

**FILED IN THE
COURT OF
QUEEN'S BENCH**

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File No. CI-17-01-05957

**THE QUEEN'S BENCH
Winnipeg Centre**

**IN THE MATTER OF: The City of Winnipeg Charter Act, City of
Winnipeg By-law 127/2016 and Section
92(2) of the Constitution Act 1867**

BETWEEN:

**RIDGEWOOD WEST LAND CORP., AND SAGE CREEK
DEVELOPMENT CORPORATION,**

applicants

- and -

THE CITY OF WINNIPEG,

respondent.

**Application under Rule 14.05 and Rule 68 of The Court of
Queen's Bench Rules.**

**AFFIDAVIT OF Tony Balaz
Sworn April 12, 2018**

FILLMORE RILEY LLP

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**Mark Newman / Dayna M. Steinfeld
File No. 404659-127/MN**

File No. CI17-01-05957

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Queen's Bench Rules.**

AFFIDAVIT OF TONY BALAZ
Sworn the 12 day of April, 2018

I, Tony Balaz, of the City of Winnipeg, in the Province of
Manitoba, Vice President, Kensington Homes and Foxridge Homes,
Qualico Developments (Winnipeg) Ltd.

AFFIRM AND SAY THAT:

Original Court Copy

1. I am the Vice President, Kensington Homes and Foxridge Homes of Qualico Developments (Winnipeg) Ltd. ["Qualico"] and as such have personal knowledge of the matters herein deposed to by me, save and except where same are stated to be based upon information and belief and where so stated, I verily believe the same to be true.

2. Founded in 1951, the Qualico group of companies is an integrated real estate business primarily operating in Western Canada, with regional offices in Winnipeg, Regina, Saskatoon, Calgary, Edmonton, Vancouver, and Austin, Texas. Qualico Developments (Winnipeg) Ltd. is a wholly owned subsidiary of Qualico Developments Canada Ltd., which is wholly owned by Qualico Group Ltd.

3. Qualico Developments (Winnipeg) Ltd. ["Qualico"] develops land and also builds single-family homes, multi-family homes and commercial properties. Qualico currently has four divisions operating as residential home builders in Winnipeg, Sterling, Kensington, Broadview and Foxridge. Qualico also has a division, Streetside, which primarily builds multi-family developments.

4. In my capacity as Vice President, I manage the Kensington Homes and Foxridge Homes operating divisions of Qualico. These divisions operate as residential single family home builders. Kensington has been building homes in Winnipeg since 1972. Foxridge has been building homes in Winnipeg since 1986.

5. On October 26, 2016, Council of The City of Winnipeg ["The City"] passed the Impact Fees By-law as By-law No 127/2016 [the "Impact Fees By-law" or the "By-law"]. The By-law mandates the payment of fees by every person who is issued a building or development permit in a residential development identified in the "Emerging Communities" depicted in the maps attached as Schedule A to the By-law.

6. The transitional provisions of the By-law provide that no Impact Fee is payable if the application for a building permit or development permit is made prior to May 1, 2017; the permit is issued within 6 months following the date of application, or such later date as determined by the Director of Planning, Property and Development; and construction of the development begins prior to November 1, 2017.

7. On October 25, 2017, the Council of The City of Winnipeg approved an amendment to the By-law. This amendment extended the transitional exemption from the application of the Impact Fee. The deadline for the commencement of construction was extended to January 1, 2018, but only if the application for a building permit or development permit was made prior to May 1, 2017. Permit applications submitted after May 1, 2017, regardless of construction start date, were subject to the Impact Fee.

8. Since the By-law was passed on October 26, 2016, I have observed higher than average numbers of sales for building new homes and applications for building permits. The divisions that I run have submitted approximately double the number of building permit applications compared to the same time frame in previous years. It is my belief based on these observations and from discussions with Kensington and Foxridge sales representatives that new home buyers and builders were trying to submit as many building permits as possible before May 1, 2017 in order to avoid the application of Impact Fees under the By-law.

9. Qualico is directly passing on the cost of Impact Fees to the home buyer. When a home buyer purchases a Kensington or

Foxridge home, the Agreement of Purchase and Sale between Qualico and the home buyer includes a line item for the estimated Impact Fee applicable to the home. This line item is added to the base price list in all Kensington and Foxridge home models and is automatically applied to the purchase of each new home. This line item forms part of the template Agreement of Purchase and Sale used for the sale of all Kensington and Foxridge home models. Attached hereto as Exhibit "1" is a copy of the template agreement

Exhibit 1, Template Agreement of Purchase and Sale

10. Where a customer is not willing to acknowledge and pay the cost of the Impact Fee, the sale will not be accepted by Kensington and Foxridge. This is subject only to any offsetting of the amount of the Impact Fee through individual negotiations; however, the Impact Fee itself must be paid by the customer in order to for the sale to be accepted.

11. All buyers of Kensington and Foxridge homes are charged the cost of the Impact Fee. However, each Agreement of Purchase and Sale provides for a refund to the home buyer of the amount paid if the By-law is overturned or the amount of the Impact Fee is lowered,

resulting in The City returning the amount of the Impact Fee to the builder.

12. I have discussed the By-law with others who work in the home building industry in The City. I have been informed through these discussions that most home builders in The City are addressing the By-law in the same way as Qualico, namely directly passing the cost of the Impact Fee onto the home buyer.

13. The Impact Fee charged by the City of Winnipeg is not related to the actual servicing cost per residence, it is charged based on the square footage of the home, regardless of lot sizing and price.

AFFIRMED BEFORE me at the)
City of Winnipeg, in the Province of)
Manitoba, this 12 day of April, 2018)





Tony Balaz

WR A [~~Commissioner for Oaths~~ / Notary Public]
in and for the
Province of Manitoba

WR ~~My Commission Expires:~~

Wayne Richard Leach
Manitoba Practising Lawyer
and Notary Public
One Dr. David Friesen Drive
Winnipeg, MB R3X 0G8

This is Exhibit 1 to the Affidavit
of Tony Balaz, affirmed before
me this 12th day of April, 2018



A Notary Public in and for
the Province of Manitoba

Wayne Richard Leach
Manitoba Practising Lawyer
and Notary Public
One Dr. David Friesen Drive
Winnipeg, MB R3X 0G8

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KENSINGTON HOMES LTD.

**SCHEDULE 02
CONTRACT SUMMARY**

LOT: _____ PLAN: _____ OPTIONS: _____

Purchase Price (not including GST)
Plus Estimated Impact Fee
Plus GST (calculated @5%)
Minus estimated GST rebate claimed through Builder
(Note: Final GST calculations to be done at time of sale closing)

TOTAL PURCHASE PRICE (includes Estimated Impact Fee, GST and rebate).....
(Notes 3,4,5 and 6)

Less deposit, paid to the Listing Broker, in trust, upon signing of this Agreement.....

Less further deposit (Payable to Kensington Homes Ltd. upon removal of all
outstanding conditions).....

Less additional deposit (Payable to Kensington Homes Ltd.).....
Due By:(_____)

Less additional deposit (Payable to Kensington Homes Ltd.).....
Due By:(_____)

By: _____ From: _____

If applicable a "change of mortgage" fee shall be charged and will become due and
payable on or before possession (Note 1)

Balance cash required to close

ANTICIPATED POSSESSION DATE _____

Possession date stated above is to be finalized by Kensington Homes at shingle stage.

Flooring, cabinets, interior and exterior selections are to be selected from builder's standard samples.
All upgrades are extra and are not included in the base price

Schedule 01 must accompany Offer to Purchase. The company reserves the right of accepting the above noted
changes and the Purchaser will receive written confirmation of the accepted changes. All extras are payable on
demand and are non-refundable.

Any changes the Purchaser may wish to make must be approved by Kensington Homes prior to work being
done.

In addition to charges for changes made 10 days after the sale has been ACCEPTED, there will be an
additional processing fee of \$200.00 payable upon receipt of Options and Upgrades Agreement. (MUST BE
ATTACHED). Please note seasonal work such as stucco, concrete approaches / driveways, concrete garage
floors, final leveling is totally dependent on weather conditions and usually cannot be started until mid-June.

* Due to Workplace, Health and Safety requirements; Purchaser(s) and / or Sub-Contractor(s) of their direct
employ are not permitted on the construction site at any time. Due to insurance reasons, Purchasers are not
permitted to place any personal belongings on the property until they receive possession.

PURCHASER: DATE: _____

PURCHASER: DATE: _____

ACCEPTED BY KENSINGTON HOMES DATE: _____

KENSINGTON SALES REPRESENTATIVE: _____

KENSINGTON HOMES LTD.

SCHEDULE 15
Impact Fee

We, _____

Purchaser of _____

acknowledge that the Purchase Price of the Property includes the City of Winnipeg Impact Fee of approximately \$5.09 per square foot on all new homes with a building permit application after May 1, 2017. The amount included in your contract related to the estimated Impact Fee is _____. This amount is based on the standard plan square footage.

Any change to the estimated Impact Fee included in this contract will be adjusted on closing at the time of possession and will be determined by the actual amount charged on the building permit.

The Manitoba Home Builders Association and The Urban Development Institute are seeking clarification on the legality of the Impact Fee. In the event the Impact Fee is overturned or reduced prior to June 30, 2018, a portion of the Impact Fee could be refunded to the builder. Provided the Purchaser is the current owner of the Property, the Purchase Price will be reduced by the amount of the refund plus GST, net of rebate.

Date _____

Witness _____

Purchaser _____

Purchaser _____