STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION Case No.
MERITAGE HOMES OF THE CAROLINAS, INC., Plaintiff, v. TOWN OF HOLLY SPRINGS, Defendant.	**COMPLAINT** **(Class Action)**

2020 DEC 18 P 12:47
WAKE CO. C.S.C.

NOW COME Plaintiff Meritage Homes of the Carolinas, Inc. (hereinafter "Plaintiff") by and through the undersigned counsel, complaining of Defendant Town of Holly Springs (hereinafter "Defendant," "Holly Springs," or "the Town"), and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff, on behalf of themselves and others similarly situated, bring this action as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure for the return of all "Recreation Fees-In-Lieu of Land Dedication" (hereinafter "Recreation Fees") unlawfully charged and collected by the Town pursuant to the Town's Unified Development Ordinance Section 7.06(F) (hereinafter "Section 7.06(F)" or "the Ordinance").

2. As described herein, the Town has unlawfully exacted the Recreation Fees from plaintiff and class members without lawful authority granted by the North Carolina General Assembly, and, alternatively, the fees are an unlawful taking in violation of Plaintiff's constitutional rights.

3. Plaintiff and class members are entitled to the return of all Recreation Fees unlawfully exacted by the Town, plus interest at the rate of 6% per annum from the date of each payment pursuant to N.C.G.S. § 160A-363(e).

4. Plaintiff and class members are further entitled to their costs and attorneys' fees incurred in this action pursuant to N.C.G.S. § 6-21.7, as the Town has violated unambiguous limits on its statutory authority.

JURISIDICTION AND VENUE

5. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

6. This Court has jurisdiction over the parties and this subject matter of this action pursuant to N.C.G.S. § 1-254 because the rights of Plaintiff are directly and adversely affected by the challenged Recreation Fees and the Ordinance.

7. Venue is proper under N.C.G.S. § 1-82 in that Defendant ("Holly Springs" or "Town of Holly Springs") is a body politic and a corporate municipality in in Wake County, North Carolina.

8. A copy of this complaint has been served on the Attorney General of North Carolina pursuant to N.C.G.S. § 1-260.

PARTIES

9. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

10. Plaintiff Meritage Homes of the Carolinas, Inc. is an Arizona corporation authorized to conduct business in the State of North Carolina, and doing business in Wake County, North Carolina.

11. Defendant Town of Holly Springs is a body politic and a corporate municipality with the capacity to be sued as provided in N.C.G.S. § 160A-11.

12. Holly Springs is not entitled to any governmental or legislative immunity because

it undertook functions beyond its governmental and propriety immunities.

13. Holly Springs is not entitled to sovereign immunity or any other immunities, and has, to the extent it has purchased insurance or participates in a risk pool arrangement or is self insured, has waived sovereign immunity and all other immunities.

THE AUTHORITY OF MUNICIPALITIES TO CHARGE FEES-IN-LIEU OF RECREATION LAND DEDICTION

14. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

15. Municipalities "possess only such powers and delegated authority as the General Assembly may deem fit to confer upon them." *High Point Surplus Co. v. Pleasants*, 264 N.C. 650, 654, 142 S.E. 697, 701 (1965).

16. Chapter 160A, Article 19 of the North Carolina General Statutes provides that "[a] city may by ordinance regulate the subdivision of land within its territorial jurisdiction." N.C.G.S. § 160A-371 (2019).

17. "Subdivision" is defined by N.C.G.S. § 160A-376(a) as:

> ...[A]ll divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets.

N.C.G.S. § 160A-376(a) (2019).

18. N.C.G.S. § 160A-372(a) states that a subdivision control ordinance may provide that, in lieu of land deduction for recreation areas, the developer may pay funds for the Town to acquire recreation areas serving residents within the immediate area of the subdivision:

> ... [F]or the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents

> of the development or subdivision or more than one subdivision or development within the immediate area.

N.C.G.S. § 160A-372(a) (2019) (emphasis added).

19. N.C.G.S. § 160A-372(e) provides that a subdivision control ordinance may provide that a developer may provide funds for the municipality to use to acquire recreational land or areas to serve the development or subdivision:

> ...[M]ay provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

N.C.G.S. § 160A-372(e) (2019) (emphasis added).

20. N.C.G.S. § 160A-372(e) further provides that "[a]ll funds received by the city pursuant to this subsection shall be used only for the acquisition or development of recreation, park, or open space sites. *Id.* emphasis added).

21. N.C.G.S. § 160A-372(e) further provides that "[a]ny formula enacted to determine the amount of funds that are to be provided under this subsection shall be based on the value of the development or subdivision for property tax purposes." *Id.* (emphasis added).

THE TOWN'S MANDATORY RECREATION FEES

22. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

23. At all times relative to this action, Holly Springs has required developers, including Plaintiff, to comply with UDO § 7.06(F) prior to the Town granting subdivision plat approval for a new development.

24. At all times relative to this action, Section 7.06(F)(1) provides:

> In order to provide park, recreation, open space or greenway sites to serve the future residents of the Town of Holly Springs and its extraterritorial

jurisdiction, in conformance with any adopted plans of the Town of Holly Springs, every residential subdivision shall, at the time of final plat, include:

a. the dedication of a portion of such land, as set forth in this Section, below;

b. an equitable amount of land in another location; or,

c. pay to the Town of Holly Springs a fee-in-lieu of dedication at the time of approval of the final plat in the amount per dwelling unit as specified in the current Town of Holly Springs Fee Schedule, as set forth in this Section, below.

25. Holly Springs will not approve a developer's subdivision plat if the developer does not comply with the provisions of UDO § 7.06(F)(1).

26. With respect to the developer's potential donation of land to Holly Springs as provided under UDO § 7.06(F)(1), pursuant to § 7.06(F)(5)(a), the amount of land dedicated shall not be less than one thirty-fifth (1/35) of an acre times the number of dwelling units or lot in the subdivision.

27. Further, the Town has developed "standards" in UDO § 7.06(F)(2) as to when it may actually accept a developer's donation of land.

28. At all times relevant hereto, the "standards" adopted by the Town for its acceptance of such land donation by a developer are set forth as follows in UDO § 7.06(F)(2):

All land dedicated to the public for recreation and park development shall substantially meet the following criteria:

a. Unit – The dedicated land shall form a single parcel of land except where the Town Council determines that two (2) parcels or more would be in the public interest. If two or more parcels are determined to be in the public interest, a path or walkway, developed in compliance with the provisions of sub-Section 7.07, C., 2., sub-Section 7.07, C., 3., and sub-Section 7.07, C., 4., regarding sidewalks, walkways, pedestrian / bike paths and pedestrian access easements.

b. Shape – The shape of the dedicated land shall be sufficiently square or round to be usable for recreational activities such as softball, tennis, croquet, etc.

c. Location – The dedicated land shall be located so as to reasonably serve the recreation and open space needs of the subdivision for which the dedication was made and shall bear a reasonable relationship to the use of the area by the future inhabitants of the subdivision or residential development.

d. Access – Public access to the dedicated land shall be provided either by direct street frontage or public easement at least twenty (20) feet in width.

e. Topography – Generally, dedicated land reserved for recreational purposes shall not exceed a five (5) percent slope.

f. Usableness – The dedicated land shall be usable for recreation. Lakes and wetlands may not be included in computed dedicated land area. Where the Parks and Recreation Advisory Board determines that recreational needs are being adequately met, either by other dedicated parcels of land or existing recreational facilities, then land that is not usable for recreation may be dedicated as open space.

g. Plans – Municipal and County plans shall be taken into consideration when evaluating proposals for the dedication of land for recreational purposes.

29. Pursuant to UDO § 7.06(F)(3), even if the above referenced standards of § 7.06(F)(2) are met by the developer, it is still in the discretion of the Holly Springs Town Council as to whether to accept a developer's proposed donation of land, or whether to instead require the developer to pay the Recreation Fees.

30. UDO § 14.1.4 expressly provides that the Recreation Fees are "requirements" and it is "Town Council's choice between Land Dedication [or] Payment of Fees-in-Lieu" and that its' determination of the Recreation Fee "exacted… shall be final and conclusive."

31. Thus, pursuant to the Town's Ordinance, the Town, in its sole discretion, can mandate a developer's payment of Recreation Fees in exchange for development subdivision

approval.

32. Upon information and belief, at all times relevant to this action, the Town has not accepted, or has only nominally accepted, land donations from developers to satisfy the requirements of UDO § 7.06(F)(1), and instead requires developers to pay the Recreation Fees.

33. At all times relevant to this action, the Town's Recreation Fees are a *de facto* mandatory adequate public facilities fee required of developers. *Lanvale Properties, LLC v. County of Cabarrus*, 366 N.C. 142, 731 S.E.2d 800 (2012).

34. The General Statutes do not authorize "a city or town, specifically or generally, to enact an adequate public facilities fee as a condition precedent for development approval." *China Grove 152, LLC v. Town of China Grove*, 242 N.C. App. 1, 7, 773 S.E.2d 566, 570 (2015).

35. "Absent specific authority from the General Assembly, [adequate facilities ordinances] that effectively require developers to pay an adequate public facilities fee to obtain development approval are invalid as a matter of law." *Lanvale Properties, LLC v. Cnty of Cabarrus*, 366 N.C. 142, 143, 731 S.E.2d 800, 803 (2012).

36. "[N.C.G.S. §] 160A–372(c) provides that a subdivision control ordinance '*may* provide that a developer *may* provide funds to the city whereby the city *may* acquire recreational land' for parks, (emphasis added); that language is clearly permissive and does not authorize municipalities to charge fees as a condition precedent to subdivision approval..." *Id.* (citing *Loren v. Jackson,* 57 N.C.App. 216, 219, 291 S.E.2d 310, 312 (1982)) (emphasis added).

37. At all times relevant to this action, the Town, pursuant to UDO § 7.06(F)(4)(c), "Prerequisites for Approval of Final Plat," has ***required*** that the developer pay a Recreation Fee to the Town prior to the recording of the final plat.

38. Further, the Town Parks and Recreation Master Plan provides that "since 1998 the

Town has had a Parks and Recreation Open Space Policy in place that ***requires*** residential developers to contribute land, greenways, and/or fees for the development of parks and greenway trails." (emphasis added).

39. Further, the Town's UDO provides that "the Town Council shall determine as a part of PD Plan or Major Site Plan approval or prior to TRC approval of a Master Subdivision Plan, whether to ***require*** a dedication of land, payment of fee-in-lieu, construction of public recreation facilities with the fee-in-lieu monies, or some combination thereof....".

40. Unlike other many municipalities, including other municipalities in Wake County, the Town has not obtained any special legislation or enabling authority from the North Carolina General Assembly authorizing it to charge its Recreation Fees.

41. At all times relevant to this action, the Town's Recreation Fees and Ordinance amount to an unlawful and *ultra vires* Adequate Public Facilities Fee Ordinance.

THE TOWN'S UNLAWFUL AND ARBITRARY RECREATION FEES

42. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

43. From July 1, 2008 through June 30, 2016, instead of a charging a recreation fee based on the value of the land to be subdivided for property tax purposes as required by N.C.G.S. § 160A-372(e), the Town's charged flat, uniform Recreation Fees ranging from $965 to $1,119 per acre for subdivisions with 6 units per acre or less of density, and higher fees charged for subdivisions with higher density.

44. The Town's Recreation Fees charged from July 1, 2008 through June 30, 2016 violate N.C.G.S. § 160A-372(e), as the fees were in no way calculated based on the property tax value of the individual land to be subdivided, and the fees were otherwise arbitrarily set by the

Town.

45. Beginning July 1, 2016, instead of a per-acre fee, the Town began charging per-unit Recreation Fees based upon the total number of proposed residential "units" in the subdivision.

46. From July 1, 2016 through June 30, 2017, the Town charged uniform, per-unit Recreation Fees of $1,500 per single-family detached unit, $1,350 per single-family attached unit, and $1,215 per multi-family unit.

47. The Town's Recreation Fees charged from July 1, 2016 through June 30, 2017 violate N.C.G.S. § 160A-372(e), as the fees again were in no way calculated based on the property tax value of the individual land to be subdivided, and the fees were otherwise arbitrarily set by the Town.

48. From July 1, 2017 through June 30, 2018, the Town continued to charge uniform, per-unit Recreation Fees, but doubled (or more than doubled) the Recreation Fees to per-unit fees of $3,000 per single-family detached unit, $2,850 per single-family attached unit, and $2,715 per multi-family unit.

49. The Town's Recreation Fees charged from July 1, 2017 through June 30, 2018 violate N.C.G.S. § 160A-372(e), as the fees again were in no way calculated based on the property tax value of the individual land to be subdivided, and the fees were otherwise arbitrarily set by the Town.

50. Prior to June 30, 2018, the Town also charged developers a per-unit water and sewer "capacity fee." The water and sewer "capacity fees" charged by the Town from July 1, 2017 through June 30, 2018 were $9,500 per single-family unit.

51. Following the North Carolina Supreme Court's unanimous decision in *Quality*

Built Homes v. Town of Carthage, 369 N.C. 15, 789 S.E.2d 454 (2016), which held that water and sewer "capacity fees" such as those charged by the Town are *ultra vires*, and the North Carolina General Assembly's subsequent enactment of Session Law 2017-138, House Bill 436, which granted conditional authority for municipality to charge such water and sewer fees, but subject to certain restrictions, effective July 1, 2018, the Town decreased its water and sewer "capacity replacement fees" to $7,795 per single-family unit, a decrease of **$1,705** from the prior capacity fees of $9,500 per unit.

52. In 2018, the Town also agreed to pay $7,950,000 to settle a class action lawsuit brought by developers for refunds of unlawful water and sewer capacity fees charged by the Town prior to July 1, 2018.

53. Effective July 1, 2018, the Town increased the Recreation Fees to $4,705 per single-family detached unit, $4,555 per single-family attached unit, and $4,420 per multi-family unit.

54. The **$1,705** per-unit increase in the single-family detached unit Recreation Fees charged to developers effective July 1, 2018 is the **exact** corresponding decrease in the single-family unit water and sewer "capacity replacement fees" also charged to developers, also effective July 1, 2018.

55. Following the July 1, 2018 increase in the Recreation Fees, a developer e-mailed the Town questioning the increase in the Recreation Fees charged by single-family unit, noting that the increase in the Recreation Fees is the exact same amount that the water and sewer "capacity replacement fees" decreased.

56. The Town Attorney replied to the developer's e-mail by stating that increase in the Recreation Fees corresponding to the exact decrease in the water and sewer "capacity fees"

was, in the words of the Town Attorney, a "mathematical miracle."

57. The Town continued to charge Recreation Fees of $4,705 per single-family detached unit, $4,555 per single-family attached unit, and $4,420 per multi-family unit from July 1, 2018 through June 30, 2020.

58. The Town's Recreation Fees charged from July 1, 2018 through June 30, 2020 violate N.C.G.S. § 160A-372(e), as the fees again were in no way calculated based on the property tax value of the individual land to be subdivided.

59. Assuming a single-family subdivision of average density of 4.0 unit per acre, the Recreation Fees charged by the Town from July 1, 2018 through June 30, 2020 would be the equivalent of a per-acre fee in the amount of **$18,820** per acre – **an over 1,500% increase over the $1,119 per-acre fee charged just two years through June 30, 2016.**

60. The Town's UDO § 7.06(F)(5)(a) provides that for the actual donation of land for recreation areas, the dedication shall be not less than one thirty-fifth (1/35) of an acre times the number of dwelling units or lot in the subdivision. Applying this same formula to the Town single-family detached Recreation Fee of $4,705 per-unit, this equates to a per-acre value of **$164,675 per acre – far in excess of the actual cost of undeveloped land in the Town measured by property tax value.**

61. Upon information and belief, effective July 1, 2020 and through the present, instead of charging a uniform, per-acre or per-unit Recreation Fee, the Town began charging Recreation Fees based on the "fair market value" of the property, and utilizing a formula of one twentieth (1/20) of the per-acre "fair market value" of the property to determine the Recreation Fee per lot or unit to be developed.

62. The Town's utilization of a factor of one twentieth (1/20) of the per-acre value of

the property for Recreation Fees charged effective July 1, 2020 violates the Town's own UDO § 7.06(F)(5)(a), which provides for a dedication factor of one thirty-fifth (1/35) per acre.

63. The Town's utilization of a factor of one twentieth (1/20) of the per-acre value of the property for Recreation Fees charged effective July 1, 2020 is significantly in excess of similar municipalities who charge recreation fees-in-lieu of land dedication, as such factors are typically one thirty-fifth (1/35) or one thirtieth (1/30) of the per-acre value of the land.

64. The Town determination of the amount of Recreation Fees based on the "fair market value" of the property as established by the Town, which, upon information and belief, the Town determines based upon the value of the land *after* it is subdivided, violates N.C.G.S. § 160A-372(e), which requires that recreation fees-in-lieu of land dedication must be based on the value of the property for property tax purposes.

65. Upon information and belief, for all Recreation Fees charged by the Town on or after July 1, 2020, the Town has established these fees based upon a valuation of the subject property that does not comply with the requirements of N.C.G.S. § 160A-372(e).

66. At all times relative to this action, the amount of Recreation Fees charged by the Town have been in direct violation of the unambiguous language of N.C.G.S. § 160A-372.

67. At all times relative to this action, the amount of Recreation Fees charged by the Town have not had have any rational nexus, or similar connection, with the impact of a new subdivision upon the Town's ability to provide its existing level of service for its citizens in the form of recreation land or areas.

THE TOWN'S UNLAWFUL EXPENDITURE OF RECREATION FEES

68. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

69. At all times relevant to this action, the Town has deposited all Recreation Fees into its General Fund, where the fees are commingled with all other general revenues of the Town.

70. Upon information and belief, at all times relevant to this action, the Town has not earmarked or set aside any Recreation Fees such to ensure that the fees are only used for the acquisition or development of recreation, park, or open space sites in the immediate area of the subdivision for which the fees were paid.

71. Upon information and belief, at all times relevant to this action, the Town is incapable of tracking and accounting what Recreation Fees have been spent on by the Town.

72. At all times relevant to this action, the Recreation Fees charged and collected by the Town have been in direct violation of the unambiguous language of N.C.G.S. § 160A-372 requiring that the fees be used only for the acquisition or development of recreation, park, or open space sites in the immediate area of the subdivision for which the fees were paid.

73. Upon information and belief, at all times relevant to this action, the Town has violated N.C.G.S. §§ 160A-372(a) and 160A-372(e) because the Town has used Recreation Fees to purchase or develop recreational land, facilities and/or areas that are not within the immediate area of the subdivision for which the developer was required to pay the Recreation Fees.

74. Upon information and belief, at all times relevant to this action, the Town has violated N.C.G.S. §§ 160A-372(a) and 160A-372(e) by depositing the Recreation Fees into "the same [depository] as permitted for other funds of the Town," UDO § 7.06(F)(6)(c), and thereby failing to ensure that the Recreation Fees were used solely for the acquisition of recreation land or areas serving the approved subdivision or immediate area by comingling and spending the Recreation Fees alongside other Town funds.

75. Further, at all times relevant to this action, the Town has failed to expend the failure to the Recreation Fees pursuant to a project ordinance violates the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the North Carolina General Statutes.

76. Upon information and belief, at all times relevant to this action, the Recreation Fees and the Ordinance have exceeded the lawful authority of the Town in other ways to be proved at trial.

FACTS SPECIFIC TO PLAINTIFF

77. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

78. On May 04, 2018, Plaintiff was required to pay Recreation Fees to the Town pursuant to Holly Springs's Residential Development Fee Worksheet, the Town's UDO § 7.06(F), and/or other adopted policies and procedures of the Town, in the amount of $258,000 for 86 units ($3,000 per unit) within Phase 9 Section 1A of the 12 Oaks subdivision.

79. On August 17, 2018, Plaintiff was required to pay Recreation Fees to the Town pursuant to Holly Springs's Residential Development Fee Worksheet, the Town's UDO § 7.06(F), and/or other adopted policies and procedures of the Town, in the amount of $254,070 for 54 units ($4,705 per unit) within Phase 9 Section 2A of the 12 Oaks subdivision.

80. On or about March 16, 2020, Plaintiff was required to pay Recreation Fees to the Town pursuant to Holly Springs's Residential Development Fee Worksheet, the Town's UDO § 7.06(F), and/or other adopted policies and procedures of the Town, in the amount of $461,090 for 98 units ($4,705 per unit) within Phase 9 Section 2B of the 12 Oaks subdivision.

81. The Town charged the above-referenced Recreation Fees to Plaintiff without any lawful authority for the fee granted to the Town by the General Assembly.

82. The Town improperly calculated the above-referenced Recreation Fees for the reasons alleged herein, and/or for additional reasons to be proved at trial.

83. The Town improperly collected the above-referenced Recreation Fees for the reasons alleged herein, and/or for additional reasons to be proved at trial.

84. Upon information and belief, the Town improperly applied and/or expended the above-referenced Recreation Fees for the reasons alleged herein, and/or for additional reasons to be proved at trial.

COMMON CLASS ALLEGATIONS

85. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

86. Pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, Plaintiff brings this action individually and on behalf of a class initially defined as:

> All natural persons, corporations, or other entities who paid Recreation Fees to the Town of Holly Springs pursuant to the Town's Residential Development Fee Worksheet, the Town's UDO § Section 7.06(F), and/or the adopted policies and practices of the Town for the maximum period allowed by law.

87. Plaintiff is an adequate representative of the class in that Plaintiff does not have antagonistic or conflicting claims with the other members of the class; Plaintiff has a sufficient interest in the outcome to ensure vigorous advocacy; and Plaintiff's counsel have the requisite qualifications and experience to conduct the proposed litigation competently and vigorously.

88. The Town has acted on grounds generally applicable to the proposed class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

89. The Class members are so numerous that joinder of all is impractical. The names and addresses of potential Class members are readily identifiable through the business records

maintained by the Town, and the Class members may be notified of the pendency of this action by published and/or mailed notice.

90. Upon information and belief, within the applicable statute of limitations period preceding the filing of Plaintiff's Complaint and until present, the Town has collected unlawful Recreation Fees from dozens, and potentially hundreds, of potential Class members.

91. The requirements of Rule 23 are met in that this class, upon information and belief, consists of hundreds of present and former developers, entities and individuals, who have either already paid, or will pay, Recreation Fees to the Town pursuant to the Town's Residential Development Fee Worksheet, the Town's UDO § Section 7.06(F), and/or the adopted policies and practices of the Town.

92. Common questions of law and fact predominate over any individual issues that may be presented, because Defendant had a pattern, practice, and policy of collecting said Recreation Fees from developers and other entities. Common questions include, but are not limited to:

a. Whether the pattern, practice, and policy of the Town in collecting recreation Fees from Plaintiff and Class Members violates with applicable North Carolina law; and,

b. Whether the Town improperly calculated, charged, collected, applied, and/or expended the Recreation Fees charged to Plaintiff and Class Members in violation of its lawful authority;

c. Whether the Recreation Fees charged to Plaintiff and Class Member lack a constitutionally-required reasonable relationship or rational nexus, or similar connection, with the impact of a new subdivision on the Town's ability to provide its existing level of service for its citizens in the form of recreation land or areas.

93. Plaintiff's claims are typical of the claims of each Class member and all are based on the same facts and legal theories in that the Town has a specific policy of collecting an improper Recreation Fee from each member of the proposed Class through the Town's

Residential Development Fee Worksheet, the Town's UDO § Section 7.06(F), and/or the adopted policies and practices of the Town.

94. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of collection of unlawful municipal fees in the context of class action litigation.

95. Neither Plaintiff nor their counsel have any interests that might cause them not to vigorously pursue this action. Plaintiff is aware of their responsibilities to the putative class and have accepted such responsibilities.

96. The Town has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

97. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action. Plaintiff further alleges that certification of the Class is appropriate in that:

a. A class action will permit a large number of similarly situated persons to prosecute its common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individuals' actions would engender; and,

b. Each and every member of the proposed Class is subject to the schedule of fees as set forth herein; and,

c. Class treatment will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein; and,

d. Absent a class action, the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages, and if Defendant's conduct continues to proceed without remedy, it will continue to reap and retain the proceeds of its ill-gotten gains.

FIRST CLAIM FOR RELIEF
(Declaration that the Town's Adoption and Enforcement of the Recreation Fees and the Ordinance Exceed the Lawful Authority of the Town and are *Ultra Vires*)

98. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

99. Municipalities in North Carolina only have the authority to exercise powers, duties, privileges and immunities conferred upon them by the General Assembly.

100. For the reasons alleged herein, and/or for other reasons to the proven at trial, the Recreation Fees and the Ordinance are not authorized by the lawful authority granted to the Town by the General Assembly and are *ultra vires*.

101. Plaintiff is entitled to a Declaratory Judgment pursuant to N.C.G.S. §§ 1-253, *et seq.* declaring that the Recreation Fees are *ultra vires*.

SECOND CLAIM FOR RELIEF
(Alternatively, Declaration that the Town's Recreation Fees are Unconstitutional)

102. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

103. Fees imposed on new development as a condition of development permits or approvals must have reasonable relationship or rational nexus, or a similar connection, to the impact of the development in question will have on existing facilities; otherwise, the fees constitute an unconstitutional taking. *Franklin Road Properties v. City of Raleigh*, 94 N.C.App. 731, 736, 381 S.E.2d 487, 490 (1989).

104. At all times relative to this action, the Recreation Fees charged by the Town lack any reasonable relationship or rational nexus, or similar connection, to the impact of a new subdivision on the Town's ability to provide its existing level of service for its citizens in the form of recreation land or areas.

105. The Recreation Fees charged by the Town in all years do not have any reasonable relationship or rational nexus to the impact, if any, that new customers have on the Town's recreation areas in their immediate area for reasons including, but not limited to, the following:

a. Failed to use an industry accepted standard methodology in computing their Recreation Fees;

b. Failed to conduct a study with a municipal financial professional to set the proper amount for Recreation Fees;

c. Failed to calculate the land value per acre and calculate a reasonable Recreation Fee based on the value of the land;

d. Did not state which, if any, recreation assets were included in any Recreation Fee calculation and the value of those assets;

e. Did not state what infrastructure items were included within the computation of its Recreation Fee, nor the justification of any infrastructure items' cost attribution to new development.

106. Plaintiff and the Class are entitled to a declaratory judgment that the Recreation Fees lack a required reasonable relationship or rational nexus, or similar connection, to the impact of a new subdivision on the Town's ability to provide its existing level of service for its citizens in the form of recreation land or areas, and that the Recreation Fees are therefore unconstitutional.

THIRD CLAIM FOR RELIEF
(Return of All Recreation Fees Plus Interest at the Rate of 6% Per Annum)

107. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

108. N.C.G.S. § 160A-363(e) provides that if a municipality is found to have exacted a fee as a condition to a development approval or permit that is not specifically authorized by law, the city shall return the fee, plus interest at the rate of 6% per annum.

109. Plaintiff and class members are entitled to the return of all Recreation Fees

charged and collected by the Town, plus 6% interest per annum from the date of each payment.

FOURTH CLAIM FOR RELIEF
(Costs and Attorneys' Fees)

110. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

111. As set forth herein, the Town, among other things, has violated the express and unambiguous limits on its statutory authority as set forth in N.C.G.S. § 160A-372 and/or other applicable law.

112. Plaintiff and class members are entitled to recovery of their costs and attorneys' fees incurred in this action pursuant to N.C.G.S. § 6-21.7.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Meritage Homes of the Carolinas, Inc. and members of the Class respectfully request:

1. That the Court declare the Town's Ordinance and the Town's charging and collection of Recreation Fees *ultra vires*; and/or to otherwise declare that the Town's charging and collection of Recreation Fees was an unlawful exercise of the Town's lawful authority;

2. Alternatively, that the Court declare that all Recreation Fees charged and collected by the Town as unconstitutional;

3. That all Recreation Fees charged and collected by the Town be returned to Plaintiff and class members, plus interest at the rate of 6% per annum from the date of each payment;

4. That this Court certify the Class and appointing Plaintiff and its counsel to represent the Class;

5. That the costs of this action be taxed against the Town, including reasonable

attorneys' fees pursuant to N.C.G.S. § 6-21.7; and

6. That Plaintiff and class members have such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 18th day of December, 2020.

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