

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-3879

TRUE HOMES, LLC, and D.R.
HORTON, INC., Individually and behalf
of all others similarly situated,

Plaintiffs,

vs.

CITY OF GREENSBORO,
Defendant.

**ORDER REGARDING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
ADMINISTRATION PROCEDURES,
STATUTORY ATTORNEYS' FEES AND
COSTS, AND NOTICE TO ISSUE TO
CLASS MEMBERS FOR A FINAL
APPROVAL HEARING**

Plaintiffs' Motion for Preliminary Approval of Class Administration Procedures, Statutory Attorneys' Fees and Costs, and for Notice to Issue to Class Members for a Final Approval Hearing (the "Motion") came on for hearing before the Honorable Richard L. Doughton, Superior Court Judge assigned to preside over this case pursuant to Rule 2.1 of the North Carolina Rules of General Practice, on October 22, 2024. After hearing from counsel for the parties, including the Consent Supplement to the Motion filed by the parties, the Affidavits in support thereof, and other exhibits submitted by Plaintiffs in support of the Motion, the Court believes the Motion should be **GRANTED** as provided for herein. The Court finds and concludes as follows with respect to the Motion:

A. NATURE OF THE CASE

1. This case is a challenge to the Water and Sewer Capacity Use Fees (the "Fees") charged by Defendant City of Greensboro ("Defendant") and has been assigned to the Hon. Richard L. Doughton as the Rule 2.1 Judge by Order of the Chief Justice of the North Carolina Supreme Court.

2. Plaintiffs on behalf of themselves and others similarly situated ("Class Members"), sought to recover what they contend are *ultra vires* and illegal water and sewer "capacity use fees"

(the “Impact Fees”) charged and collected by Defendant.

3. The Court entered an Order on August 13, 2020 certifying the case as a class action pursuant to Rule 23 of the N.C. Rules of Civil Procedure, with the class defined as follows (the “Class”):

All natural persons, corporations, or other entities who at any point between March 4, 2016 and the present paid Water and Sewer Capacity Use Fees to the City of Greensboro pursuant to the schedule of fees and/or Code of Ordinances adopted by City of Greensboro.

4. The Notice Administrator for the Order Granting Class Certification, Lemonstripe, LLC, thereafter, sent the Court-approved notice of the certified class to all Class Members, advising them of their right to opt-out of the Class. As set forth in the affidavit of Tom Peterson of Lemonstripe, LLC filed on August 9, 2022, no Class Member opted out of the Class.

5. On August 24, 2022, the Court entered an Order and Judgment granting Plaintiffs’ Motion for Summary Judgment and denying Defendant’s Motion for Summary Judgment, and entered judgment in favor of Plaintiffs and Class Members in the principal amount of \$5,252,309.06, plus pre-judgment interest in the amount of \$1,612,700.22 through July 15, 2022, and with further pre-judgment interest in the amount of \$863.39 per diem from July 16, 2022 through the date of judgment, and with post-judgment interest thereafter at the rate of \$863.39 per diem (the “Judgment”). The Judgment further provides that the Court reserves ruling on Plaintiffs’ request for statutory costs and attorneys’ fees until after any appellate review of the Judgment. The Judgment also provides that the Court will entertain a motion regarding class administration, including regarding the mechanics of paying the Judgment to the Class, and related Class administration issues after any appellate review of the Judgment.

6. Defendant gave notice of appeal from the Judgment to the North Carolina Court of Appeals on August 30, 2022. The Court of Appeals issued a published decision on February 6,

2024 affirming the Judgment. Defendant filed a petition for discretionary review from the Court of Appeals decision to the North Carolina Supreme Court on March 12, 2024. The Supreme Court entered an Order on June 28, 2024 denying Defendant’s petition for discretionary review.

7. On August 8, 2024, Judge Doughton entered an Order appointing Settlement Services, Inc. (“SSI”) as Interim Class Administrator to Receive Payment of Judgment. SSI has established a qualified settlement fund (“QSF”) to receive payment of the Judgment, and Defendant paid \$7,520,322.29 into the Greensboro Qualified Settlement Fund, representing payment in full of the principal and interest due under the Judgment, on August 12, 2024.

8. The underlying Motion filed on August 13, 2024 seeks to establish class administration procedures, for an award of statutory attorneys’ fees and costs pursuant to N.C. Gen. Stat. § 6-21.7, for notice to issue to Class Members, and for the Court to set a Final Approval Hearing is now properly before the Court.

9. The parties filed a Consent Supplement to the Motion on October 4, 2024 (the “Consent Supplement”), which resolves by agreement all issues addressed by the Motion, subject to approval by the Court.

B. PRELIMINARY APPROVAL OF CLASS ADMINISTRATION PROCEDURES

10. As previously set forth in Plaintiffs’ materials in support of its motion for class certification, this case is one of a number of North Carolina water and sewer impact fee class actions that have resolved by settlement or by judgment.¹ The class administration procedures as

¹ See, e.g., *Eastwood Construction, LLC v. City of Monroe*, Union County File No. 18-CVS-2692; *Lennar Carolinas, LLC, et al. v. Town of Mooresville* and *M/I Homes of Charlotte, LLC, et al. v. Town of Mooresville*, Iredell County File Nos. 18-CVS-2792 and 18-CVS-3105; *Gregory, Inc. v. Town of Angier*, Harnett County File No. 19-CVS-1598; *Gregory, Inc. v. Town of Fuquay-Varina*, Wake County File No. 19-CVS-8602; *CFL Homes, Inc. v. Town of Oak Island*, Brunswick County File No. 19-CVS-1415; *Plantation Building of Wilmington, Inc. v. Brunswick County*, Brunswick County File No. 19-CVS-647; *D.R. Horton, Inc., et al. v. City of Statesville*, Iredell County File

approved by courts in those cases have worked efficiently and fairly for class members. The Court, therefore, approves substantially the same procedures in this case.

11. Plaintiffs seek the appointment of SSI to serve as the Administrator for the purpose of, among other things, determining each Class Member's percentage share of the common fund of monies recovered on behalf of Class Members in this action (the "Common Fund"); managing the payment of Class Member benefit checks, Class Counsel's attorneys' fees and expense awards, and service awards for the named Plaintiffs; addressing Class Members' questions regarding the Judgment; and any other matters ancillary to the fair and efficient administration of the distribution of the Judgment to Class Members. SSI has previously served as Administrator in at least seven similar North Carolina impact fee class action cases. Plaintiffs' counsel has considerable experience working with SSI and are highly confident in SSI's ability to serve as Administrator in this case.

12. Accordingly, the Court approves SSI to serve as the Administrator for the purpose of determining each Class Member's percentage share of the common fund of monies recovered on behalf of Class Members in this action; managing the payment of Class Member benefit checks, Class Counsel's attorneys' fees and expense awards, and service awards for the named Plaintiffs; and addressing Class Members' questions regarding the Judgment.

13. The Court also approves the following administration procedures, which are the same or substantially similar procedures that have been used in other similar North Carolina impact fee cases:

No. 20-CVS-177; *Granite Land and Timber, LLC v. Town of Clayton*, Johnston County File No. 20-CVS-2903; *Daedalus, LLC v. City of Charlotte*, Mecklenburg County File Nos. 18-CVS-21073 and 21-CVS-6852.

- a. After the Court finally approves the Class Representative Service Awards and Class Counsel's Attorneys' Fee and Expense Award, the Administrator will determine each Class Member's percentage share of the Common Fund, which shall be based on each class member's total Claim Amount (being the Class Member's total Capacity Use Fees paid to the City during the period from March 4, 2016 through August 24, 2022, plus interest at the rate of 6% per annum from the date of each payment), after deducting *pro rata* expenses for Administration, the Class Representative Service Awards, Class Counsel's Attorney Fee and Expense Award, and any other payments as ordered by the Court;
- b. Class Members shall be entitled to the following award: an amount up to 100% of the Class Member's Claim Amount, less the Class Member's *pro-rata* share of Settlement Administration costs, Class Representative Service Awards, Attorneys' Fees and Expenses, and other costs of this Settlement Agreement;
- c. The Administrator shall mail the checks to Class Members by first-class mail to the Class Member's last known address maintained in Defendant's records (unless the Class Member has provided the Administrator with an updated address). The Administrator shall use skip-tracing and other locating efforts to remail any checks that are returned as undeliverable;
- d. The Class Member benefit checks shall be valid for a period of one-hundred and eighty (180) days from the date of mailing. For any Class Member benefit checks that have not been cashed or deposited within one-hundred

and eighty (180) days of mailing, those funds shall revert back to the Common Fund to be distributed through a second round of checks in the following manner: the total amount of unclaimed funds shall be paid *pro rata* to the Class Members who cashed or deposited checks in the first distribution, up to the amount of making these Class Members whole on their total Claim Amount. The second round of checks shall be valid for a period of one-hundred and eighty (180) days from the date of mailing;

- e. If any funds still remain in the Common Fund after making all Class Members who cashed or deposited checks in the first distribution whole on their total Claim Amount or otherwise following the check expiration date for the second round of checks, these unclaimed funds shall be distributed *cy pres* to a local Greensboro charitable fund approved by the Court upon motion of either party following the check expiration date for the second round of checks.

C. ATTORNEYS' FEES AND COSTS

14. Attorneys' fees in class actions are typically awarded to class counsel from the common fund under the "percentage of recovery" method. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,'... a reasonable fee is based on a percentage of the fund bestowed on the class..."); *Archbold v. Wells Fargo Bank, N.A.*, 2015 WL 4276295, at *5 (S.D.W.Va. Jul. 14, 2015) ("[T]here is a clear consensus among the federal and state courts, consistent with Supreme Court precedent, that the award of attorneys' fees in common fund cases should be based on a percentage of the recovery"); *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2019 WL 7066834, at *4 (M.D.N.C. Dec. 23, 2019) ("[D]istrict courts in the

Fourth Circuit overwhelmingly prefer the percentage method in common-fund cases.”); *Bailey v. State*, 348 N.C. 130, 500 S.E.2d 54 (1998) (approving percentage of a common fund as attorneys’ fees).

15. One-third (1/3) of the common fund is a generally accepted percentage for attorneys’ fee awards in class actions. *See, e.g., 5 Newberg and Rubenstein on Class Actions*, § 15:73 (6th ed.) (“fee awards in class actions average around one-third of the recovery”); *In re Rite Aid Corp. Sec. Litig.*, 146 F.Supp.2d 706, 735 (E.D. Pa. 2001) (citing affidavit of Professor John C. Coffee, Jr. of Columbia University Law School, in which 289 class action settlements are compiled; the median attorneys’ fees is one-third); *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. of Empirical Legal Studies 27, 31, 33 (2004) (a comprehensive study of attorneys’ fees in class action cases notes “a remarkable uniformity in awards between roughly 30% to 33% of the settlement amount”); *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811, at 833-34, 383 (2010) (finding that between 30%-35% is the most common five-point range for class action fee awards in the Fourth Circuit). That is particularly true when, as here, Class Counsel has litigated the case through a final judgment, which was affirmed on appeal, and that maximized the total successful recovery for class members.

16. The award of one-third (1/3) of the common fund serves to recognize successful class counsel for the commitment made, risks taken, legal theories pioneered, skill and resources expended, and results obtained for the class. *See e.g., In re Combustion, Inc.*, 968 F. Supp. 1116, 1132 (W.D. La. 1997) (“When the class action successfully recovers a fund for the benefit of a class, it is long settled that the attorneys who created that class recovery are entitled to be reimbursed from the common fund for their reasonable litigation expenses, including reasonable attorneys’ fees.”). It also serves to simulate fee awards that would otherwise prevail in the market.

See, e.g., In re Vitamins Antitrust Litigation, 2001 WL 34312839, at *12 (D.D.C. July 16, 2001) (“[s]ince the percentage of recovery method is meant to simulate awards that would otherwise prevail in the market, the Court finds a one-third attorneys’ fees recovery in this case to be reasonable.”); *Byers v. Carpenter*, 1998 WL 34031740, *9 (Wake Co. Super. Ct. Jan. 30, 1998) (recognizing in North Carolina that “[t]ypical fee arrangements provide that the attorney is paid 25% if the case is settled prior to filing the civil action, 33-1/3% after the filing of a civil action and 40% after the case is appealed to the appellate court.”).

17. An attorney fee of one-third (1/3) of the common fund is typically awarded to class counsel in North Carolina class actions, including other water and sewer impact fee cases. *See, e.g., Plantation Building of Wilmington, Inc. v. Brunswick County*, Brunswick County File No. 19-CVS-647 (Hon. Richard K. Harrell) (33.33% from \$15 million common fund); *Stewart v. Southwood Realty Co.* (Wake County File No. 18-CVS-6090) (Hon. Alan Baddour) (33.33% from \$1,737,000 common fund); *Upright Builders, Inc. v. Town of Apex* (Wake County File No. 18-CVS-4384) (Hon. Graham Shirley) (33.33% from \$15,356,673 common fund); *Currin Builders Inc. v. Town of Holly Springs* (Wake County File Nos. 17-CVS-6244, 17-CVS-6245, and 18-CVS-1373) (Hon. Stanley Carmichael) (33.33% from \$7,950,000 common fund); *Gregory, Inc. v. Town of Fuquay-Varina* (Wake County File No. 19-CVS-8602) (Hon. Jeffrey Foster) (33.33% from \$4,750,000 common fund); *Smith v. Excel Property Management* (Wake County File No. 20-CVS-872) (33.33% from common fund).

18. As such, Plaintiffs have requested to include as part of the Notice to the Class their intent to seek an attorney fee and expense award not to exceed one-third (1/3) of the Common Fund.

19. The Court approves the form of the Notice attached hereto as Exhibit A. In that

Notice, the Class will be apprised of Class Counsel’s intention to request an award of Attorney’s Fees and Expenses not to exceed one-third (1/3) of the Common Fund. This notice will provide the “procedural safeguard” of giving Class Members forty-five days to comment on, or object to, Class Counsel’s fee request.

20. Plaintiffs’ Motion indicates that will provide further support for the request for an attorneys’ fee and expense award in the amount of one-third (1/3) of the Common Fund at the Final Approval Hearing.

21. This case also presents a class action that was litigated to final judgment and, as such, implicates a statute which provides for the separate payment of attorneys’ fees from the defendant into the Common Fund. In such instances, separate from “percentage of recovery” award of attorneys’ fees and expenses for class counsel from the common fund, successful class action plaintiffs should also pursue recovery of attorneys’ fees under the applicable fee-shifting statute from the defendant to boost the overall recovery for class members. *See Brundle on behalf of Constellis Emp. Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 787 (4th Cir. 2019), *as amended* (Mar. 22, 2019); *see id.* at 786 (“[A]lthough both the common fund doctrine and fee-shifting statutes facilitate suit by plaintiffs who may otherwise lack the means to hire counsel, they operate in distinct ways and serve distinct purposes.”).

22. In this case, N.C.G.S. § 6-21.7 provides:

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... In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant. For purposes of this section, ‘unambiguous’ means that the limits of authority are not reasonably susceptible to multiple constructions.

N.C.G.S. § 6-21.7.

23. Plaintiffs' Motion requested an additional \$858,390.92, consisting of \$850,660.00 in fees and \$7,730.92 in costs, to be paid into the Common Fund by the City pursuant to N.C. Gen. Stat. § 6-21.7.

24. As set forth in the Consent Supplement, the Parties have negotiated a compromise for a payment of the amount of \$500,000.00 to be paid into the Common Fund by the City in satisfaction of Plaintiffs' Motion. The Court finds the amount of \$500,000.00 to be a fair, adequate and reasonable compromise of the Plaintiffs' Motion for Attorneys' Fees pursuant to N.C. Gen. Stat. § 6-21.7 and grants Plaintiffs' Motion to that extent.

25. The \$500,000.00 should be paid by the City into the QSF established by SSI within fifteen (15) days of the date of this Order, and those proceeds should be added to the Common Fund therein pursuant to the Plaintiffs' Motion and request.

D. NOTICE TO CLASS MEMBERS AND FINAL APPROVAL HEARING

26. Plaintiffs' Motion also prays the Court to approve the form of the Notice to Class Members. The proposed Notice attached to the Consent Supplement explains in simple terms: i) the relief that has resulted from this litigation; ii) Class Counsel's intent at the Final Approval Hearing to seek an award of Attorneys' Fees and Expenses not to exceed one-third (1/3) of the Common Fund, and for Plaintiffs to each receive a Class Representative Service Award in the amount of \$15,000.00; iii) the date, time, and location of the Final Approval Hearing; and iv) the deadlines and procedures for filing objections to the Class Administration procedures, Class Counsel's Attorneys' Fee and Expense Award, or the Class Representative Service Awards.

27. Plaintiffs' Motion also prays for the approval of the following notice procedures, which are the same or substantially similar procedures that have been used in other similar North Carolina impact fee cases:

- a. Any member of the Class who intends to object to the Class Administration procedures, Class Counsel's Attorneys' Fee and Expense Award, or the Class Representative Service Awards must file objections in writing and postmarked no later than forty-five (45) days after the mailing of the notice, and serve the same upon the Administrator, Class Counsel, and Counsel for Defendant;
- b. Objections to the Class Administration procedures, Class Counsel's Attorneys' Fee and Expense Award, or the Class Representative Service Awards must contain: (a) a caption or title that identifies it as "Objection to Class Administration in *True Homes, LLC, et al. v. City of Greensboro*, Guilford County Case Number 19-CVS-3879;" (b) set forth the specific reason(s), if any, for each objection, including all legal support the Class Member wishes to bring to the Court's attention and all factual evidence the Class Member wishes to offer in support of the objection; (c) include the name and address of the Class Member; (d) be personally signed by the Class Member; (e) include an identification, by case style and number, of any other class settlements in which the objector or the objector's attorney(s) have asserted an objection; (f) include an identification of all attorneys having a financial interest or stake in the objection.
- c. Class Members submitting objections to the Class Administration procedures, Class Counsel's Attorneys' Fee and Expense Award, or the Class Representative Service Awards who wish to be heard at the Final Approval Hearing must state in their objection an intent to appear at the

Final Approval Hearing, either personally or through their counsel; and

- d. Any Class Member who does not raise a proper objection prior to the deadline (45 days after the mailing of the notice) shall be foreclosed from seeking review of the Class Administration procedures, Class Counsel's Attorneys' Fee and Expense Award, or the Class Representative Service Awards, or from opposing the same at the Final Approval Hearing;
- e. The Administrator will provide a summary chart and file all original objections with the Court, along with copies to Class Counsel and Counsel for Defendant.

28. The Court approves the proposed Notice Plan and the Class Notice attached hereto as Exhibit A.

29. The Notice to be provided as set forth in the Plaintiffs' Motion and this Order is hereby found to be the best means practicable of providing notice under the circumstances and when completed, shall constitute due and sufficient notice of the proposed settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with Rule 23 of the North Carolina Rules of Civil Procedure, due process, the Constitution of the United States, the laws of North Carolina and any other applicable laws.

30. SSI is also appointed the Class Administrator to supervise and administer, in conjunction with the Parties, the Notice Process described herein and to aid in the effectuation of the Class Administration pursuant to the terms described in the Plaintiffs' Motion and this Order.

31. The Parties are instructed to specify an objection deadline date in the Notice which shall be forty-five (45) days after the date of mailing of the Class Notice.

32. Within fourteen (14) days of the date of this Order: (a) Class Counsel shall cause a copy of the Notice (in a form substantially similar to that approved herein), to be mailed by first class mail, postage prepaid, to the last known address of all Settlement Class members who can be identified by reasonable effort; and (b) the parties shall agree upon the form and content of, and the Notice and Settlement Administrator shall publish, an internet website containing a copy of the Notice and other relevant information.

33. The 45-day notice period provides Class Members with sufficient opportunity to object to the Class Administration procedures, Class Counsel's Attorneys' Fee and Expense Award, or the Class Representative Service Awards. *See, e.g., Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 828, 831 (E.D.N.C. 1994) (finding notice adequate where class members had less than 45 days to object); see generally, 3 Newberg § 8.37 (observing that the bulk of notices directed thirty- to sixty-day intervals between mailing or publishing class notice and the deadline for the recipient to object).

34. Notice shall be sent by first-class mail to the Class Member's last known address maintained in Defendant's records (unless the Class Member has provided the Administrator with an updated address). The Administrator shall use skip-tracing and other locating efforts to re-mail any checks that are returned as undeliverable. The Administrator shall file an affidavit with the Court at least fourteen (14) days prior to the Final Approval Hearing as to the results of notice campaign.

35. Class Counsel shall file with the Court, no later than ten (10) days prior to the Final Approval Hearing, (a) a sworn statement attesting to compliance with the provisions of this paragraph, attesting to the mailing of the Class Notice to each member of the Class; (b) a list identifying all members of the Class (name and last known address); (c) a print-out of the

information available on the internet website; and (d) the Administrator's itemization of the costs incurred in printing, mailing, publishing and otherwise administering the class notice process, and such other information as may be appropriate to document and summarize the class notice process.

36. The Court hereby finds the form and method of notice herein to be the best practicable under the circumstances, consistent with due process of law and N.C. R. Civ. P. 23 and constituting due and sufficient notice of the pendency of this action.

37. A Final Approval Hearing is hereby scheduled to be held before the undersigned on February 21, 2025 at 2:00 p.m. to consider Plaintiffs' Counsel's application for an award of attorney fees and costs from the Common Fund, incentive payments to Plaintiffs in the amount of \$15,000.00 each, and to rule upon such other matters as the Court may deem appropriate. The date and time of the Final Approval Hearing shall be set in the Notice, but the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court.

38. Any Class Member may, but need not, submit comments or objections to the proposed Class Administration Procedures, Attorneys' Fee and Expense Award and/or Class Representatives Service Awards by filing and serving a written objection. The Class Member making the objection ("objector") must sign the objection either personally or through his or her attorney. If the Class Member is a trust, corporation, or other entity, the objection must be signed by an authorized representative of the trust, corporation, or other entity or the trusts, corporation, or entities' attorney. An objection must provide: (1) the objector's name, current address, telephone number, and fax number (if applicable); (2) the name of the lawsuit, *True Homes, LLC, et al. v. City of Greensboro*, Guilford Co. File No. 19-CVS-3879; (3) a statement of the reason(s) why the objector objects to the proposed the proposed Class Administration Procedures,

Attorneys' Fee and Expense Award and/or Class Representatives Service Awards and the basis to support such position, including any legal support the objector wishes to bring to the Court's attention; (4) copies of any documents that the objector believes supports his or her contention; (5) the identity of any witnesses the objector intends to present, and copies of any exhibits the objector intends to introduce at the Final Approval hearing; and (6) the objector's signature (or objector's lawyer's signature). If an objector intends to appear personally at the Final Approval Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing. Objections, along with any notices of intent to appear, must be filed no later than forty-five (45) days after the initial mailing of the Notice by the Class Administrator. If counsel is appearing on behalf of more than one Class Member, Counsel must identify each such Class Member and each Class Member must have complied with the requirements of this paragraph. These documents must be filed with the Clerk of Superior Court at the following address: Office of the Clerk of the Superior Court, General Court of Justice, located at the Guilford County Courthouse at 201 South Eugene Street, Greensboro, NC 27401.

39. Objections, along with any notices of intent to appear, must be postmarked by no later than forty-five (45) days after the initial mailing of the Notice by the Class Notice and Settlement Administrator, and addressed to City of Greensboro Impact Fee Class Action – Objections, P.O. Box 2715, Portland, OR 97208-2715 with copies of the Request sent to:

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40. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Class Member who does not timely file and serve an objection in writing to the proposed Class Administration Procedures, Attorneys' Fee and Expense Award and/or Class Representatives Service Awards, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

41. Persons wishing to be heard at the Final Approval Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Final Approval Hearing. Class members need not appear at the hearing or take any other action to indicate their approval.

42. Any of the Parties' papers with respect to whether the proposed Class Administration Procedures, Attorneys' Fee and Expense Award and/or Class Representatives Service Awards should be approved, and any application by Class Counsel for an award of attorneys' fees and costs, and service payments, together with papers in support thereof, shall be

filed with the Court and served on other Parties no later than February 11, 2025. Copies of such materials shall be available for inspection at the Office of the Clerk of Court.

43. The Court reserves the right to approve the proposed Class Administration Procedures, Attorneys' Fee and Expense Award and/or Class Representatives Service Awards with such modifications as may be agreed to by counsel for the Parties and without further notice to members of the Settlement Class.

44. The Court hereby retains jurisdiction for purposes of implementing the Class Administration Procedures, and the payment of Class Member benefits, Class Counsel's Attorneys' Fee and Expense Award and Class Representatives Service Awards and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the same as may from time to time be appropriate and resolve any and all disputes thereunder.

45. All funds in the QSF are and shall remain subject to the jurisdiction of the Court.

46. All reasonable costs incurred in notifying members of the Class, as well as administering the Class Administration Procedures, shall be paid as set forth in the Class Administration Procedures from the Common Fund.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Plaintiffs Motion for Preliminary Approval of the Class Administration Procedures as set forth herein is **GRANTED**, as modified by the terms of the Consent Supplement;

2. That Plaintiffs' Motion for statutory attorneys' fees and costs pursuant to N.C.G.S. § 6-21.7 is **GRANTED**, and the Court awards the combined amount of \$500,000.00 in fees and costs, and that those funds shall be paid into the Common Fund by the Defendant within fifteen (15) days of the entry of this Order;

3. That a Final Approval Hearing is hereby scheduled to be held before the undersigned on February 21, 2025 at 2:00 p.m. at the Guilford County Courthouse at 201 South Eugene Street, Greensboro, NC 27401 to consider: (a) the fairness, reasonableness, and adequacy of the Class Administration Procedures; (b) Plaintiffs' Counsel's application for an award of attorney fees and costs; (c) the incentive payments to Plaintiffs in the amount of \$15,000.00 each; and (d) to rule upon such other matters as the Court may deem appropriate. The date and time of the Final Approval Hearing shall be set in the Notice, but the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court.

4. That the Court approves the form and procedure of notice as set forth herein and attached as Exhibit A advising Class Members of the i) the relief that has resulted from this litigation; ii) Class Counsel's intent at the Final Approval Hearing to seek an award of Attorneys' Fees and Expenses not to exceed one-third (1/3) of the Common Fund, and for Plaintiffs to each receive a Class Representative Service Award in the amount of \$15,000.00; iii) the date, time, and location of the Final Approval Hearing; and iv) the deadlines and procedures for filing objections to the Class Administration procedures, Class Counsel's Attorneys' Fee and Expense Award, or the Class Representative Service Award.

11/22/2024 2:21:24 PM

SO ORDERED this ____ day of November, 2024.



THE HONORABLE RICHARD L. DOUGHTON
SUPERIOR COURT JUDGE PRESIDING

EXHIBIT A

GENERAL COURT OF JUSTICE, SUPERIOR COURT DIVISION OF GUILFORD COUNTY, NORTH CAROLINA

If you paid Water or Sewer Capacity Use Fees to the City of Greensboro from March 4, 2016 through August 24, 2022, you qualify for benefits from a class action judgment.

This Notice may affect your rights, so please read it carefully.

- A judgment against the City of Greensboro has been entered in a class action lawsuit alleging that the water and sewer capacity use fees (“Capacity Use Fees”) charged and collected by the Defendant City of Greensboro (“Defendant” or the “City”) from March 4, 2016 through August 24, 2022 are unlawful. All persons or organizations who paid Capacity Use Fees to the City of Greensboro from March 4, 2016 through August 24, 2022 are included in the judgment and are entitled to receive payment.
- The Court in charge of this case still has to decide certain issues relating to the administration of the judgment, class counsels’ attorneys’ fee expense award, and class representative service awards.
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.
- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS:	
HOW TO GET JUDGMENT BENEFITS	To get a payment, you do not have to do anything if you are a member of the class. Checks will be mailed to you automatically.
OBJECT	Write to the Court about why you do not like the terms of the administration of the judgment, class counsels’ attorneys’ fee and expense award, or class representative service awards.
GO TO A HEARING	Ask to speak in Court about the fairness of the administration of the judgment, class counsels’ attorneys’ fee and expense award, or class representative service awards.

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BASIC INFORMATION

1. Why is this Notice being provided?

A Court authorized this Notice because you have a right to know about a class action judgment and about all of your options before the Court decides whether to grant final approval of the terms of the administration of the judgment, class counsels' attorneys' fee expense award, and class representative service awards. This Notice explains the lawsuit, the judgment, your legal rights, what benefits are available, who may be eligible for those benefits, and how to get them.

The Hon. Richard L. Doughton, Superior Court Judge, is overseeing this lawsuit. The judgment resolves the civil action known as *True Homes, LLC, et al. v. City of Greensboro* (Guilford County Case No. 19-CVS-3879).

The persons who sued are called the "Plaintiffs," and the City of Greensboro who was sued is called the "Defendant."

2. What is this lawsuit about?

The City charged Capacity Use Fees to new development as a condition of the City connecting a property to the City's water and sewer systems.

Plaintiffs filed a lawsuit on March 5, 2019 alleging that the Capacity Use Fees charged by the City from March 4, 2016 through August 24, 2022 were unlawful. The City denied these allegations.

On August 17, 2021, Judge Doughton certified the case as a class action, with the class consisting of "all natural persons, corporations, or other entities who at any point between March 4, 2016 and the present paid Water and Sewer Capacity Use Fees to the City of Greensboro pursuant to the schedule of fees and/or Code of Ordinances adopted by City of Greensboro." Notice of the certified class was provided to all class members, and no class members opted out of the class.

On August 24, 2022, Judge Doughton ruled that the Capacity Use Fees charged by the City from March 4, 2016 through August 24, 2022 were not authorized by North Carolina law and must be refunded to Plaintiffs and the class. The City appealed, and the North Carolina Court of Appeals affirmed Judge Doughton's ruling.

3. Why is there a judgment?

The Court ruled in favor of Plaintiffs and the class after the parties engaged in discovery in the lawsuit.

WHO IS IN THE JUDGMENT

To see if you will be affected by the judgment you first have to determine if you are a member of the class.

4. How do I know if I am part of the judgment?

The Court has approved the following class:

All natural persons, corporations, or other entities who (a) at any point between March 4, 2016 through the present paid Water and Sewer Capacity Use Fees to the City of Greensboro pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Greensboro.

The City has furnished a list of all natural persons, corporations, or other entities who have paid Capacity Use Fees to the City from March 4, 2016 through August 24, 2022. You have received this notice because you have been identified from those records as having paid Capacity Fees to the City during this period, and therefore have the right to a refund pursuant to N.C.G.S. § 160D-106.

5. What if I am not sure whether I am included in the judgment?

If you are not sure whether you are a member of the Class, or have any other questions about the judgment, visit the website at www.greensborocapacityfeejudgment.com or call the toll-free number, (833) 772-5909. You may also write with questions to *True Homes, LLC v. City of Greensboro* Administrator, P.O. Box 2715, Portland, OR 97208-2715, or send an e-mail to claims@ssiclaims.com.

THE JUDGMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

6. How much money is available under the judgment?

A common fund in the amount of \$8,020,322.29 has been established to pay the claims of class members for Capacity Use Fees paid from March 4, 2016 to August 24, 2022. This amount is 100% of all Capacity Use Fee payments collected by the City from March 4, 2016 to August 24, 2022, plus interest at the rate of 6% per annum from the date of each Capacity Use Fee payment through August 13, 2024, plus \$500,000.00 for court-awarded statutory attorneys' fees and costs. Administration costs, class counsel attorneys' fees and expenses, and class representative service awards will be paid from the common fund.

Each member of the class will receive a refund of up to 100% of their Capacity Fee payments made to the City from March 4, 2016 to August 24, 2022, plus interest at the rate of 6% per annum from the date of each Capacity Fee payment through August 13, 2024, less a pro-rata share of administration costs, class counsel attorneys' fees and expenses, and class representative service awards as awarded by the Court.

HOW TO GET BENEFITS FROM THE JUDGMENT

7. How and when can I get a payment?

To get a payment, you do not have to do anything if you are a member of the class. A check will be mailed to you automatically. The City has furnished records of the addresses of all class members, and your payment will be mailed to the same address as this Notice. **If your address has changed, please submit a change of address form available at www.greensborocapacityfeejudgment.com, or contact Class Counsel.**

Payments will be made to class members in approximately April 2025.

THE LAWYERS REPRESENTING YOU

8. Do I have a lawyer in the case?

The Court has designated James R. DeMay and J. Hunter Bryson of Milberg Coleman Bryson Phillips Grossman, PLLC; John F. Scarbrough of Scarbrough & Scarbrough, PLLC; and William G. Wright of Shipman & Wright, LLP as Class Counsel for members of the class.

9. How will the Lawyers be paid?

At the final approval hearing, Class Counsel will ask the Court for an award of class counsel attorneys' fees and expenses in the amount of one-third (1/3) of the common fund. The award of attorneys' fees and expenses ordered by the Court will be paid from the common fund. Class Counsel is also requesting a class representative service award of \$15,000 for each Plaintiff, also to be paid from the common fund.

OBJECTING

10. How do I tell the Court if I do not like the terms?

You may, if you wish, object to the terms of administration, class counsels' attorneys' fee expense award, or class representative service awards. All objections must contain the following:

- (1) Contain a caption or title that identifies it as "Objection to Class Administration in *True Homes, LLC, et al. v. City of Greensboro*, Guilford County No. 19-CVS-3879;"
- (2) If you wish to appear and be heard, either personally or through counsel, at the Final Approval Hearing, a statement as to this intent;
- (3) Set forth the specific reason(s), if any, for each objection, including all legal support the class member wishes to bring to the Court's attention and all factual evidence the class member wishes to offer in support of the objection;
- (4) Include the name and address of the class member;
- (5) Be personally signed by the class member or an officer or director thereof with actual authority to bind the entity;
- (6) Include an identification, by case style and number, of any other class settlements in which the objector or the objector's attorney(s) have asserted an objection; and
- (7) Include an identification of all attorneys having a financial interest or stake in the objection.

Your Objection must be filed with the Clerk of Superior Court for Guilford County, North Carolina and delivered to Class Counsel and to Defense Counsel, no later than **[45 days from mailing of notice]** at the following addresses:

City of Greensboro Impact Fee Class Action – Objections
P.O. Box 2715

Portland, OR 97208-2715

Court	Class Counsel	Defense Counsel
Clerk of Superior Court Guilford County Superior Court P.O. Box 3008 Greensboro, NC 27402	James R. DeMay J. Hunter Bryson Milberg Coleman Bryson Phillips Grossman PLLC 900 W. Morgan Street Raleigh, NC 27603 John Scarbrough Scarbrough & Scarbrough, PLLC 141 Union Street South Concord, NC 28025 William G. Wright Shipman & Wright, LLP 575 Military Cutoff Road, Suite 106 Wilmington, NC 28405	Steve Russell Alan Duncan Tyler Nullmeyer Mullins Duncan Harrell & Russell PLLC 300 N. Greene St., Suite 2000 Greensboro, NC 27401

If you do not comply with these procedures and the deadline for objections, you will lose any opportunity to have your objection considered at the final approval hearing or otherwise to contest the approval of the terms of administration, class counsels' attorneys' fee expense award, or class representative service awards or to appeal from any order or judgment entered by the Court in connection herewith.

THE COURT'S FINAL APPROVAL HEARING

11. When and where will the Court decide whether to approve the terms?

On February 21, 2025 at 2:00 p.m., the Court will hold a public hearing in the Superior Court Division of Guilford County, North Carolina, located at 201 South Eugene Street, Greensboro, North Carolina 27401, to determine whether the terms of administration, class counsels' attorneys' fee and expense award, and class representative service awards are fair, adequate, and reasonable and should be finally approved. This hearing may be continued or rescheduled by the Court without further notice to the class so you should check the website for updates. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the terms of administration, class counsels' attorneys' fee and expense award, or class representative service awards.

12. Do I have to come to the hearing?

No, Class Counsel will answer any questions the Court has. However, you are welcome to attend the hearing.

IF YOU DO NOTHING

13. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will receive a check in the mail for your payment at the same address as this Notice.

GETTING MORE INFORMATION

14. How do I get more information?

You can view a copy of the judgment and read a list of Frequently Asked Questions and Answers at the website. You may also write with questions to True Homes, LLC, et al. v. City of Greensboro Administrator, P.O. Box 2715, Portland, OR 97208-2715 or send an e-mail to claims@ssiclaims.com. If you wish to communicate directly with Class Counsel, you may contact them at the addresses listed above, or by e-mail at jdemay@milberg.com, hbryson@milberg.com, jfs@sandslegal.net, and wwright@shipmanlaw.com. You may also seek advice and guidance from your own private attorney at your own expense.