

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

LADCO COMPANY LIMITED,

applicant,

- and -

THE CITY OF WINNIPEG

respondent.

**AFFIDAVIT OF MICHAEL CARRUTHERS
SWORN April // , 2018**

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AFFIDAVIT OF MICHAEL CARRUTHERS

I, **MICHAEL CARRUTHERS**, of the City of Winnipeg, in the Province of Manitoba,
Manager,

MAKE OATH AND SAY THAT:

1. I have worked in the land development industry in Winnipeg for over 15 years. For the past 12 years, I have worked in the Land Development Division of Ladco Company Limited ("Ladco") and currently as Manager of Land Development. I am a Board member of both the Manitoba Home Builders Association ("MHBA") and the Urban Development Institute ("UDI"). I was President of UDI from 2010 to 2015. I graduated from the University of Nebraska-Lincoln with a Master's Degree in Community and Regional Planning in 1998, and have previously worked in city planning in the City of Winnipeg's Planning, Property and Development Department and as a planning consultant at the planning and engineering firm ND LEA.

2. I have been extensively involved in the planning and development of Waverley West, including Ladco's development of South Pointe and Prairie Pointe.

3. South Pointe includes approximately 47 acres of land designated for commercial development and Prairie Pointe includes approximately 50 acres of land designated for commercial development. It is quite possible that part or all of the commercial development in these areas will be undertaken by Ladco itself. Accordingly, if the City proceeds with Phase 2 of implementation of the By-law as described in Section 4(A) of the Resolution passed by the City on October 26, 2016, any commercial development in South Pointe or Prairie Pointe would be subject to the impact fee effective November 1, 2018.

4. For a number of years, I have followed the City of Winnipeg's (the "City's") consideration and imposition of what is being referred to today as impact fees.

5. On November 2, 2013, Mr. Deepak Joshi, Acting Chief Administrative Officer for the City met with UDI and MHBA officials and, among other things, indicated that the City Administration:

- a. would brief City Council the following week with respect to the City's ability to charge fees on new development under The City of Winnipeg Charter (the "Charter");
- b. had determined that the City did not have sufficient authority to impose such fees without provincial approval; and
- c. would be seeking authorization from City Council to request that the Province amend the Charter or create other legislation to enable the City to apply fees on new development.

6. Mr. Joshi also advised that the City would work in collaboration with UDI and MHBA on the preparation and implementation of such fees.

7. On November 20, 2013, City Council passed a resolution requesting that the Province amend the Charter "to provide legal authority to permit the City to impose growth development charges by by-law on development/building permit and subdivision

applicants for various types of growth related capital infrastructure...”. The Council Minutes are attached as Exhibit “A” to this Affidavit.

8. In November 2013, Premier Greg Selinger publicly stated that the Province was not prepared to amend the Charter and that the Provincial government’s view was that the City had sufficient authority through development agreements.


9. The City and UDI commenced a review of the City’s Development Agreement Parameters in late 2015 and early 2016. Six meetings were held. This review process was not completed, and since the City retained Hemson Consulting Inc. (“Hemson”) to examine the implementation of impact fees, the review process has not been pursued by the City.

10. On July 19, 2016 I attended the first of two presentations to stakeholders made by John Hughes, a principal of Hemson. Mr. Hughes described the methodology and timelines that his firm would use to prepare its reports. I asked whether Hemson would review any of the cost-benefit studies that had been prepared in support of development in Winnipeg (including Waverley West) which had concluded that development is economically sustainable. Mr. Hughes responded that “that was beyond the scope of their study”. I also asked whether Hemson’s investigations of other jurisdictions would include comparing Winnipeg’s Development Agreement Parameters with the development standards in other jurisdictions to ensure a proper “apples-to-apples” comparison. Mr. Hughes replied that such a comparison was “not relevant”.

11. I make this affidavit *bona fide*.

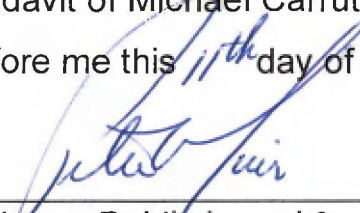
Sworn before me at the)
 City of Winnipeg, in the)
 Province of Manitoba,)
 this 11th day of ~~March~~, 2018.)
~~March~~)
 April)
)
)
)

_____)
 A Notary Public in and for)
 the Province of Manitoba.)



 MICHAEL CARRUTHERS

This is Exhibit "A" referred to in the
Affidavit of Michael Carruthers sworn
before me this 11th day of April, 2018.

A handwritten signature in blue ink, appearing to read "Peter J. ...", is written over the text of the affidavit.

A Notary Public in and for
the Province of Manitoba.

EXECUTIVE POLICY COMMITTEE

MOTIONS

Minute No. 43

Moved by Councillor Wyatt,
Seconded by Councillor Gerbasi,

WHEREAS the Conference Board of Canada is forecasting Winnipeg's population to grow by over 200,000 people over the next 23 years;

AND WHEREAS these additional 200,000 people will trigger the need for an additional 100,000 dwellings resulting in the development of new subdivisions as well as redevelopment of land;

AND WHEREAS these additional 200,000 people will be the labour supply for a growing economy which will need to be supported by increased land and infrastructure requirements for commercial, industrial and institutional sectors;

AND WHEREAS this combined growth in housing and commercial land requirements will result in needed growth related infrastructure such as Regional Streets, Rapid Transit and other services (recreations / parks etc.);

AND WHEREAS Winnipeg's Transportation Master Plan outlines the need for increased growth related infrastructure spending with cost estimates approaching \$3 billion;

AND WHEREAS the infrastructure deficit study presented to Council indicated that the infrastructure deficit will grow to \$7.4 billion by 2019 and that growth related infrastructure makes up about half of the total amount;

AND WHEREAS currently, Development Agreements do not cover growth related infrastructure needs that are "off-site" or downstream from the new subdivisions, such as regional street work, bridge work, as well as increased demand for public services such as Rapid Transit and recreation centres;

THEREFORE BE IT RESOLVED:

1. That Council request the Province of Manitoba to amend The City of Winnipeg Charter to provide legal authority to permit the City to impose growth development charges by by-law on development/building permit and subdivision applicants for various types of growth related capital infrastructure, such as but not limited to, regional streets, bridges, rapid transit and recreation and leisure facilities;

Executive Policy Committee – Motions (continued):

2. That Council request the Province of Manitoba to amend the City of Winnipeg Charter to permit the City to require an owner to enter into a development agreement as a condition of approval of any of the following:

- a variance,
- ii. a conditional use,
- iii. a development permit, and
- iv. a building permit,

to provide the same authority to the City of Winnipeg as other Manitoba municipalities have under the Planning Act (i and ii) and additional authorities (iii and iv). (Note: presently the City can require a developer to enter into a development agreement as a condition of approval of a subdivision or re-zoning only. The City would like the ability to require a development agreement at other points in the development approval process, in order to have the developer install / pay / partially pay for needed infrastructure relating to the developer's proposal.);

3. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing.

The Speaker ruled that the motion was required to stand as Notice of Motion in accordance with Rule 17.1 of the Procedure By-law.

Moved by Councillor Wyatt,

That the rule be suspended to allow consideration of the motion at this time.

The motion for suspension of the rules was declared carried.

Councillors Havixbeck and Swandel asked to be recorded as having voted against the suspension of the rules in accordance with Rule 47(7) of the Procedure By-law 50/2007.

In amendment,

Moved by Councillor Wyatt,

Seconded by Councillor Gerbasi,

THAT Motion No. 5 Moved by Councillor Wyatt and Seconded by Councillor Gerbasi be amended by adding a further resolve which reads:

Executive Policy Committee – Motions (continued):

“3. That the Proper Officers of the City of Winnipeg consult with the industry on this matter.”

and that the existing resolve 3 be renumbered accordingly.

The motion for adoption of the amendment was put.

Councillor Swandel called for the yeas and nays which were as follows:

Yea: His Worship Mayor Katz, Councillors Eadie, Gerbasi, Nordman, Orlikow, Pagtakhan, Smith, Steen, Wyatt and Sharma. 10

Nay: Councillors Browaty, Fielding, Havixbeck, Mayes and Swandel. 5

and the motion for adoption of the amendment was declared carried.

The motion for adoption of the item, as amended, was put.

Councillor Swandel called for the yeas and nays which were as follows:

Yea: His Worship Mayor Katz, Councillors Eadie, Gerbasi, Nordman, Orlikow, Pagtakhan, Smith, Steen, Wyatt and Sharma. 10

Nay: Councillors Browaty, Fielding, Havixbeck, Mayes and Swandel. 5

The motion moved by Councillors Wyatt and Gerbasi, as amended, and as noted below, was put and declared carried.

WHEREAS the Conference Board of Canada is forecasting Winnipeg’s population to grow by over 200,000 people over the next 23 years;

AND WHEREAS these additional 200,000 people will trigger the need for an additional 100,000 dwellings resulting in the development of new subdivisions as well as redevelopment of land;

AND WHEREAS these additional 200,000 people will be the labour supply for a growing economy which will need to be supported by increased land and infrastructure requirements for commercial, industrial and institutional sectors;

Executive Policy Committee – Motions (continued):

AND WHEREAS this combined growth in housing and commercial land requirements will result in needed growth related infrastructure such as Regional Streets, Rapid Transit and other services (recreations / parks etc.);

AND WHEREAS Winnipeg's Transportation Master Plan outlines the need for increased growth related infrastructure spending with cost estimates approaching \$3 billion;

AND WHEREAS the infrastructure deficit study presented to Council indicated that the infrastructure deficit will grow to \$7.4 billion by 2019 and that growth related infrastructure makes up about half of the total amount;

AND WHEREAS currently, Development Agreements do not cover growth related infrastructure needs that are "off-site" or downstream from the new subdivisions, such as regional street work, bridge work, as well as increased demand for public services such as Rapid Transit and recreation centres;

THEREFORE BE IT RESOLVED:

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2. That Council request the Province of Manitoba to amend the City of Winnipeg Charter to permit the City to require an owner to enter into a development agreement as a condition of approval of any of the following:

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to provide the same authority to the City of Winnipeg as other Manitoba municipalities have under the Planning Act (i and ii) and additional authorities (iii and iv). (Note: Presently the City can require a developer to enter into a development agreement as a condition of approval of a subdivision or re-zoning only. The City would like the ability to require a development agreement at other points in the development approval process, in order to have the developer install / pay / partially pay for needed infrastructure relating to the developer's proposal.);

Executive Policy Committee – Motions (continued):

3. That the Proper Officers of the City of Winnipeg consult with the industry on this matter.
4. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing.