

In the Court of Appeal of Alberta

Citation: Zhuromsky v Calgary (City), 2026 ABCA 271

Date: 20260817

Docket: 2601-0150AC

Registry: Calgary

Between:

Evgeny Zhuromsky

Applicant

- and -

**City of Calgary,
Calgary Subdivision and Development Appeal Board and
Best Investment Group Inc**

Respondents

**Reasons for Decision of
The Honourable Justice Joshua B. Hawkes**

Application for Permission to Appeal

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Introduction

[1] The proposed development has a lengthy legal history. It was approved by the Development Authority in August of 2024. In November of that year the Subdivision and Development Appeal Board (the Board) upheld the approval with amendments 2024 CGYSDAB 0052 (CanLII) (SDAB 2024). This Court granted permission to appeal SDAB 2024 in a decision reported as *Zhuromsky v Calgary (City)*, 2025 ABCA 106 (*PTA 1*). Following the hearing of the appeal, in *Zhuromsky v Calgary (City)*, 2025 ABCA 352 (*Zhuromsky 352*) this Court allowed the appeal and returned the matter back to the Board for reconsideration.

[2] The Board conducted a new hearing and again approved the development with conditions. Mr. Zhuromsky seeks permission to appeal that decision. Permission to appeal is granted on one issue as described below.

Background

[3] A central question in this dispute is whether the proposed development is compliant with the Bylaw. The crucial passage in SDAB 2024 on this point was brief:

[136] The Appellant questioned whether the Secondary Suites were compliant as defined in the Bylaw for Units 1-4 as access to the utility rooms was through these Secondary Suites and Unit 5 Secondary Suite did not seem to have a complete party walls. The Development Authority submitted that access to the utility rooms was through agreement with Secondary Suite tenants and did not compromise the requirements of a Secondary Suite in the Bylaw. The Unit 5 Secondary Suite did have a full party wall and was compliant by definition. The Board accepts the Development Authority's submission that the Secondary Suites are compliant with Bylaw requirements.¹

[4] In *PTA 1*, permission to appeal was granted on the following questions:

1) Whether the SDAB incorrectly interpreted the definitions of “Rowhouse Building” and “Secondary Suite” in the Bylaw, which resulted in it approving a development permit for a use that is not a permitted or discretionary use under the applicable zoning;

¹ See *PTA 1* at para 8.

2) Whether the SDAB failed to take into account relevant considerations relating to impacts on the applicant's property, and in particular sight lines; and

3) Whether the SDAB failed to provide sufficient reasons for its decision.²

[5] The reason for granting permission to appeal on the interpretation of the definitions in the Bylaw was stated as follows:

I am satisfied that the interpretive issue raised by the applicant warrants review by a panel of this Court. The applicant has a reasonable chance of success and the issue is important to the applicant and to the owners of the subject site. The issue is also important to the general public. Issues relating to density and Secondary Suites are of significant public interest in the City of Calgary at this time. Further, there was evidence at the SDAB hearing that the City has approved hundreds of configurations similar to the one in issue.³

[6] When the case was considered by a panel of the Court, they found that the reasons of the Board reflected a failure to consider and engage with the definitions of "Rowhouse Building" and "Secondary Suite" in the Bylaw and the interpretive issues involved. This was an error of law.⁴ However, the court explicitly declined to comment on the substantive issue regarding the definitions of "Rowhouse Building" and "Secondary Suite" in the absence of proper consideration of those issues by the Board.⁵ The decision was cancelled, and the matter returned to the Board for a rehearing.⁶ The Board has now rendered a new decision, reported at 2024 CGYSDAB 0052 (CanLII), which the applicant seeks permission to appeal.

The Test for Permission to Appeal

[7] Permission to appeal may be granted if the three requirements of section 688(3) of the *Municipal Government Act*, RSA 2000, c M-26, are met regarding each proposed ground: (1) it involves a question of law or jurisdiction; (2) it is of sufficient importance to merit a further appeal; and (3) it has a reasonable chance of success. These requirements are cumulative.⁷

² *Ibid* at para 15.

³ *Ibid* at para 9.

⁴ *Zhuromsky* 352 at para 24.

⁵ *Ibid* at para 29.

⁶ *Ibid* at para 31.

⁷ *Stubicar v Calgary (Subdivision and Development Appeal Board)*, 2022 ABCA 299 at para 13, citing *Augustana Neighbourhood Association v Camrose (Subdivision and Development Appeal Board)*, 2021 ABCA 427 at para 18.

Analysis

[8] The applicant proposes two grounds of appeal:

- 1) The Board incorrectly interpreted the definitions of “Rowhouse Building” and “Secondary Suite” in the Bylaw and approved a development that is not a permitted or discretionary use in the Residential – Grade-Oriented Infill (“R-CG”) district and that exceeds the maximum density; and
- 2) The Board conducted the hearing in a manner that was procedurally unfair by accepting multiple revised plans during the course of the appeal and imposing conditions that require substantive plan changes without any opportunity for Mr. Zhuromsky to review and evaluate the impact of the changes.

[9] The first proposed question is functionally identical to the first question on which permission to appeal was granted in *PTA 1*. Moreover, permission to appeal has also been granted in *Conley v Calgary (City)*, 2026 ABCA 105 (*Conley*), which involves the interpretation of the definition of “Secondary Suite” raising similar arguments to those in this case.⁸ Permission to appeal has also been granted in appeals involving similar terms and interpretive issues arising out of the Edmonton land use bylaw.⁹ Granting permission to appeal on the interpretive issues as stated in the proposed question is also consistent with the substantive decision of a panel of this Court in *Zhuromsky 352* at para 29.

[10] The doctrine of judicial comity is explained by the Federal Court of Appeal as follows:

[29] ...The doctrine which applies to the judges’ treatment of decisions of their colleagues on the same court is judicial comity. The decision of one judge of the Federal Court does not bind the other judges of the Federal Court in the sense that failing to follow the decision of a colleague is an error which justifies appellate intervention. ...

[30] This does not mean that judges are free to disregard the decisions of their colleagues. Judicial comity is a doctrine which seeks to promote uniformity and predictability in the law. Litigants and appellate courts expect that judges will consider the decisions of their colleagues carefully and, if they choose to differ, will explain why. One way of doing this is to distinguish the facts of the two cases or to identify relevant legal principles which were not addressed.¹⁰

⁸ *Conley* at paras 7-8.

⁹ *Hawkesworth v Edmonton (City)*, 2026 ABCA 171 at paras 10, 13, 18-21.

¹⁰ *Friedman v Canada (National Revenue)*, 2021 FCA 101, leave to appeal denied at 2022 CanLII 14374 (SCC).

[11] While I am thus not bound by the decisions of my colleagues in *PTA 1* or the related cases listed above, I find them persuasive. The only real factor distinguishing the present circumstances from those at the time of *PTA 1* is that the Court now has the benefit of the reasons of the Board regarding the application of the contested definitions to the proposed development. Further, the presence of other related cases may serve as an indication that these questions raise issues of sufficient importance to warrant a further appeal.¹¹ That may mean that the Court needs to take steps to sequence or coordinate appeals where practical to ensure that the issues are addressed and resolved as efficiently as possible.¹²

[12] A further question arises: whether, in light of the reasons provided by the Board, the proposed question is an extricable question of law (and thus amenable to appeal under section 688 (3) of the *Municipal Government Act*), or a question of mixed fact and law? The test distinguishing between the two is easy to state¹³ but consistency in application may be elusive. Two reasons for caution emerge from the case law. First, what can be construed as an extricable question of law is seemingly constrained only by the expertise and imagination of counsel.¹⁴ The distinction can be a difficult one to draw, particularly at the margins.¹⁵ A review of the case law illustrates a continuum between issues of law or jurisdiction and issues of mixed fact and law in this area. At one end of that continuum are cases that involve provisions that either require no interpretation, or the application of provisions or principles where interpretive issues have been settled.¹⁶ At the other end of that spectrum are questions of law or questions with extricable legal issues.

[13] Second, the restriction of appeals in the *Municipal Government Act* reflects an important policy choice by the legislature: planning decisions are left primarily to local bodies with review by this Court in limited circumstances.¹⁷ That choice is animated by fundamental principles in land use planning in Alberta. As this Court has noted:

[26] These values – orderly and economic development, preservation of quality of life and the environment, respect for individual rights, and recognition of the

¹¹ *R v Goldson*, 2019 ABCA 416 at para 15; *Louis v Poitras*, 2020 ONCA 815 at para 76.

¹² *R v Hanna*, 2021 ABCA 350 at para 24.

¹³ See *Housen v Nikolaisen*, 2002 SCC 33 at paras 26-27.

¹⁴ *Teal Cedar Products Ltd v British Columbia*, 2017 SCC 32 at para 45; *Augustana Neighbourhood Association v Camrose (Subdivision and Development Appeal Board)*, 2021 ABCA 427 at paras 20-21.

¹⁵ *Canada (Director of Investigation and Research) v Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 SCR 748 at para 35; *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co.*, 2016 SCC 37 at paras 41, 48.

¹⁶ *Grossmann v Edmonton (Subdivision and Development Appeal Board)*, 2026 ABCA 165 at paras 16-17; *T. Sun Holdings Ltd v Calgary (City)*, 2012 ABCA 320 at paras 10-11; *Liquor Stores Limited Partnership v Edmonton (City)*, 2015 ABCA 63 at paras 11-12; *Dimant v Calgary (City)*, 2021 ABCA 396 at para 18.

¹⁷ *Berreth v Mountain View (County of)*, 2004 ABCA 363 at para 5; *Mathews v Standard (Subdivision and Appeal Board)*, 2017 ABCA 10 at para 8.

limited extent to which the overall public interest may legitimately override individual rights – are critical components in planning law and practice in Alberta, and thus highly relevant to the interpretation of the Bylaw.

[27] Central to these values is the need for certainty and predictability in planning law. Although expropriation of private property is permitted for the public, not private, good in clearly defined and limited circumstances, private ownership of land remains one of the fundamental elements of our Parliamentary democracy. Without certainty, the economical development of land would be an unachievable objective. Who would invest in land with no clear indication as to the use to which it could be put? Hence the importance of land use bylaws which clearly define the specific uses for property and any limits on them.

[28] The need for predictability is equally imperative. The public must have confidence that the rules governing land use will be applied fairly and equally. This is as important to the individual landowner as it is to the corporate developer. Without this, few would wish to invest capital in an asset the value of which might tomorrow prove relatively worthless. This is not in the community's collective interest.¹⁸

[14] The restrictions in the test for permission to appeal in section 688 of the *Municipal Government Act* reflect an attempt to both give effect to and reconcile these principles. This case provides a compelling example of the tension that can arise between them. For example, while the goal of certainty and predictability in the law can be achieved through the appeal process, the time and cost of that process can adversely affect the economic viability of development. I do not suggest that these are factors that change the established test for permission to appeal. Rather, they are animating factors that provide context and illustrate the purpose behind the restrictions.

[15] Notwithstanding the cautions noted above, I am satisfied that there are arguable interpretive issues surrounding the applicable definitions in this case. As illustrated by the related cases already before the Court, these are matters of broader concern. As a result, permission to appeal is granted on the following question:

Did the Board err in interpreting the definitions of “Rowhouse Building” and “Secondary Suite” in the Bylaw, thereby approving a development that is not a permitted or discretionary use in the Residential – Grade-Oriented Infill (“R-CG”) district and that exceeds the maximum density?

[16] The applicant also seeks permission to appeal on a second ground arising from what is characterized as procedural unfairness arising from a combination of the Board permitting revised

¹⁸ *Love v Flagstaff (County of) Subdivision and Development Appeal Board*, 2002 ABCA 292 at paras 26-28.

plans to be submitted for consideration during the appeal process and the denial of an adjournment application to give more time to consider those revised plans. While denial of procedural fairness can give rise to a question of law, I am satisfied that in the circumstances of this case the exercise of discretion by the Board does not give rise to any questions of law or jurisdiction of sufficient importance. That is particularly so given the adjournment between the first hearing date and the continuation of that hearing approximately seven weeks later. Permission is denied on this question.

Conclusion

[17] Permission to appeal is granted on Question 1 set out above. Permission to appeal is denied on Question 2.

Application heard on July 29, 2026

Reasons filed at Calgary, Alberta
this 17th day of August, 2026

Hawkes J.A.

Appearances:

J. A. Agrios, K.C.
for the Applicant

N.J. Maynard (no appearance)
A. Ferris
for the Respondent City of Calgary

J. Sykes
for the Respondent Calgary Subdivision and Development Appeal Board

K. Elhatton-Lake
for the Respondent Best Investment Group Inc