



Safety Codes Council

COUNCIL ORDER NO. 2021-04B

BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE PLUMBING AND PRIVATE SEWAGE SUB-COUNCIL

(the "Tribunal")

ON JANUARY 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 Order dated August 17, 2021 in the plumbing discipline (the "Order"), issued pursuant to *Section 49 of the Act* and the *National Plumbing Code Of Canada 2015 (the "Code")* by [REDACTED], a Safety Codes Officer (the "SCO") on behalf of [REDACTED] (the "Respondent") against [REDACTED] (the "Appellants") relating to a property located at [REDACTED] (the "subject property"); and

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

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

Without restricting the generality of the foregoing, an excerpt from the Order that has been varied is reproduced below:

FROM

Action to be taken; You are hereby ordered to do the following:
time limit

- (1) Immediately cease all operations of the diner until the building is deemed compliant with all relevant codes and standards and occupancy has been granted by a [REDACTED] Safety Codes Officer in the building and relevant related disciplines.
- (2) Not reoccupy or recommence any operations, except as required to bring the facility into compliance with this Order and the Code, until all contraventions identified in this Order have been remedied to the satisfaction of [REDACTED].

TO

Action to be taken; You are hereby ordered to do the following:
time limit

- (1) Immediately cease all operations of the diner until the building is deemed compliant with all relevant codes and standards and occupancy has been granted by a [REDACTED] Safety Codes Officer in the building and relevant related disciplines.
- (2) Not reoccupy or recommence any operations, except as required to bring the facility into compliance with this Order and the Code, until all contraventions identified in this Order have been remedied to the satisfaction of [REDACTED].
- (3) Obtain the necessary permits from the authority having jurisdiction to install, alter or add to a plumbing system.
- (4) Retain a professional to review and correct the deficiencies noted in the Order.
- (5) Meet all requirements of the issued permit so that it is closed compliant.

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 Order, and confirmed the names of those in attendance:
 - a) Appearing for the Appellant, the Tribunal heard from [REDACTED] (Legal Representative, [REDACTED]), [REDACTED] (Property Owner), and [REDACTED] (Property Owner).
 - b) Appearing for the Respondent, the Tribunal heard from [REDACTED] (Legal Representative, [REDACTED]), [REDACTED] (Safety Codes Officer, [REDACTED]), and [REDACTED] (Manager [REDACTED]).
 - 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] (Plumbing Technical Advisor, Alberta Municipal Affairs).
 - e) Attending as observers for the hearing: [REDACTED] ([REDACTED] Alberta Municipal Affairs) and [REDACTED] (Safety Codes Council).
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] and [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 11).
7. The Appellant submitted one piece of new evidence containing documentation for a development permit and communication between the Appellants and [REDACTED]. The Respondent had previously seen this evidence and did not object to the submission of it to the Tribunal. The new evidence was marked as “**Exhibit 2 Appellant**” and was distributed, by email, to the Tribunal, the Co-Facilitators, and the Technical Advisors, and one copy retained for **The Record**.
8. The Respondent submitted one piece of new evidence containing photographs taken at the subject property. The Respondent had previously seen this evidence and did not object to the submission of it to the Tribunal. The new evidence was marked as “**Exhibit 2 Respondent**” and was distributed, by email, to the Tribunal, the Co-Facilitators, and the Technical Advisors, and one copy retained for **The Record**.
9. The Council determined that the SCO had the necessary designation of powers in place at the time of issuing the Order, pursuant to section 32 of the *Act* (Item iii in **The Record**).
10. There were several objections during the course of the hearing relating to the line of questioning. On any objection the Tribunal heard the grounds for objection by the objecting party and sought a response from the other party. The Tribunal then convened in-camera to consider the objection. Upon reconvening the hearing the Tribunal advised of its decision on the objection. In essence the Tribunal’s decisions favoured relevance and ensuring the evidence being given was connected to the Order being appealed.

The Record:

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

<u>Item</u>	<u>Description</u>	<u>Date</u>	<u>Pages</u>
i.	Notices of Appeal	September 21, 2021	2-16
ii.	Council’s Acknowledgment Letter	September 22, 2021	17-20
iii.	Council’s Designation of Powers Verification	September 22, 2021	21
iv.	Respondent’s Letter re Representation	September 27, 2021	22
v.	Respondent’s Letter re Hearing date availability	October 12, 2021	23-24
vi.	Appellant’s Letter re Stay of orders request	October 14, 2021	25-26
vii.	Respondent’s Letter re Response to stay request	October 21, 2021	27-105
viii.	Council’s Letter re Stay not granted	October 28, 2021	106
ix.	Council’s Notification of Hearing Letter	November 4, 2021	107-109
x.	Council’s Revised Notification of Hearing Letter	November 5, 2021	110-112

xi.	Respondent's Letter re Confirmation of attendance	November 26, 2021	113
xii.	Appellant's Letter re Confirmation of attendance and witnesses	December 17, 2021	114
xiii.	Respondent's Letter re Witnesses	December 17, 2021	115
xiv.	EXHIBIT 1 APPELLANT – Appellant's Appeal Brief	-	116-141
xv.	EXHIBIT 1 RESPONDENT – Respondent's Appeal Brief	-	142-232
xvi.	EXHIBIT 2 APPELLANT – Development Permit and Communications (15 pages)	-	-
xvii.	EXHIBIT 2 RESPONDENT – Photographs (4 pages)	-	-

Issue:

- 12.** This Appeal concerns the issuance of the Order and the possible contraventions of the *Act*, including the *Code*, with respect to the plumbing systems at the subject property.

Positions of the Parties:

Appellant

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

- 13.** It is the position of the Appellant that the Order should be revoked or in the alternative, varied to include reasonable terms and conditions as the Appellant has substantially complied with the Order.

Respondent

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

- 14.** It is the position of the Respondent that the Order should be confirmed as the Appellant has not complied with the Order and is not following the legislated process of obtaining a permit to complete the necessary work at the subject property.

Summary of the Submissions and Oral Evidence Provided On Behalf of the Appellant:

Submissions provided on behalf of [REDACTED]

- 15.** The diner has been operating pursuant to an approved cottage industry development permit from 2017 (the "2017 Development Permit") issued by the Respondent (pages 2-11 of **Exhibit 2 Appellant**).
- 16.** The Appellants have operated the diner for the past six years without making any adjustments, revisions or changes to the plumbing system.
- 17.** The June 2021 inspection revealed minor concerns which the Appellants have substantially rectified on their own and do not feel professionals have to be engaged.

18. The Appellant's are making effort to bring the diner into safety code compliance; however, the instructions since the summer of 2021 have been confusing and unclear and the terms of the Order are contradictory and have some inaccuracies.
19. The Respondents are bound statutorily to act in good faith, which they have not.

Evidence provided on behalf of [REDACTED]

20. [REDACTED] has owned the subject property since 1997 which he believes consist of 120 acres instead of the 160 acres noted on the Land Title Certificate (Page 161 of **The Record**).
21. Due to an illness and subsequently losing his job, the Appellants embarked on the business of the greenhouse on the subject property in 2013.
22. There were no concerns about the subject property until [REDACTED] involvement in 2021.
23. [REDACTED] believed the necessary permits were in place for the subject property and he as obtained advice for plumbing in the diner from someone at the [REDACTED] office, the internet, as well as, discussions with a local plumber and department store employees.
24. Some of the statements in the Order are false, as there was a main building vent in place at the diner that went out the back of the building. During the inspection the safety code officers did not inquire about the main building vent.
25. With respect to venting for fixtures, there was a vent however [REDACTED] ordered it to be removed prior to the safety code inspection. There are also multiple heat vents in the diner, as well as, bathroom vents to help with odours. A vent hose has been added to the bathroom vent so this is now vented outdoors instead of the attic, as the Order suggests.
26. The toilet seat was changed to the horseshoe type to fix the issue on the water closets.
27. Going through the photographs (Pages 1-4 of **Exhibit 2 Respondent**) [REDACTED] explained these were the undersides of the sinks in the diner. Since the issuance of the Order, [REDACTED] has installed grease traps on the sinks in the kitchen. The washroom sink has remain unchanged.
28. No dishwasher or grease was ever thrown out the back door; only water from washing the floor has.
29. Vents have now been put in after each trap to address the concern on the venting systems.
30. An estimated \$500 has been spent on fixing the items in the Order.
31. [REDACTED] was informed that there are numerous code deficiencies, but a full list has not been provided and he only has the information from the Order which he has substantially completed.

Evidence provided on behalf of [REDACTED]

32. On the issue identified in the Order with respect to dishwasher being thrown out back, [REDACTED] advised she did previously throw dirty water from washing the floors out the back door; however, she now flushes it down the toilet. There may have been some grease on the floor which gets mopped up from the daily washing of the floors.

33. At the meeting between themselves and the Respondent suggestions were made on what the Appellant's need to do to get the property into compliance; however, the minutes from the meeting did not reflect these.

Summary of the Oral Evidence Provided On Behalf of the Respondent:

Submissions provided on behalf of [REDACTED]

34. The Respondent is an accredited municipality and is tasked with the administration of the Act.
35. The Appellants are local business owners, running a business that includes greenhouses and a diner; however, they have proceeded with work on the subject property without approval and authorization from the Respondent, as is required.
36. There are significant safety concerns to the public, as the diner is a public place where people come to eat. There are two [REDACTED] Orders (Pages 196-201 of **The Record**) on the subject property which further evidence the public health concerns.
37. The Respondent has not acted in bad faith, they are just requiring compliance with the legislation and adherence to the statutory process. It is not the Respondent's responsibility to advise property owners; it is an owner's responsibility to seek professional assistance.
38. The SCO inspected the subject property in 2021 and found breaches of two codes.
39. The Appellants have not applied for permits to undertake the work to remedy the breaches outlined in the Orders. The required process is outlined in the Permit Regulation, which requires a person to make an application to authorize the scope of work. Once the Permit is issued a person can undertake the work on that permit, which may set out conditions. A safety codes officer would then inspect the completed work, possibly even multiple times during the construction or installation as things may get covered up.
40. A site map of the subject property (Page 165 of **The Record**) shows there are a number of buildings on the land.
41. Sometime between 2013 and 2015 a diner was built on the subject property and was in operation even though the 2017 Development Permit was not yet in place. Regardless, safety code permits were required in all disciplines and the 2017 Development Permit is not that.
42. There is no record of any plumbing permits for the diner and the Appellant's have not engaged any professionals or experts to assist in correcting deficiencies.
43. With respect to the plumbing discipline there are three main concerns with respect to the Act: venting, water closets, and a lack of grease interceptors. The issue around the disposal of dishwater may now have been remedied as evidenced in the oral evidence of [REDACTED].
44. The Order has not been complied with as professionals have not been engaged and no permits have been applied for by the Appellants.
45. The minutes from the July 22, 2021 meeting were not included in the Record and so any evidence in relation to these is not relevant.

46. There has been no collusion with [REDACTED], and any allegation of this is inappropriate. [REDACTED] and [REDACTED] are two regulators who may speak to each other on matters of public health.
47. It is acknowledged there is no timeline for compliance in the Order and the Respondent takes no issue with the imposition of a timeline. The Appellants cannot operate their business until all safety code issues are remedied to the satisfaction of the Respondent.

Evidence provided on behalf of [REDACTED]

48. [REDACTED] is the Manager of [REDACTED] with the Respondent. Her role is to oversee all aspects of safety code work.
49. Prior to summer 2021 there were concerns with the subject property not being in compliance; however, [REDACTED] brought specific issues to the Respondent's attention.
50. A joint inspection was scheduled and safety codes officers attended the site. Multiple orders were issued as a result which were vetted by Legal Counsel.
51. A meeting was held on July 22, 2021 between the Appellants, Supervisor, [REDACTED] and [REDACTED]. Another person from the Respondent also attended to take minutes. At the meeting the Appellants were given a copy of all orders on the subject property and discussion occurred about next steps. It was made clear that professionals should be engaged given the extent and number of issues. The Appellants were also advised that permits were required prior to any work being done.
52. The permit requirement has been relayed to the Appellants a few times, even through Legal Counsel.
53. The Respondent does not have records of any plumbing permits for the diner business.
54. The 2017 Development Permit is different from the required safety code permits in the various disciplines.

Evidence provided on behalf of [REDACTED]

55. [REDACTED] has been a plumbing inspector for eight years, but has been in the trade for 25 years.
56. He clarified that venting of a plumbing system is different from exhaust fans which is under the scope of the Building discipline. For plumbing, venting refers to the venting of plumbing fixtures.
57. On June 23, 2021 a joint site inspection occurred and the photographs (Pages 1 to 4 of **Exhibit 2 Respondent**) demonstrate what was present at the subject property on inspection of the plumbing systems. The first photograph depicts how a sink should be vented. [REDACTED] went through the other three photographs depicting the pipe going straight down into the floor with various configurations and placement of the p-trap. None of the p-traps were protected by vents as required by the Code. The lack of vents lead to concerns of sewer gas coming up through the pipes.
58. On the issue of the bathroom fans being vented into the attic space. [REDACTED] acknowledges that [REDACTED] may have fixed this by venting to the outdoors but no permits were obtained for this work and so it cannot be inspected.

59. With respect to the water closet, this is a minimum requirement of the Code to limit the risk of any health issues. The entire toilet would need to be replaced.
60. On inspection, there was a griddle in the back and it was evident food was being served and so the interceptors were included. They may have now been added; however, no permit was obtained and so this cannot be inspected.
61. Every building is required to have a three-inch vent for plumbing that extends to and penetrates the roof; there was no such vent at the diner.

Technical Advisor – Questions & Answers:

62. [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.
63. 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:
64. *Q: What is the objective in the Code in regards to the requiring of venting in a plumbing system and why is this required for safety under the Code?*

A: It protects the trap. The trap contains a depth of water that provides the required seal to protect the owner and general public from the effects of sewer gas, which could include asphyxiation. If there is a positive or negative pressure in the system, the vent allows fresh air to come in or out freely.

Findings of Fact:

The Tribunal makes the following findings:

65. The plumbing systems at the subject property were not in compliance with the Code based on the oral evidence presented by both parties and confirmed by Pages 2-4 of Exhibit 2 Respondent, at the time the Order was issued.
66. There is no plumbing permit on record for the diner; accordingly, the plumbing systems were initially installed without a permit.
67. The alterations required to the plumbing systems to bring them up to Code require a permit.
68. While the Respondents have now communicated the necessity of obtaining permits and engaging professionals to address the concerns in the Order this was not set out as a specific requirement in the Order.

Reasons for Decision:

69. On an appeal such as this, the powers of the Tribunal are set out in subsection 52(2) of the *Act*:

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.

70. The Order was said to be issued pursuant to subsection 49(1) of the *Act*, which 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.

71. The Tribunal finds, based on the evidence before it, that the SCO had reasonable and probable grounds to believe the *Act* was being contravened as there were numerous violations of the Code at the subject property, with respect to the plumbing systems and no plumbing permit had been obtained for the original installation.

72. While the Appellant may have made attempts to fix the issues outlined in the Order, no evidence was provided to depict the alterations. These would have also been done without the necessary permit being in place.

73. Section 14(1) of the *Permit Regulation* AR 204, 2007 states a permit in the plumbing discipline is required to install, alter or add to a plumbing system. The items noted in the Order require alterations and additions to the existing plumbing systems and so a permit is required.

74. The Order is being varied to include the requirement around obtaining permits and engaging a professional as this is what the Respondent is requiring and an Order shall set out what a person is required to do or stop doing in respect to the thing, process, or activity(...) pursuant to section 49(3)(a) of the *Act*.

75. Engaging a professional would assist in deciphering the terminology and attending to the necessary fixes to bring the subject property into compliance, with respect to its plumbing systems.

Signed at the [redacted])
in the Province of Alberta)
this 10th day of February, 2022)

[redacted]
Chair, Plumbing & Private Sewage Sub-Council
Administrative Tribunal