all times.”

Issue:

1. The Appeal concerns the requirement to backfill open excavation located in the Accredited Municipality.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. Appearing for the Appellant, the Appeal Panel heard from the legal counsel for the Business Owner.

3. Appearing for the Respondent, the Appeal Panel heard from the legal counsel for the Accredited Municipality.
4. Attending as a Technical Advisor for the hearing was representative from Alberta Municipal Affairs.
5. Attending as an observer was individual from Alberta Municipal Affairs.
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 8 as items 1) to 6). 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.

The Record:

8. The Appeal 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 February 23, 2017
 - 4) Stay of order letter dated March 7, 2017
 - 5) Appeal hearing brief submission from the Appellant
 - 6) Appeal hearing brief submission from the Respondent

Provisions of the Safety Codes Act:

9. 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.

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

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

Part 1

Compliance

Section 1.1. General

1.1.1. Application of this Code

1.1.1.1. Application of this Code

- 1) This Code applies to any one or more of the following:
 - g) the demolition of any *building*,
 - i) the correction of an *unsafe condition* in or about *building* or property,

Position of the Parties

- 11. Legal counsels for the parties made a joint submission at the hearing - they introduced an amendment to the order compliance date: October 20, 2018, which is 6 months from the date of hearing. This time is believed to be sufficient for the Business Owner to commence development of the land.
- 12. The parties confirmed that the requirement of the order - backfilling the excavation - remains in place.

Reasons for Decision:

- 13. The Appeal Panel agreed to change the compliance date to October 20, 2018, as suggested by both parties.
- 14. The Appeal Panel agreed that there was mutual agreement between the Appellant and the Respondent that there is a land development process in progress, therefore the parties proposed to introduce the following sentence to the requirements of the order: "Business Owner shall maintain the existing fencing and ensure that it remains intact and in good condition at all times."

Signed at the City Edmonton)
 in the Province of Alberta)
 this 26th Day of April A.D. 2018) -----

Chair, Building Sub-Council Appeal Panel