



FOR IMMEDIATE RELEASE

November 30, 2017

## **Development Industry Files Affidavits to Review Impact Fee By-law**

WINNIPEG - The Manitoba Home Builders' Association (MHBA) and the Urban Development Institute (UDI, Manitoba Chapter filed affidavits today with the Manitoba Court of Queen's Bench for the review of the Impact Fee by-law.

The court application process seeks an order declaring 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 it. The application also states the by-law is an indirect tax on Winnipeg homebuyers and that it is discriminatory in its collection of the Impact Fee.

“As was stated in January, the legal validity of the Impact Fee by-law has been in question since it was announced. Today’s action is simply the next step in the process that began with the initial filing.” said Mike Moore, Spokesperson for the two organizations.

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. Moore also stated that the affidavits provide a detailed overview of the rationale for UDI and MHBA’s position. “UDI and its member developers remain committed to exploring fair and appropriate approaches to fund and plan for growth,” said Moore.

A direct link to the affidavits can be found at:

<https://www.dropbox.com/sh/gjj5cxbc2y4b186/AAAbICPF5YfEFn2co4P4E3i3a?dl=0>

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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.

The UDI/MHBA application will be heard at The Court of Queens Bench 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 and before the final legal briefs are filed with the Court. Transcripts of the cross-examinations are then filed with the court and become 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 Manitoba 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>