

## **RECORD OF DECISION**

### **SASKATCHEWAN BUILDING AND ACCESSIBILITY STANDARDS APPEAL BOARD Hearing 02.03**

**October 17, 2002**

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On September 19, 2002, the owner applied to the Saskatchewan Building and Accessibility Standards Appeal Board (hereafter know as “the Appeal Board”) under Section 12 of *The Uniform Building and Accessibility Standards Act* for an order exempting the owner from compliance with the accessibility standards of the Act.

#### **Background**

The owner submitted plans and applications for development and building permits to construct an 84 m<sup>2</sup> addition and renovations to an existing one-storey pump station, to result in a total building area of 190 m<sup>2</sup>. During the building permit plan review, the building official noted that barrier-free facilities, such as washrooms, parking stalls, signs, and lever-type handles, were required. The owner was notified, in a letter from the local authority dated August 20, 2002, that the development permit and building permit were available. The plan review report for the project was sent with the letter, identifying that the project was required to be in compliance with barrier-free requirements. The owner submitted a letter dated September 4, 2002, to the local authority asking that the barrier-free requirements for this project be waived. The local authority refused this request, but advised the owners that they could apply to the Appeal Board for an exemption order.

#### **The Hearing**

At the hearing, the owner’s representative explained that the building will contain staff showers, lockers, lunchroom, one office for the crew foreperson, and an access stair to underground cells and equipment. All staff on site must be physically capable of climbing in and out of underground cells to complete maintenance and repairs. Site access is controlled by a perimeter fence, and public are not permitted nor invited to enter the site or the pump station building.

The owner’s designer explained that the existing building was constructed in 1984-85. The entry is at grade level, but the building was not originally designed to meet the needs of people with physical disabilities. The designer noted that the need for compliance with barrier-free design requirements was considered when the addition and renovations were planned, but they did not believe that the legislation or the proposed use of the building required such compliance.

The local authority’s representatives confirmed that they had no objection to the exemption, but no authority to grant the exemption. The building official explained that since the existing building is barrier-free, the barrier-free requirements apply to the addition and the existing building.

There was considerable discussion about the extent of barrier-free accessibility within the existing building.

## The Legislation

The Appeal Board reviewed the following sections of *The Uniform Building and Accessibility Standards Regulations*:

**2(5)** For the purposes of these regulations:

- (a) a building;
- (b) a building area; or
- (c) a facility in a building;

is barrier-free if a person with a physical disability that may or may not require the use of a wheelchair is able, without assistance, to approach, enter, pass to and from and make use of the building, building area or facility, as the case may be.

**16(1)** Subject to subsection (2), the owner of an existing building to which an addition is made shall ensure that:

- (a) the addition; and
- (b) the existing building, if the addition has internal pedestrian connections with the existing building; is barrier-free in conformance with the Code.

**(2)** Subsection (1) does not apply to an existing building:

- (a) that is not barrier-free; and
- (b) to which an addition is being made, if the addition is:

...  
(iii) a horizontal addition where the resulting total building area would be less than 600 m<sup>2</sup>.

## The Consideration

The Appeal Board considered the information presented at the hearing and reviewed their authority under Section 12 of *The Uniform Building and Accessibility Standards Act*. The Appeal Board concluded that the existing building is not barrier-free and that compliance with the accessibility standards is not required. To confirm this, they agreed to issue an order exempting the owner from compliance with the accessibility standards. However, the Board also agreed to encourage the owner to consider modifications to enhance the accessibility of the facility.

The Appeal Board noted that their decision is not intended to set a precedent for any other building, and that this decision is not intended to encumber any future decisions.

The Appeal Board observed that designers may not be fully aware of the opportunity provided by the Act to deal with exemption from the accessibility standards in the design and pre-construction stage. They directed the chief building official to prepare and distribute information to designers that advise them about these mechanisms in the Act.