

MINUTES
BUILDING DEVELOPMENT APPEALS BOARD
SPECIAL MEETING
BANQUET HALL
March 24, 2022 at 10:00

Meeting called to order by Chairman Barry Ezerski.

MEMBERS PRESENT: Mike Cornish
 Barbara Ellis
 Barry Ezerski
 Bryan Jones (entered late)
 Mark Mitchell
 Arthur Patrick
 Mark Pippin
 Charlie Wright

MEMBERS ABSENT: Joshua Dickson
 Michael Merritt
 Arthur Patrick

ALSO PRESENT: Charlotte Brown, Supervisor License and Permits
 Michael Wright, Fire Marshall Office
 Ralph Maietta, License and Permits
 Denise Ezell, Record Secretary

3. Approval of minutes from March 3, 2022.

Motion by Pippin, **Second** by Ellis, to approve the minutes of March 3, 2022 as written.
Aye: Ellis, Ezerski, Mitchell, Pippin, Wright Cornish. **Nay:** None. **Motion Passed.**

Old Business

4. Hear an appeal from Kent Waller regarding the requirement of a railing surrounding the mechanical equipment on the top of the Ice House located at 4509 SW Lee Blvd.

Ezerski asked would you like to tell us where we are at.

Waller stated you hit the nail on the head. It is mechanical equipment. It came on a trailer, it is a unit, sales tax was paid when it got to the state, the state issued a vending machine permit and equipment doesn't have a roof. That is as simple as it can be. It is just like your refrigerator at home excepts it sets inside and it has a top not a roof. Code says, "guards shall be provided where various components that require service and roof hatch openings that are located within ten (10) feet of a roof edge or roof sides or open side of a walking service". This has no roof. It has a top

and that is as simple as it gets. This is the City of Lawton's condenser units. There are no rails around the top of those. If you were going to service the fan and motor, you would probably do it from the top. It is a piece of equipment.

Pippin stated you can access those or get to them with a ladder.

Maietta stated code does not address a piece of equipment unless it is on the roof. If that equipment is on the roof it would have to have rails around it.

Waller stated if this piece of equipment was on a roof.

Maietta stated that is a building.

Waller stated no, that is not a building.

Maietta stated sure it is.

Waller stated no, it is a machine. You put water and electricity in it. It makes ice and water. It is that simple.

Maietta stated it is a structure with equipment inside and outside.

Waller stated it is piece of equipment and it is as simple as that. If that is not the case, here is an ice dispensing machine and the equipment is on the top. It is clearly over thirty (30) inches to the ground.

Maietta stated yes, but it can be serviced with a ladder.

Waller stated nowhere in here does it say serviced with a ladder.

Maietta stated we allow that.

Waller stated we allow that, okay.

Maietta stated at the last meeting you specified that the piece of equipment hanging off the back of the building could be served with a ladder. I'm just bring it back up as to what we were talking about.

Waller stated that is a piece of equipment. Here is one that is inside. The code has not reference to inside or outside. Here is an ice dispenser that is over six (6) foot tall and has a twelve (12) inch rail around the top of it. The condensing unit and compressor is on the roof. It is a piece of equipment and that is why guardrails are not required. If you go into any dollar store, they have installed hundreds of feet of refrigeration units inside the building. It is a self-contained refrigeration unit. The compressors are located on the top and there are no rails around them because they are a piece of equipment. It is just that simple. I have pictures from Logan County, McCloud, El Reno, Midwest City, Stillwater, Canton, Chandler, Chickasha, Duncan, Ardmore,

and Kingston and none of these have guardrails. The only place that has guardrails is Lawton and Oklahoma City.

Brown stated Elgin has one with rails on it.

Waller stated they do not have the big unit.

Brown stated it is a smaller unit, but it has rails around it.

Waller stated I don't think the rails are forty-two (42) inches tall. I'll have to look at it. It is a screen around the equipment.

Brown stated I didn't measure it, but it is owned by one of our mechanical contractors.

Maietta asked are you trying to say that the structure is not a building that it is a piece of equipment.

Waller stated absolutely, it is a piece of equipment.

Maietta stated that is out of my area.

Waller stated it doesn't have a couch, chair or tv. You walk in top put bags in the bagger, salt in the water softener, change the filter and remove the proceeds. It has a had wash sink to sanitize your hands before you touch the bags. It is barely big enough for one (1) person. Nobody occupies it or spends the night there.

Maietta asked if we have a walk-in cooler sitting outside is that a piece of equipment or a building.

Waller stated if it came in as one piece, and they didn't manufacture it on site it's equipment.

Maietta asked does it matter if the equipment is on the roof of a walk-in cooler.

Waller stated it matters whether it was built there or brought in on a trailer and sat there. It is just that simple. Lawton has two (2) units that have rails and one (1) that doesn't. Oklahoma City requires rails. I haven't found another place that does.

Cornish asked did you say Oklahoma City does or does not.

Waller stated Oklahoma City does.

Pippin asked did somebody put that unit on top of the roof or piece of equipment as you call it.

Waller stated yes.

Pippin stated that person should have gotten a mechanical inspection.

Waller stated hey, I didn't have anything to do with that. I bought it, they brought it in, and they assemble it.

Pippin stated it seems to me this problem belongs to that person. If that came in two (2) pieces, and somebody put that equipment on top, that requires a mechanical license.

Waller stated I think it is a one-piece unit.

Pippin stated no, it came on the trailer in two (2) pieces.

Waller stated yes, I mean the ice maker is one unit and it sits down on a rail.

Pippin stated it is a mechanical device that must be installed. That takes a mechanical contractor to do so.

Waller stated okay, I'm not going to argue with you.

Pippin stated that person or company should have gotten an inspection.

Maietta stated we talked about that at the last meeting.

Waller stated I think we are getting off track here.

Maietta stated no, if the mechanical contractor had called in for his inspection this would have been addressed from the start. He would have known we would not clear it without railing.

Ezerski asked did the company that install it have any type of inspection when it was installed.

Waller stated it was set in place and they left. It took them about four (4) hours. Then we called a plumber to connect the waterline and an electrician to connect the electricity. There is no sewer line connected because it drips into a trap. That was the inspections. Ice House of Oklahoma installed this, and they install everyone's in Oklahoma. They have installed well over a hundred (100) of them.

Ezerski asked are they required to have a permit.

Cornish asked did the electrician get a permit.

Brown stated the subs worked under Mr. Waller's permit.

Cornish stated I just wanted to make sure the electrician and plumber had a permit.

Brown stated yes.

Maietta stated do you see that ice machine that is sitting outside.

Waller stated yes.

Maietta stated that doesn't require an inspection. You were required to get a plumbing, electrical, and mechanical inspection. If the whole building is an appliance, you shouldn't have needed any inspections.

Waller stated when you tie it to the waterline you need a plumbing inspection.

Wright stated the railing is a safety measure is that correct.

Brown stated yes.

Wright stated whether it is a building, ice machine or whatever the railing is a safety measure. What about a release of liability from the owner in case something happens it wouldn't be their responsibility?

Smith stated you can't do that. You can't advocate responsibility just because you don't want it.

Cornish stated we are mandated by state law to have insurance and we are required to show it every time you hire a sub. The first thing we do is get that release of liability.

Pippin stated if you purchase a cooling tower it has rails because you have to get on top to work on it. You can't work on it from underneath or with a ladder. It comes with rails.

Cornish asked what is a cooling tower.

Pippin stated it is a water cool chiller. Instead of a condenser it uses water. You purchase those with rails because you have to get on top of them to work.

Maietta stated put the liability to the side because you are talking money. Without rails you are putting someone's life in danger. A simple fix is to put up rails, so workers are safe working on the equipment. I thought this appeal was about the interpretation of the code. I don't think anyone here disagrees. It is kind of specific. I believe this is getting a little out into left field. It has nothing to do with code.

Cornish asked is this a building or a piece of equipment.

Waller asked what do you mean it doesn't have anything to do with the code.

Maietta stated because you don't want to put a rail up.

Waller stated I think it is more dangerous with a rail.

Maietta stated when I met you, I gave you a suggestion. I suggested he could put rails around the front piece of equipment.

Waller stated when I talked to the engineers, I have to put four (4) to six (6) braces to hold them up and make them stable enough. Four (4) to six (6) braces with six (6) holes each through the top of that unit. That is almost a hundred (100) holes in a perfectly good roof/unit.

Maietta stated that is not necessarily true. I called you about three (3) contractors, Mark being one of those, and you said you were too busy and would get back with me. You never got back with me.

Waller stated I personally knew two (2) of the three (3) contractors.

Maietta stated okay, did you call any of them.

Waller stated nope.

Maietta asked why not. They could have come up with an easy solution.

Waller stated they could have come up with an easy solution.

Maietta stated there are guardrails all around town.

Waller stated I would say fifty (5) percent of the guardrails I see around town will not meet the code. They will not hold the limit they are supposed to. If you are going to have a guardrail it needs to hold the specified weight.

Maietta stated I agree with you.

Waller stated they are put up by people that do not have an engineer's license.

Maietta stated you don't need to be an engineer to put a guardrail up.

Waller stated how do you know it is going to hold what it is supposed to hold.

Maietta stated if secured properly it will hold. We are not talking a ton of weight. We are talking two hundred fifty (250) pounds. This is not only for protection. It also makes you aware you are close to the edge. I don't believe someone will run full force into the rail to see if it will hold.

Waller stated that is your interpretation of what somebody is going to do. I think the liability would be far greater if they didn't hold.

Maietta stated I don't know about that.

Waller stated the answer to that is to require an engineer's certification that every guardrail that goes up in Lawton, Oklahoma have a certification.

Pippin stated they have rails that will meet city code that will sit on the roof without putting holes in the roof.

Waller stated yes, but you can't put those on the roof that is eight (8) foot wide.

Pippin stated if it misses a few inches Ralph will allow it. At least you have something for those working up there. The whole point is if he backs up it reminds him he is close to the edge. I went and looked at the one on the safety building and they are cool.

Maietta stated several years ago there was a guy doing some flashing. He stepped back and went through a skylight and fell thirty (30) feet. It messed him up bad. It doesn't take much for someone to get lost in thoughts and step backwards. If the guardrail isn't there you may go overboard.

Waller stated but it is supposed to hold a certain amount.

Maietta stated I agree.

Waller stated I contend this is not a roof it is a piece of equipment. The code very specifically says roof. A piece of equipment doesn't have a roof.

Mitchell asked so you are arguing they misinterpreted the code.

Waller stated yes sir.

Mitchell stated the appeals process is supposed to be about misinterpretation of the code. It is not because you don't want to do it. Have they misinterpreted the code, or you are proposing something that is equal or better.

Waller stated you cannot put a restraining system on it because the building is too narrow.

Pippin stated but you could have ordered it with it.

Maietta stated the factory makes it.

Waller stated it is too narrow. It has to be ten (10) feet from the center point to the edge.

Pippin stated I mean the rails that come with it.

Waller stated the company does not manufacture the rails. They designed a set of rails that will fit. They do not furnish them. They sell these all over the United States and have set over a hundred (100) in Oklahoma.

Pippin asked what are you offering to make it better so it is not a risk. Mark just stated it is either misinterpretation or what.

Mitchell stated the appeal is misinterpretation. I think if he was to offer something for Ralph and Charlotte to consider that was equal or better than that would be a solution.

Waller stated I believe if we have a code there should not be any “oh it should be four (4) feet, but three (3) feet is fine”. We are getting into some real slippery slope and the city doesn’t do that. The city reads really good. They can read and understand. It clearly says in a paragraph a roof, and this does not have a roof. It is a piece of equipment. Everything about it is a piece of equipment.

Ezerski stated Charlotte, didn’t you do further investigation on this.

Brown stated we got our code commentary for the mechanical code and there is an anchoring exception that was put into the code this year. The anchoring is for sloped roofs and not a flat roof. It must be more than ten (10) feet away from the edge of the roof and his building is only eight (8) feet wide. We couldn’t allow for anchoring. He has to do some type of railing to meet the code.

Waller stated if working off a ladder is acceptable, we will work off a ladder.

Maietta stated you can’t.

Waller stated it will be difficult, but we could do it.

Maietta stated you can’t reach the equipment.

Waller stated you would have to leave the ladder a little longer if that is one of your acceptations, but I don’t see that acceptance written here.

Maietta stated I said the acceptance was the back condenser. It is a condenser coil that will need to be cleaned with a water hose.

Brown stated you won’t have to get on the roof.

Maietta stated the rest of the equipment you will have to get on the roof to work on.

Waller stated it is only four (4) feet from each side to the center.

Maietta stated it doesn’t matter. If they get on the roof, they need protection to stop a fall. So, you are saying it is not a roof.

Waller stated it is not a roof. It is a mechanical unit.

Chestnut, John asked what is the definition of a structure to determine if it is equipment or a structure.

Cornish stated she issued it as a building permit.

Waller stated you have to get a building permit to get a plumbing and electrical inspection.

Cornish stated at the last meeting we determined that technically it was a piece of equipment and not a building.

Chestnut, John stated but it has to be serviced from the top.

Brown stated yes.

Chestnut, John stated so structurally it is sound enough to support someone.

Waller stated yes, but it is not structurally sound enough, what supports the equipment is the frame below that holds the ice bend. This bend holds 8,000 pounds of ice. It goes to the top and there are bolts that go through and holds the equipment.

Chestnut, John stated my questions isn't if it is structurally capable of holding the equipment. Is it capable of holding a person?

Waller stated yes.

Brown stated the mechanical code defines equipment as "all piping, ducts, vent, control devices and other components to systems, other than appliances, which are permanently installed and intergraded to provide control of environmental conditions for buildings. This definition shall also include other systems specifically regulated in this code". The mechanical code doesn't have a definition for a structure.

Rogalski asked what about appliances. It did mention appliances.

Brown stated an appliance is a devices or apparatus that is manufactured and designed to utilized energy and for which this code requires specific requirements.

Waller stated so it is a big appliance.

Ezerski asked how many feet above the ground is it.

Waller stated fifty (50).

Maietta stated it will be your decision as to whether it is a piece of equipment or a building.

Ezerski asked does anyone have any thoughts.

Pippin stated I believe the person who installed the equipment should have gotten a mechanical inspection and they should deal with it.

Cornish asked do you feel it is a building or do you feel it is a piece of equipment.

Pippin stated it is a mechanical devise that was supposed to have an inspection.

Cornish asked is that considered a building.

Pippin stated I don't know.

Cornish stated it doesn't sleep or house anyone.

Mitchell stated neither does a public restroom in a park.

Pippin stated we keep calling it a roof and not a top. I don't know.

Maietta stated it is occupiable. You walk in, you can wash your hands, and get your money.

Wright asked did the others have a mechanical inspection before going into operation. Didn't you say there were three (3) others.

Brown stated yes.

Wright asked did they have to have an inspection before they into operation.

Brown stated they should have. I didn't verify that information. Ralph, do you remember.

Maietta stated I don't recall. I don't know how long those have been in existence. I've been here thirteen (13) years.

Pippin stated they haven't been here that long.

Wright M stated just for reference the building code defines a structure "as that which is built or constructed". I believe the structure that we are talking about is. The commentary says they are leaving that intentionally broad because everything that is built has an improvement for real property.

Waller stated this was not built here. It was not constructed here. It was installed here.

Wright M stated now we are debating on the terminology.

Maietta stated a mobile home is not built on site. It is constructed in a factory and delivered just like yours. It is considered to be a building.

Waller stated I don't want to get into a Tish Tash deal.

Pippin stated I don't know whether it is a building or equipment. I do know that when you buy equipment that has to be worked on from the top it comes with rails. They gave you an option.

Waller stated no, there was no option.

Pippin stated those were installed before it shipped. The one on Lee looks good and it wasn't put there afterwards.

Waller stated yes it was.

Pippin stated it doesn't look like it.

Waller stated it was and Ice House of Oklahoma put it on. They did the one on Sheridan also. They have guy out of Oklahoma City that manufactures those.

Pippin stated they look good. When you buy a cooling tower it has rails. They know you have to get on top to work. It is a piece of equipment, but it has safety devices.

Waller stated I think a lot of places provide safety.

Pippin stated the picture of the chiller you have can be worked on from underneath.

Brown stated I will also prefascist that whatever you determination today will set the review for the future installation of these buildings.

Waller asked what about all the coolers and things inside of stores that don't have rails.

Pippin stated they can be worked on from a ladder.

Waller stated their backs are up against a wall.

Pippin stated then they will take it apart. The one you showed you can take the whole contraption off to work on it.

Waller stated but you still have to work on it from the top.

Pippin stated but you are working from a ladder.

Maietta stated you are misunderstanding. All the equipment that you are talking about is sitting on the ground and not the roof.

Waller stated my piece of equipment is sitting on the ground.

Maietta stated this doesn't say equipment sitting on the ground. It says equipment sitting on a roof that is within ten (10) feet of the roof edge. It doesn't address ice machines sitting at the 7-11. It says roof. They are worried about someone on top of the roof working on the equipment. They are trying to give protection from falling off the roof.

Waller stated okay, then I don't have a roof. I have a top to a mechanical piece of equipment. It is that simple.

Ezerski stated this is a safety issue is what it is.

Cornish stated it is a safety issue.

Waller stated build a sidewalk that is half to one (1) degree out of slope on a side slope. That is a safety issue.

Cornish stated we have to come to a conclusion.

Ezerski stated we need to make a motion here.

Chestnut, John asked is it possible to put railing around where the equipment is and not go all the way around the building.

Cornish stated it is too small.

Waller stated you can leave about a thirty (30) inch opening. That takes six (6) more braces to support it. Each brace has six (6) holes that will penetrate the top of the building. It is held on by top rivets and now you have a hundred (100) of them on the roof.

Pippin stated there are other ways to do it. If you would go to the new safety facility and see what they have where you have no penetration.

Waller stated those take room. They have a big base and are very heavy. This is only eight (8) feet.

Pippin stated it doesn't take that big of base.

Cornish asked do you know how heavy it is.

Pippin stated no, but it must be heavy to hold two hundred (200) pounds.

Waller stated two hundred fifty (250).

Cornish stated it probably weighs eight (8) or nine hundred (900) pounds.

Pippin stated you can tie the two devices together to make it even stronger.

Cornish stated I would be afraid because the roof is only about that thick.

Pippin stated I don't know about that either, but I have concerns about somebody falling off.

Maietta stated there is enough room on that roof to do a horseshoe rail around the front unit. There is room to come off that rail on each side and fasten it where it would hold and meet the two hundred fifty (250) pound requirement. The same thing on the end of the roof. If you put a rail on both sides of the edge of the roof and come out thirty (30) inches past the second unit with an

offset and attach it to the roof that will more than meet the requirements. You would have to push so hard that it would come unattached from the roof.

Waller stated and each one of those have six (6) rivets. Each time you start and stop you have to brace it with a brace, and it takes six (6) more holes in each brace.

Ezerski asked are you concerned about the functionality of the unit.

Waller stated yes. It has a computer and electrical panel in it that is huge.

Smith stated we have three (3) of these in Lawton and two (2) of them already have the safety railing around them. You are asking us to go against what we have had other people install and give you a special dispensation that you don't have to install the railing.

Waller stated it is not in accordance and it is an exception to the code.

Smith stated your belief is that.

Waller stated yes because this is a variance committee.

Smith stated this is an appeals board for the decisions that are made through License and Permitting. There are safety requirements for anything that gets put up and it must come through our office. We have asked that you comply with the same regulations that everybody else complies with. You believe that the interpretation for it to apply to you is incorrect.

Waller stated that is correct. I have a piece of equipment. If that Ice House was sitting on top of a building, we would have to have rails around it.

Smith stated I understand that is your issue. Did we have any conversations with the other owners?

Maietta stated I talked with Justin who owns several throughout the state and he automatically puts up rails because they are required.

Brown stated we tried to contact Ice House of Oklahoma and we got no response.

Waller stated he didn't put up rails in Medicine Park.

Maietta stated we have nothing to do with Medicine Park.

Smith stated he did put them here in Lawton. They are on the other structures that are owned by other individuals here.

Waller stated two (2) of them.

Smith stated yes sir and yours is the third.

Brown stated his will be the fourth. The one on 67th Street has a type of railing. It doesn't meet the height requirement.

Cornish stated it has railing but it isn't the right height.

Brown stated it appears that way. I haven't been up there. It is like a white fence around it.

Cornish asked why didn't they have to have rails instead of a white fence.

Brown stated I can't speak to that. That one was installed eight (8) years ago when I was in planning.

Maietta stated the code says guardrail. It doesn't specify what it is supposed to be made of.

Brown stated it just says guards.

Ezerski stated but it is not the right height is that correct.

Waller stated it is a screen for some of the equipment and for advertisement.

Smith stated that is an issue for us to go out and inspect. I don't think that is what we are here to discuss today. We are here to discuss your appeal.

Waller stated I'm just pointing out that there are just two (2) of the three (3).

Motion by Mitchell, to deny the appeal of Kent Waller regarding the requirement of a railing surrounding the mechanical equipment on the top of the Ice House located at 4509 SW Lee Boulevard and uphold the interpretation of the code by staff.

Mitchell stated as I said earlier the appeals process is designed for those who thinks the city has misinterpreted the code. I believe the city has interpreted the code correctly and that is why I made the motion to deny the appeal.

Second by Jones. **Aye:** Ellis, Ezerski, Jones, Mitchell, Pippin, Wright, Cornish. **Nay:** None.
Motion Passed.

Ezerski stated the motion passes.

Waller asked how long do I have to get this done.

Brown stated we will give you thirty (30) days.

Waller stated give me sixty (60).

Brown stated I will be willing to work with sixty (60).

Waller stated I think I might just move it to Elgin.

Brown stated okay.

Wright asked the railing that was designed to fit that unit is it forty-two (42) inches.

Waller stated it is forty-two (42) inches.

Maietta stated I should have mentioned this earlier but if someone has to climb over the rail system to get onto the roof, I don't think I can approve that. There will have to be a separation or a ladder that goes up and over. We don't want someone to balance themselves on a rail and possibly fall getting on the roof. There are plenty of ways to put the rails up there. You can lean a ladder up against the roof, get on the roof and have rails to project them as they work. Waller said this was one complete railing and the only way to get on the roof was to climb over it.

Waller asked does he have the authority to not approve a rail that is built to specifications.

Brown stated it has to be submitted to us for our approval before construction.

Ezerski asked can there be a gate.

Maietta stated sure.

Waller stated then it takes two (2) rails, and you have to support each side of that.

Wright stated if you build a three (3) story building you put up railing as a safety measure. It is not a full structural railing. It is a safety measure. If this says guardrail, why do you have to go with forty-two (42) inches.

Maietta stated if the building is larger and further than ten (10) feet away from the edge.

Jones asked if it is eight (8) foot away from the edge do you still have to have a rail.

Maietta stated the code specifies forty-two (42) high plus a center rail at twenty-one (21). I guess they thought at that height someone wouldn't flip over or go in between.

Wright asked can you not come up with something else that can be considered as a guardrail other than forty-two (42) inches.

Cornish stated at the last meeting we suggested a pole in the center with a hook over the top.

Waller stated can't do it. It doesn't meet code.

Maietta stated if necessary, I'll go get a two hundred (200) pound scowl.

Cornish stated I'm not questioning I'm just making a statement.

Maietta stated it is easy to check and easy enough to fasten that thing a lot of ways to meet code. I hate to see the Ice House go away. Like I said I have the numbers of three (3) contractors. This might be a lot simpler than you think. At least let them look at it.

Waller asked was the first one Roy Kiddingham.

Pippin stated David.

Maietta stated it was David then Mark.

Wright asked Mark, have you seen that.

Pippin stated yes.

Wright stated it is not a full or all the way around the building.

Pippin stated you can make a gate here and still be structurally sound. You could make an access at the front part to the top.

Wright stated the back end is open and you don't need it here.

Waller stated I appreciate your time and I'll let you know what my decision is.

5. Discussion.

6. Adjournment.

There being no further business the meeting adjourned at 10:45 a.m.

Motion by Mitchell, Second by Pippin, to adjourn. **Aye:** Ezerski, Jones, Mitchell, Pippin, Wright, Cornish, Ellis. **Nay:** None. **Motion Passed.**