



# Safety Codes Council

**COUNCIL ORDER NO. 2022-01**

**BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE ELECTRICAL SUB-COUNCIL**

(the “Tribunal”)

**ON APRIL 25, 2022**

**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 electrical discipline to [REDACTED] (the “Appellant”) and [REDACTED] for the lands legally described as [REDACTED] [REDACTED] (the “Subject Property”) on December 7, 2021 by the [REDACTED] (the “Respondent”) (referred to as 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 PERMIT IS DIRECTED TO BE ISSUED.

**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] (Legal Representative), [REDACTED] (Property Owner), [REDACTED] ([REDACTED] / Electrical Contractor), and [REDACTED] (Expert Witness).
  - b) Appearing for the Respondent, the Tribunal heard from [REDACTED] (Legal Representative), [REDACTED] (Legal Representative), [REDACTED] (Permit Issuer), [REDACTED] ([REDACTED]), and [REDACTED] (Expert Witness).
  - c) Facilitating the hearing on behalf of the Safety Codes Council: [REDACTED] (Coordinator of Appeals), [REDACTED] (Co-Facilitator), and [REDACTED] (Co-Facilitator).
  - d) Attending as Technical Advisor for the hearing: [REDACTED] (Electrical Technical Advisor, Alberta Municipal Affairs).

- e) Attending as observers for the hearing: [REDACTED]
3. The Coordinator of Appeals then introduced the Chair of the Tribunal (the “Chair”), [REDACTED] and turned the hearing over to him.
  4. The Chair called the hearing to Order and introduced the other Tribunal members: [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.	Notice of Appeal	January 4, 2022
ii.	Council’s Acknowledgment Letter	January 5, 2022
iii.	Council’s Notification of Hearing Letter	February 14, 2022
iv.	<b>EXHIBIT 1 APPELLANT</b> – Appellant’s Appeal Brief	-
v.	<b>EXHIBIT 1 RESPONDENT</b> – Respondent’s Appeal Brief	-
vi.	<b>EXHIBIT 2 APPELLANT</b> – Expert Witness Credentials	-

**Issue:**

8. This appeal concerns the issuance of the Refusal dated December 7, 2021 and whether the request to install a 3 phase, 400 ampere (“amps”), and 120/208 voltage electrical service, in permit application 20210905, dated October 26, 2021 (the “Permit Application”) complies with the requirements of the Act, specifically Part 1 of the Canadian Electrical Code 2021 (the “Electrical Code”).

**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 Refusal was not reasonable or correct as sufficient information was provided for the Permit Application and the requested electrical service complies with the Act.

Respondent

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

10. It is the Respondent’s position that the Refusal was reasonable and the only correct decision to make given the information or lack thereof provided by the Appellant to support the Permit Application and there are concerns regarding compliance with the Act and or other enactments.

**Summary of the Evidence Provided On Behalf of the Appellant:**

Submissions made on behalf of the Appellant’s Legal Representative:

11. It was not reasonable or correct for the Respondent to determine that the electrical connection requested in the Permit Application (Pages 87 to 89 of **The Record, Exhibit 1 Appellant**) was excessive or for illegal use.
12. The electrical service of 3 phase power, 400 amperes (amps), and 120/208 voltage was appropriate given these are agricultural lands and this is necessary and reasonably required for the stated use of ventilation fans, irrigation systems, and heavy equipment on the Subject Property.
13. Even not taking into account the specific uses of the connection, the overall request in the Permit Application is to access electricity on the Subject Property.
14. The permit issuer did not have the expertise or knowledge to determine whether 3 phase power was suitable for these purposes, even though sufficient information was provided to be able to make this determination.
15. There are clear benefits to 3 phase power and various legitimate uses of this at the Subject Property. Regardless, the issue on intended use is separate from the issue of the Refusal as the electrical permit is sought to establish an electrical connection to the Subject Property and provide electricity. This service is required before any kind of further development is pursued on the Subject Property.

16. The Refusal should not have been issued just because the electrical connection requested was atypical or not cost effective.
17. The Respondent's Land Use Bylaw [REDACTED] (the "Bylaws") (Pages 104 to 106 of **The Record, Exhibit 1 Appellant**) does not apply to the situation as it was not a development permit that was requested but rather a permit to run a wire; this kind of connection is also exempt from a development permit. When the Appellant decides on next steps for the Subject Property, which can only reasonably be taken once an electrical connection is secured, then the necessary development permits will be sought.
18. The argument on cost effectiveness lacks consideration that the Appellant has already invested substantial funds, approximately \$50,000, to install the electrical pole on the Subject Property.
19. This level of conversation on potential use of the Subject Property is not warranted in dealing with an electrical permit application. The Respondent's subsequent concerns on alleged illegal or improper use of the Subject Property have different enforcement options separate from the *Act*.

Evidence on behalf of [REDACTED]:

20. [REDACTED] is the 50% owner of [REDACTED], which he set up with a friend to invest in agriculture and food production following the supply chain issue aftermath with the COVID-19 pandemic. Prior to this, in 2007 he established [REDACTED] in Calgary. He possesses a Bachelor Degree of Computer Science Applications from China and immigrated to Canada in 2001 and has attained Canadian citizenship. [REDACTED] does not have a criminal record.
21. With respect to the Subject Property, it was purchased in May 2020 by [REDACTED] and required a lot of work by to repair and clean it for the proposed agriculture business, as it had been abandoned with limited services on site. There is electrical service for a small section of the Subject Property; [REDACTED] previously installed a water ventilation system and gas connection. This work took approximately 4-5 months and cost somewhere between \$100,000 to \$150,000. The business is now stalled due to the situation with the Refusal.
22. It was only discovered after the purchase of the Subject Property that it was subject of issues with the Respondent, given it had previously been used as a grow-op. [REDACTED] stated he did not know the previous owners and none of this was disclosed prior to purchase.
23. The intended use for the Subject Property is agricultural – have a small amount of cattle, pigs and chickens and then also build greenhouses to grow vegetables.
24. [REDACTED] had previously consulted another Electrician and went over the intended use for the Subject Property to get professional advice on what was required to achieve those plans. Four business-sized greenhouses were in the plans; accordingly, the Electrician advised the more power the better and having extra would remove concerns of an overload. The recommendation was 3 phase, 400 amps to ensure the Subject Property could handle any future expansion.
25. That Electrician provided the plans to [REDACTED], who agreed with the recommendation. [REDACTED] then prepared the plans and [REDACTED] believes they pulled the necessary permits (Pages 43 to 64 of **The Record, Exhibit 1 Appellant**) for the installation of the electrical pole and lines.

26. The previously engaged Electrician completed the first connection from the pole to the panel for a small section of the Subject Property but was unable to complete the rest of the electrical service connection; that is when [REDACTED] was hired.
27. Information was provided to support the Permit Application for an electrical connection; he was not seeking a development permit as no development of the greenhouses is being done at this time.
28. An electrical connection is required before anything further can be done at the Subject Property. Given there were no issues with the installation of the electrical pole, [REDACTED] did not anticipate this much hardship in establishing the connection.
29. [REDACTED] verified he received the Respondent's letter dated January 5, 2022 (Page 199 of **The Record, Exhibit 1 Respondent**). On the issue of the high usage, [REDACTED] had previously explained to a representative for [REDACTED] that they experienced a frozen water line and repair people required heat to fix this. The repair-person even called and left a message explaining this to the representative, but the call was not returned. For the requested site inspection, he had initially questioned why this was required and based on legal advice indicated to the Respondent they would need a search warrant (Page 201 of **The Record, Exhibit 1 Respondent**). [REDACTED] later agreed to a site inspection, but it was cancelled by the Respondent and there was no follow up after to reschedule (Page 200 of **The Record, Exhibit 1 Respondent**).

Evidence on behalf of [REDACTED]

30. [REDACTED] is a Master Electrician and owns the company [REDACTED]; he is also a qualified electrical contractor and was engaged by [REDACTED] for electrical work on the Subject Property.
31. He was involved in submitting two electrical permit applications in September and October 2021 (Pages 68-69 and 87 to 89 of **The Record, Exhibit 1 Appellant**) to the Respondent, both of which were refused.
32. The scope of work for the Permit Application, subject to this appeal, was to install a 400 amp, 120/208 volt, 3 phase electrical service by running a cable from the service pole to the electrical room on the Subject Property.
33. [REDACTED] has performed this type of service approximately 20 to 30 times and advised that the installation has not occurred at the Subject Property as the permit was refused.

Evidence on behalf of [REDACTED]

34. [REDACTED] obtained his Journeyman Electrician Red Seal in 1992 and has been an Electrical Safety Codes Officer since 2000. He holds a Group A and Group B designation for Alberta, which covers different voltage levels, as well as, a Field Safety Representative designation from British Columbia as he also performs electrical inspections for companies in B.C.
35. Since 2011 he has been employed with [REDACTED], performing electrical inspections on different electrical installations at various oilfields. Prior to this, he was with [REDACTED] inspecting all kinds of commercial, residential, and industrial installations.

36. A typical residential installation is single phase, 120/240 volts, 100 amps; however, some larger residences will use 200 amps if they run electrical heat continuously, as well as, have an electrical vehicle charging so you look at a demand load calculation to determine how much power you could need for a given residence.
37. Three phase is required for higher demands and bigger loads. It enables a smoother connection and is 50% more efficient for electrical motors. If you have single phase, the physical size of the motor is larger because you need a larger service, which can become costly. With 3 phase, the motors can be smaller and simpler, and will last longer than on single-phase connection. Other advantages of 3 phase include that it: never goes to zero so does not require a restart, can accommodate different designs, and works with many torques. Three phase is a Cadillac.
38. There is the alternative of getting a generator, which is cheaper, runs on diesel fuel and can run on an as-needed basis; but if one can afford a 3 phase, it is significantly better to have this in place.
39. [REDACTED] has a designation of powers to issue permits for the Respondent and would not have the technical knowledge that an electrical safety codes officer would possess, to determine whether 3 phase is required or not for the stated uses. Training from being an electrician engineer, journeyman electrician, or something equivalent provides knowledge of characteristics of different loads, what will be done with the power and what equipment is going to be powered.
40. The Refusal was an arbitrary decision and did not take into consideration many factors.
41. With respect to the potential uses listed in the Refusal (Page 6 of **The Record**):
- a) irrigation systems – single phase would be expensive, require large cables, and become complicated with the size of motors. It takes a lot of horsepower to move water and single phase motors are not available over 10 horsepower. Three phase is required.
  - b) ventilation fans – with 3 phase these could be smaller with higher torque.
  - c) equipment – typically agricultural lands require a lot of equipment with motors; therefore, it is best to have more power to meet growing needs. Three phase allows large motors to be efficiently powered with fewer complications.
42. There is also the aspect of making the property more marketable for re-sale (Page 7 of **The Record**); having 3 phase already installed is a huge benefit and selling point as it will support diverse types of equipment and uses for the land.
43. [REDACTED] has four sites to deal with and has foresight to put in a bigger service to allow expansion instead of having to continuously go back and expand the service with a limiting single-phase connection. It is also noteworthy that even with a 400 amp service, only 80% is available for use.
44. With respect to the email from [REDACTED] to [REDACTED] on February 22, 2022 (Page 207 of **The Record, Exhibit 1 Respondent**):
- a) the statement on reasonable service ampacity for agricultural properties is a generalized statement likely based on review of smaller farms as large farms may not pull permits and because of cost just run on generators;
  - b) the statement on red flag points to suspicious activity occurring at the Subject Property; however, it is the duty of a safety codes officer to inspect and ensure compliance with the Electrical Code

and not make judgements on intended use;

c) it would appear [REDACTED] may not have had all of the necessary Subject Property information and understanding of the possibilities with that size of land.

45. [REDACTED] has never seen a refusal of an electrical permit. Typically, electrical services are put in and then development follows, so he questioned the request from the Respondent for a development permit prior to connection. Regardless, an exemption for a development permit applies in this case as this is the connection of a utility to an existing building or land for lawful use, in accordance with the Bylaws (Page 106 of **The Record, Exhibit 1 Appellant**).

#### **Summary of the Evidence Provided On Behalf of the Respondent:**

##### Submissions made on behalf of the Respondent's Legal Representatives:

46. The *Act*, including the *Permit Regulation*, are discretionary on whether a permit may or may not be issued.
47. The Permit Application was for a parcel of land in an agricultural land use area. The requested service of 3 phase power, 400 amps, was atypical based on the Respondent's experience for agricultural uses. Accordingly, more information was requested from the Appellant to support the requested service under the Permit Application, specifically to determine whether a development permit is required under the Respondent's Quality Management Plan (the "QMP") and Bylaws or ascertain the use of the Subject Property with respect to the *Permit Regulation*.
48. As an accredited municipality, the Respondent must comply with their QMP, which sets out the scope, operations, and delivery requirements for safety code services. It also specifically states that an electrical permit shall not be issued where a development permit or a building permit is required (Page 165 of **The Record, Exhibit 1 Respondent**). In addition, a statement on the use or proposed use of the Subject Property, in a permit application for any discipline, is required under section 20(a) of the *Permit Regulation* and by the QMP; therefore, it was reasonable for the Respondent to request this information.
49. The *Municipal Government Act* and Bylaws, stipulates the requirement for development permits to be in place. Under the *Municipal Government Act*, all developments require a permit and 'development' has a broad meaning. There are exemptions under the Bylaws, namely a utility service may be exempt when the connection is for a lawful purpose (Page 298 of **The Record, Exhibit 1 Respondent**). Here, given the atypical service requested, for agricultural use, the Respondent is not satisfied of this being for a lawful purpose and so the exemption does not apply.
50. The additional information provided (Pages 186 to 188 of **The Record, Exhibit 1 Respondent**) was in speculative terms and insufficient to adequately ascertain the use of the Subject Property and determine whether they were exempt from requiring a development permit.
51. The lack and resistance to provide additional information inhibits the Respondent from ensuring compliance with the *Act* and its Bylaws. For instance, the evidence regarding the potential greenhouse on the Subject Property was new information learned during the hearing and illustrates the issue at hand.

52. In accordance with, section 26(b) and 26(c), there were grounds to issue the Refusal as incorrect or insufficient information was provided and there was concern of contravention of the Act or another enactment.

Evidence on behalf of [REDACTED]:

53. [REDACTED] holds a Bachelor of Science and Applied Land Use Planning Certificate from the University of Alberta. She has been with the Respondent since 2008 and is currently the [REDACTED]. In 2016 she received a designation of powers to issue permits in certain disciplines, including electrical, based on compliance with the *Permit Regulation*.
54. With respect to permit applications submitted to the Respondent, once an application is received and depending on the information provided, a safety codes officer from [REDACTED], may be consulted and relied on in making a determination on the issuance of the permit. A permit is issued only if satisfactory information has been provided in accordance with the Permit Regulation.
55. For the Permit Application, [REDACTED] reviewed what was submitted and required additional information from the Appellants, which was not forthcoming. Given the high usage, [REDACTED] at [REDACTED] was consulted and the Refusal followed.
56. The QMP includes a provision that links permits issued under the Act to requirements under the Bylaws. This ensures requirements under the Bylaws are cross-checked during the permitting process to ensure the necessary development permits are also in place.
57. Other than what is in The Record, no other plans and specifications for the Subject Property have been provided to the Respondent. The proposed greenhouse has not previously been mentioned and may also require a development permit depending on whether it meets the horticultural use definition in the Bylaws.
58. On the issue of the other proposed uses, [REDACTED], in her experience, has not seen a 400 amp service required for general farming activity. This level of service has been requested for more industrial, commercial operations, such as confined feeding, Hutterite colonies, welding shops or large-scale auto bodies.
59. Resale value is not a land use consideration; therefore, it carried little weight when assessing the application.

Evidence on behalf of [REDACTED]:

60. [REDACTED] holds a Bachelor of Arts and Masters in Urban and Regional Planning from Stellenbosch University in South Africa. She has been with the Respondent since 2013 and is the [REDACTED]. Previous work experience includes working with two other municipalities in planning and development.
61. [REDACTED] involvement with the Permit Application was discussions with the Appellant prior to submission of the Permit Application, and then corresponding with the Appellant's Legal Representative following the Refusal, which she assisted [REDACTED] with.
62. The QMP and Bylaws work together for planning and development purposes and to ensure all



necessary permits are obtained for development and safety code compliance. The QMP requires that and electrical permit not be issued if a building or development permit is required; therefore, an assessment is required to determine whether a building or development permit is required and exemptions for this are located in the Bylaws.

63. For the Bylaws, development permits are not required to connect utilities to lawful use of buildings and lands. In determining 'lawful' the Respondent looks at zoning, actual use of the land, and past permits. The Subject Property has been zoned for agricultural use and consists of five separate buildings (Page 145 of **The Record, Exhibit 1 Respondent**). A development permit was previously pulled for the Subject Property, in 2000, for agriculture use.
64. One of the exempt uses under the Bylaws is "Agriculture, Extensive", which contemplates farm-related uses. Accordingly, this would be considered a lawful use and exempt from obtaining a development permit. However, because the electrical service applied for is so excessive the Respondent required more information from the Appellant to determine that the Subject Property appropriately falls into any of the exempt uses.
65. Information and plans regarding a greenhouse on the Subject Property have not been previously provided to the Respondent. The Respondent would require further information on the proposed greenhouse to determine whether or not a development permit is required.
66. The Permit Application did not provide enough information to determine lawful use and whether a development permit is required.

Evidence on behalf of [REDACTED]:

67. [REDACTED] is a Master Electrician (34 years) and certified Group A and Group B Safety Codes Officer (26 years). He is currently employed with [REDACTED] as [REDACTED]. Duties include managing other Safety Codes Officers across the Province and various inspections areas, including the Respondent's. His experience includes residential, commercial, and industrial applications.
68. With respect to the Permit Application, [REDACTED] was consulted prior to the issuance of the Refusal as to whether the ampacity requested was excessive for this type of property and it was verbally advised that it was out of the ordinary.
69. When a permit application is reviewed, the important factors are voltage and ampacity. In [REDACTED] experience, he has never seen 3 phase power for a property the size of the Subject Property or justification for 400 amps.
70. A typical service for this size of property would be 100-200 amps and 3 phase power is more beneficial for larger properties with residences on the acreage and or massive farming operations.
71. The requested service might be required for extensive grain operations, but with a different voltage, or a cannabis or bitcoin mining operation.
72. The requested service is not cost-effective. There are several other available options including the use of generators or enabling solar power for those specific times the property owner needs to increase the amount of power they have access to.

73. With respect to the email correspondence dated February 22, 2022 (Page 207 of **The Record, Exhibit 1 Respondent**) this was based on residential only use of the Subject Property, as [REDACTED] only learned during the hearing that the Subject Property was zoned for agricultural use. Regardless, in [REDACTED] opinion, a maximum of single phase, 200 amps, 120/240 volt service would be sufficient for the proposed uses identified.
74. It was advised that a 3 phase power line was once in place at the Subject Property but was removed by the utility company.
75. [REDACTED] stated there are benefits to 3 phase power – cleaner than diesel alternative, better efficiency, requires smaller wiring, and enables operation of certain equipment. In addition, having 3 phase power available at the Subject Property would improve the resale value.

#### **Technical Advisor – Questions & Answers:**

76. [REDACTED] 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.
77. 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:
78. *Q: Is there anything in the Electrical Code or Act that would prevent the size and characteristics of this service?*

A: There is nothing in the Electrical Code that speaks to a maximum size; however, there is a minimum size requirement. There is nothing in the Act that requires either a maximum or a minimum size.

#### **Findings of Fact:**

*The Tribunal makes the following findings:*

79. An electrical permit was required to establish an electrical connection at the Subject Property and this was applied for by the Appellant in the Permit Application.
80. Information was provided by the Appellant on the proposed use of the electrical connection on the Subject Property including, ventilation, irrigation systems, heavy motor use and the installation of a greenhouse.
81. Rule 8-104(2) of the Electrical Code, Part 1 is concerned with the minimum size of an electrical service; there are no limits on the maximum size of service.
82. The Appellant has exceeded the minimum size requirements by requesting 3 phase power, 400 amps, 120/208 volts electrical service.
83. The Permit Application complies with the requirements of the Act, specifically Part 1 of the Electrical Code.

**Reasons for Decision:**

**84.** 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,

**85.** 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.

**86.** The Tribunal finds that while a permit issuer under the *Act* has the authority and discretion to issue a permit, the evidence before the Tribunal confirms the Appellant complied with the *Act* by exceeding the minimum size of electrical service required at the Subject Property and by providing sufficient information on the potential use, which did not include the development of the land, but rather to provide electrical connection to the Subject Property from the pole.

**87.** The Respondent's concerns regarding the installation being atypical, as well as, previous and potential future illegal use of the land are not sufficient reasons for the Refusal where the Appellant has met the requirements of the *Act* and furnished the requested additional information on use to support the Permit Application.

**88.** The purpose and intent of the safety codes system is to ensure safety and health to persons and property. Here, the Appellants have likely overestimated the electrical service required which alleviates any safety concerns with respect to the electrical systems at the Subject Property.

**89.** By exceeding the minimum requirement set out in the Electrical Code this ensures there is enough electrical service for the use or proposed use of the Subject Property.

**90.** Any further work on the Subject Property will require separate permits, such as for additional wiring, and there is an onus on the Appellant to ensure these are in place.

Signed at the City of Edmonton )  
in the Province of Alberta )  
this 15<sup>th</sup> day of June, 2022 )

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Chair, Electrical Sub-Council  
Administrative Tribunal