STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-8602

FILED
2021 MAR 31 A 10:53
WAKE CO., C.S.C.

GREGORY, INC., TRIPLE A HOMES, INC., WISEMANPLUS, LLC, and WISEMANPLUS DEV CO LLC, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TOWN OF FUQUAY-VARINA,

Defendant.

FIRST AMENDED AND SUPPLEMENTED CLASS ACTION COMPLAINT

NOW COME the Plaintiffs, by and through their undersigned counsel, and on behalf of themselves and all others similarly situated, hereby file this First Amended and Supplemented Complaint, with leave of the Court, against Defendant Town of Fuquay-Varina ("the Town"), alleging and stating as follows:

1. Plaintiffs, on behalf of themselves and others similarly situated, bring this action to challenge the Town's unlawful and unauthorized exaction of certain one-time water and sewer fees which it has referred to by several different names, including, but not limited to "acreage fees," "capacity fees," "impact fees" and/or "system development fees." The foregoing water and sewer fees charged by the Town are collectively referred to herein as the "Impact Fees."

2. Plaintiffs bring this class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, on behalf of themselves and all similarly situated individuals, proprietorships, partnerships, corporations,or other entities who paid

Impact Fees to the Town at any point (a) from June 24, 2016 through June 30, 2018, and (b) from July 1, 2018 through the present (hereinafter collectively, the "Classes").

PARTIES, JURISDICTION, and VENUE

3. Plaintiff Gregory, Inc. is a North Carolina corporation with a principal office in Harnett County, North Carolina. Gregory, Inc. conducts business in the Town of Fuquay-Varina, Wake County, North Carolina.

4. Plaintiff Triple A Homes, Inc. ("Triple A") is a North Carolina corporation with a principal office on in Holly Springs, North Carolina. Triple A conducts business in the Town of Fuquay-Varina, Wake County, North Carolina.

5. Plaintiff WisemanPlus, LLC is a North Carolina limited liability company with a principal office in Fuquay-Varina, North Carolina. WisemanPlus, LLC conducts business in the Town of Fuquay-Varina, Wake County, North Carolina.

6. Plaintiff WisemanPlus Dev Co LLC is a North Carolina limited liability company with a principal office in Fuquay-Varina, North Carolina. WisemanPlus Dev Co LLC conducts business in the Town of Fuquay-Varina, Wake County, North Carolina.

7. Gregory, Inc., Triple A Homes, WisemanPlus, LLC, and WisemanPlus Dev Co LLC, are collectively referred to herein as "Plaintiffs.

8. Defendant Town of Fuquay-Varina is a political subdivision of the State of North Carolina as prescribed by Chapter 160A of the North Carolina General Statutes with the capacity to sue and be sued pursuant to N.C. Gen. Stat. § 160A-11.

9. This Court has jurisdiction over the parties and subject matter of this action. Plaintiffs and the Classes have a specific personal and legal interest in the subject matter of this case in that the rights of Plaintiffs and the Classes are directly and adversely affected by the Impact Fees, ordinances, and policies of the Town, and Plaintiffs and the Classes have suffered and will continue to suffer irreparable harm without the relief requested herein.

10. Plaintiffs have standing to bring this action on behalf of themselves and all others similarly situated pursuant to, *inter alia*, N.C. Gen. Stat. § 1-253, *et. seq.*, and Rule 57 of the North Carolina Rules of Civil Procedure, to obtain relief including, *inter alia*, a declaratory judgment by this Court regarding whether the Town possessed authority from the North Carolina General Assembly at all times relevant to this action to exact the Impact Fees from Plaintiffs and the Classes as a condition of and prior to furnishing water and/or sewer service to a property. A genuine and justiciable controversy exists in that Plaintiffs, on behalf of themselves and the Classes, allege that the Town's exaction of the Impact Fees from Plaintiffs and the Classes was and is unauthorized, while the Town claims that it has authority to charge the Impact Fees.

11. In addition, Plaintiffs, on behalf of themselves and the Classes, seek the return of all Impact Fees paid to the Town, along with pre-judgment interest on refunded Impact Fees at the rate of 6% per annum from the date of payment of the Impact Fees, as provided by N.C. Gen. Stat. § 160A-363(e), and post-judgment interest at the legal rate.

12. Plaintiffs, on behalf of themselves and the Classes, further seek an award of attorneys' fees, costs, and expenses pursuant to N.C. Gen. Stat.§ 6-21.7, *et. seq.*, N.C. Gen. Stat.§ 1-263, and/or other applicable law.

13. This action has been filed within all applicable statutes of limitation and repose, and all conditions precedent to the filing of this action have been complied with.

14. Jurisdiction and venue are proper in the Superior Court of Wake County.

15. A copy of this First Amended and Supplemented Complaint has been served on the Attorney General of North Carolina pursuant to N.C. Gen. Stat. § 1-260.

BACKGROUND

16. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

17. A municipality "is a creature of the General Assembly, has no inherent powers, and can exercise only such powers as are expressly conferred by the General Assembly and such as are necessarily implied by those expressly given." *High Point Surplus Co. v. Pleasants*, 264 N.C. 650, 654, 142 S.E.2d 697, 701 (1965). "All acts beyond the scope of powers granted to a municipality are invalid." *Quality Built Homes v. Town of Carthage*, 369 N.C. 15, 19, 789 S.E.2d 454, 457 (2016) (citation omitted).

18. Prior to October 1, 2017, the statutory authority of municipalities to charge and collect water and sewer fees was set forth in former N.C. Gen. Stat. §

160A-314(a) (2016), which, at that time, allowed municipalities to "establish and revise...rents, rates, fees, charges, and penalties for *the use of or the services furnished by* any public enterprise." *See* N.C. Gen. Stat. § 160A-314(a) (2016) (emphasis added).

19. As discussed herein, former N.C. Gen. Stat. § 160A-314(a) (2016) did not authorize municipalities to charge one-time fees to new development as a condition to providing new water and/or sewer service the new development, commonly called "impact fees," "capacity fees," "availability fees," or "system development fees," such as the Impact Fees.

20. In fact, prior to October 1, 2017, many municipalities sought and received special local authority from the General Assembly to charge fees like the Town's Impact Fees. The Town did not seek or receive such special authority.

21. On August 19, 2016, the North Carolina Supreme Court unanimously held in *Quality Built Homes v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), that former N.C. Gen. Stat. § 160A-314(a) (2016) did not authorize municipalities to charge fees for prospective water and sewer services "to be furnished" in the future, such as the Impact Fees.

22. Instead, the *Quality Built Homes* Court held that "[a] municipality's ability to 'establish and revise' its various 'fees' is limited to 'the use of' or 'the services furnished by' the enterprise, which provisions are operative in the present tense." *Quality Built Home*, 369 N.C. at 20, 789 S.E.2d at 458 (quoting former N.C. Gen. Stat. § 160A-134(a)) (emphasis added).

23. The North Carolina Supreme Court held that the former N.C. Gen. Stat. § 160A-314(a) (2016) only "empower[ed] [municipalities] to charge for the contemporaneous use of water and sewer services—not to collect fees for future discretionary spending." *Quality Built Homes*, 369 N.C. at 19–20, 789 S.E.2d at 458 (emphasis added).

24. The Court determined that the proper method for a municipality to fund its water or sewer systems was through its "authority to charge tap fees and to establish water and sewer rates to fund necessary improvements and maintain service to its inhabitants, which is sufficient to address its expansion needs." *Id.*, 369 N.C. at 21-22, 789 S.E.2d at 459.

25. On July 20, 2017, the North Carolina General Assembly enacted the "Public Water and Sewer System Development Fee Act," codified in Article 8 of Chapter 162A of the North Carolina General Statutes, which granted limited authority for municipalities to charge one-time fees to new development for water and sewer services to be furnished in the future. *See* N.C. Session Law § 2017-138, House Bill 436 ("HB 436").

26. HB 436 amended N.C. Gen. Stat. § 160A-314(a) to allow municipalities, for the first time, to charge "system development fees" for prospective water and sewer services "to be furnished" but "*only* in accordance with Article 8 of Chapter 162A of the General Statutes." *See* HB 436, § 4(a) (emphasis added).

27. Article 8 of Chapter 162A of the General Statutes provides that municipalities may "adopt a system development fee for water or sewer service only

in accordance with the conditions and limitations of [Chapter 162A, Article 8]." N.C. Gen. Stat. § 162A-203(a) (emphasis added).

28. The General Assembly expressly provided that HB 436 did not *retroactively* authorize Impact Fees:

> Nothing in this act provides retroactive authority for any system development fee, or any similar fee for water or sewer services to be furnished, collected by a local governmental unit prior to October 1, 2017.

HB 436, § 11 (emphasis added).

29. Further, HB 436 added N.C. Gen. Stat. § 162A-215, entitled "[n]arrow construction" which mandates that "[n]otwithstanding ... G.S. 160A-4, in any judicial action interpreting [Article 8 of Chapter 162A], all powers conferred by this Article shall be narrowly construed to ensure that system development fees do not unduly burden new development." (emphasis added).

THE TOWN'S *ULTRA VIRES* AND UNLAWFUL FEES

30. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

31. The Town owns and operates water and sewer public enterprise systems which supply water and sewer service to customers both within and outside the municipal limits of the Town.

32. The Town, at all times relevant hereto, has charged the Impact Fees prior to, and as a condition of, a new connection to the Town's water and/or sewer systems.

33. Although North Carolina "municipalities routinely seek and obtain enabling legislation from the General Assembly to assess impact fees[,]" *see Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 21, 789 S.E.2d 454, 459 (2016), the Town did not seek, and did not receive, special enabling legislation from the North Carolina General Assembly authorizing it to charge the Impact Fees.

34. At all times relevant hereto, the Town's Impact Fees were charged separate from and in addition to the Town's "tap" or "connection" fees, which reflect the material and labor costs necessary to actually connect a new development to the Town's water or sewer systems.

THE TOWN'S UNLAWFUL PRE-JULY 1, 2018 IMPACT FEES.

35. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

36. Prior to July 1, 2018, the Town charged "capacity fees," "acreage fees," or "impact fees," to all new development to be served by the Town's water and sewer systems, in an amount "based upon such fee schedules prescribed and adopted by the Town Board of Commissioners." *See* Town's Code of Ordinances § 5-1016(e) (emphasis added).

37. Effective January 1, 2016, the Town adopted and charged Impact Fees in amounts of $1,500 for a 5/8" meter size for water and $2,750 for a 5/8" meter size for sewer for each new connection. Higher Impact Fees were charged for larger meter sizes.

38. Effective October 1, 2016, the Town increased its Impact Fees to $2,000

for a 5/8" meter size for water and $3,250 for a 5/8" meter size for sewer for each new connection. The Town continues to charge Impact Fees in these amounts today. Higher Impact Fees are charged for larger meter sizes.

39. The Town adopted and charged the Impact Fees pursuant to § 5-1016 of the Code of Ordinances, Town of Fuquay-Varina, North Carolina (the Town's "Code of Ordinances"), a true and accurate copy of which is attached here to as Exhibit A. Code of Ordinances § 5-1016 establishes the Town's Impact Fees and provides for their collection as follows:

> (b) In addition to all other charges prescribed by ordinance or resolution now in effect, **there shall be a capacity fee charge for connecting to the water system and the sewer system of the Town**. For residential development, these charges shall be calculated on a per dwelling unit basis. For nonresidential development, these charges shall be based upon the meter size for the project, as well as an impact fee for fire protection water service based upon the main line tap size. These charges are to be paid as follows:
>
> > (1) In the case of a **residential subdivision, these fees are payable *prior to the approval of the final plat* of the subdivision or an approved phase of the subdivision.**
> >
> > (2) In nonresidential application, or when there is no subdivision of land involved, **these fees are payable prior to the issuance of the building permit**.

See Town's Code of Ordinances § 5-1016(b) (emphasis added).

40. The Town's Pre-July 1, 2018 Impact Fees were unlawful for reasons including, but not limited to, the following:

a. The Impact Fees were charged for services to be furnished in the future, in violation of *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016);

b. The Town unlawfully conditioned the issuance of development

approval and/or permits upon the payment of the Impact Fees;

c. The Impact Fees charged during the relevant time period were for future discretionary spending and/or for future capital improvement expansion projects of the Town, also in violation of *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016) and;

d. The amount of the Impact Fees did not bear any reasonable relationship or rational nexus, or other similar connection, to the impact of new development on the Town's water and sewer systems.

41. The Town's Pre-July 1, 2018 Impact Fees were charged and collected by the Town in violation of N.C. Gen. Stat. § 160A-314(a) (2016) and the North Carolina Supreme Court's unanimous decision in *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016) because the Town's Pre-July 1, 2018 Impact Fees were charged for water and sewer services "to be furnished" in the future.

42. The Town required payment of the Impact Fees in full as a condition of development approval, and before a subject property was connected to the water and/or sewer systems and services were actually furnished by the Town.

43. The Town, at all times relevant hereto, required payment of the Impact Fees as a mandatory precondition to allowing a new connection to the Town's water and/or sewer systems, and the Town would not allow a property to connect to the Town's systems unless and until all Impact Fees were paid in full.

44. As noted by the *Quality Built Homes* Court, prior to October 1, 2017, a municipality could fund the expansion of its water and sewer systems by exercising its "authority to charge tap fees and to establish water and sewer rates to fund necessary improvements and maintain service to its inhabitants, which [are] sufficient to address its expansion needs." *See Quality Built Homes*, 369 N.C. at 21–22, 789 S.E.2d at 459.

45. At all times relevant to this action, the Town did, in fact, charge tap fees and user rates for services furnished by its water and sewer systems, which were sufficient to fund its water and sewer systems, including expansion-related expenses and debt service.

46. In addition, the Pre-July 1, 2018 Impact Fees were transferred to and collected in the Town's Capital Reserve Fund for future discretionary spending and/or for future capital improvement expansion projects, also in violation of *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016).

47. In fact, the Town's Code of Ordinances provides that the purpose of the Impact Fees was, in part, "to build capital reserve funds for ***future investment*** in water and sewer collection, distribution and treatment facilities." *See* Town's Code of Ordinances § 5-1016 (emphasis added).

48. Following the *Quality Built Homes* decision in 2016, the Town continued to charge its illegal Impact Fees, which exceeded the unambiguous limits of its authority.

49. Moreover, the Town's Pre-July 1, 2018 Impact Fees lacked a rational

nexus to the impact of new development on the Town's water and sewer systems. In fact, the Impact Fee amounts had no connection whatsoever to the impact of new development on the systems, and were instead based solely on what the Town determined it needed for additional revenue.

50. At all times during the period three (3) years prior to the commencement of this action through the present, the Town has been without any lawful authority to charge its Impact Fees.

THE TOWN'S UNLAWFUL POST-JULY 1, 2018 IMPACT FEES

51. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

52. The Town's Post-July 1, 2018 Impact Fees were calculated in a study by Raftelis Financial Consultants, Inc., which the Town thereafter adopted in purported compliance with HB 436 (the "2018 Study"). A copy of the 2018 Study is attached hereto as "Exhibit B" and incorporated by reference herein.

53. The 2018 Study utilizes the "buy-in" method to calculate the Town's Impact Fees, which is authorized by N.C. Gen. Stat. § 162A-201(9) as a methodology designed to "recoup costs of existing facilities which serve...new development." N.C. Gen. Stat. § 162A-201(9).

54. The "buy-in method" "is based on the principle of achieving capital equity between existing and new customers. [It] attempts to assess new customers a [fee] to approximate the average equity or debt-free investment position of existing customers."

55. The Impact Fees calculated in the 2018 Study and charged by the Town on and after July 1, 2018 violate Article 8, Chapter 162A of the General Statutes and generally accepted accounting, engineering, and planning methodologies for reasons including, but not limited to, the following:

a) The Town improperly included in the cost basis for the Impact Fees millions of dollars for the value of assets which were donated, funded, or reimbursed, in whole or in part, by developers or other third parties, and for which the Town incurred no cost to acquire or construct;

b) The Town improperly included in the cost basis for the Impact Fees millions of dollars for the value of assets that were not major system components, or core system assets, necessary to serve and benefitting all customers;

c) The Town improperly included in the cost basis for the sewer Impact Fee millions of dollars for the value of "construction in progess" for a wastewater treatment plant expansion that was not yet completed and providing service to customers;

d) In valuing the "construction in progress" for the wastewater treatment plant, the Town improperly included the value of items not permitted to be included in the cost basis for the sewer Impact Fees – such as furniture – and, upon information and belief, improperly used as the construction "value" amount the total contract price for the construction, as opposed to the value of construction actually completed to-date;

e) The Town improperly included in the cost basis for the Impact Fees over a

million dollars for the value of decommissioned facilities no longer in service;

f) The Town improperly applied a flawed construction cost index factor to escalate the value of its assets included in the cost basis for the Impact Fees;

g) The Town improperly "reduced" the mandatory outstanding principal debt credit applied to the Impact Fees on the basis that the Town allegedly used Impact Fee revenue to pay outstanding debt service, when the Town in fact has not used Impact Fee revenue to pay outstanding debt service. Regardless, such a "reduction" in the debt credit is improper even if Impact Fee revenue *was* used to pay debt service;

h) The Town improperly used flow design standards as the measure for water and sewer consumption in calculating the Impact Fees, instead of using the Town's actual consumption data, which had already been calculated and was readily available to the Town. Using flow design standards instead of actual consumption data resulted in arbitraty and inflated consumption amounts;

i) The Town improperly applied "peaking" and "inflow and infiltration" factors to a flow design measure of water and sewer consumption in calculating the Impact Fees;

j) The Town improperly applied a measure of water and sewer consumption in calculating the Impact Fees that is in excess of the water and sewer consumption values that the Town used for its planning and expansion

purposes;

k) The Town improperly used a four-bedroom home as the basis for its "Equivalent Residential Unit" (ERU) used to calculate the Impact Fees, instead of a three-bedroom home (as used by every similar city or town surrounding the Town in calculating their impact fees), and the Town failed to implement a sliding scale approach that would have adjusted the Impact Fee based upon the number of bedrooms of a home;

l) The Town has failed to properly establish and account for Impact Fee revenue by means of a lawful capital reserve fund pursuant to Part 2 of Article 3 of Chapter 159 of the General Statutes, and/or has impermissibly used Impact Fee revenue for purposes other than those set forth in N.C. Gen. Stat. § 162A-211(a); and

m) Upon information and belief, the Town's Impact Fees violate Article 8 of Chapter 162A, and generally accepted accounting, engineering, and planning methodologies, and are otherwise unlawful, for additional reasons to be further developed throughout the course of discovery.

FACTS SPECIFIC TO PLAINTIFFS

56. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

57. Plaintiffs are developers and builders who were required to pay Impact Fees to the Town both before and after July 1, 2018, in an amount in excess of $25,000.00.

58. Triple A was required by the Town to pay Impact Fees as a condition of development approval during the tome period relevant to this action. Specifically, Triple A paid Impact Fees to the Town in the amount of $8,500 on or about September 27, 2016, and Impact Fees in the amount of $10,500 on or about June 3, 2017.

59. WisemanPlus, LLC was required by the Town to pay Impact Fees of $183,750 on or about December 30, 2019 as a condition of development approval.

60. WisemanPlus Dev Co LLC was required by the Town to pay Impact Fees of $94,500 on or about September 20, 2019 as a condition of development approval.

61. As alleged herein, Plaintiffs have been injured as a result of the Town's unlawful exaction of the Impact Fees both prior to and after July 1, 2018, as Plaintiffs have been required to pay, and have paid, the *ultra vires*, illegal, and unconstitutional Impact Fees.

COMMON CLASS ALLEGATIONS

62. The preceding paragraphs are reincorporated by reference as if fully set forth herein.

63. Pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, Plaintiffs bring this action individually and on behalf of Classes initially defined as:

(a) All individuals, proprietorships, partnerships, corporations, and other entitites who (a) from June 24, 2016 through June 30, 2018 (b) paid water or sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees to the Town of Fuquay-Varina.

Excluded from subclass (a) are individuals, proprietorships, partnerships, corporations, and other entitites who paid water or sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees subject to any of the following agreements: (1) the "Development and Infrastructure Agreement" between Bill Clark Homes of Raleigh, LLC and the Town dated October 7, 2014 for the Sunset Glen Subdvision; (2) the "Development and Infrastructure Agreement" between Reliabuilt, LLC and the Town dated December 30, 2014 for the Sonoma Springs Subdivision; or (3) the "Infrastructure Agreement" between BB-Massengill, LLC and the Town dated June 30, 2016 for the Bentwinds Bluffs Subdivision.

(b) All individuals, proprietorships, partnerships, corporations, and other entitites who (a) from July 1, 2018 through the present (b) paid water or sewer acreage fees, impact fees, capacity fees, and/or system development fees to the Town of Fuquay-Varina.

64. Plaintiffs reserve the right to redefine the Classes prior to certification.

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

66. Upon information and belief, there are hundreds of distinct potential Class members who paid the Impact Fees to the Town from June 24, 2016 through June 30, 2018.

67. Upon information and belief, there are also hundreds of distinct potential Class members who paid Impact Fees to the Town from July 1, 2018 through the present.

68. The requirements of Rule 23 are met in that the Classes consist of several hundred present and former developers and home builders, entities and individuals, who have paid Impact Fees to the Town.

69. Common questions of law and fact predominate over any individual issues that may be presented because the Town has a pattern, practice, and policy of collecting said Impact Fees from developers and home builders. Common questions include, but are not limited to:

a. Whether Defendant Town lacked authority to charge and collect the Pre-July 1, 2018 Impact Fees, and specifically, whether the Impact Fees were charged for water or sewer service "to be furnished" in the future, and/or whether the Impact Fees were charged and collected by the Town for expansion of its systems and/or future discretionary spending;

b. Whether the Town's Pre-July 1, 2018 Impact Fees lacked any reasonable relationship or rational nexus, or similar connection, to the impact of new development on the Town's water and sewer systems;

c. Whether the Town's Post-July 1, 2018 Impact Fees and the manner in which the Town has calculated, adopted, charged, and accounted for these Impact Fees, violate the provisions of Article 8, Chapter 162A of the North Carolina General Statutes, and/or generally accepted accounting, engineering, and planning methodologies;

d. Whether Plaintiffs and the Classes are entitled to a refund of all Impact Fees paid to Defendant Town, plus interest thereon at the rate of 6% per annum, pursuant to N.C. Gen. Stat. § 160A-363(e); and

e. Whether Plaintiffs and the Classes are entitled to their costs, expenses, and attorneys' fees pursuant to N.C. Gen. Stat. § 6-21.7, N.C. Gen. Stat. § 1-263, and/or other applicable law.

70. Plaintiffs' claims are typical of the claims of each Class member and all are based on the same facts and legal theories in that Town charged and collected the unlawful Impact Fees from each member of the proposed Classes in the same manner.

71. Plaintiffs have no interests which would be adverse or antagonistic to the interests of other members of the proposed Classes.

72. Neither Plaintiffs nor their counsel have any interests that might cause them not to vigorously pursue this action. Plaintiffs are aware of their responsibilities to the putative Classes and have accepted such responsibilities.

73. Plaintiffs will fairly and adequately protect the interests of the Classes and have retained experienced counsel, competent in the recovery of unlawful impact fees, who were counsel in the *Quality Built Homes, Inc. v. Town of Carthage* case, and

who are counsel in similar class action and other lawsuits against municipalities and counties in North Carolina seeking recovery of unlawful Impact Fees.

74. The Town has acted on grounds generally applicable to the Classes, thereby making final declaratory relief appropriate with respect to the Classes as a whole.

75. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiffs anticipate that no unusual difficulties are likely to be encountered in the management of this class action. Plaintiffs further allege that certification of the Classes is appropriate in that:

a. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense which would be engendered by actions on behalf of numerous individual persons and entities;

b. Each and every member of the proposed Classes was subject to the same ordinances and schedules of Impact Fees as set forth herein;

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 and incur monetary damages, and the Town will continue to retain the proceeds of its unlawful Impact Fees.

FIRST CLAIM FOR RELIEF
(Declaration that the Town's Impact Fees Charged and Collected Prior to July 1, 2018 are *Ultra Vires*)

76. The foregoing allegations are hereby reincorporated by reference as if fully set forth herein.

77. Pursuant to N.C. Const. Art. VII, Sec. 1 and N.C. Gen. Stat. § 160A-4, municipalities in North Carolina only have authority to exercise the powers, duties, privileges and immunities conferred upon them by the General Assembly.

78. Prior to HB 436, the Town's authority to charge and collect fees for its water and sewer services was limited to the authority provided in former N.C. Gen. Stat. § 160-314(a) (2016), allowing the Town to adopt "schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise."

79. The North Carolina Supreme Court held in *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016) that former N.C. Gen. Stat. § 160-314(a) (2016) only authorized municipalities "to charge for the contemporaneous use of water and sewer services – not to collect fees for future discretionary spending." (emphasis added).

80. The Impact Fees charged and collected by the Town prior to July 1, 2018 were not for the contemporaneous use of the Town's water and sewer services.

81. The Impact Fees charged and collected by the Town prior to July 1, 2018 were for services "to be furnished" in violation of *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016).

82. For the reasons detailed herein, the Town was without lawful authority granted by the General Assembly to charge and collect the Pre-July 1, 2018 Impact Fees from Plaintiffs and the Class.

83. Plaintiffs and the Class members are entitled to a judgment declaring the Town's Impact Fees charged and collected prior to July 1, 2018 were unlawful and *ultra vires*.

SECOND CLAIM FOR RELIEF
(Declaration that the Town's Impact Fees Charged and Collected on and after July 1, 2018 are *Ultra Vires*)

84. The foregoing allegations are hereby reincorporated by reference as if fully set forth herein.

85. Following the enactment of HB 436, municipalities in North Carolina could charge system development fees for services "to be furnished" only if adopted "in accordance with the conditions and limitations of [Chapter 162A, Article 8]." N.C. Gen. Stat. § 162A-203(a) (emphasis added).

86. Further, notwithstanding N.C. Gen. Stat. § 160A-4, the powers granted to municipalities under HB 436 "shall be narrowly construed to ensure that [Impact Fees] do not unduly burden new development." N.C. Gen. Stat. § 162A-215 (emphasis added).

87. The Post-July 1, 2018 Impact Fees charged by the Town fail to comply with Article 8 of Chapter 162A of the General Statutes for the reasons detailed above.

88. Plaintiffs and Class members are entitled to a judgment declaring that the Town's Impact Fees charged and collected on or after July 1, 2018 are unlawful and *ultra vires*.

89. Plaintiffs and the Class members are further entitled to an Order requiring the Town to undergo a proper and lawful calculation of its Impact Fees in accordance with the provisions of Article 8, Chapter 162A and generally accepted accounting, engineering, and planning methodologies.

THIRD CLAIM FOR RELIEF
(In the Alternative: All Impact Fees Lack a Reasonable Relationship or Rational Nexus)

90. The foregoing allegations are hereby reincorporated by reference as if fully set forth herein.

91. This claim for relief is pled in the alternative and in the event that any of the Impact Fees charged and collected by the Town from Plaintiffs and the Class members are determined not to be *ultra vires*.

92. Impact Fees imposed on new development must have a reasonable relationship or rational nexus, or similar connection, to the impacts that new development will have on the Town's water and sewer systems.

93. The Impact Fees charged and collected by the Town from Plaintiffs and the Class members both prior to and on or after July 1, 2018 lacked any reasonable relationship or rational nexus, or similar connection, to the impact of Plaintiffs' and the Class members' developments on the Town's existing water and sewer systems.

94. Plaintiffs and the Classes are entitled to a declaratory judgment that the Impact Fees charged by the Town lack a reasonable relationship or rational nexus, or similar connection, to the impact of a new development on the Town's water or sewer systems.

102. Through the Town's exaction of the Impact Fees, Plaintiffs and the Class members have been treated disparately and discriminatively as compared to similarly situated, existing customers of the water and sewer systems, and without any rational basis.

103. Plaintiffs and the Class members are entitled to a declaratory judgment that all Impact Fees violate the doctrine of unconstitutional conditions.

104. Plaintiffs and the Class members are entitled to a declaratory judgment that all Impact Fees constitute an unlawful taking in violation of Plaintiffs' and the Class members' constitutional rights.

105. Plaintiffs and the Class members are entitled to a declaratory judgment that all Impact Fees violate Plaintiffs' and the Class members' constitutional rights to equal protection and substantive due process.

FOURTH CLAIM FOR RELIEF
(Refund of All Impact Fees)

95. The foregoing allegations are hereby reincorporated by reference as if fully set forth herein.

96. Plaintiffs and the members of the Classes have clearly established rights under law to be free from the assessment of illegal Impact Fees by the Town.

97. The Town's charging and collecting of the Impact Fees, both prior to and on or after July 1, 2018, was in excess of the Town's authority granted by the General Assembly and therefore, illegal and *ultra vires*.

98. Further, the Town's charging and collecting of the illegal Impact Fees is in violation of the doctrine of unconstitutional conditions, constitutes an unlawful taking, and/or violates the rights of Plaintiffs and the Class members to equal protection and substantive due process.

99. Plaintiffs and the Class members have suffered pecuniary loss because of the Town's exaction of the illegal Impact Fees.

100. The Town will be unjustly enriched if it is allowed to retain the illegal Impact Fees charged and collected without proper authority from the North Carolina General Assembly and in violation of the law and Plaintiffs' and the Class members' constitutional rights to equal protection and substantive due process.

101. The well-settled law in North Carolina is that a local government shall refund to the payor any illegally charged development fees, such as the Town's Impact Fees. *See, e.g., Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 517 S.E.2d 874 (1999); *Durham Land Owners Ass'n v. Cnty. of Durham*, 177 N.C. App. 629, 630 S.E.2d 200 (2006); *Amward Homes, Inc. v. Town of Cary*, 206 N.C. App. 38, 64, 698 S.E.2d 404, 422 (2010); *China Grove 152, LLC v. Town of China Grove*, 242 N.C. App. 1, 773 S.E.2d 566 (2015); *Tommy Davis Constr., Inc. v. Cape Fear Public Utility Authority*, 807 F.3d 62 (4th Cir. 2016).

102. Moreover, N.C. Gen. Stat. § 160A-363(e) provides: "If the city is found to have illegally exacted a tax, fee, or monetary contribution for development or a development permit not specifically authorized by law, the city shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum."

103. The Town's Impact Fees were not specifically authorized by law.

104. The Town illegally exacted the Impact Fees from Plaintiffs and the Class as a condition of development.

105. Plaintiffs and the Class members are entitled to the return of all Impact Fees illegally charged and collected by the Town during the relevant time period, together with pre-judgment interest on their returned Impact Fees at the rate of 6% per annum from the date of payment of the Impact Fees, as provided by N.C. Gen. Stat. § 160A-363(e), and post-judgment interest at the legal rate.

FIFTH CLAIM FOR RELIEF
(Costs, Expenses, and Attorneys' Fees)

106. The foregoing allegations are hereby reincorporated by reference as if fully set forth herein.

107. N.C. Gen. Stat. § 6-21.7, as amended by the General Assembly's enactment of Session Law 2019-111, now provides, in pertinent part, as follows:

> In any action in which a city or county is a party, upon a finding by the court that the city or county violated a statute or case law setting forth unambiguous limits on its authority, the court *shall award* reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action.

N.C. Gen. Stat. § 6-21.7 (emphasis added).

108. As detailed above, Defendant Town's Impact Fees are in violation of statutes and/or case law setting forth unambiguous limits on the Town's authority.

109. Specifically, the North Carolina Supreme Court unanimously held in n *Quality Built Homes, Inc. v. Town of Carthage*, filed on August 19, 2016, that former N.C. Gen. Stat. § 160A-314(a) (2016) "clearly and unambiguously" authorized municipalities to charge only "for the contemporaneous use of water and sewer services – not to collect fees for future discretionary spending." *Quality Built Homes, Inc.*, 369 N.C. at 20, 789 S.E.2d at 458.

110. The North Carolina Supreme Court has, since at least 1982, "cautioned that municipalities may lack the power to charge for prospective [water and sewer] services." *Id.*, 369 N.C. at 20-21, 789 S.E.2d at 458 (citing *Town of Spring Hope v. Bissette*, 305 N.C. 248, 251, 287 S.E.2d 851, 853 (1982)).

111. As noted in *Quality Built Homes*, "[m]unicipalities routinely seek and obtain enabling legislation from the General Assembly to assess impact fees..." *Quality Built Homes*, 369 N.C. at 22, 789 S.E.2d at 459. The Town never sought or received such legislation for its Pre-July 1, 2018 Impact Fees.

112. Notwithstanding the North Carolina Supreme Court's "clear and unambiguous" pronouncement regarding former N.C. Gen. Stat. § 160A-314(a) (2016) on August 19, 2016, the Town continued to charge and collect its Impact Fees without any lawful authority through at least June 30, 2018.

113. In addition, for the reasons detailed herein, the Impact Fees charged and collected by the Town on or after July 1, 2018, clearly and unambiguously violate

the express provisions of Article 8, Chapter 162A of the General Statutes, and/or generally-accepted accounting, engineering, and planning methodologies.

114. The Town violated clear and unambiguous limits on its authority as established by statute and legal precedent in charging and collecting all Impact Fees.

115. Plaintiffs and the Class members are entitled to recover their costs, expenses, and attorneys' fees incurred in this action pursuant to N.C. Gen. Stat. § 6-21.7, N.C. Gen. Stat. § 1-263, N.C. Gen. Stat. § 6-1, and/or other applicable law.

SIXTH CLAIM FOR RELIEF
(Accounting)

116. The foregoing allegations are hereby reincorporated by reference as if fully set forth herein.

117. Plaintiffs and the Class members are entitled to an accounting from the Town of all Impact Fees paid by Plaintiffs and Class members through the date of the accounting, and then updates to the accounting through the pendency of this action, as applicable.

WHEREFORE, Plaintiffs, individually and on behalf of the Classes, pray for relief as follows:

a) That the Court certify the Classes and appoint Plaintiffs and their counsel to represent the Classes;

b) That the Court declare the Impact Fees exacted from Plaintiffs and the Class members by the Town, both prior to July 1, 2018, and on or after July 1, 2018, unlawful and *ultra vires*;

c) In the alternative, that the Court declare the Impact Fees charged and collected by the Town both prior to July 1, 2018 and on or after July 1, 2018, unlawful and in violation of the doctrine of unconstitutional conditions, and/or an unlawful taking, and/or violative of the rights of Plaintiffs and the Class members to equal protection and to substantive due process;

d) That Plaintiffs and the Class members have and recover of the Town all Impact Fees exacted from the them by the Town from June 24, 2016 through the present, together with interest at 6% per annum from the date of payment until judgment as provided in N.C. Gen. Stat. § 160A-363(e), and interest thereafter at the legal rate;

e) That the Town be required to undergo a proper and lawful calculation of its Impact Fees in accordance with Article 8, Chapter 162A and generally accepted accounting, engineering, and planning methodologies;

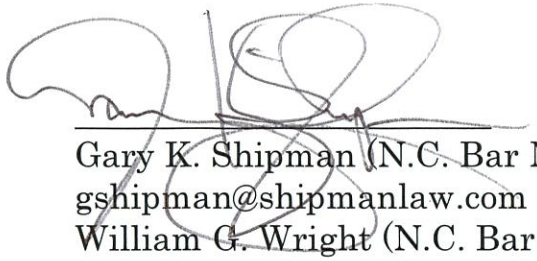
f) That the Town be required to provide an accounting of all Impact Fees paid by Plaintiffs through the date of the accounting, and then updates to the accounting through the pendency of this action, as applicable;

g) That Plaintiffs and the Class members have and recover the costs of this action, including attorneys' fees and costs as provided in N.C. Gen. Stat. § 6-21.7 and/or other applicable law; and

h) That Plaintiffs and the Class members have such other relief as may be just and proper.

THIS, the 23rd day of March, 2021.

SHIPMAN & WRIGHT, LLP



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Attorneys for Plaintiff, Triple A, WisemanPlus, LLC, and WisemanPlus Dev Co LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon the parties to this action by mailing a copy thereof by first-class mail, postage pre-paid, to the following parties or their counsel of record, addressed as follows:

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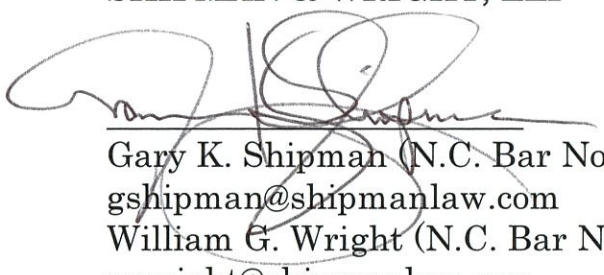
Attorneys for Defendant Town of Fuquay-Varina

THIS, the 23rd day of March, 2021.

SHIPMAN & WRIGHT, LLP



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§ 5-1016. - Capacity fees.

(a) Water and sewer capacity fees are established in order to recover the cost of previous capital investments in the water and sewer systems and to build capital reserve funds for future investment in water and sewer collection, distribution and treatment facilities.

(b) In addition to all other charges prescribed by ordinance or resolution now in effect, there shall be a capacity fee charge for connecting to the water system and the sewer system of the Town. For residential development, these charges shall be calculated on a per dwelling unit basis. For nonresidential development, these charges shall be based upon the meter size for the project, as well as an impact fee for fire protection water service based upon the main line tap size. These charges are to be paid as follows:

(1) In the case of a residential subdivision, these fees are payable prior to the approval of the final plat of the subdivision or an approved phase of the subdivision.

(2) In nonresidential application, or when there is no subdivision of land involved, these fees are payable prior to the issuance of the building permit.

(c) These fees are not applicable to land that is proposed for redevelopment, provided that acreage and/or unit capacity fees have been previously paid for that property.

(d) In the case of multiple water taps to the main line, the water service impact fee for a nonresidential project shall be computed as if the total water service for the project were being served by one line tap equivalent to the cross-sectional area of the multiple taps.

(e) The charges for water and sewer service capacity fees and water service impact fees shall be based upon such fee schedules prescribed and adopted by the Town Board of Commissioners.

(Code 1977, § 5-1016; Ord. No. M-86-9, 6-2-1986; Ord. No. M-86-10, 7-7-1986; Ord. No. M-91-09, 8-5-1991; Ord. No. M-07-01, 1-2-2007)

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April 5, 2018

Mr. Jay Meyers
Public Utilities Director
Town of Fuquay-Varina
401 Old Honeycutt Road
Fuquay-Varina, NC 27526

Dear Mr. Meyers:

Raftelis Financial Consultants, Inc. ("RFC") has completed its assignment to develop cost-justified water and wastewater system development fees for consideration by the Town of Fuquay-Varina ("Town"). This letter documents the results of the analysis which is based on a cost-justified approach for establishing system development fees as set forth in North Carolina general statute 162A Article 8 "System Development Fees".

Raftelis is a financial professional firm that has provided rate and financial consulting to public water and wastewater utilities since 1993, has edited or contributed content for the Seventh Edition of the American Water Works Association "Principles of Water Rates, Fees and Charges M-1 Manual" (AWWA M-1 Manual), and has calculated system development fees for utilities in North Carolina and across the country since 1993 using generally accepted methodologies as provided in the AWWA M-1 Manual and other water/sewer industry publications. Raftelis is qualified to perform system development fee calculations for water and wastewater utilities in North Carolina.

Background

System development fees are defined as one-time charges assessed to new water and wastewater customers, or developers and builders, to recover a proportional share of capital costs incurred to provide service availability and capacity for new utility customers. Typically, the cost basis for setting system development fees is based on the major system components, or core system assets, that are necessary to serve, and that provide benefit to, all customers. These components typically include reservoirs, water treatment plants, storage tanks, major water transmission lines, wastewater treatment plants, pumping stations, and major wastewater interceptors.

RFC recommends that system development fees should be consistent with the common legal standard in setting system development fees in the water and wastewater industry – the Rational Nexus Test. The Rational Nexus test requires that: 1) the need for capacity is a result of new development; 2) the costs are identified to accommodate new development; and 3) the appropriate

apportionment of that cost to new development is in relation to the benefit the new development reasonably receives[1].

There are three approaches, as described below, for calculating water and wastewater system development fees that are recognized in the industry as cost justified[2] (that meet the requirement of the Rational Nexus standard), and as set forth in North Carolina general statute 162A Article 8 "System Development Fees".

Buy-In Approach

The Capacity Buy-In Approach calculates a system development fee based upon the proportional cost of each user's share of existing system capacity, and is most appropriate in cases where the existing system assets provide adequate capacity to provide service to new customers. The cost of the facilities is based on fixed assets records and can include escalation of the depreciated value of those assets to current dollars, or "replacement costs" as identified in the general statute. The general statute also identifies adjustments to be made to the replacement cost such as "debt credits, grants, and other generally accepted valuation adjustments."

Incremental Cost Approach

The Incremental Cost (or Marginal Cost) Approach calculates a system development fee based upon a new customer's proportional share of the incremental future cost of system capacity. This approach focuses on the cost of adding additional facilities to serve new customers. It is most appropriate when existing facilities do not have adequate capacity to provide service to new customers, and the cost for new capacity can be tied to an approved capital improvement plan (CIP) that covers at least a 10-year planning period. Per the general statute, a revenue credit must be applied "against the projected aggregate cost of water or sewer capital improvements."

Combined Approach

The Combined Approach is a combination of the Buy-In and Incremental Cost approaches, and is appropriate to be used when the existing assets provide some capacity to accommodate new customers, but where the capital improvement plan also identifies significant capital investment to add additional infrastructure to address future growth and capacity needs.

Calculation of System Development Fees

RFC requested and was provided with the following data from Town staff to complete the system development fee calculation:

---

[1] See the AWWA M-1 7th Edition Manual –System Development Charges, Chapter VII2; pp.324.
[2] See the AWWA M-1 Manual –System Development Charges, Chapter VII.2; pp.329-330.

- Water and wastewater fixed asset data;
- Outstanding utility debt and associated debt service;
- Construction work in progress ("CWIP")
- Contributed capital;
- Capacity in water and sewer systems;
- Daily water production data;
- Inflow and infiltration data; and
- History of system development fees collected.

When Raftelis was engaged to conduct this study, the Town had completed approximately 83% of the Terrible Creek Wastewater Treatment plant expansion. Since the majority of the expansion was complete, the Capacity Buy-In Approach was used to calculate the system development fees.

Using the Capacity Buy-In approach, Raftelis calculated the estimated cost, or investment in, the current capacity available to provide utility services to existing and new customers. This analysis was based on a review of fixed asset records and other information as of June 30, 2017. The depreciated value of the assets was first adjusted to reflect an estimated replacement cost to determine the "replacement cost new less depreciation" (RCNLD) value for the assets. The asset values were escalated using the Handy Whitman Index of Public Utility Construction Costs (for the South Atlantic Region). The RCNLD value of the water assets includes water supply, treatment, storage and distribution facilities but excludes small equipment, vehicles, and meters. The RCNLD value of the sewer assets includes wastewater collection facilities but excludes small equipment and vehicles.

Several adjustments were then made to the RCNLD value, which were as follows:

- *Subtraction of contributed assets* - Assets contributed by or paid for by developers were deducted from the calculation since these costs were not "paid" by the existing customers.

- *Debt Service Credit* - Utilities often borrow funds to construct assets, and revenues from retail rates and charges can be used to make the payments on these borrowed funds. To ensure that new customers are not being double charged for these assets, once through the system development fee and again through retail rates and charges, the proportion of the outstanding debt principal amount that is anticipated to be paid for through retail rates and charges was deducted from the system development fee calculation. This proportional amount was estimated by comparing the historical annual amount of revenues collected from system development fees with the respective annual amount of principal payments. Since the Town applies revenues from system development fees to offset outstanding debt service, and since the Town's bond ordinance allows the inclusion of system development fees to be used in meeting debt service coverage requirements, the amount of the debt credit was calculated as the principal amount of outstanding debt

less the proportion of the principal amount estimated to be paid for with system development fee revenues.

The adjusted RCNLD value was then converted to a unit cost of capacity by dividing the RCNLD value by a basic unit measure of cost per gallon per day (GPD) for water and wastewater capacity, as shown in Exhibit 1.

Exhibit 1 – Cost per GPD of Core Utility Assets

	Water	Wastewater
Adjusted RCNLD	**$29,814,453**	**$55,978,652**
Total Capacity (gallons per day)	**4,250,000**	**5,720,000**
Cost Per Gallon per Day	**$7.02**	**$9.79**

This measure becomes the basic building block or starting point for determining the *maximum cost-justified level* of the water and wastewater system development fees. Fees for different types of customers are based on this cost of capacity multiplied by the amount of capacity needed to serve each type or class of customer.

The next step is to define the level of demand associated with a typical, or average, residential customer, often referred to as an Equivalent Residential Unit, or ERU. The level of demand associated with a typical residential customer is often estimated using wastewater design flow rates as specified by the North Carolina Administrative Code Title 15A (Department of Environment and Natural Resources) Subchapter 2T, which states that the sewage from dwelling units is 120 gallons per day per bedroom. However, the Town has obtained a flow reduction letter for 75 gallons per person per day. Based on construction trends in the Town, the Town advised using a four-bedroom homes which results in a typical residential customer use of 300 gallons per day. The typical residential water use represents average water use. To estimate the peak day water use, daily water production data was obtained. The average max day peaking factor over the past five-year period was 1.65. To be conservative, a peaking factor of only 1.2 was used to adjust the ERU (as shown in Exhibit 2). For calculating the wastewater system development fee, the ERU was adjusted to account for inflow and infiltration (I&I). The Town provided an I&I factor of 1.13.

Exhibit 2: Water and Wastewater Demand per Residential ERU

	Water – gallons per day per ERU	Wastewater – gallons per day per ERU
ERU	**300**	**300**
Peaking Factor	**1.20**	
Inflow and Infiltration Factor		**1.13**
Adjusted ERU	**360**	**339**

Assessment Methodology

The analysis provides a maximum cost-justified level of system development fees that can be assessed by the Town. For residential customers, the calculation of the system development fee is based on the cost per gallon per day multiplied times the number of gallons per day required to serve each ERU, as shown below in Exhibit 3.

Exhibit 3 – Calculated Maximum Residential Capacity Fee

Residential	Water	Wastewater
Cost per GPD	**$7.02**	**$9.79**
GPD per ERU	**360**	**339**
Total Calculated Capacity Fee per ERU	**$2,525**	**$3,318**
Existing Capacity Fee per ERU	**$2,000**	**$3,250**

For non-residential customers, the fees for the smallest residential meter can be used and then scaled up by the flow ratios for each meter size, as specified in the AWWA M-1 Manual[3], the results of with are shown in Exhibit 4. This method provides a straightforward approach that is simple to administer and reasonably equitable for most new customers. It should be noted Exhibit 4 also shows the system development fees for fire protection service which have been estimated

[3] See the AWWA M-1 Manual – Appendix B- Equivalent Meter Ratios; pp.326

using the demand factors for fire flow by meter size (but relative to a ¾" meter). For all calculations, the system development fees have been rounded to the nearest dollar.

Exhibit 4– Calculated Maximum System Development Fees for Non-Residential Customers

	Existing		Maximum Cost Justified	
Meter Size	Water	Wastewater	Water	Wastewater
¾"	$2,000	$3,250	$ 2,525	$ 3,318
1"			$ 4,209	$ 5,529
1.5"			$ 8,418	$ 11,059
2"			$ 13,469	$ 17,694
4"			$ 26,938	$ 35,388
4" fire line			$ 3,226	
6"			$ 42,091	$ 55,294
6" fire line			$ 9,370	
8"			$ 84,182	$ 110,587
8" fire line			$ 19,969	
10"			$ 134,691	$ 176,940
10" fire line			$ 35,910	
12"			$ 202,037	$ 265,409
12" fire line			$ 58,005	

The Town may elect to charge a cost per gallon that is less than the maximum cost-justified cost documented in this report. If the Town elects to charge a fee that is less, all customers must be treated equally, meaning the same reduced cost per gallon per day must be used for all customers.

We appreciate the opportunity to assist the Town of Fuquay-Varina with this important engagement. Should you have questions, please do not hesitate to contact me at (704) 373-1199.

Very truly yours,
RAFTELIS FINANCIAL CONSULTANTS, INC.

Elaine Conti

Elaine Conti, Senior Manager

Appendix

Supporting Schedules
From the
System Development Fee Model

Town of Fuquay-Varina, NC
Supporting Schedule 1 – Fixed Assets and Adjustments

Fixed Asset Summary (1)	Water	Sewer
Category	Replacement Cost New Less Depreciation	Replacement Cost New Less Depreciation
Vehicles	126,472	126,472
BLDG	2,845	3,528
Equipment	196,026	291,633
Land	103,492	318,884
Opr. Plant	422,548	19,010,478
Lines	29,421,467	20,711,406
Other (tanks, pump stations, purchased capacity, etc.)	5,896,317	19,890,618
Total	**$ 36,169,167**	**$ 60,353,019**
Adjustments to Fixed Assets (2)		
Less: Meters	(128,336)	(45,297)
Less: Vehicles	(126,472)	(126,472)
Less: Non-Core Equipment	(152,483)	(210,910)
Less: Other Non-Core Assets	-	-
Less: Easements	(45,699)	(116,259)
Less: Contributed Capital	(5,901,724)	(6,337,112)
Total: Net Assets Eligible for Inclusion	**$ 29,814,453**	**$ 53,516,969**
Additions/Subtractions to Fixed Assets		
Plus: Construction in Progress (3)	-	32,238,367
Less: Outstanding Principal Debt That is Paid Through Rates (4)	-	(29,776,684)
Net Value	**$ 29,814,453**	**$ 55,978,652**
Divided by Capacity		
Total Capacity (Gallons per Day) (5)	4,250,000	5,720,000
Net Cost per Gallon per Day	**$ 7.02**	**$ 9.79**
Calculation of ERU		
Average Daily Consumption per ERU (6)	300	300
Peaking Factor (7)	1.20	
Inflow and Infiltration Factor (8)	-	1.13
Adjusted ERU	360	339
Calculation of Maximum System Development Fee	**$ 2,525**	**$ 3,318**
Current Capacity Fee per unit for Residential Customers	*$ 2,000*	*$ 3,250*

NOTES:

(1) Fixed asset information was provided by the Town and the net book value was escalated to 2017 to calculate the replacement cost new less depreciation value (RCNLD).

(2) The RCNLD is adjusted to exclude meters, vehicles, etc. However, distribution/collection lines (exclusive of contributed lines) are included.

(3) The Town provided the construction work in progress amount for the terrible creek wastewater plant, of which 83% of the constructions costs had been incurred as of the date of this report.

(4) The RCNLD is adjusted to exclude the amount of the debt service that will be paid through revenues from user rates and charges as opposed to system development fee revenues.

(5) The capacity for the wastewater system includes the additional 2 MGD of capacity provided by the terrible creek wastewater plant expansion.

(6) The Town has obtained a flow reduction letter for 75 gallons per person per day. Based on construction trends, the Town advised using a four-bedroom home which results in a typical residential customer (or equivalent residential unit) use of 300 gallons per day. These results are consistent with state guidelines which specify expected average wastewater usage of 240 GPD for a 2-bedroom single family home and 360 GPD for a 3-bedroom home, the average of which results in an ERU of 300 GPD.

(7) The average day and max day demand was obtained from a recent capacity study conducted by Freese Nichols. Over the past 5 years system peaking factors have averaged 1.65 but to be conservative, the peaking factor was reduced to only 1.20.

(8) The inflow and infiltration factor was provided by Town staff based on comparing wastewater flow sent for treatment with actual billable wastewater flow.

Supporting Schedule 2 – Debt Service Adjustment

	Water	Sewer
Total Outstanding Debt	$ 3,336,284	40,893,127
Less: % paid through System Development Fees	100%	27%
Net Outstanding Principal Debt Paid through Rates	$ -	$ 29,776,684
Average annual SDF revenue collected from 2008-2015	$ 404,423	$ 518,988
Average annual principal payment 2018-2028	$ 309,483	$ 1,909,158
% of annual debt coverage from SDF revenue	131%	27%

(Total outstanding debt includes debt issued to fund the wastewater treatment plant expansion.)

Fiscal Year	Revenues from Water SDFs	Revenues from Water SDFs
2008	$796,279	$739,055
2009	$232,558	$157,689
2010	$241,520	$386,437
2011	$111,989	$131,779
2012	$370,048	$559,667
2013	$338,980	$468,127
2014	$540,996	$848,130
2015	$603,015	$861,020
Average	***$404,423***	***$518,988***

(Includes revenues from SDFs *prior* to increase in SDF fees, which occurred after 2015.)

Supporting Schedule 3 – History of Peaking Factors

Year	Average Day Demand - MGD	Max Day Demand - MGD	Peaking Factor
2012	1.40	2.40	1.71
2013	1.70	2.80	1.65
2014	1.80	3.20	1.78
2015	2.00	3.30	1.65
2016	2.10	3.10	1.48
Average			1.65

Source: Freese Nichols Water Capacity Study page 3-1