



Safety Codes Council

COUNCIL ORDER NO. 2021-01

BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE BUILDING & FIRE SUB-COUNCIL

(the "Tribunal")

ON JUNE 7, 2021

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

AND IN THE MATTER OF the refusal to issue a permit in the building discipline to [REDACTED] (the "Refusal");

UPON REVIEWING AND CONSIDERING the evidence named in **The Record**, including written submissions of the Appellant and Respondent; and **UPON HEARING** the testimony of the parties at the virtual hearing;

IT IS HEREBY ORDERED THAT the Refusal is CONFIRMED.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

1. The hearing for this matter was conducted by virtual means.
2. At the commencement of the hearing, the Coordinator of Appeals confirmed the subject of the appeal as the Refusal, and confirmed the names of those in attendance:
 - a) Appearing for the Appellant, the Tribunal heard from [REDACTED]
 - b) Appearing for the Respondent, the Tribunal heard from [REDACTED].
 - c) Facilitating the hearing on behalf of the Safety Codes Council: [REDACTED] (Coordinator of Appeals and Co-Facilitator), and [REDACTED] (Co-Facilitator).
 - d) Attending as Technical Advisor for the hearing: [REDACTED].
 - e) Attending as observers for the hearing: [REDACTED]

C [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3. The Coordinator of Appeals then introduced the Chair of the Tribunal (the “Chair”), C [REDACTED] and turned the hearing over to C [REDACTED].
4. The Chair called the hearing to Order and introduced the other Tribunal members: C [REDACTED].
5. 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. The Tribunal also confirmed they had jurisdiction to hear and decide this appeal.
6. The Chair then explained the process of the hearing, and advised of the list of the written material before the Tribunal, consisting of the documents listed below in **The Record** (see paragraph 7). The Appellant and Respondent confirmed that there were no objections to any of the material submitted to the Tribunal.

The Record:

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

<u>Item</u>	<u>Description</u>	<u>Date</u>
i.	Refusal to Issue a Building Permit	April 23, 2021
ii.	Notice of Appeal from C [REDACTED]	April 30, 2021
iii.	Council’s Acknowledgment Letter	April 30, 2021
iv.	Council’s Notification of Hearing Letter	May 6, 2021
v.	EXHIBIT 1 APPELLANT - Appellant’s Appeal Brief	-
vi.	EXHIBIT 2 RESPONDENT - Respondent’s Appeal Brief	-

Issue:

8. This appeal concerns whether the shipping containers on the site, as they are being used, are a building under the *National Building Code - 2019 Alberta Edition (the Building Code)*, and if so, whether they comply with the requirements of the *Safety Codes Act (the Act)*, which includes the *Building Code*, to be issued a permit?

Positions of the Parties:

Appellant

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


9. It is the Appellant's position that the shipping containers should be viewed as manufactured product or fire-proof storage boxes, instead of a building under the *Building Code*. In addition, given that the containers are being used for their intended and sole purpose of storage, they do not need to comply with the requirements of the *Act* for a building.

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 the shipping containers are a building under the *Building Code* and in their current state they do not address the ventilation and spatial separation requirements to be issued a building permit under the *Act*.

Summary of the Evidence Provided On Behalf of the Appellant:

Evidence provided on behalf of 

11. Overall the Appellant is seeking clarity on the position and applicability of the *Building Code* with respect to safe use and operation of shipping containers.
12. The Appellant operates and is licensed across Canada, with various work completed in different jurisdictions. Their experience has been varying degrees of understanding and comprehension with respect to shipping containers.
13. Shipping containers have been located on site for twelve years and have been used for general storage. They have been moved from time to time around the site, as they are portable but are a quasi-permanent fixture on the site.
14. A development permit was applied for and subsequently issued by the Respondent on August 17, 2020 [pages 18-24 of the Record in Exhibit 1 Appellant].
15. The safety codes officer later asked for a new permit citing that the shipping containers were considered buildings and required alteration for compliance with the *Building Code*.
16. A building permit was subsequently applied for in December 2020.
17. A building permit was in fact issued in March 2021; however, the Appellant did not agree with the conditions set out in the permit and requested that the Respondent formally refuse the building permit request in April 2021, in order to proceed to an appeal.
18. The shipping containers are being used for their intended purpose of storage and accordingly should not require any modifications to meet the *Building Code*.

19. C [REDACTED] pointed to a 2018 Alberta Fire Code STANDATA [pages 57-59 of The Record in Exhibit 1 Appellant] which spoke to the use of shipping containers as is for safe storage of flammable liquids, combustible liquids, explosives and or dangerous goods.
20. Modifications to the shipping containers, such as adding services or ventilation to them, could decrease the safety of the containers for the public. For example, adding ventilation may allow fire to propagate more and based on research referenced by the Appellant, adding drywall and fire protections would have a nominal benefit [pages 33-51 of The Record in Exhibit 1 Appellant].
21. C [REDACTED] specifically referenced fire safety research of shipping containers conducted by the U.S. Coast Guard, indicating oxygen-limited fires self-extinguish within sealed shipping containers [pages 15-16 of The Record in Exhibit 1 Appellant].
22. C [REDACTED] offered that the shipping containers are also being utilized by a corporate entity and so a fire safety plan, program, and training for staff, are in place.
23. In addition, they are not accessible to customers of the store and the doors remain closed during business hours. Only trained staff may access the containers, and this would generally occur outside of business hours.

Summary of the Evidence Provided On Behalf of the Respondent:

Evidence provided on behalf of C [REDACTED]

24. C [REDACTED] contended that for the Respondent the use of the shipping containers is a safety issue and this appeal is based on the application of the *Building Code*, addressing the disadvantage of using such structures. Nevertheless, a building permit is required for the shipping containers as they are buildings.
25. Shipping containers used for storage, especially when at a business, are regulated by the *Building Code* and accordingly need to comply with the provisions of it.
26. The inherent risk of the use of shipping containers is not fully understood by the public, and having a safety plan and training for staff using them is not necessarily sufficient.
27. C [REDACTED] advised that when he has gone by and or visited the site, on multiple occasions, he witnessed the doors to the shipping containers being ajar and that the corporate entity had a different locking mechanism installed on the doors, that does not require them to be completely sealed.
28. The U.S. Coast Guard Report provided by the Appellant [pages 60-76 of The Record in Exhibit 1 Appellant] speaks to shipping containers being acceptable at sea; however, this cannot be relied on in an urban area with people around.
29. Shipping containers are more prolific in use now; however, C [REDACTED] emphasised that they can cause injury or death and the safety system is in place to try to mitigate these risks.
30. The Respondent, as the authority having jurisdiction, is willing and trying to work with the Appellant on the issue and the particular conditions being asked of the Appellant

here are not onerous.

31. The Respondent is requesting that spatial separation requirements be met and that natural ventilation be provided as per the *Building Code* requirements.
32. The Respondent has the responsibility to look at all of the circumstances around building and apply the code in a reasonable and practical way. Here, there is the use of a shipping container in an urban area, where the doors are not properly sealed. C ██████ proposed that if a fire did ignite, this would create a very dangerous situation for employees.
33. C ██████ advised that a formal alternative solution has not been sought; however, the Appellant has previously provided the Respondent with the U.S. Coast Guard Report [pages 60-76 of The Record in Exhibit 1 Appellant] and Fire Investigation Report in a Container [pages 77 to 92 of The Record in Exhibit 1 Appellant] and this research did not appear to adequately address the spatial separation issue or that the shipping containers would be in an air-tight condition.
34. C ██████ stressed the importance of passive building fire-safety features and the emphasis being placed on the 2018 Alberta Fire Code STANDATA [pages 57-59 of The Record in Exhibit 1 Appellant] and fire safety plans for the site do not adequately address the ongoing use of shipping containers.
35. C ██████ spoke to his reliance on the shipping containers satisfying the definition of a building, but also insisted on the need for clarity across the industry.

Technical Advisor - Questions & Answers:

36. C ██████ was the Technical Advisors 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.
37. The Tribunal deliberated on the questions for the Technical Advisor in camera. All parties including the Technical Advisors and observers reconvened in the virtual hearing room and the Chair posed the Tribunal's questions to the Technical Advisor and received the following responses:
 38. *Q: Is a shipping container considered a building under the Building Code?*
A: Yes.
 39. *Q: What is the definition of a building in the Building Code?*
A: Building means any structure used or intended for supporting or sheltering any use or occupancy. Occupancy is also defined in the Code as, the use or intended use of a building or part thereof for the shelter or support of persons, animals, or property (Sentence 1.4.1.2.(1) of Division A).
 40. *Q: What does the Building Code say in reference to temporary structures?*
A: Except for buildings constructed under Part 10 of Division B, the authority having jurisdiction may allow, for a limited time only, the erection or relocation and existence of a building for an occupancy which may, because of its nature, exist for a short time,

under circumstances which may warrant only selective compliance with this Code (Sentence 1.1.1.3.(1) of Division A).

41. Q: *Given what you have heard about the use of the structure, if it was built in place is there a circumstance it would not require a building permit?*

A: There is no difference whether it was built in place or placed on the site. If it meets the definition of a building than it is a building and must meet the requirements of Division A and B.

42. Q: *Are there any regulations or standards around the use of the shipping containers for quasi-permanent storage use?*

A: Not that I am aware of.

43. Q: *Is it reasonable to use a fire safety plan to satisfy Building Code issues?*

A: In terms of applying for an alternate solution, it is the discretion of the authority having jurisdiction. Codes are objective based; therefore, if you meet the objective of the code than it is up to the authority having jurisdiction on what they accept.

44. Q: *In terms of the Building Code, is there a difference between the public as customer vs public as employees?*

A: No, there is no difference.

Findings of Fact:

The Tribunal makes the following findings:

45. The shipping containers have been located on the site for twelve years [page 17 of The Record in Exhibit 1 Appellant].

46. The shipping containers are in day-to-day use and support occupancy of product and employees at the site.

47. The shipping containers, as they are being used, are a building under and subject to the *Building Code*.

48. There exists an issue of exposure protection given that the site is in an urban area and there are neighbouring properties [pages 56 and 93 of The Record in Exhibit 1 Appellant and pages 103 and 104 of The Record in Exhibit 1 Respondent].

49. A building permit was required for the use of the shipping containers at the site and was applied for by the Appellant.

50. The building permit application was refused by the Respondent as the shipping containers, in their current state, do not meet Sentence 1.2.1.1. of Division A *Building Code* regarding compliance with the *Building Code*.

Reasons for Decision:

51. On an appeal such as this, the powers of the Tribunal are set out in subsection 52(2) of the *Act*, the relevant excerpt is reproduced below:

52(2) The Council may by order

(b) confirm a refusal or direct that a designation, certificate or permit be issued and direct inclusion of terms and conditions in the designation, certificate or permit,

52. The Refusal was issued pursuant to subsections 44(1) and 44(3) of the *Act*:

44(1) On receipt of an application, a safety codes officer or other person designated by an Administrator may issue a permit to a person who complies with the requirements of this Act or issue a permit with respect to a thing, process or activity if it complies with the requirements of this Act.

44(3) If a safety codes officer or other person designated by an Administrator refuses to issue a permit, the safety codes officer or other person designated by an Administrator shall serve the applicant with a written notice of the refusal.

53. The shipping containers are not in temporary use given the length of time they have been on the site and so selective compliance with the *Building Code* is not applicable.

54. The containers are not solely being used for their intended purpose of transportation and storage and they are publically accessible, even if access is limited to employees at the site.

55. The Tribunal finds, based on the evidence before it, that the shipping containers, on site and as they are being used, meet the definition of a building under the *Building Code*, accordingly, they need to comply with the requirements of it.

56. The U.S. Coast Guard Report does not adequately address the situation of these specific shipping containers, in that they are in an urban area and not at sea, they are publically accessible, and are not in an air-tight condition given that the doors are not always completely sealed or can be left open.

57. On the issue of modifications being made to the shipping container that may decrease the safety of the containers, the Tribunal refers the Appellant to the alternative solution process under Division A, Section 1.2 of the *Building Code*.

58. No evidence was presented to show that the shipping containers met, for example, the spatial separation or ventilation requirements of Sentence 1.2.1.1 of Division A of the *Building Code*, as addressed in the Refusal. The tribunal did not consider whether further requirements have or have not been met.

Signed at the City of Red Deer)
in the Province of Alberta)
this 21st day of June, 2021)

C
Chair, Fire & Building Sub-Council
Administrative Tribunal