



## **FOR IMMEDIATE RELEASE**

January 24, 2017

### **Development Industry Files Notice of Application to Review Impact Fee By-law**

WINNIPEG - The Manitoba Home Builders' Association and the Urban Development Institute, Manitoba Chapter are filing a Notice of Application today, asking the Manitoba Court of Queen's Bench to review the City of Winnipeg's Impact Fee by-law (127/2016).

The application seeks a declaration that the Impact Fee by-law is invalid on the grounds that the City of Winnipeg Charter does not provide the City the authority to enact the by-law. The application also states the by-law is an indirect tax on Winnipeg homebuyers and is discriminatory in its collection of the Impact Fee.

"The legal validity of the Impact Fee by-law has been in question since day one. We are asking the courts to review this matter in order to clear up the legal uncertainties that are affecting local businesses," said Mike Moore, President of the Manitoba Home Builders' Association. "The fee this by-law will impose on new-home buyers will be detrimental to Winnipeg taxpayers, tradespeople and the entire construction industry. A fair legal review of the by-law is necessary to ensure jobs are sustained and Winnipeg homeowners are not subject to an indirect and illegal tax from the City."

"It is critical to Winnipeg's future that both the development community and the City work as partners to plan for and properly share the costs of new development," said Eric Vogan, President of the Urban Development Institute, Manitoba Chapter. "UDI and MHBA remain willing to collaborate with the City of Winnipeg on a plan-based approach to establish a legal and equitable cost-sharing structure."

Winnipeg City Council passed the Impact Fee by-law by a vote of 10 to 6 on October 26, 2016.

An explanation of the legal process is provided in the attached background material. Affidavits in support of the application will be filed in the coming months. As this matter is now before the courts, MHBA and UDI will not be responding to questions specific to the legal proceedings. We will continue to update media when appropriate.

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**BACKGROUNDER AND NOTICE OF APPLICATION ATTACHED**

## **BACKGROUNDER**

### **Legal Process Summary for an Application**

The court rules allow for an Application procedure where the parties are seeking a determination that depends on the interpretation of a statute (i.e. The City of Winnipeg Charter) or by-law, or when there are no material facts in dispute.

An application is heard in court before a single judge. The evidence used at the hearing of an Application is provided by supporting affidavits.

The affidavits filed after the filing of the Notice of Application set out all of the essential facts necessary to prove the case for each of the legal arguments that are raised.

After the applicant's affidavits are filed the respondent (the City) files its affidavit evidence. If new issues are raised by the respondent, the applicant may be in a position to file further affidavits in response.

Individuals who swear affidavits may be cross-examined by the other party on the contents of their affidavit. Cross-examinations occur before the hearing. Transcripts of the cross-examinations are filed with the court and are part of the evidence on an application.

During the hearing, oral arguments are heard by a single judge in court. The oral arguments are based on the arguments found in written briefs that are filed prior to the hearing. A written brief contains all the factual and legal arguments, case law and relevant legislation, and will reference the affidavits and cross-examination transcripts.

The court will render a decision in the matter at some point after the hearing. The amount of time it takes the court to render a decision is based on many factors, including the complexity of the issues contested in the written briefs and oral arguments. The court tries to issue reasons for decision within six months of a hearing. Decisions of a judge can be appealed to the Court of Appeal.

### **Legal Representation**

UDI and MHBA will be represented by Antoine Hacault and John Stefaniuk of Thompson Dorfman Sweatman LLP. Their respective Bios can be found at <http://www.tdslaw.com/people/lawyers>