



# Safety Codes Council

## COUNCIL ORDER No. 0015494

### BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE BUILDING SUB-COUNCIL

On June 26, 2019

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

**AND IN THE MATTER OF** the Order dated April 4, 2019 and issued pursuant to Section 49 of the *Safety Codes Act* by the Accredited Municipality ("Respondent") against the property owner of the subject property ("Appellant").

**UPON REVIEWING AND CONSIDERING** the evidence named in **The Record** and the arguments made on behalf of the Respondent and the Appellant; **AND UPON HEARING** the testimony of witnesses at the hearing; **THIS COUNCIL ORDERS THAT** the Order is **VARIED:**

#### **FROM**

You are hereby ordered to submit the required building permit and drawings for the change in use of your shop to include living quarters no later than May 15, 2019.

#### **TO**

The property owner is hereby ordered to:

1. Submit the required building permit application and supporting drawings, documents and details to the authority having jurisdiction (AHJ), if the property owner is seeking to use the subject building as a *dwelling unit*; OR
2. Remove the interior development that does not directly relate to the housing of livestock, storage or maintenance of equipment or storage of materials or produce as outlined in the *Alberta Building Code (ABC)*, 2014 Div. A, Appendix A 1.1.1.1 (5) (a)) and notify the AHJ in writing; OR
3. Provide the AHJ with a letter, over the property owners' signatures, declaring that:
  - a) the subject building will never be used as a *dwelling unit* in part or in whole;
  - b) the subject building will only be used as a farm building; and
  - c) the property owners' will advise potential purchasers or lessees of the

above if they are planning to sell, lease or otherwise assign the subject property.

Completion of one of the three options above shall be satisfied on or before September 20, 2019.

**Issue:**

1. This Appeal concerns an addition to a farm building possibly containing living quarters and requiring reapplication of a building permit for the change in use.

**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:
3. Appearing for the Appellant, the Tribunal heard from the Appellant.
4. Appearing for the Respondent, the Tribunal heard from Counsel for the Respondent, Development Officer for the Accredited Municipality, and the Safety Codes Officer (SCO) employed by an Accredited Agency. There was also in attendance one witness from the Accredited Municipality.
5. The Administrative Tribunal consists of the Chair and three other Building Sub-Council members.
6. A Technical Advisor from Alberta Municipal Affairs (AMA) was the Technical Advisor for the appeal hearing.
7. The Coordinator of Appeals and Co-Facilitator's attended on behalf of the Safety Codes Council.
8. Several individuals attended the hearing as observers.
9. The Appellant and Respondent confirmed there were no objections to any members of the Tribunal. Upon the Chair asking whether the Tribunal had jurisdiction to hear and decide on the Appeal, the Appellant objected as CAO for the Accredited Municipality appeared to give the go ahead to issue the order, but did not sign the order. After hearing from Counsel for the Respondent, the Tribunal convened in camera and upon inviting all attendees back into the room confirmed that the SCO issued the order and had the authority to do so. The Chair confirmed the Council had the jurisdiction to hear and decide on the matter as it relates to the issued order under the *Safety Codes Act*.
10. The Tribunal Chair (the "Chair") then explained the hearing, and reviewed the list of the written material before the Tribunal, consisting of the documents listed below in **The Record** (items 13-23). The Appellant and Respondent confirmed that there were no objections to any of the material submitted to the Tribunal prior to the hearing.

11. Upon the conclusion of the Appellant's testimony, there was a request by the Appellant to summarize their case and leave without hearing the Respondent due to health concerns. The Tribunal recessed after hearing from the Respondent and provided the option to adjourn if the Appellant was unable to continue; otherwise, they would consider the Appeal abandoned. The parties agreed to proceed with a short lunch break.
12. Upon reconvening the hearing, Counsel for the Respondent asked the Tribunal to confirm that the Appellant was not recording the proceedings and that any transcript by the Appellant is not an official reporting. The Chair reminded the Appellant that they may continue to take notes for their personal use and confirmed they were not recording the Appeal.

#### **The Record:**

13. The Appeal Tribunal considered, or had available for reference, the following documentation:
14. Acknowledgement letter from the Safety Codes Council dated 6 May 2019 inclusive of the notice of appeal.
15. Stay of order letter dated 07 May 2019.
16. Written notification of hearing dated 16 May 2019.
17. Hearing brief from the Appellant marked as "Exhibit 1 Appellant".
18. Hearing brief from the Respondent marked as "Exhibit 1 Respondent" received 05 June 2019.
19. Service letter of Respondent brief upon appellant dated 05 June 2019.
20. Service letter of Appellant brief upon Respondent dated 06 June 2019.
21. Recording between the Appellant and Respondent from 13 March 2019 and communicated via email on 17 June 2019.
22. Change in representation notification 25 June 2019.
23. Additional hearing brief from the Appellant marked as "Exhibit 2 Appellant" received via email 25 June 2019 and communicated via email on 25 June 2019.

#### **Provisions of the *Safety Codes Act***

24. The relevant *Safety Codes Act*, S-1, RSA 2000, sections are found in Appendix A of this decision.

#### **Position of the Parties**

##### *Appellant*

*From the Appellant's submissions and testimony, and in response to questions posed by the Tribunal, the Appellant's position is summarized as follows:*

25. The Appellant's farm dates back to 1881 and as with many farm families, there is a tradition of sharing within the community, including having people stay in their shop and it was a surprise to learn this is not a permitted use.
26. The Appellant did have family members staying in the building for a brief period in January 2019, but they moved out upon discovery that this is not permitted. There was a large amount of furniture stored in the centre storage area, which gave the impression of residential occupancy.
27. As stated on page 003 of the Respondent's written submission, the SCO attended the property on January 23, 2019 and observed a 2- storey interior development, which in their opinion was for residential use. Among other developments, the SCO observed there was a separate room with sleeping quarter provisions, which included a window, smoke alarms and a closet.
28. The Appellant referred the Tribunal to a photograph (Exhibit 12), included in Exhibit 2 Appellant, confirming the area observed by the SCO as sleeping quarters now contains a computer workstation and no closet.
29. The Appellant confirmed he extended the Respondent numerous opportunities to inspect this area, but they have refused.
30. While the Respondent states (page 004, paragraph 16) that some of the material included in their written submission "concerns development permits, which is outside the scope of the Order and this appeal", perhaps 80% of the material concerns the development permit and how it relates to the Order.
31. The Appellant believes this is an attempt on the part of the Respondent to confuse and bias the Tribunal.
32. The Appellant referred the Tribunal to page 0027 of the Respondent Submission containing a copy of an email from an employee of Alberta Municipal Affairs to the SCO. This email discusses the definitions of *residential occupancy* and *dwelling unit* under the ABC and asks whether the SCO informed the owner about the penalties under the Act, including fines and jail time.
33. The employee from Alberta Municipal Affairs continues, suggesting that if the owner provides a letter stating the space is not for residential use nor has any sleeping accommodation, it might be accepted. This communication occurred March 5, 2019, shortly before the recorded phone call between the Appellant and the Respondent which is now part of **the Record**.
34. The Respondent did not have permission to record this phone call and it is the Appellant's opinion that this is the Respondent's attempt at character assassination. Some may even view the release of this recording as entrapment.
35. The Appellant referred to the April 30, 2019 letter from the insurance agent who confirms the building is rebuilt "to standards far above" what their office normally sees. In this letter, he confirms "the intent of the structure is for farming not living quarters" and they are proud to insure.

36. Development Permit, issued November 29, 2018 (see page 0043 of Respondent Submission) confirms there were no plans to include living quarters and yet the Respondent has proceeded to issue an order.
37. The Appellant said they are now ordered to submit a building permit, and yet on November 27, 2018 (see page 0034 of Respondent Submission), it was the SCO's opinion that he would only need to apply for electrical and gas permits, which he did as confirmed under tab 2 of their supplementary brief.
38. The Appellant explained there might have been some confusion due to the fact the Master Electrician applied for an electrical permit for the Appellant's personal residence at about the same time as the application for the farm building, and it is the May 2019 application, which refers to "residential".
39. In a January 10, 2019 email from the SCO to the Appellant (page 0059 of the Respondent submission), the SCO suggests the Appellant is not willing to work to resolve this matter and asks the Appellant if he is willing to let the SCO stop by and take a look to determine if other permits are required.
40. On January 23, 2019, the SCO did in fact visit the site to inspect the building and told the builder, carpenter and electrician that no other permit was required. While there had been discussion of "possible" living quarters, it is not **what is possible**, but **what is**, that should matter. That is why the SCO did not take pictures.
41. Referring to the timeline contained in the Respondent submission (page 0035), the Appellant asked the Tribunal to note January 27<sup>th</sup> and the comment that while a building permit is not required for the shop, one is required for the construction on the interior "being that there are provisions for living quarters in there". The Appellant noted that the SCO did not say there **were** living quarters, only **provisions for such**, which is a different thing.
42. The Appellant made several references to being "threatened" throughout this process and referred the Tribunal to page 0077 of the Respondent Submission stating "I will send you information regarding what the consequences will/can be" if an Order is not complied with, plus reference to the possible involvement of the Alberta New Home Warranty Program.
43. Many documents on **the Record** confirm that an inspection occurred. See pages 0098 and 0099 of the Respondent Submission in this regard.
44. The Appellant presented several arguments as to why there could not be living quarters in the farm building as it was constructed. These included, the development permit would not allow it, the building was used to store hazardous material (see Exhibit 6 of Appellant's original submission), plus there was a toxic waste dump located adjacent to the Appellant's property. In response to a question from the Respondent's legal counsel the Appellant was not able to provide evidence that the use of the property adjacent to theirs was illegal.
45. Documents' relating to the gas permit on pages 0049 - 0051 all confirm the structure

is a farm building and nothing more. The Appellant was aware that the Gas Permit Application on page 0052 of the Respondent submission has the residential box checked off, but this does not align with other information on file.

- 46.** The Appellant referred to the Electrical Permit Application containing the description “center block addition inside of a farm shop like an apartment” and pointed out that he never signed the document and a 200 Amp breaker box would be excessive for an apartment and the development permit did not allow such to be included.
- 47.** Photographs (Exhibits 9 - 23) included with the Appellant’s Additional Hearing Brief should prove this is not a *dwelling unit*. In all the information provided by the Respondent, not once does the Respondent say this is “residential” despite the Respondent’s testimony to the contrary. Referring back to the letter from insurance company using the space as living quarters would be a huge issue for the insurer. The Appellant believes the insurance company letter should be sufficient proof.
- 48.** The Appellant asked rhetorically what would be reasonable when determining residential occupancy and whether a temporary stay is considered. The Appellant explained this was why they included the photograph of a bed in the middle of a hockey arena with a Zamboni in their submission.
- 49.** Temporary stays, including sleeping in farm buildings has been going on for a hundred years. The Appellant accepts that it is no longer permissible, although he does not agree with it. Allowing farm workers to rest up after a sixteen-hour shift is a matter of safety to prevent them from driving home tired.
- 50.** The Appellant said it was significant the Chair of the Building Sub-Council granted him a Stay with the only evidence submitted being the letter from their insurer. They pointed out it is impossible to comply with the Stay as no “residence” was identified in the Order, yet the Stay refers to “the area identified as a residence.”
- 51.** The Appellant said he is not sure what the Order even means. It is functionally inoperative as written. It does not say what the problem is, only the whole building.
- 52.** In response to questions from the Tribunal and Respondent, the Appellant provided additional detail regarding the building in question. He described a 70 x 100 foot shop containing a tool room, air compressor room and office, all in the main building. He described the addition of a mechanical room on the main level approximately 24 x 36 feet, with a two-storey atrium above the mechanical room. The second level contains a laundry room with washer/dryer, a computer room and an emergency egress stairwell. Other areas are as shown in the photographs provided. The addition contains two kitchens, three bathrooms with showers and toilets, two laundry rooms and a lift to allow access to the upper floors.
- 53.** After the January 23, 2019 visit from the SCO, the Appellant took out the closet as no one would be sleeping there and there are no plans to allow such in the future. The Appellant did not advise the SCO about this, but did offer to allow access for further inspection.

- 54.** Before January 2019, the insurance company did not express concern with the practice of allowing family members or other people to sleep the farm building; however, recent discussions with the insurer confirm its use is restricted to a farm building, which is what the Appellant plans to do.
- 55.** The Appellant suspects the Respondent's efforts to have their farm building classified as residential is a thinly disguised attempt to get more tax revenue. He is also concerned that the consequence of obtaining a building permit will lead to significant additional costs including a firewall and possible sprinkler system.
- 56.** There will be no humans living in the building. It is a low occupancy farm building and therefore exempt from the ABC. It was never the Appellant's plan to move themselves or their family into the addition. The Order is invalid.

*Respondent*

*From the Respondent's submissions and testimony, and in response to questions posed by the Tribunal, the Respondent's position is summarized as follows:*

- 57.** The SCO provided the following information.
- 58.** The Respondent asked the SCO to check out the possibility that there was a residence under construction in the farm building. The SCO emailed the Appellant, but did not receive a response so he arranged through the material supplier to attend the site on January 23, 2019. The Appellant was not there at the time.
- 59.** The material supplier, master electrician and one other individual were on site. The SCO noted there was a kitchen and bathroom and that there were smoke detectors and an egress window present.
- 60.** The SCO did comment that it was a nice building, but would require a building permit if the intent is to use it as a residence.
- 61.** The SCO emailed their thanks to the Appellant for allowing him in and told the Appellant about the requirement to get a building permit. The SCO did not refer to the need for a plumbing permit as he may only deal with matters under the building discipline.
- 62.** The SCO issued the Order because a building permit is required whenever there is residential construction. He confirmed there were no beds or couches there at the time, but the project was not complete at the time of inspection.
- 63.** The Development Officer for the Accredited Municipality provided the following information.
- 64.** Initially plans for the farm building replacement did not include the noted addition. The Appellant assured the Respondent the building was strictly cold storage with no services.
- 65.** Discovery of the addition occurred during a drive by and during a subsequent telephone conversation; the Appellant said it was strictly a boiler room.

66. Regarding the development adjacent to the subject property, which the Appellant believes is illegal and toxic; the Appellant did appeal the development to the Development Appeal Board who found there was no substance to the allegations. The business is legal.
67. While the Appellant has suggested the Respondent's current action against him is in response to the Appellant's own action relating to the adjacent property, the Respondent's only motivation is compliance with the *Act*.
68. The witness provided the following information.
69. The witness worked with the Appellant for approximately 12 years and was familiar with both the original farm building and its replacement.
70. Neither the Respondent nor the business on the adjacent property was responsible for the witness leaving the Appellant's employ. The witness simply wanted to better himself.
71. The witness was present on January 23<sup>rd</sup> and the SCO was clear on the requirement for additional permits. At the time the witness was the only employee of the farm and other than the Appellant's daughter and family, the witness did not see anyone else living there.
72. It was the witness's impression that while the main floor of the building was a shop and office for farm employees; the intention for the top two floors was to use it as a residence for the Appellant's daughter and family.
73. While the Appellant has commenced legal action against the witness, the witness is attending the hearing because it is not right that people can lie their way out of situations just to make life miserable for everyone.
74. Counsel for the Respondent continued, stating, the Appellant's reference to character assassination supported by the recorded telephone conversation that is part of **the Record** and other testimony is unfounded. If anyone's character is assaulted, it is the Development Officer's of the Accredited Municipality.
75. While the Appellant has testified he would never allow people to use the building as a residence given that there is hazardous material stored inside the building and a toxic dump on the adjacent property, the Appellant has let people live there before and the Tribunal must ask themselves if he can be trusted not to do so again.
76. The Respondent asks that the Tribunal confirm the Order to safeguard any person using the space. While the Appellant has testified he will no longer use the building as a residence, the Respondent is concerned, as the Appellant is not always truthful.
77. If the Tribunal decides to vary the Order, the Respondent asks that it is clear that no one may sleep in the subject building. The Respondent is concerned that without such clarity, the Appellant will use it as a residence anyway.

*The Technical Advisor with Alberta Municipal Affairs was able to clarify the following for the*



*benefit of all in attendance at the hearing:*

**78.** The ABC, 2014 states in Division A 1.1.1.1. 5) *This Code does not apply to: a) a building of low human occupancy associated with the operation of the farm or acreage on which it is located, where the building is used for the: i) housing of livestock; ii) storage or maintenance of equipment, or; iii) storage of materials or produce (see Appendix A).*

**79.** Division A, Appendix A-1.1.1.1. (5) (a) *Farm and Acreage Buildings. Farm and acreage buildings include, but are not limited to, produce storage facilities, livestock and poultry housing, milking centres, manure storage facilities, grain bins, silos, feed preparation centres, farm workshops, and horse riding, exercise and training facilities not used by the public. Farm buildings may be classed as low or high human occupancy, depending on the occupant load.*

*Examples of farm buildings likely to be classed as low human occupancy as defined in Article 1.2.1.2. of the National Farm Building Code of Canada are livestock and poultry housing, manure and machinery storage facilities, and horse exercise and training facilities where no bleachers or viewing areas are provided.*

*Examples of buildings that would be classed as other than low human occupancy include farm retail centres for feeds, horticultural and livestock produce, auction barns and show areas where bleachers or other public facilities are provided. Farm work centres where the number of workers frequently exceeds the limit for low human occupancy are also in this category. It is possible to have areas of both high and low human occupancy in the same building, provided that the structural safety and fire separation requirements for high human occupancy are met in the part thus designated.*

**80.** The ABC provides no explanation of **low occupancy**, but **occupancy** itself is defined under section 3.7.2 as “the use or intended use of a *building* or part thereof for the shelter or support of persons, animals or property.”

**81.** *Dwelling unit* under the ABC, 2014 Division A 1.4.1.2 Defined Terms: *means a suite operated as a housekeeping unit, used or intended to be used by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities.*

**82.** The ABC does not address **intent** versus **current use**, but any change of use may lead to a change of classification.

**83.** The *Safety Codes Act* is silent on farm buildings, but the Permit Regulation, AR 204/2007 defines a farm building as follows:

*“farm building” means a building located on agricultural land as defined in the Agricultural Operation Practices Act that is occupied for an agricultural operation as defined in the Agricultural Operation Practices Act, including, but not limited to,*

*(i) housing livestock,*

*(ii) storing, sorting, grading or bulk packaging of agricultural products that have not undergone secondary processing, and*

*(iii) housing, storing or maintaining machinery that is undertaken in the building.*

**84.** The Alberta Building Code is the only code that allows exemption for farm buildings.

**Findings of Fact:**

*The Tribunal makes the following findings:*

- 85.** Additions to the subject building discovered during drive by inspections in November 2018 did not have the appropriate development permits in place and the AHJ worked with the Appellant to fill out the Development Permit Application resulting in approval of permit on November 29.
- 86.** Further permit applications for this addition include gas and electrical. The electrical permit submitted by the electrician, creates a question around the use of this addition due to the description of work, which states, “center block addition inside of a farm shop like an apartment with a sub-panel”. This results in further communication and arrangements to view the subject building.
- 87.** On January 23, 2019, the SCO inspects the shop discovering an incomplete 2-storey interior development with potential provisions for living quarters including provisions for sleeping quarters, a complete kitchen and full size bathroom and confirms it did not have any beds or couches.
- 88.** While the Appellant becomes aware of the necessity to apply for a building permit after the site inspection, the Appellant is not in agreement with the assessment and does not apply for the building permit; however, the Appellant removes the closet and replaces it with a computer workstation.
- 89.** The SCO and Respondent seek further clarification from Municipal Affairs who suggests the SCO impress upon the Appellant the serious implications of non-compliance under the *Act*. There is also a suggestion to seek a letter from the Appellant confirming that the subject building is not for residential use and does not contain any sleeping accommodations.
- 90.** Ongoing communication and attempts to re-inspect the property are futile so the Respondent provides the Appellant with one last opportunity to apply for a development permit or the Respondent will proceed with issuing an order.
- 91.** Service of the subject order occurs on April 5, 2019 resulting in an appeal request.
- 92.** The insurance company inspects the subject building on April 29, 2019 and provides confirmation in writing on April 30 to the Appellant that the building is insured and the intent of use is for farming, not living.
- 93.** The Appellant admits to allowing their family to sleep in the subject building prior to the January inspection by the SCO.

**Reasons for Decision:**

94. In essence, the question before the Tribunal is whether the subject building contains a *dwelling unit* as defined in the ABC.
95. It is clear from the evidence that the Appellant did have people sleeping in the subject building prior to the inspection in January 2019 and according to the Appellant, this is a common practice within the farming community due to long working days.
96. The Appellant claims it was not their intent to have people living in the subject building, but rather provide a resting place and wash facilities for workers as well as a farm office. However, the Tribunal determined the provisions within the subject building to be excessive for a farm office. In light of this, the Tribunal determined the subject building does meet the definition of a *dwelling unit* and so if the intention or use is to provide sleeping facilities then the Appellant must follow through with the permit process to ensure the safety of those using the building.
97. The Tribunal also considered the communications and letter from the insurance company. They determined that the Respondent did not provide the Appellant the opportunity to submit a letter confirming the Appellant would not use the subject building as a *dwelling unit*, as was the suggestion of Municipal Affairs and that the Appellant did not inform the Respondent of their subsequent inspection and discussion with the insurance company.
98. The evidence suggests that the Appellant did not understand the risk to safety and the impact on their insurance if the Appellant allowed people to sleep in the subject building. The Appellant's testimony relating to their discussion with the insurance company and the subsequent letter from the insurance company provide the Tribunal with the assurance that the Appellant is now well aware of the risks and will not allow anyone to sleep, even temporarily, in the subject building going forward.
99. In consideration of other uses within the subject building, the Tribunal recognizes that using the subject building as a *dwelling unit* does create a safety risk and thus their decision is reflective of this and provides the Appellant with a few options to ensure compliance and safety.

Signed at the City Edmonton )  
in the Province of Alberta )  
this 16<sup>th</sup> Day of August A.D. 2019 )

Chair, Building Sub-Council Appeal Tribunal

## APPENDIX A

### Provisions of the *Safety Codes Act*

**100.** All areas of Alberta are subject to the laws, codes and regulations of the *Safety Codes Act*.

**101.** The *Safety Codes Act* provides:

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.

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.