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IN THE MATTER OF THE *HOMEOWNER PROTECTION ACT, S.B.C. 1998 C. 31*

AND IN THE MATTER OF an appeal to the British Columbia Safety Standard Appeal Board

BETWEEN:	**A Homeowner**	**Appellant**
AND:	**Homeowner Protection Office**	**Respondent**

REASONS FOR DECISION
Denial of Application for Owner Builder Authorization

Vice Chair:	Abigail Fulton
On behalf of the Appellant:	Appellant Homeowner
Counsel for the Homeowner Protection Office:	Kevin L. Boonstra Kuhn & Company

Introduction

[1] This is an appeal of a decision by the Homeowner Protection Office (the "Respondent") to uphold a compliance order (the "Compliance Order") issued on July 15, 2009 to a homeowner (the "Appellant") under section 28.1 of the *Homeowner Protection Act* (the "Act") requiring the Appellant to either apply for Owner Builder Authorization or become a Licensed Residential Builder under the Act for the purposes of a new building under construction on the Appellant's property.

[2] The Appellant appeals the review of the Compliance Order on the grounds that the structure being built is exempt from the requirements of the Act. The Appellant seeks a reversal of the decision to uphold the Compliance Order.

[3] By agreement of both parties, the appeal was considered through written submissions in April, 2010.

Issue

[4] The issue to be determined in this appeal is whether or not the structure being built by the Appellant falls within the jurisdiction of the *Homeowner Protection Act, S.B.C 1998, c. 31* , and the *Homeowner Protection Act Regulation, B.C. Red. 29/99* (the "Regulation"). If it does the Compliance Order will be upheld.

Appellant's Position

[5] The Appellant is building a structure (the "Building") on property owned by her and a family member in Chilliwack, BC (the "Property"). According to building plans submitted by the Appellant the metal clad Building was to be constructed around a previously existing manufactured home with the final structure to include a kitchen, two bathrooms, two bedrooms and a living room.

[6] According to the Appellant, the Building was intended to be a Temporary Accessory Dwelling (a "TAD") which meant it was to be a dwelling unit, accessory to residential or agricultural use and to be occupied on a temporary basis subject to certain regulations.

[7] The Appellant makes reference in her submission to a copy of an email apparently sent by the Manager, Licensing & Deputy Registrar of the Homeowner Protection Office to an unknown party indicating that a temporary residence in the loft of a storage building would not require home warranty insurance and suggests that this

email provides a precedent for her belief that a TAD should be exempt from the requirements under the Act.

[8] Alternatively, the Appellant suggests that the Building is constructed around a previously existing manufactured home. That portion of the structure could still be moved off the property with the balance of the Building then being converted into a farm storage building. As the definition of a new home under the Act excludes a manufactured home unless otherwise prescribed, she therefore submits that the Building is exempt from the Act and Regulation.

Respondent's Position

[9] It is the position of the Respondent that the Building in question is a new home within the meaning of the Act and Regulation. While the Building was being constructed around the frame of a previously existing manufactured home, the manufactured home had been stripped down to the point where it could no longer qualify as such. The resulting structure had concrete foundations and appeared to be a single integrated dwelling unit.

[10] The Respondent argues that if the Building is a TAD, this would not in any way relieve the Appellant from the requirements of the Act and Regulation. Specifically the Appellant and the co-owner of the property should either become licensed residential builders and get home warranty insurance, or apply for an owner builder authorization which, if approved, would exempt them from the licensing and warranty provisions of the Act.

Decision

[11] Section 14 of the Act states:

> **14 (1)** A person must not carry on the business of a residential builder against licensed under this Part.
>
> Section 22 of the Act states:
>
> **22 (1)** A person must not build a new home unless the new home is registered for coverage by home warranty insurance provided by a warranty provider.

[12] It is agreed that the Appellant and her family member, the registered owners of the Property, have caused to be constructed the Building at issue and that neither of them are licensed residential builders. It is also agreed that there is no home warranty

insurance on the Building. However, these requirements only exist if the Building meets the definition of a new home.

[13] The definition of a new home under s. 1 of the Act is as follows:

> "**new home**" means a building, or portion of a building, that is newly constructed or being constructed and is intended for residential occupancy, and includes
>
> (a) a self-contained dwelling unit that is
>
> (i) detached, or
>
> (ii) attached to one or more other self-contained dwelling units,
>
> (b) a building having 2 or more self-contained dwelling units under one ownership,
>
> (c) common property, common facilities and other assets of a strata corporation,
>
> (d) any building or portion of a building of a class prescribed by the regulations as a new home to which this Act applies, and
>
> (e) a home that is or is being substantially reconstructed,
>
> but does not include a manufactured home unless otherwise prescribed.

[14] There is no specific exemption listed in the Act for a Temporary Accessory Dwelling and any determination of whether such a building is exempt from the Act would therefore have to be based on the specific circumstances of the case in relation to the Act and Regulation just as any other building would be.

[15] In this case, it is agreed that the Building is substantially new, with new foundations poured and walls constructed and there appears to be no dispute as to the intention for this Building to be used as a residence. The plans submitted by the Appellant indicate a kitchen, bathrooms, bedrooms and living room which support such an intention. There has been no evidence presented to the Board to indicate that this property was not built for residential use, at least initially. There is some question as to whether it might be transformed into an agricultural building at some later date however that would only happen at some unknown date in the future and as such would not apply to the current situation.

[16] The Act specifically exempts manufactured homes unless otherwise prescribed. A portion of the Building appears to have been a manufactured home at one time. The Appellant has provided photographs which are purported to be the CSA sticker and registration number of the manufactured home around which the new Building was constructed. In addition the Appellant has submitted a photograph indicating that a trailer hitch remains attached to the remaining frame of the manufactured home. The question arises, is this sufficient evidence to cause the Building to be exempt from the Act and regulation?

[17] To make such a determination, the Board must first consider the following definitions listed in the Regulation:

> "**manufactured home**" means a factory built home or a mobile home
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> "**mobile home**" means a home which is governed by or required to be certified under CSA standard CSA-Z240;
>
> "**factory built home**" means a home which is governed by or required to be certified under CSA standard CAN/CSA-A277;

[18] It is important to note that in order to qualify as a manufactured home under the Act the home must achieve the required CSA standards. The mere fact that a home is capable of being moved is not sufficient.

[19] The evidence provided by the Appellant, while enough to cause a consideration of whether the Building is, at least in part, a manufactured home is not conclusive of whether or not the home, as it exists now, is certified or capable of being certified under the required CSA standards.

[20] The Respondent has provided the Board with the sworn affidavit of G. Adaire Chown, the Senior Director, Technical Affairs of the Canadian Manufactured Housing Institute, and a copy of relevant CSA regulations. The affidavit provides the opinion based on CSA regulations and photographs that the portion of the Building that may once have been a manufactured home with proper certification would no long qualify for CSA certification due to the significant changes.

[21] The photographs submitted clearly indicate a structure that is stripped down to a frame throughout, including the portion that rests above the trailer hitch. The Appellant has pointed to the trailer hitch in her submission as evidence of the mobility of the

previously existing manufactured home, and also provided a photograph of that hitch which corresponds to the Respondent's photograph. The Board is therefore satisfied that significant alterations were made to the previously existing manufactured home. The Board is also satisfied that the Appellant cannot seek to rely upon any CSA certification that may have existed prior to such alterations being made. There has been no evidence provided to the Board indicating that there has been any new CSA certification of the finished Building. Without such evidence it must be concluded that even though the portion of the Building that rests above the trailer hitch may indeed be movable, the necessary regulatory requirements to qualify for an exemption under the Act as a manufactured home cannot be met.

[22] The Act provides some relief from the requirements of licensing and home warranty insurance in instances where a new home is being constructed by an owner builder. Section 20 (1) states as follows:

> **20 (1)** On application to the registrar, a person who intends to build, for personal use, a new home of a prescribed type may be issued an authorization if the person
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> (a) meets the criteria prescribed for owner builders, and
>
> (b) pays the prescribed fees.
>
> **(2)** The registrar may issue an authorization under subsection (1) to a person who does not meet the criteria referred to in subsection (1) (a) if the registrar is satisfied that special circumstances justify doing so.
>
> **(3)** An owner builder, with respect to the new home for which the owner builder's authorization is issued, is not required
>
> (a) to obtain home warranty insurance, or
>
> (b) to be licensed under this Act.

[23] No application under this section of the Act has been made by the Appellant or her family member, the registered co-owner of the Property, despite the fact that they could likely eliminate the requirement to obtain home warranty insurance or be licensed residential builders through such an action.

[24] The Board is sympathetic to the Appellant's position that this is farm land and that the Building may ultimately be transformed to a farm storage building in the future,

however it is the Board's decision that the Act and Regulation apply to the Building in question at this time.

[25] For the reasons given, this Appeal is dismissed and the Compliance Order is upheld.

Signed by:

Abigail Fulton,
Vice-Chair, Safety Standards Appeal Board