



Safety Codes Council

COUNCIL ORDER No. 0015488

BEFORE THE BUILDING SUB-COUNCIL

On July 18, 2018

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(1)(a) of the Safety Codes Act, R.S.A. 2000 c. S-1, issued June 15, 2018 by the Accredited Municipality (Respondent) against Unit Owners (Appellants) and a numbered Condominium Corporation.

UPON REVIEWING the Issued Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **VARIED**, with the **change of the compliance date** from July 27, 2018 to **October 1, 2018**.

Reasons for the Decision

Introduction:

1. The Appeal concerns the addition to a low-rise condominium building that has been constructed without permits necessary under the Safety Codes Act.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. Appearing for the Appellant, the Appeal Panel heard from the legal counsel for the Appellant; the owner of the unit in question; and a Professional Engineer hired by the Appellant (Appellant's Engineer).
3. Appearing for the Respondent, the Appeal Panel heard from the legal counsel for the

Accredited Municipality; Chief Commercial Plans Examiner; the superintendent of the numbered Condominium Corporation (Condominium Corporation); and a Professional Engineer hired by the Condominium Corporation (Condominium Corporation's Engineer).

4. Representatives from the Condominium Corporation requested to have status in the appeal hearing. The request was denied based on the fact that the Condominium Corporation did not file the notice of appeal jointly with the Appellants. However, the Condominium Corporation's superintendent and the Condominium Corporation's Engineer were allowed to testify as witnesses from the Respondent's side. Other representatives of the Condominium Corporation were attending as observers.
5. Also attending as observers were individuals 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 (Panel), and that the Safety Codes Council (Council) in general and the Panel in particular had jurisdiction to hear and decide the appeal.
7. The Appeal Panel Chair (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 1) to 5). 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. Admitted as evidence were an additional submission from the Respondent - a letter to the Appellant from the Appellant's Engineer dated November 6, 2017 (marked as "Exhibit 1, Respondent, Date: July 18, 2018"), and a submission from the Appellant - Professional Qualifications of the Appellant's Engineer (marked as "Exhibit 1, Appellant, Date: July 18, 2018), listed in the Record below as items 6) and 7). Not admitted as evidence in response to an objection from the Appellant's legal counsel were several photographs, and a complaint to APEGA regarding the Appellant's Engineer.

The Record:

9. The Appeal Panel considered, or had available for reference, the following documentation:
 1. Notice of Appeal
 2. Acknowledgment Letter dated June 28, 2018
 3. Stay of Order Letter dated June 28, 2018
 4. Appeal Hearing Brief submission from the Appellant
 5. Appeal Hearing Brief submission from the Respondent
 6. Letter to the Appellant from the Appellant's Engineer dated November 6, 2017
 7. Professional Qualifications of the Appellant's Engineer

Position of the Parties

Appellant's

- 10.** At the commencement of the hearing, the Appellant's legal counsel objected the Condominium Corporation to be given a status in the appeal hearing. The Panel satisfied the objection, confirming that the individuals who filed the notice of appeal are the Appellants, and the Accredited Municipality is the Respondent.
- 11.** The building was constructed in 1982, and the Condominium Corporation came into existence on November 6, 2006. The property in question is a 3.5-storey, low-rise building located in Edmonton.
- 12.** On May 30, 2005, after the purchase of the building was completed, the three owners began to work on the building repairs. One of the owners owns a roofing company which did the roofing for the building.
- 13.** The three owners contracted the design work on the structure in question to an individual contractor who assured the former that under the Building Code, constructing the access to the roof-top would not require building permit. However, the Accredited Municipality informed the owners that the permit would be needed.
- 14.** The roof-top patio was constructed without a building permit around 2006.
- 15.** The Appellant indicated that they hired an independent inspector to provide code requirements as an SCO. They used to work together on other projects. The Appellant indicated that the recommendation was to have a telepost installed as an 'additional element'.
- 16.** The roof-top addition was constructed respectful of the amenity space and adding the value to the building in general. There have been no issues with the addition - only minor touch-up repairs have been performed.
- 17.** By the decision of the Subdivision and Development Appeal Board from June 5, 2009, the Appellant was granted a Major Development Permit allowing for construction of an addition to the Apartment Building (4.88 metres by 5.49 metres access to a roof-top deck).
- 18.** On June 17, 2009, the Appellant applied for the Commercial Final Permit with the Accredited Municipality, however, after numerous attempts to follow-up with the latter, the Appellant never heard back about the permit application. Both the Appellant and the Appellant's Engineer unsuccessfully pursued this with the Accredited Municipality.
- 19.** The Appellant referenced the letters from residents of the building supporting the addition to the roof top.
- 20.** On June 13, 2016, the Appellant's Engineer was called by the Appellant. It was required to provide more documentation related to installation of the roof-top addition to the Accredited Municipality.
- 21.** The Appellant's Engineer carried out a review of the building and the unit in question,

reviewed background information, reports, and documents they received from the Appellant and issued engineers report with respect to the design and construction on or after June 14, 2016. The Appellant's Engineer submitted drawings and ABC schedules dated June 29, 2016, to the Accredited Municipality.

- 22.** In a later report, dated July 9, 2018, the Appellant's Engineer comments on the report issued by the Condominium Corporation's Engineer, dated May 27, 2018, outlining the points of disagreement regarding the building's structural integrity, safety, damage that the roof-top addition is causing to the building, and presence of imminent danger to the building and its occupants.
- 23.** The Appellant's Engineer emphasized that the structure is stable, and there is no sagging or drifting associated with the roof-top addition. The roof survived the severe snowstorm of 2011, and is in 'almost perfect' condition, according to the Appellant's Engineer. While there may be issues identified, they are unrelated to the roof-top addition. For example, most buildings of that age have cracks in the foundation.
- 24.** The Appellant's Engineer strongly disagreed with the reference to 'imminent danger' in the report by the Condominium Corporation's Engineer, and the former emphasized that removing the roof-top addition is a very serious decision.
- 25.** As of the date of this hearing, the roof-top addition has been demolished. Demolition by the Condominium Corporation started on May 22, 2018.
- 26.** During cross-examination, the Appellant sought clarification of what is understood by 'imminent danger' in the Condominium Corporation's Engineer's report. Based on the reply from The Condominium Corporation's Engineer, the Appellant insists that there is no evidence of imminent danger to people or property, despite which the statements about imminent danger in the Condominium Corporation's Engineer's report were relied on while the Safety Codes Council was considering the Appellant's request for a Stay of Order.
- 27.** The Appellant raised a question why since 2006 no measures were taken to prevent having the structure on the roof top.
- 28.** The tenants very much enjoyed the space for fourteen years. It is not a big structure and no structural issues presented themselves.
- 29.** The previous Condo Board believed the roof-top addition increased the value of all the units. These have since plummeted.
- 30.** The Appellant is seeking the order to be revoked and the parties allowed to continue with their litigation. It is evident to the Appellant that the Order was premature and therefore invalid.
- 31.** The Appellant's Engineer acknowledged, under questioning from the Panel, that they did not see the exposed structure, just drawings and other reports but was satisfied these reflected what was constructed.
- 32.** The Appellant's Engineer was asked, if they did not observe the condition of suites

located two levels down the suite in question, which the Condominium Corporation's Engineer's report indicated were sagging, how could they conclude this was unrelated to the roof-top addition? The Appellant's Engineer replied saying, that since there was no sagging evident in the floor of the suite in question, there could be none in the ceiling of the two below it.

Respondent's

- 33.** At the beginning of the hearing, the Accredited Municipality chose to incorporate the evidence from the Condominium Corporation into their case presentation.
- 34.** Safety Codes Act, Alberta Building Code, and the Accredited Municipality require building permits prior to commencing work. The structure in question needs to meet building permit requirements. A building permit was never issued by the Accredited Municipality because sufficient information was never provided. Chief Commercial Plans Examiner understood the decision not to issue a permit related to information about the constructed height of the building in relation to the maximum height permitted under the Alberta Building Code, given that it was constructed of combustible material.
- 35.** Considerable structural alteration occurred when the roof-top addition was constructed and the Appellant is in essence 'begging for forgiveness rather than seeking permission.'
- 36.** In 2016, an enforcement officer followed up on the delinquent application for the permit.
- 37.** The Condominium Corporation's Engineer's report of May 27, 2018 prepared for the Condominium Corporation indicated that there is imminent danger to the structure. A safety codes officer reviewed the engineer's report and issued an order. Perceived significant danger was the basis to order removal of the illegal structure.
- 38.** After May 27, 2018, the Accredited Municipality hasn't received any rebuttal engineering reports.
- 39.** The Condominium Corporation's Engineer's report was based on the observations and measurements made on-site. It took them three attempts to get the access not only to the roof top but also to the inside of units. The Condominium Corporation's Engineer in their report indicate that the building envelope is changing and there is no evidence that the base of the building was reinforced. Since their first visit to the site, the Condominium Corporation's Engineer's opinion about the building hasn't changed.
- 40.** During the cross-examination, however, the Condominium Corporation's Engineer clarified that 'imminent danger' indicated in their report does not mean that the building will fail in the nearest future. They used a 'stronger word' to motivate the Appellant to take necessary actions about the structure and ensure safety before a major snowfall.
- 41.** The Condominium Corporation superintendent, confirmed that the structure in question has been removed and the roof was covered, and, as of July 9, 2018, is 'back to its original condition'.
- 42.** The decision to issue the Order of June 15, 2018 was based entirely on the Condominium

Corporation's Engineer's report of May 27, 2018. A safety codes officer did not visit the site prior to that date.

- 43. As indicated in that report, and as Condominium Corporation's Engineer testified during the hearing, there is sagging in the floors of suites below the suite in question, and the ceiling of suite right below the suite in question was sagging, suggesting the floor of suite in question was likewise sagging, all in the area of the telepost, which was sitting only on plywood, with no reinforcement underneath.
- 44. Condominium Corporation's Engineer also observed cracks in the walls of suites below the suite in question, in the same spot on all three floors. The rough openings of the windows of these same suites were also observed to be under stress.
- 45. Their original report in 2016 was based on an external inspection only and has not changed given their more recent inside inspection.
- 46. Since removing the roof top addition, the water ponding on the roof has improved considerably, suggesting the roof top addition was indeed too heavy for the underlying structure.
- 47. The building has been restored to its original design and has been inspected by the Condominium Corporation's Engineer.
- 48. The Accredited Municipality could not explain why, given the Condominium Corporation's Engineer's opinion that there was imminent danger, the decision was to issue an Order to demolish, but not to evacuate the building.
- 49. The Accredited Municipality emphasized that safety is the main issue, and the municipality errs on the side of safety, therefore the order issued on June 15, 2018 should be upheld.

Provisions of the Safety Codes Act:

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

Part 5

Orders, Appeals

Order

49(1) A safety codes officer may issue an order if the safety codes officer believes, on reasonable and probable grounds, that

- a) this Act is contravened.

Emergency

47(1) If a safety codes officer is, on reasonable and probable grounds, of the opinion that there is an imminent and serious danger to persons or property because of any thing, process or activity to which this Act applies or because of a fire hazard or risk of an explosion, the officer may take any action that the officer considers necessary to remove or reduce the danger.

Findings of the Appeal Panel:

The Appeal Panel makes the following findings:

- 51.** Having heard the clarification from the Condominium Corporation's Engineer regarding the use of 'imminent', and taking into account the fact that no subsequent order to vacate the building was issued after June 15, 2018, the Panel agrees that there was no imminent danger to people or property, at least as is generally applied under the Safety Codes Act.
- 52.** Even though there was no imminent danger to people or property, the Panel agrees that there were grounds for issuing the order:
- (a) The roof-top addition was built without a building permit.
 - (b) The Condominium Corporation's Engineer recently visited the site and documented concerns with the building envelope and structure.
 - (c) The Condominium Corporation's Engineer's reporting is more detailed in terms of amount of covered and exposed structure viewed at different stages and completed more recently, including during the demolition and repair.
 - (d) The appellant had not addressed the concerns the Accredited Municipality had raised in relation to the height of the building vs. the requirements of the Building Code.
- 53.** Therefore, while the Panel accepts the Appellant's position that there was not imminent danger to the structure, as least as is normally interpreted under the Safety Codes Act, the Panel has agreed there were grounds for issuing the Order. In light of the Condominium Corporation's Engineer's clarification that the matter should be addressed before the winter snow, the Panel determined October 1, 2018 was a reasonable date, recognizing the terms of the appeal are reported to be now satisfied.
- 54.** There is no documentation from either party that the issue has been resolved or completed to the conditions of the order as of the date of the appeal hearing.

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

Chair, Building Sub-Council Appeal Panel