



Safety Codes Council

COUNCIL ORDER No. 0015495

BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE BUILDING SUB-COUNCIL

(the "Tribunal")

On September 20, 2019

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

AND IN THE MATTER OF the Order dated May 1, 2019 (the "Order") issued pursuant to *Section 49 of the Act (the "Act")*¹ and the *Alberta Building Code 2014 (the "ABC")* by an Accredited Agency on behalf of an Accredited Municipality (the "Respondent") against the property owner (the "Appellant") relating to the subject property.

UPON REVIEWING AND CONSIDERING the evidence named in **The Record** and the submissions made on behalf of the Appellant and Respondent; **AND UPON HEARING** the testimony of the witnesses at the hearing;

IT IS HEREBY ORDERED THAT the Order is **VARIED**.

FROM

Action to be taken: To immediately cease occupying of the Building as a Group C occupancy. And, within 60 days from the date on this Order, provide a letter of Conformance from a Structural Engineer with regards to the structural integrity of the building and an Environmental Engineer on the possibility of the presence of mould in the building, prior to allowing the building to be renovated for a Group D, E or F-3 Occupancy.

Direction of action: Provide the Engineer's letters of conformance prior to the building being considered acceptable to renovate to another occupancy via approval of the building permit. This includes ensuring the proper fire ratings of the exterior walls to adjacent property lines. If all the criteria is not met the building may be

¹References in this decision to the *Safety Codes Act*, includes reference to the *Alberta Building Code 2014*, pursuant to Section 1(2) of the Act.

required to be demolished.

TO

Action to be taken:

1) Occupation: The building shall remain unoccupied until the terms of this Order are satisfied, as determined by the Permit Issuer².

2) Structural Review: Obtain a report from a structural engineer regarding the structural integrity of the building. (Acknowledged as received at the hearing by all parties).

3) Application Submission: Within 120 days of the service of this VARIED ORDER, based on assessment of the report listed in (2) above and any other necessary and appropriate consultations, determine feasible use or proposed use of the building by occupancy Group(s)/Division(s) of the building, and thereafter make application for all applicable permits by submission of: completed sets of plans and specifications; completed application forms; and fees satisfactory to the Permit Issuer for the applicable Building Permit and associated Safety Codes Permit for work on the building to complete one of the following options:

Option 1

- a. Apply for Building Permit to construct essential structural remediation work under structural engineer direction;
- b. Establish change-of-use to the selected occupancy Group(s)/Division(s); and
- c. Construct interior and exterior alterations to the existing building for the selected occupancy Group(s)/Division(s).

OR

Option 2

- a. Apply for a Building Permit to Demolish which includes: removal of the entire building, the foundation and all materials of construction, debris and equipment; and
- b. Groom the site to ensure there are no open excavations, pits, or areas where water may accumulate or drain into adjacent private property.

4) Projected schedule of work: Upon obtaining the permits and permissions for either option, submit a letter to the Permit Issuer during the project advising of:

² Permit issuer means a safety codes officer or a person designated to issue permits pursuant to section 44 of the *Safety Codes Act* (Section (1)(1)(m) of *Permit Regulation, Alberta Regulation 204/2007*).

- a. The date on which the work will start, falling within 90 days of the date of building permit issuance³;
- b. Any impending change of ownership of the property;
- c. Schedule for all inspections required as part of the permit conditions for the building and other disciplines;
- d. Deviation from any condition of issuance of the building permit;
- e. Change of size or scope of the project for which the building permits is issued;
- f. Completion of construction for which the building permit is issued; and
- g. Any other event or circumstance arising that materially impacts the project.

5) Failure to apply for or obtain permits:

Failure to apply for the required permits and permissions as described under (3) above, within 120 days of the service of this Varied Order, may result in the Authority Having Jurisdiction⁴, at its discretion, issuing an Order to demolish the building.

Failure to provide all information reasonably required by the Authority Having Jurisdiction within reasonable timelines to build or to demolish as the case may be, will be deemed as abandonment; thus viewed as failure to apply for the required permits and permissions.

Direction of action:

It is strongly recommended that a knowledgeable third-party codes and construction consultant experienced with the repair, adaptation and repurposing of existing buildings conduct a code analysis. The analysis should extend to include other structures on the property to establish viable occupancy options and any alternative solution approaches that may be appropriate to the existing building before applying for permits.

Issue:

1. This Appeal concerns the possible contravention of the Act, including various Articles within Division A and B of the ABC referenced in the Order, making the subject property unsafe for Group C occupancy and possibly requiring demolition of the structure.

³ A permit expires if the undertaking to which it applies is not commenced within 90 days from the date of issue of the permit (Section 25(1)(a) of *Permit Regulation, Alberta Regulation 204/2007*).

⁴ Authority Having Jurisdiction means as a safety codes officer in the building discipline exercising authority pursuant to designation of powers and terms of employment in accordance with the *Safety Codes Act (Alberta Building Code 2014)*.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. At the commencement of the hearing, the Coordinator of Appeals confirmed the matter is an appeal of the Order issued to the Appellant, reminded all attendees that recording devices are not permitted and confirmed the names of those in attendance:
 - i. Appearing for the Appellant, the Tribunal heard from Legal Counsel for the Appellant, the Appellant, the Appellant's son, and a contractor engaged by the Appellant (the "contractor").
 - ii. Appearing for the Respondent, the Tribunal heard from a representative for the Respondent and the Safety Codes Officer (SCO) who issued the Order.
 - iii. Presiding as the Tribunal: four members of the Building Sub-Council.
 - iv. Facilitating on behalf of the Safety Codes Council: the Coordinator of Appeals and two co-facilitators.
 - v. Attending as Technical Advisor: Technical Advisor with Alberta Municipal Affairs.
 - vi. Attending as observers for the hearing: Two individuals from the Safety Codes Council.
3. The Appellant and Respondent confirmed there were no objections to any members of the Tribunal, and that the Safety Codes Council in general and the Tribunal in particular had jurisdiction to hear and decide the appeal.
4. The Tribunal Chair (the "Chair") then explained the process of the hearing, and reviewed the list of the written material before the Tribunal, consisting of the documents listed below in **The Record** (see paragraph 8). The Appellant and Respondent confirmed that there were no objections to any of the material submitted to the Tribunal.
5. The Chair sought clarification from the parties as to the subject of appeal, as the Notice of Appeal submitted by the Appellant included an Order issued on April 24, 2019; however, both parties' material dealt with the Order dated May 1, 2019. The April 24, 2019 Order was identical in content to the May 1, 2019 Order, but it was missing the Safety Code Officer's signature. The parties agreed that the order subject to this appeal was the one issued on May 1, 2019.
6. Legal counsel for the Appellant submitted additional evidence marked as "Exhibit 2 Appellant" during the proceedings. Upon confirming the Respondent did not object to the submissions, this exhibit was distributed to the parties, the Tribunal, the Co-Facilitators, and one copy was retained for the Record.
7. The Respondent submitted additional evidence marked as "Exhibit 2 Respondent" during the proceedings. Upon confirming the Appellant did not object to the submissions, this exhibit was distributed to the parties, the Tribunal, the Co-Facilitators, and one copy was retained for the Record.

The Record:

8. The Tribunal considered, or had available for reference, the following documentation:

- i. Notice of Appeal dated June 5, 2019
- ii. Acknowledgement Letter to Appellant dated June 6, 2019
- iii. Written Notification of Hearing dated July 8, 2019
- iv. Letter from Appellant advising of attendee's dated August 23, 2019
- v. EXHIBIT 1 APPELLANT - Appellant's Brief Submission (the "Appellant's Brief")
- vi. EXHIBIT 1 RESPONDENT - Respondent's Brief Submission (the "Respondent's Brief")
- vii. Letter to Appellant serving the Respondent's Brief dated September 6, 2019
- viii. Letter to Respondent serving the Appellant's Brief dated September 6, 2019
- ix. EXHIBIT 2 APPELLANT - 2006 Drawing and Description of Improvements
- x. EXHIBIT 2 RESPONDENT - Email exchange between [REDACTED] on April 11, 2019

Position of the Parties

Appellant

From the Appellant's submissions and testimony, the Appellant's position is summarized as follows:

9. It is the position of the Appellant that demolition of the subject property is not reasonable and there are other solutions available to address the issues. The Appellant is seeking for the Tribunal to vary the Order, as they have obtained the reports required of them pursuant to the Order and are willing to explore other solutions that meet the standards of the ABC, other than demolition of the subject property.

Respondent

From the Respondent's submissions and testimony, the Respondent's position is summarized as follows:

10. It is the position of the Respondent that they are greatly concerned with the current safety of the subject property and risks posed to any occupiers of it. They do not oppose development of the property; however, the Appellant needs to go through the proper permits and inspection process in order to continue.

Summary of the Oral Evidence Provided On Behalf of the Appellant

11. Legal Counsel for the Appellant, began submissions by advising that the Appellant and the Appellant's spouse have lived in the Accredited Municipality for more than 40 years, owning and operating several businesses there. The subject property was originally a 1,600 square foot commercial/retail, wood framed structure, dating back to the 1950's and located in the older part of downtown, with several neighbouring buildings being of the same age, condition and orientation on their lots. A 900 square foot addition to the

building was built in the 1990's. The Appellant purchased the combined complex in the late 1990's and lived safely and comfortably there for more than 10 years.

12. In 2012, the Appellant decided to offer suites for rent in the building. The Appellant applied for a permit and made changes to the interior and exterior of the building. This permit was fully inspected by the Accredited Agency and approved on December 17, 2014.
13. After having spent a considerable amount of money on the structure, the Appellant was surprised to learn in 2017 that the classification of the building was wrong. The Accredited Agency should have been aware of the rental suites from their numerous site inspections over the years and if the building did not fit the classification assigned originally, the Appellant should have been notified much earlier, not years after he was granted the initial permit.
14. Following this, the Appellant was advised to obtain the services of a professional engineer. The Appellant engaged [REDACTED]. Drawings were submitted (Appellant's Brief, pages A40 to A49) and a cost estimate of \$100,000 led to the decision not to proceed with construction, as the Appellant could not afford this expense.
15. After advising the Accredited Agency of this decision, see Exhibit 2 Respondent, the Appellant was served the Order, which is the subject of this appeal.
16. The Order required the Appellant to vacate the subject property and accordingly the Appellant moved into a motel room of his other business, resulting in a lost income opportunity from renting that unit to potential customers.
17. The Appellant disagrees with the possible demolition of the subject property. This will be costly, and would also leave him with a vacant lot, which he will not be able to sell due to the economic situation in the Accredited Municipality. He has been advised that the Respondent, may demolish the building, and any cost associated with this added to his taxes. The Appellant feels there are other options such as converting the unit back to a shop front with just one or two suites in the back for the owners (the original structure) and they would mitigate the mould.
18. The Appellant acknowledges the building is not a hundred percent, but none of the other similar buildings in the Accredited Municipality are being treated the same way. The appellant has consulted people in the industry who agree that what is being asked for is unusual and excessive.
19. It was pointed out that insurance companies never had any issues with the building when providing insurance and that this whole ordeal is likely a result of animosity between the Respondent and the Appellant.
20. Legal Counsel for the Appellant also stated that the Appellant would prefer working with a different Safety Codes Officer as he believes the SCO is only interested in demolishing the building.

Evidence Summary of the Appellant's Witness - the Appellant's Son

21. The Appellant's son has been assisting the Appellant with this matter.

- 22.** The Appellant's son directed the Tribunal to Schedule F in the Appellant's Brief, which contained a Structural Condition Assessment conducted by [REDACTED], dated September 2, 2019. He pointed to the findings in the report that the building was structurally sound, in comparison to the SCO's opinion that it was not. He further directed the Tribunal to the Limited Scope Mould Assessment Program Report by [REDACTED], dated June 10, 2019 in the Appellant's Brief page A56 to A63.
- 23.** The Appellant's son stated he felt it was odd the number of things that were being asked of them specifically. He added that they feel singled out by the Respondent, in that other buildings are not being treated the same way. He submitted that the Mayor's businesses in the Accredited Municipality competed with the Appellant's businesses.
- 24.** The Appellant's son added that the Accredited Municipality's Fire Department Order that was issued on June 19, 2019 was unfair, in that there was no note taking done that day; however, there is a checklist (Appellant's Brief, pages A19 to A24) attached to the order which is notably not signed. He also submitted that fire extinguishers were present and there are misspellings in the document suggesting it was done in a rush. He submitted that the Fire Department Order was a reaction to the Appellant filing an appeal with the Safety Codes Council, as the inspection occurred on April 30, 2019, but was not served until June 19, 2019, a few days after the Respondent was notified of the Appellant's Notice of Appeal.
- 25.** The Appellant's son noted that English is his father's second language and that he is not well versed in safety codes matters. As such, he is dependent on advice from the Respondent, and contractors.
- 26.** The Appellant had previously purposed the subject property as a laundromat; however, there was a significant flooding problem in the basement in 1997. Insurance did not cover the expenses and Appellant was left to cover the cost to remediate. Later, he was presented with a \$14,000 bill by the Respondent for water usage. The Appellant could not afford this cost and so the Respondent put a lien against the property. It was later confirmed the excessive water usage was the result of a curb stop being left open or broken in relation to an adjacent property.
- 27.** The Appellant's son testified that inconsistent advice from the Respondent has resulted in great financial loss for his father.
- 28.** The Appellant acknowledges that the subject property needs work, as identified in the two reports mentioned in paragraph 22 and suggested that it is not possible to complete this work by April 1, 2020, which is the deadline presented by the Respondent in their Brief. This is due to the weather and the fact that the necessary contractors or engineers are not physically located in the Accredited Municipality. They asked for a year to address the issues, including time to raise the necessary finances.
- 29.** The Appellant's son pleaded that they are looking to work with the Respondent to find a solution to avoid tearing the subject property down. The Appellant is willing to convert the subject property to either a) one or two suites and a storefront or b) a storage facility. The Appellant ideally wants to be able to reside in the subject property with their spouse, as done so for the last 10 years.

Evidence Summary of the Appellant's Witness - The Contractor

30. The Contractor was contracted by the Appellant in 2016. He is a Contractor, Journeyman Carpenter, and Operations Supervisor with [REDACTED], with 12 years of inspections experience.
31. The Contractor reinforced much of what had been previously submitted as evidence regarding the fact that some rental suites were planned or present as far back as 2006 (Exhibit 2 Appellant) and the Accredited Agency should have known the subject property was wrongly classified before 2017. He pointed to numerous material in the Appellant's Brief that mentioned 'rentals' in documents from 2012 to 2014.
32. The Contractor walked the Tribunal through some of the material in the Appellant's brief, such as the various development permits that were obtained (Schedule D), the Foundation Investigation Report from November 2012 (pages C9 to C16) and the proposed floor plans in the 2019 [REDACTED] drawings (Appellant's Brief, pages A31, A40 to A49).
33. The Contractor submitted that it took about 20 months to obtain the 2019 [REDACTED] drawings for the proposed renovation.
34. It was explained that the main issue with the directions in the Order is the necessity for modifying the subject property to meet the non-combustible wall standard and the cost associated with doing so.
35. The Contractor then went on to discuss the circumstances around the 2019 Accredited Municipality's Fire Department Order. He testified that he accompanied the Fire Chief during his inspection in April 2019 and there are many statements in the report that are not true. These include the lack of permits, no presence of a T-bar ceiling in the suites, and fire separations already being in place. Any and all electrical concerns had been addressed by a Master Electrician. It is true that there were no smoke detectors installed, there was only one small natural gas heating unit, no central forced air, just space heaters.
36. The Fire Chief's comment that old lumber and combustible materials were piled right up to the soffits was an embellishment of what was really there. Not all the windows had heavy duty screens as the Fire Chief stated; only three did.
37. The Fire Chief's comment about having to "squeeze" past the gas meter if using the breezeway is also an exaggeration. There is 44" of clearance and the Accredited Agency had no issues with the installation when it was inspected in 2014.
38. Whether the subject property is 18" over the property line is unknown since there has never been a survey, and the Chief's comment about there being three or four layers of shingles under the metal roof is not true. There is only one layer of shingles under strapping, and this is true for all neighbouring buildings.
39. The Fire Chief's comment that if the subject property were to catch fire there would not be any interior attack of any sort should not be the case. There is excellent access (13') between the adjacent theatre and the Appellant's building on one side. The other side

wall has fire rated walls as does the theatre side of the building and fire extinguishers are present in the subject property.

Evidence Summary of the Appellant's Witness - The Appellant

- 40. The Appellant is the property owner.
- 41. The Appellant testified that there has been previous conflict between himself and the Respondent, along with owners of the neighbouring properties.
- 42. The Appellant stated that the Respondent has treated him differently than other business owners. He recalled one situation where he was forced to cover the cost of his property's parking lot; however, the Respondent paid to pave the movie theatre's lot.
- 43. He also recalled a situation with respect to a neighbouring property, the owner of which was a previous Councillor of the Accredited Municipality. There was a dispute with respect to the property lines of the neighbouring property and the Appellant claims the other owner threatened him that he would shut down the Appellant's building.

Summary of the Oral Evidence Provided On Behalf of the Respondent

- 44. The Respondent's Representative, the Chief Administrative Officer for the Accredited Municipality (the "CAO") submitted that the Respondent contracts the Accredited Agency to perform permitting and inspection services.
- 45. When the subject property was converted to a laundromat, it had only a ¾" water line and needed to be upgraded to a 2" line. While the Respondent provided the water meter, all other work was contracted by the Appellant. When the new meter was installed, the contractor turned on the wrong curb stop, which resulted in the flooding problem. Therefore, the 1997 flooding issue was not due to the Respondent.
- 46. The Respondent stands by the Fire Chief's report and findings, believing he did perform a thorough inspection at the time.
- 47. The 2012 permit application in the Respondent Brief at page 18 was for a 500 square foot shed as per the diagram on page 19. Nowhere in the hand-drawn sketches that accompanied the application is there evidence of rental units, kitchens or toilets. If they were present at the time, they were not shown on the application and for that reason; the Plans Examiner identified the structure as an F3 low hazard occupancy as opposed to Group C occupancy on inspection.

Evidence Summary of the Respondent's Witness - The Safety Codes Officer

- 48. The SCO believes that since 2012 there have been many changes made to the subject property. In the Plans Examination Report of November 5, 2012, the need for 2 hour, non-combustible cladding was noted. The SCO was not sure why the former SCO who is no longer employed by the Accredited Agency, signed off on the permit since all requirements had not been met.

49. On June 18, 2014, the Appellant requested an inspection, having made the improvements. Inspection by the previous SCO noted several more deficiencies and after a follow up inspection (December 17, 2014) advised “no more site inspections required.”
50. The Accredited Agency only became aware of the existence of suites in the subject property in 2016. It was when the SCO was inspecting the movie theatre next door that he observed evidence of construction at the subject property and as per his November 2012 - Site Inspection Report (the Respondent Brief, page 46) advised the Appellant of the need for non-combustible construction and cladding on the west wall and non-combustible cladding on the east wall.
51. In 2017, when the Appellant applied for a Development Permit (the Respondent’s Brief, page 63), the plan proposed to include 5 dwelling units with additional detail included with a June 23, 2017 Building Permit Application. Engineered drawings were prepared by [REDACTED].
52. During his site visit around this time, the SCO observed many of the same concerns noted by the Fire Chief during a later inspection. He noted the need for a fire alarm system and smoke detectors as there is no secondary egress through a window in certain areas of the building.
53. It remains unclear whether the breezeway is within the property line, but if so may have to be of non-combustible construction.
54. The requirements noted proved to be too costly for the Appellant as evidenced by email communication between the Appellant and Respondent (Exhibit 2 Respondent) and given the history leading up to this point, the SCO believed resolution was unlikely, prompting him to issue the subject Order.
55. The Fire Chief was asked to get involved to support the “Action to be taken” as prescribed in the Order, which was to cease occupancy of the property as a Group C occupancy and engage the appropriate professionals to address structural and environmental (mould) concerns. The Appellant would still have to adhere to the fire ratings.
56. The SCO said he would have to see a plan if he were to consider a one or two suite building, but the subject property would still have to be structurally sound and comply with all applicable ABC requirements.
57. The SCO said he had not yet seen the September 2, 2019 report from [REDACTED] (the Appellant’s Brief, Schedule F) and took a few minutes to read the report. He said on first reading he did not feel that the four remedial actions identified on page 4 of the engineers report would render the subject property structurally sound.
58. He concluded, that if the Appellant submitted an application for a Development and a Building Permit along with the recent environmental and structural condition assessment reports, it would be considered, but if it still proved too costly for the Appellant, the building would have to be demolished.

Technical Advisor - Questions & Answers

59. [REDACTED], was the Technical Advisor with Alberta Municipal Affairs present for the hearing. The role of the Technical Advisor is to clarify questions of the Tribunal regarding the interpretation of the relevant codes and any related code issues.
60. The Tribunal deliberated on the questions for the Technical Advisor in camera. All parties including the Technical Advisor were then invited back to the hearing room and the Chair posed the Tribunal's questions to the Technical Advisor and received the following responses:
61. Q: *How far into the ABC do you go when changing use, and what is grandfathered in?*
- A: If there is a change in use, the SCO would make a determination as to how far to go. Change of use is key (D to C occupancy). Fire separation could come up if other buildings were in close proximity. New drawings would need to be submitted demonstrating what existed when built and requesting a change in use and a determination would be made on what other requirements in the code would apply.
62. Q: *What are the required ratings for residential buildings that are not houses close to property lines?*
- A: Given the lack of a survey to determine property lines, limiting distances, fire department response time and the uncertain nature of any future development, it is impossible to know what code articles will come into play. It depends on limiting distance, exterior wall to property line Part 3 and Part 9.
- If the local fire department cannot respond to the property within ten minutes, the limiting distance is reduced in half, which increases the fire resistant rating requirements for the walls of that property. To know the ratings required, it is necessary to know the type of construction for the property (ie. house or building). Section 9.10.15. applies to spatial separation between houses and Section 9.10.14. applies to Spatial separation between buildings.
63. Q: *What are the allowable openings in the same?*
- A: 2-hour wall with cladding.
64. Q: *Is it acceptable to have a single unit residential occupancy and another occupancy in the same building, and what occupancy do you design that to?*
- A: It is acceptable to have a residential occupancy and a business in the same building as long as the necessary fire separations are in place. If the fire separation does not exist, then you would apply the more stringent requirements. With an F2 residential occupancy there will be fire separation requirements.
65. Q: *Please clarify when professional input is required as residential occupancy.*
- A: Professional involvement is dealt with in Section 2.4 of Division C in the ABC. Particularly, 2.4.2. (3) articulates that four dwellings or less does not require professional development except as required in sentence (9), which provides the AHJ with the flexibility to require professional involvement based on the complexity and size of a project that gives rise to special safety concerns. 2.4.2. (4) states that it will be required if there are between 5-20 dwelling units in a single site.

Findings of Fact:

The Tribunal makes the following findings:

66. The subject property owned by the Appellant is located at [REDACTED]. It is a 60+ year old structure with an addition from the 1990's and it has housed a variety of different businesses.
67. The 2006 diagram submitted as Exhibit 2 Appellant on the day of the hearing depicts retail area and room rental at the back; however, there is insufficient evidence to support the inclusion of this diagram with any permits to the Respondent demonstrating the existence of rentals.
68. The Respondent issues a stop work notice to the Appellant in July 2012 as building permits are not in place and construction is occurring at the subject property. In this notice, it provides the Appellant with the information required to move forward.
69. In an effort to work with the Appellant on the subject property to remove the stop work order, the Respondent submits a letter to the Accredited Agency on November 1, 2012 that confirms they can move forward with building permit [REDACTED]. This permit is for a 500 square foot addition to be used as storage and classed as Group F3 Occupancy (Low Hazard Industrial).
70. The Accredited Agency issues a letter to the Appellant on November 6, 2012 enclosing the building permit, plans review and a copy of the approved drawings containing notes to assist the Appellant with compliance under the ABC and provides copies of all necessary permit applications required to comply with the Act. Subsequently, an inspection occurs on November 19, 2013 noting deficiencies with cladding.
71. On June 18, 2014, the Appellant advised the Accredited Agency that improvements are complete and request an inspection. A former SCO with the Accredited Agency cites further deficiencies in his inspection on July 8, 2014 and after another site visit in December determines no further site inspections are required.
72. While inspecting the property next door in 2016, the SCO noticed work being done on the subject property and after inquiring further discovered the existence of suites. This leads to the Respondent following up with the Appellant to apply for the necessary permits.
73. In 2017, the Appellant applies for a development permit to change the use of the subject property from general retail to dwelling units (suites L1-L5), which is subsequently approved and confirming that the Accredited Agency will follow up on the building permit.
74. The Accredited Agency issues a formal letter on November 20, 2017 advising the Appellant of the requirements before they will issue a building permit.
75. Further drawings are submitted in July 2018 and the Accredited Agency reiterates the outstanding requirements before construction and issuance of a building permit on August 8, 2018. The Appellant is given a few extensions to provide the outstanding information due to difficulty receiving updated diagrams from [REDACTED]. After submission of the new diagrams and upon request for other outstanding items, the

Appellant's son confirms that the Appellant could not justify spending the money to build the property in accordance with the specifications in the design and seeks an alternative solution to continue use of the existing structure.

76. The SCO conducts a site visit on April 24, 2019 resulting in the subject Order dated May 1, which is served on the Appellant by May 2, 2019.
77. The current design of the subject property is five suites as depicted in the September 2017 [REDACTED] drawings in the Appellant's Brief at page A5. Prior to the renovation, there was one suite with a large retail area, as shown in Exhibit 2 Appellant.
78. The 'action to be taken' in the Order has been satisfied by the Appellant, as they have obtained the necessary structural and environmental reports; however, the Respondent only reviewed these reports at the hearing:
 - i. Structural Condition Assessment by [REDACTED] dated September 2, 2019 in the Appellant's Brief, pages F1 to F6; and
 - ii. Limited Scope Mould Assessment Program Report by [REDACTED] [REDACTED] dated June 10, 2019 in the Appellant's Brief page A56 to A63.
79. The scope of the Structural Condition Assessment Report is based on a visual inspection of the structural system and does not include an assessment of the building envelope or the interior developments. It determines that the building is primarily sufficient to support the imposed design loads, excepting the exterior load bearing systems in the north-west corner and the interior supports of the main floor beam. The report further recommends remedial work to ensure the requirements of the ABC are maintained respecting the structural systems.
80. The scope of the Limited Mould Assessment Program Report is based on a visual assessment and a collection of samples for analysis. It confirms there is actual growth, requiring professional remediation.
81. The code deficiencies identified in the Order concern the safety of the building and the occupiers within it (i.e. egress, fire protection walls, smoke alarms, ventilation, etc.). Some of the deficiencies only apply to the subject property if it remains a five-plex.
82. The Appellant is willing to work with the Respondent and has provided options to avoid the possible demolition of the building, such as:
 - i. Reducing the five-plex to one or two suites with the remaining space being used as a storefront; or
 - ii. Converting the entire subject property to a storage facility.
83. The Accredited Municipality's Fire Department Order dated June 19, 2019 that forms part of the evidence is not the subject of this appeal.

Reasons for Decision:

84. The Order was issued pursuant to section 49 of the Act. Subsection 49(1) of the Act reads as follows:

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, or
- b) The design construction, manufacture, operation, maintenance, use or relocation of a thing or the condition of a thing, process or activity to which this Act applies is such that there is danger of serious injury or damage to a person or property.

85. On an appeal such as this, the powers of the Tribunal are set out in subsection 52(2) of the Act. That provision reads as follows:

52(2) The Council may by order

- a) 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.

86. In coming to its decision to vary the Order, the Tribunal looked at the purpose and intent of the safety codes system, which is to provide assurance of safety and health to persons and property. This is primarily achieved through a permitting and inspection process. The Act speaks to the requirement of permits at subsection 43(1):

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 appropriate permit.

87. While the Appellant believed the necessary permits were in place, the evidence demonstrates the Appellant did not have the necessary permits for construction of the five-suites and the subject property is unsafe for Group C occupancy.

88. The Act provides at section 5 that:

- 5 The owner of any thing, process or activity to which this Act applies shall ensure that it meets the requirements of the Act, that the thing is maintained as required by the regulations, and that when the process of activity is undertaken it is done in a safe manner.

Therefore, there is an onus on the owner (as defined in the Act) to satisfy all ABC requirements.

89. The two reports, listed at paragraph 78, constitutes new information and there is evidence of structural and environmental concerns from these reports that need to be resolved. The Appellant and Respondent both expressed a willingness to look at this matter again given this new information.

90. There may be different design options available to the Appellant that can be reviewed with a design professional to work within the Appellant's budget.

91. There is some latitude on what parts of the pre-existing structure can be grandfathered in and which cannot, pursuant to the *ABC*. The parties may want to explore alternative solutions to the problems that exist as there may be other avenues to compliance that do not necessitate demolishing the building. However, it is up to the Appellant to decide how to proceed, and do so within the extended timeline set out by the Tribunal, given the previous experience of working with designers from other cities.
92. In light of all of the above, the Tribunal's decision is to vary the Order; thus, providing the Appellant sufficient time to find the appropriate designers and contractors to bring the property up to code for the intended use.
93. Lastly, the Appellant asked the Tribunal to change the Accredited Agency or SCO utilized by the Respondent; however, the Tribunal does not have the authority to dictate whom the Respondent engages to assist them with compliance under the *Act*. The Tribunal's authority is derived from section 52 (2) of the *Act* as noted in paragraph 85 above.

Signed at the [REDACTED])
in the Province of Alberta)
this 15th Day of November A.D. 2019)

Chair Building Sub-Council
Administrative Tribunal