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QUEEN'S BENCH 11:12:52 -06'00'

File No. CI17-01-05957

File No. CI-17-01-

**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.

**NOTICE OF APPLICATION
Uncontested List**

Hearing Date: Tuesday, the 21st day of February, 2017 at 10:00 a.m.

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

**THE QUEEN'S BENCH
Winnipeg Centre**

**IN THE MATTER OF: The City of Winnipeg Charter Act, City of Winnipeg By-law
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NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following pages.

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, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

January 25, 2017

Issued: C. Laniuk

Deputy Registrar
100C – 408 York Avenue
Winnipeg, MB R3C 0P9

TO: K. BORYSKAVICH,
City Solicitor/Director of Legal Services
3rd Floor, 185 King Street
Winnipeg, Manitoba
R3B 1J1
Solicitors for the Respondent,
The City of Winnipeg

APPLICATION

1. The applicant makes application for:
 - (a) An order of certiorari to quash City of Winnipeg By-law 127/2016, as amended, (the "By-law") and the related resolutions ("Resolutions") of Council of the City of Winnipeg passed on October 26, 2016.
 - (b) A determination that the By-law, or portions thereof, and the related Resolutions, or portions thereof, are invalid, unenforceable and/or null and void.
 - (c) A determination that The City of Winnipeg Charter S.M. 2002, c.39 (the "Charter") does not provide to the City of Winnipeg the power or jurisdiction to enact the By-law or the Resolutions, or recover the fees and charges imposed pursuant to the By-law (the "Impact Fees") and/or the Resolutions.
 - (d) A determination, in the alternative, that the Impact Fees constitute an indirect tax and therefore the City of Winnipeg has no authority to impose and recover such fees.
 - (e) A determination, in the alternative, that the By-law, and the Impact Fees imposed thereby, do not impose a valid user fee or regulatory charge, and are therefore beyond the jurisdiction of the City of Winnipeg.
 - (f) A determination, in the alternative, that the By-law, and the Impact Fees are discriminatory.

- (g) A determination that the City of Winnipeg cannot, in respect of those developments where development agreements have been entered into, impose or recover Impact Fees.
- (h) Consequent upon the determinations above an order requiring the repayment of any Impact Fees collected together with interest.
- (i) Such further and other relief as the applicants may advise and this Honourable Court may permit.
- (j) Costs.

2. The grounds for the application are:

- (a) The City of Winnipeg Charter does not provide authority or power to the City of Winnipeg to enact By-law 127/2016 or the Resolutions and accordingly the By-law and/or the Resolutions are ultra vires the City of Winnipeg.
- (b) The Impact Fees constitute an indirect tax and the City of Winnipeg has no power to impose an indirect tax by virtue of section 92 (2) of the Constitution Act, 1867.
- (c) The Impact Fees do not constitute a valid user fee or regulatory charge.
- (d) The By-law unlawfully discriminates between classes of development, and between developments of the same type, by exempting certain developments, commercial, office, industrial and institutional, and certain geographic areas of the City of Winnipeg, from the imposition of the Impact Fees.

- (e) The By-law does not require that the Impact Fees collected be expended to fund infrastructure requirements related to the development in respect of which the Impact Fees are being imposed.
 - (f) Court of Queen's Bench Rule 14.05 permits the bringing of the application.
 - (g) 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) The affidavit of Eric Vogan, to be filed.
 - (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 24, 2017

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