

In the Court of Appeal of Alberta

Citation: Homes by Avi (BVX) Inc v Land and Property Rights Tribunal, 2026 ABCA 254

Date: 20260729

Docket: 2601-0143AC

Registry: Calgary

Between:

Homes by Avi (BVX) Inc.

Applicant

- and -

Land and Property Rights Tribunal and the City of Calgary

Respondents

**Reasons for Decision of
The Honourable Justice Kevin Feth**

Application for Permission to Appeal

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Overview

[1] Homes by Avi (BVX) Inc applies for permission to appeal a decision of the Land and Property Rights Tribunal (LPRT) which dismissed Avi’s appeal to the LPRT on a preliminary issue. The LPRT found no appealable decision under s 678(1) of the *Municipal Government Act*, RSA 2000, c M-26 (the Act).

[2] The proposed appeal to this Court does not involve a question of law having sufficient importance to merit a further appeal and has no reasonable chance of success. Permission to appeal is denied.

Background

[3] In December 2022, Avi obtained a residential subdivision approval from the City of Calgary Subdivision Authority subject to ninety conditions. One of the conditions (Condition 61) required Avi “at its expense, but subject to normal oversize, endeavours to assist and boundary cost recoveries” to enter into a development agreement with the City for the installation and construction of various public utilities, improvements, fences, a multiuse pathway and street lighting.

[4] After the conditional approval issued, Avi negotiated with the City for more than 2 ½ years about the terms of the cost sharing arrangements contemplated by Condition 61, including the interpretation of the “endeavours to assist” provision.

[5] Despite those ongoing negotiations, in February 2024, Avi and the City entered into the development agreement required under Condition 61. The subdivision was registered in June 2025.

[6] Avi and the City continued to discuss possible changes to the development agreement. However, by a letter dated October 15, 2025, the City’s Manager of Development Engineering informed Avi that the City would not facilitate Avi’s proposed non-standard cost sharing arrangements. Avi treated the letter as a written decision by which the City was refusing to assist with the proposed cost sharing for oversized infrastructure (Refusal Letter).

[7] Section 678 of the Act permits a “decision of a subdivision authority on an application for subdivision approval” to be appealed to the applicable subdivision and development appeal board “by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority”. Avi appealed the Refusal Letter to the City of Calgary Subdivision and Development

Appeal Board on the basis that Avi's legitimate expectations to be treated fairly were not being met. Avi requested that the condition be varied to require the City to assist with the cost sharing.

[8] The Appeal Board directed the appeal to the LPRT in accordance with s 678(2) of the Act. Avi does not dispute that the appeal was properly directed to the LPRT.

[9] The LPRT found that the Refusal Letter was a decision of the City's Development Engineering Business Unit, not the Subdivision Authority, and therefore "not a decision that can be appealed to the LPRT under s. 678(1), which provides for an appeal of '[t]he decision of a subdivision authority on an application for subdivision approval'": Decision at para 34.

[10] The Subdivision Authority asserted before the LPRT that in any event, Avi's appeal was filed outside the 14-day statutory appeal period and time-barred. The LPRT declined to determine whether the appeal was filed out of time because the Refusal Letter was not appealable.

Permission to appeal

[11] An appeal lies to this Court, with permission, if "the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success": s 688(3) of the Act; *Shaikh v Land and Property Rights Tribunal*, 2023 ABCA 56 at para 6.

[12] Permission may be granted if there is a reasonably arguable point of law or jurisdiction which could affect the result: *Rendle v Edmonton (Development Appeal Board)*, 1995 ABCA 499 (CanLII) at para 2, [1995] AJ No 1169 (QL).

[13] Permission will not be granted to dispute fact findings: *Investors Group Trust Co Ltd v Calgary (City of)*, 2005 ABCA 34 at para 14. A question of law "does not concern a finding of fact, or applying the facts to the correct law governing a situation": *Biernacki v Alberta (Land and Property Rights Tribunal)*, 2022 ABCA 56 at para 11 [*Biernacki*].

[14] An issue may be of sufficient importance to merit an appeal if it is important to the applicant and for jurisprudential purposes: *P V O Ltd v Mackenzie (Municipal District No 23)*, 2003 ABCA 83 at para 8, 327 AR 99. Sufficient importance includes that "resolution of the matter has implications and effects beyond the scope of the specific case or has implications more broadly linked to the rule of law": *Augustana Neighbourhood Association v Camrose (Subdivision and Development Appeal Board)*, 2021 ABCA 427 at para 16; *Biernacki* at para 11. However, in exceptional cases, permission may be granted where the decision only affects the parties, especially where the impact of the decision on the applicant will be severe and the proposed appeal is meritorious: *Canadian Natural Resources Limited v Municipal District of Greenview No. 16 Subdivision and Development Appeal Board*, 2019 ABCA 143 at para 12; *Carleo Investments Ltd v Strathcona (County)*, 2014 ABCA 302 at para 10.

[15] In determining whether an appeal has a reasonable chance of success, “the Court generally considers what appellate review standard would apply to the proposed question of law”: *Biernacki* at para 11. The LPRT’s decisions are reviewed on the standard of reasonableness: *Land and Property Rights Tribunal Act*, SA 2020, c L - 2.3 at s 19: *Shaikh v Land and Property Rights Tribunal*, 2024 ABCA 55 at para 5; *Windy Field Ltd v Cardston (County)*, 2023 ABCA 1 at para 24.

Analysis

[16] Avi contends the LPRT erred in law by concluding that the Refusal Letter was not a decision of the Subdivision Authority under s 678(1) of the Act, by failing to provide sufficient reasons for its finding that the Refusal Letter was issued by a “business unit” of the City rather than the Subdivision Authority, and by finding that a refusal to interpret or amend an approval condition (i.e., Condition 61) is not a decision of a subdivision authority.

[17] I find that these arguments either do not involve a question of law, do not have sufficient importance to merit a further appeal, or have no reasonable chance of success.

[18] First, the LPRT made a finding of fact that the Refusal Letter was “not a decision of the [Subdivision Authority] but rather a decision of the [City’s] Business Unit made on behalf of the municipality”, and a finding of mixed fact and law that the Refusal Letter did not constitute a decision under s 678(1) of the Act: Decision at para 34. No question of law is engaged, and in any event, the finding has no implications beyond the scope of this specific case.

[19] Second, insufficiency of reasons is not a stand-alone ground of appeal from an administrative decision, although the quality and sufficiency of the reasons are factors to be considered in determining whether the decision is reasonable: *Site Energy Services Ltd v Wood Buffalo (Regional Municipality)*, 2015 ABCA 106 at para 15. Reasons facilitate meaningful review by displaying the decision-maker’s rationale for a decision and their purpose is to demonstrate “justification, transparency and intelligibility”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 81, [2019] 4 SCR 653.

[20] The LPRT provided detailed reasons justifying its finding. In canvassing the relevant evidence and submissions, the LPRT noted that the Refusal Letter was signed by the Manager of the City’s Business Unit, not by the Subdivision Authority, and arose from negotiations between the Business Unit and Avi about the contents of the development agreement, culminating in the Business Unit’s decision not to change the standard “endeavor to assist” provisions.

[21] The LPRT explained that the Subdivision Authority’s role under the Act is not to make decisions about the details of development agreements. The Subdivision Authority “exercise[s] subdivision powers and duties on behalf of the municipality” and is empowered to impose conditions on subdivision approvals, including “a condition that the applicant enter into an

agreement with the municipality”: ss 623 and 655(1)(b) of the Act. Avi and the City were to “work out the terms and details of the agreement” because the “requirements for servicing commonly involve technical details outside the [Subdivision Authority’s] area of expertise, which are best left to the developer and municipality’s engineering department”: Decision at para 31. The LPRT found that the negotiation of the development agreement and amendments to it, and the termination of those negotiations by the Business Unit, were outside the function of the Subdivision Authority. Accordingly, those negotiations were not part of any decision by the Subdivision Authority.

[22] On a reasonableness standard of review, this ground has no reasonable chance of success.

[23] Third, Avi argues that the words “decision of a subdivision authority on an application for subdivision approval” in s 678(1) of the Act should be interpreted to extend the right of appeal to subsequent disputes about the meaning or scope of a condition of approval. Further, Avi argues that a subdivision authority cannot structure a condition of approval so that “its substantive content – and any dispute about how it applies – is worked out later through a negotiated development agreement”. Instead, any communications from a municipality about the contents of a development agreement must be treated as the communications of the subdivision authority.

[24] Avi submits the LPRT failed to recognize that a development agreement carries “public law character” because it is an “extension of the subdivision approval”. Disputes between a developer and a municipality about the contents of the development agreement are therefore within the scope of a subdivision authority’s decision-making. In support, Avi relies on general comments in *Focaccia Holdings Ltd v Parkland Beach (Summer Village Subdivision and Development Appeal Board)*, 2014 ABCA 132 at para 30 [*Focaccia*], that a development agreement is “a specialized type of contract which has a public law or regulatory aspect”, one of the “regulatory tools by which the municipality controls subdivision and development”, and “work[s] in combination with development permits, subdivision approvals, and municipal bylaws”.

[25] The LPRT expressly rejected this argument. While recognizing that the comments in *Focaccia* might support a subdivision authority imposing conditions that control or otherwise direct the terms of a development agreement at the time of subdivision approval, the LPRT concluded that those comments “do not imply that each of the detailed ‘conditions and provisos’ within a Development Agreement that have been left to a municipality and developer to negotiate after subdivision approval must be considered an appealable decision of the [Subdivision Authority]”. The LPRT considered the Act’s legislative purpose and added that such a conclusion “would extend and undermine the finality of the subdivision approval process and erode the ability of municipalities to ensure adherence to safe and appropriate standards for roads and utilities”: Decision at para 36.

[26] The LPRT correctly recognized at paragraphs 30-31 that the statutory scheme distinguishes between a subdivision authority and a municipality. A subdivision authority’s role, as prescribed in s 623 of the Act, is “to exercise subdivision powers and duties on behalf of the municipality”.

In this role, the subdivision authority is expressly authorized to impose conditions for subdivision approvals including “a condition that the applicant enter into an agreement with the municipality”: s 655(1)(b). The Act directs that the development agreement is with the municipality, not the subdivision authority.

[27] Avi provides no principled basis for challenging the LPRT’s reasoning and findings. It provides no meaningful legal analysis for the contention that the “public law character” of a development agreement required by an approval is sufficient to convert a unilateral decision made by a party to that agreement to cease negotiating changes into a “decision of a subdivision authority”.

[28] On Avi’s interpretation of s 678 of the Act, once a conditional approval was granted, the Subdivision Authority was accountable for the City’s performance of the development agreement, including refusals to correctly interpret or even amend the terms of that agreement. Moreover, the Subdivision Authority remained accountable long after the subdivision was registered. That demand for indefinite supervision highlights the LPRT’s concern that the finality of the subdivision approval process would be undermined.

[29] The LPRT also rejected Avi’s contention that “procedural fairness” required the Refusal Letter to be interpreted as a “deferred decision” by the Subdivision Authority on a component of the subdivision approval because the developer would not know whether to appeal that component until the negotiations between the developer and the City were exhausted. However, as the LPRT noted, the approval directed Avi to install offsite utilities and roads at its expense “subject to normal oversize, endeavours to assist and boundary cost recoveries” which “are found in the standard development agreement conditions published by the City”: Decision at paras 33, 35.

[30] The comments in *Focaccia* provide no arguable, principled basis for interfering with the LPRT’s findings. Avi provides no principled and arguable basis for interpreting the statutory language as proposed and has failed to demonstrate that the LPRT’s interpretation of the legislation was arguably unreasonable. Consequently, even if a question of law is raised, it has no reasonable chance of success.

[31] Avi also raises two possible grounds of appeal concerning the timeliness of the appeal to the LPRT. Avi argues the LPRT erred by declining to determine whether Avi’s appeal to the LPRT was filed out of time and by concluding that any right to appeal the interpretation of the condition expired 14 days after the subdivision approval issued. However, as the LPRT concluded, those issues only arise if the decision at issue was appealable. It was not. Those proposed grounds need not be considered and provide no basis for granting permission to appeal.

Conclusion

[32] The application does not raise a question of law or jurisdiction that has a reasonable chance of success on appeal.

[33] Permission to appeal is denied.

Application heard on July 23, 2026

Reasons filed at Calgary, Alberta
this 29th day of July, 2026

Feth J.A.

Appearances:

R.A. Homersham
for the Applicant

M.J. d'Alquen
for the Land and Property Rights Tribunal

A. Ferris
for the City of Calgary