

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

LADCO COMPANY LIMITED

Applicant,

- and -

THE CITY OF WINNIPEG

Respondent,

Application Under: *The City of Winnipeg Charter*, S.M. 2002, c.39
The Constitution Act 1867 and
The Court of Queen's Bench Act, S.M. 1988-89, c.4

NOTICE OF APPLICATION

**HEARING DATE: Tuesday the 21st day of February, 2017 at 10:00 a.m.
BEFORE the Presiding Judge on the Uncontested Motions List**

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BETWEEN:

LADCO COMPANY LIMITED

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- and -

THE CITY OF WINNIPEG

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NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge, on Tuesday, the 21st day of February, 2017, at 10:00 a.m., at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Issued C. Laniuk

Deputy Registrar

Date: January 25, 2017

To: The City of Winnipeg
c/o City of Winnipeg Clerk's Office
510 Main Street
Winnipeg, MB R3B 1B9

APPLICATION

1. The Applicant makes application for:
 - a. An Order for certiorari to quash City of Winnipeg By-law No. 127/2016, as amended (the “Impact Fee By-law” or the “By-law”);
 - b. An Order for certiorari to quash City of Winnipeg Resolution passed on October 26, 2016 relating to implementation of the Impact Fee By-law (the “Resolution”);
 - c. An Order for prohibition preventing the Respondent from attempting to collect Impact Fees pursuant to the Impact Fee By-law;
 - d. A Declaration that the By-law and Resolution are *ultra vires* the jurisdiction of the Respondent;
 - e. In the alternative, a Declaration that, even if the By-law is not *ultra vires* the jurisdiction of the Respondent, the Development Agreements and related By-laws and other documents entered into between the Applicant and the Respondent provide for payment of off-site infrastructure and services or Impact Fees;
 - f. In the alternative, an Order for prohibition preventing the Respondent from attempting to collect Impact Fees pursuant to the By-law with respect to any properties of the Applicant for which Development Agreements (or other agreements or By-laws) providing for payment or other consideration of off-site infrastructure and services or Impact Fees have been entered into;
 - g. An Order for mandamus directing the Respondent to refund any Impact Fees collected pursuant to the Impact Fee Bylaw together with interest;
 - h. Costs; and
 - i. Such further and other relief as this honourable Court may deem just.

2. The grounds for the application are:
- a. Sections 5, 6 and 210 of the *City Charter* which the Respondent relied on as authority to pass the By-law and the Resolution cannot be reasonably interpreted as providing authority for the By-law and the Resolution and they are therefore *ultra vires* the jurisdiction of the Respondent;
 - b. In the alternative, if sections 5, 6, and 210 can be reasonably interpreted as providing authority for the By-law and the Resolution, the By-law and Resolution ought to be quashed on the basis that:
 - i. The By-law and Resolution do not impose a valid user fee or regulatory charge, rather, they impose a tax for which the Respondent has no jurisdiction to impose. The By-law and Resolution are therefore *ultra vires* and unconstitutional;
 - ii. The By-law unlawfully discriminates between classes of developments (exempting commercial, office, industrial and institutional developments from the Impact Fee) and between areas of the City to which the Impact Fees apply and is therefore *ultra vires*;
 - c. In the further alternative, if the By-law is not *ultra vires*, the Development Agreements entered into between the Applicant and Respondent already provide for consideration of off-site infrastructure and services such that the Respondent has no authority to collect twice for the same costs;
 - d. *The City of Winnipeg Charter*, S.M. 2002, c. 39, and in particular, sections 1, 5, 6, and 210;
 - e. *The Constitution Act, 1867* and in particular, s.92(2);
 - f. *The Court of Queen's Bench Act*, S.M. 1988-89 c.4, section 32 and 34;
 - g. *The Court of Queen's Bench Rules* 14.05, 38, and 68; and

- h. Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- a. Affidavit(s) to be sworn and filed; and
 - b. Such further and other material as counsel may advise and this Honourable Court may permit.

January , 2017

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