

File No. CI 17-01-05956
CI 17-01-05957
CI 17-01-05958

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**

**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***

AND BETWEEN:

RIDGEWOOD WEST LAND CORP. and
SAGE CREEK DEVELOPMENT CORPORATION

applicants,

- and-

THE CITY OF WINNIPEG

respondent,

**IN THE MATTER OF: *City of Winnipeg By-law*
127/2016, as amended and passed on October 26,
2015, *The City of Winnipeg Charter* S.M. 2002, c.
39 and Subsection 92(2) and (9) of the
*Constitution Act 1867***

AND BETWEEN:

URBAN DEVELOPMENT INSTITUTE (MANITOBA DIVISION)
and MANITOBA HOME BUILDERS' ASSOCIATION INC.

applicants,

- and-

THE CITY OF WINNIPEG

respondent.

ORDER: APPLICATIONS

MLT Aikins LLP
Barristers & Solicitors
30th Flr - 360 Main
Street
Winnipeg, MB R3C 4G1
File No. 0080499-00026

KEITH J. FERBERS
Telephone: (204) 957-4691
kferbers@mltaikins.com

Solicitors for Ladco
Company Limited

Fillmore Riley LLP
Barristers, Solicitors &
Trademark Agents
1700-360 Main Street
Winnipeg, MB R3C 3Z3

MARK NEWMAN
DAYNA STEINFELD
Telephone: (204) 957-8325
marknewman@fillmoreriley.com
dsteinfeld@fillmoreriley.com

Counsel for Ridgewood
West Land Corp., and
Sage Creek Development
Corporation

**Thompson Dorfman
Sweatman LLP**
Barristers & Solicitors
1700-242 Hargrave Street
Winnipeg, MB R3C 0V1

JOHN STEFANIUK
Telephone: (204) 934-0597
jds@tdslaw.com

Counsel for Urban
Development Institute
(Manitoba Division)
and Manitoba Home Builders'
Association Inc.

THE QUEEN'S BENCH
WINNIPEG CENTRE

THE HONOURABLE MR.) day, the ____ day of September, 2020
)
JUSTICE EDMOND)

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***

**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***

AND BETWEEN:

RIDGEWOOD WEST LAND CORP. and
SAGE CREEK DEVELOPMENT CORPORATION

applicants,

- and-

THE CITY OF WINNIPEG

respondent,

**IN THE MATTER OF: *City of Winnipeg By- law*
127/2016, as amended and passed on October 26,
2015, *The City of Winnipeg Charter S.M. 2002, c.*
39 and Subsection 92(2) and (9) of the
*Constitution Act 1867***

AND BETWEEN:

URBAN DEVELOPMENT INSTITUTE (MANITOBA DIVISION)
and MANITOBA HOME BUILDERS' ASSOCIATION INC.

applicants,

- and-

THE CITY OF WINNIPEG

respondent.

ORDER

THESE APPLICATIONS, made by the applicants LADCO COMPANY LIMITED ("Ladco"), RIDGEWOOD WEST LAND CORP. and SAGE CREEK DEVELOPMENT CORPORATION ("Qualico"), and URBAN DEVELOPMENT INSTITUTE (MANITOBA DIVISION) and MANITOBA HOME BUILDERS' ASSOCIATION INC for an Order quashing City of Winnipeg By-Law 127/2016 and related Resolution, and for mandamus or an order of restitution requiring the City of Winnipeg to refund the fees collected under City of Winnipeg By-Law 127/2016 (the "Impact Fees") were heard on Monday February 24, 2020, Tuesday February 25, 2020, Wednesday February 26, 2020 and Thursday February 27, 2020 at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba,

ON READING the Notices of Application, the following affidavits filed herein:

Re: Ladco's application in file No. CI 17-01-05956:

- Affidavit of Alan Borger, sworn February 27, 2018;
- Affidavit of Michael Carruthers sworn April 11, 2018;
- Affidavit of Alan Borger sworn April 18, 2019;

Re: Ridgewood and Sage Creek application CI 17-01-05957:

- Affidavit of Eric Vogan affirmed November 29, 2017;
- Affidavit of Eric Vogan, affirmed December 1, 2017;
- Affidavit of Eric Vogan, affirmed April 22, 2019;
- Affidavit of Eric Vogan, affirmed May 2019
- Affidavit of Ken Braun, sworn April 12, 2018;
- Affidavit of Tony Balaz, sworn April 12, 2018.
- Affidavit of Sara Varnes, sworn May 16, 2019;

Re: UDI and MHBA application CI 17-01-05958:

- Affidavit of Mike Moore, sworn November 28, 2017.

Re: Affidavits Filed by The City:

- Affidavit of Valdene Lawson, sworn March 14, 2019;
- Affidavit of John Tyler Markowsky, affirmed March 15, 2019;
- Affidavit of John Hughes, affirmed March 13, 2019;
- Affidavit of Yolanda Woods, affirmed May 17, 2019; and
- Affidavit of Mike Stevens, sworn July 3, 2019.

the evidence at cross-examinations of John Markowsky, Valdene Lawson and John Hughes, and the evidence and the briefs of the parties, and on hearing the submissions of counsel for the parties and this Court having reserved its decision and with Reasons for Decision being delivered on July 8, 2020;

THIS COURT ORDERS THAT:

1. The enactment of the By-Law and Resolution and imposing the Impact Fee was reasonable based on the authority or power of City council pursuant to the Charter.
2. The By-Law and Resolution be and are hereby quashed as imposing a constitutionally invalid indirect tax and is not saved as a valid user fee or regulatory charge;
3. The decision by City council to phase-in the imposition of the Impact Fee is authorized pursuant to the Charter and was reasonable; and, as such, the Impact Fee is not invalid by reason of being discriminatory;
4. The application for declaratory relief relating to the breach of contract/implied promise issue is a standalone claim and so is not to be decided in these applications;
5. An order for mandamus and restitution be and is hereby granted requiring the City of Winnipeg to refund any Impact Fee paid to the person on record at the City of Winnipeg as having paid the Impact Fee when obtaining a building permit or development permit, together with interest earned on the Impact Fee while deposited in the reserve fund with interest to be calculated from the date that the Impact Fee was paid to the date that the Impact Fee is refunded;
6. To the extent that any developers or builders paid the Impact Fee and are entitled to the refund set out in paragraph 5 above, such developers and builders are ordered and directed to refund the Impact Fee to the homeowner or purchaser or such other person to whom the Impact Fee had been passed on together with the accrued interest received from the City subject to any contractual arrangements to the contrary; and

7. If the parties cannot agree on costs or the interest calculation applicable to the refunds, those issues may be spoken to and, if necessary, a further hearing be scheduled.

September_____,2020

J.G. Edmond, J
Digitally signed by J.G. Edmond, J
Date: 2020.10.27 08:38:32 -05'00'

EDMOND J.

I, ORVEL CURRIE, of the firm DD WEST LLP hereby certify that I have received the consent as to form of the following parties:

MLT AIKINS LLP per Keith Ferbers Counsel for LADCO COMPANY LTD.

FILLMORE RILEY LLP per Mark Newman / Dayna M. Steinfeld Counsel for RIDGEWOOD WEST LAND CORP. and SAGE CREEK DEVELOPMENT CORPORATION

THOMPSON DORFMAN SWEATMAN LLP per John Stefaniuk Counsel for URBAN DEVELOPMENT INSTITUTE (MANITOBA DIVISION) and MANITOBA HOME BUILDERS' ASSOCIATION INC.

as directed by the Honourable Justice Edmond.