IN THE SUPERIOR COURT OF BRYAN COUNTY
STATE OF GEORGIA

| | | |
|---|---|---|
| HOME BUILDERS ASSOCIATION OF SAVANNAH, INC. d/b/a HOME BUILDERS ASSOCIATION OF GREATER SAVANNAH | ) | |
| Plaintiff, | ) | Civil Action File No.: _____ |
| v. | ) | |
| BRYAN COUNTY, GEORGIA, a political subdivision of the State of Georgia; and CARTER INFINGER, NOAH COVINGTON, WADE PRICE, STEVE MYERS, BRAD BROOKSHIRE, and GENE WALLACE, individually in their official capacities as current Bryan County Commissioners, and constituting the Board of Commissioners of Bryan County, Georgia, | ) | |
| Defendants. | ) | |

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION**

COMES NOW, HOMEBUILDERS ASSOCIATION OF SAVANNAH, INC. d/b/a HOMEBUILDERS ASSOCIATION OF GREATER SAVANNAH ("Plaintiff" or "HBAS"), by and through its counsel of record, and files this Complaint for Declaratory Judgment and Injunction against Defendants BRYAN COUNTY, GEORGIA, a political subdivision of the State of Georgia; and CARTER INFINGER, NOAH COVINGTON, WADE PRICE, STEVE MYERS, BRAD BROOKSHIRE, GENE WALLACE, individually in their official capacities as current Bryan County Commissioners, and constituting the Board of Commissioners of Bryan County, Georgia ("Defendant" or "BOC"), as follows:

1.

This is a facial challenge to two zoning ordinances recently passed by the Bryan County Board of Commissioners, to wit: (a) The Bryan County Development Impact Fee Ordinance (the "**DIFO**"), on grounds that it is unconstitutionally discriminatory on its face and that it transgresses the parameters of the enabling act, O.C.G.A. § 36-71-1, *et seq.* (the "**Enabling Act**"); and (b) The Bryan County Interim Development Ordinance (the "**IDO**"), on grounds that it constitutes unconstitutional exclusionary zoning on its face and in practice. Collectively, the DIFO and the IDO are herein referred to as the "**Ordinances**."

2.

Plaintiff HBAS is a Georgia corporation, in good standing with the Secretary of State, and licensed to transact business in the State of Georgia. Plaintiff is a trade association whose members are comprised of home builders, real estate agents, bankers, and others transacting business in the greater Savannah area, including, without limitation, Bryan County, Georgia.

3.

The Defendant Bryan County, Georgia (the "County"), is a political subdivision of the State of Georgia, is subject to the jurisdiction and venue of this Court, and may be served with summons and process through the Chairman of the Board of Commissioners for Bryan County, Carter Infinger, at his office at 66 Captain Matthew Freeman Drive, Richmond Hill, Georgia 31324, or through the County Attorney, Leamon R. Holliday, who has been authorized to accept service.

4.

Defendant members of the Bryan County Board of Commissioners (the "**BOC**"), Carter

Infinger, Noah Covington, Wade Price, Steve Myers, Brad Brookshire, Gene Wallace, are natural persons capable of suing and being sued, are vested collectively with all the governmental powers of Bryan County, are subject to the jurisdiction of this Court, and may be served with process by delivery of a copy of this Complaint and Summons to each of them at 66 Captain Matthew Freeman Drive, Richmond Hill, Georgia 31324, or through the County Attorney, Leamon R. Holliday, who has been authorized to accept service. In the alternative, they may be personally served at their respective residences.

5.

On October 8, 2018, Plaintiff, by and through the undersigned counsel, sent correspondence to the County Attorney for Bryan County, Leamon Holliday, to notify Mr. Holliday and the County that the IDO as written is unconstitutional on its face because its regulations will substantially increase the cost and price of homes in Bryan County in ways that are not rationally related to the health, safety or welfare of Bryan County residents, amounting to unconstitutional exclusionary zoning. A true and correct copy of the October 8, 2018, letter is attached hereto as Exhibit "A" and incorporated herein by this express reference.

6.

Plaintiff appeared by its officers and counsel at the December 11, 2018, BOC meeting to make objections regarding the Ordinances, including, in particular, the increased and disproportionate costs and other burdens that would be placed upon residential home builders and home buyers under the Ordinances as written. Plaintiff also iterated several legal impediments, including violations of the Georgia State and Federal Constitutions, and the Impact Fee Ordinance, O.C.G.A. §§ 36-71-1, *et seq.*

7.

Defendants ignored Plaintiff's objections in their haste to restrict development of affordable housing and otherwise exclude middle and lower income home buyers from Bryan County. In response, by way example, Commissioner Covington made plain the Defendants' intentions when he announced: "If you've got an exclusive club, sometimes you've got an initiation fee. And **Bryan County is like an exclusive club.** And if you want to move into our county and take advantage of our amenities and our school system, and what we have going on, **then maybe you should pay an initiation fee**."

8.

Plaintiff again appeared by its officers and counsel at the January 8, 2019, BOC meeting in order to reiterate its objections, including that the Ordinances were unconstitutional and illegal on their face, thereby giving Defendants an opportunity to revise and correct the Ordinances accordingly. In addition, Counsel for Plaintiff read portions of the October 8, 2018, letter described above and appearing in Exhibit "A".

9.

Defendants have failed and refused to amend or otherwise modify the Ordinances to remove language that, as to the DIFO, amounts to discrimination under the Equal Protection Clauses of the Georgia and United States Constitution, transgresses the Enabling Act, and amounts to an unconstitutional taking under the Constitutions of the State of Georgia and the United States; and, as to the IDO, amounts to unconstitutional exclusionary zoning practices and an unconstitutional taking under the Constitutions of the State of Georgia and the United States, and violates the First Amendment of the U.S. Constitution.

10.

Defendants are subject to the jurisdiction of this Court, and venue is proper in this Court.

11.

Plaintiff seeks a declaratory judgment pursuant to O.C.G.A. § 9-4-1, *et seq*.

12.

Plaintiff shows that there is an actual and justiciable controversy between the Plaintiff and the Defendants as presented by the facts set forth herein, which is appropriate for resolution by declaratory judgment as provided by O.C.G.A. § 9-4-1, *et seq*. because it creates uncertainty and harm on the part of Plaintiff's members with respect to their rights, status, duties, obligations and legal relations toward Defendants. More specifically, Plaintiff brings this suit to challenge the constitutionality and lawfulness of the recently passed Ordinances.

**FACTS RELATING TO THE IMPACT FEE ORDINANCE**

13.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

14.

Georgia's Development Impact Fee Act, O.C.G.A. § 36-71-1 *et seq.* (the "Enabling Act") was enacted to create a program for "planning and financing public facilities needed to serve new growth and development . . . in order to promote and accommodate orderly growth and development and **to protect the public health, safety, and general welfare of the citizens of the State of Georgia**." O.C.G.A. § 36-71-1(b).

15.

Development impact fees are conditions imposed upon development approval, which municipalities and counties are authorized to exact so long as the ordinance complies with the Enabling Act and the United States and Georgia Constitutions. O.C.G.A. §§ 36-71-1(b), 36-71-3(a).

16.

The express purpose of the statute is to enable a municipality or county to plan for costs related to improvements necessitated by new growth and development, while ensuring that the new growth and development pays no more than its proportionate share of the cost of public facilities need to serve new growth and development, and to prevent duplicate and ad hoc development exactions. O.C.G.A. §§ 36-71-2(b), (b)(4).

17.

Development impact fees cannot be used to remedy already existing problems such as lack of capacity, but rather must be used to pay for a proportionate share of the cost of improvements needed to serve *new growth and development*. O.C.G.A. § 36-71-2(b)(4).

18.

Impact fees must be designed to ensure a reasonable correlation, or nexus, between the fee levied and the specific improvements (here, transportation) to be constructed. O.C.G.A. §§ 36-71-2(b), (b)(4); 36-71-4(q).

19.

A nexus is created when the cost projections are based upon actually anticipated future growth and the corresponding burden that future growth will have on the particular public facility

for which the county seeks to exact fees for improvements.

20.

Cost projections and, in turn, impact fees must be based on *reasonable estimates* of actual future improvement costs necessitated by future growth and development.

21.

Impact fees collected cannot be spent on anything other than the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located. O.C.G.A. §§ 36-71-4(m), 36-71-8(b).

22.

A development impact fee ordinance may create an exemption for all or part of particular development projects from development impact fees so long as three requirements are met: (1) such projects are determined to create extraordinary economic development and employment growth or affordable housing; (2) the public policy which supports the exemption is contained in the county's comprehensive plan; and (3) the exempt development project's proportionate share of the system improvement is funded through a revenue source other than development impact fees. O.C.G.A. § 36-71-4(l).

23.

Before a county can impose development impact fees as a condition on development, the county must have adopted a comprehensive plan containing a capital improvements element. O.C.G.A. § 36-71-3(a).

24.

On January 8, 2019, the BOC unanimously voted to adopt the DIFO pursuant to the

Enabling Act. A copy of the DIFO is attached hereto as Exhibit "B" and incorporated herein by this express reference.

25.

At the same meeting, the BOC voted to adopt its Capital Improvements Element as an amendment to its Comprehensive Plan (the "Transportation CIE"). A true and correct copy of the Transportation CIE is attached hereto as Exhibit "C" and incorporated herein by this express reference. A true and correct copy of the 2018 Comprehensive Plan is attached here to as Exhibit "D" and incorporated herein by this express reference.

26.

The DIFO and the Transportation CIE identify the County's roadways as the subject of improvements for which the impact fees are to be imposed, in accordance with O.C.G.A. § 36-61-2(17)(C), which defines public facilities to include roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways.

27.

The Transportation CIE's express purpose is to create a "Transportation Development Impact Fee Analysis Report" to provide Defendant Bryan County with the "necessary technical documentation and guidance to support the adoption of a Development Impact Fee Program to fund capital facilities, amenities and infrastructure for roadway/transportation facilities and infrastructure . . . ." The Transportation CIE is further intended to "provid[e] the necessary practical and procedural analysis as required by Georgia law to support a schedule of fees to be established by the adoption of the Bryan County Development Impact Fee Ordinance." *See* Ex. "C" at 6.

28.

The Transportation CIE and DIFO establish the service area impacted by the impact fee to encompass "all property located within unincorporated south Bryan County." *See* Ex. "C" at 9.

29.

The Transportation CIE sets forth a chart of Major Intersections of South Bryan County and their respective Level of Service rankings, which is a measurement of delay incurred at an intersection or for a particular traffic movement. *See* Ex. "C" at 19–20, Table 3.

30.

Table 3 is shown herein for the Court's ease of reference:

**Major Intersections of South Bryan County**
**2015/2016 Level of Service Survey**

| | | Morning Peak-Hour | | Afternoon Peak-Hour | |
|---|---|---|---|---|---|
| **Intersection** | **Control Device** | **LOS** | **Delay (Seconds)** | **LOS** | **Delay (Seconds)** |
| U. S. 17 at S. R. 144 | Traffic Signal | E- F | 39 - 80 | D | 29 - 40 |
| U. S. 17 at Harris Trail | Traffic Signal | C - D | 17 - 35 | C | 22 -35 |
| U. S. 17 at Belfast Keller Road | Stop Sign | F | 198 | D | 32 |
| S. R. 144 at Timber Trail | Traffic Signal | B - C | 10 - 24 | A - C | 5 - 22 |
| Harris Trail at Timber Trail | Stop Sign | E | 45 | D | 31 |
| Harris Trail at Port Royal Road | Stop Sign | C | 21 | B | 11 |
| S. R. 144 at Port Royal Road | Stop Sign | F | 83 | F | 212 |
| S. R. 144 at Fort McAllister Road | Stop Sign | D | 25 | E | 44 |
| S. R. 144 at Belfast River Road | Roundabout | A - C | 5 - 21 | A - E | 6 - 37 |
| Belfast River Road at Harris Trail | Stop Sign | B - D | 13 - 28 | C | 15 - 16 |
| S. R. 144 at Belfast-Keller Road | Stop Sign | B - C | 11 - 19 | B - C | 10 -15 |
| Belfast River Road at Belfast-Keller Road | Stop Sign | A - B | 9 - 11 | A - B | 7 - 10 |

31.

According to the Transportation CIE, Table 3 purports to show that "virtually all roadways and intersections in South Bryan County classified at or below the minimal service levels" already existing in **2015**, three years prior to the DIFO passed on January 8, 2019. *See* Ex. "C" at 20–21, Table 3.

32.

In light of the reported findings on Table 3, the 2019 DIFO is intended to impose impact fees in order to generate revenues for "a sequence of planned capital improvement projects [that] have been developed to address the transportation and mobility challenges and issues" **already existing as of 2015** and identified on Table 3.

33.

Defendants estimate that the total costs for transportation system improvements will be $68,469,000. *See* Ex. "C" at 12.

34.

The estimate described above is not substantiated.

35.

Defendants intend to commence transportation projects "at the earliest possible date" and to utilize Special Purpose Local Option Sales Tax (SPLOST) and Transportation Special Purpose Local Option Sales Tax (TSPLOST) funds to provide "initial funding from some of these projects." *See* Ex. "C" at 12.

36.

Defendants intend to reimburse the County's general fund and appropriate SPLOST funds

from development impact fees as they are collected for any amounts that were used to provide initial funding for transportation system improvements. *See* Ex. "C" at 12–13.

37.

Of the total cost of planned capital improvements totaling $68,469,000, the County has designated $46,810,000 of this cost to be funded by revenues generated by local impact fees, to include reimbursements made to SPLOST or TSPLOST as described in Paragraphs 27 and 28 above. *See* Ex. "C" at 12–13, 24, 26.

38.

The County intends to raise $46,810,000 in revenue from development impact fees to fund certain transportation improvements as further described in the Transportation CIE.

39.

The formula for calculating the South Bryan County Transportation Development Impact fee is as follows:

1) Cost of planned capital improvements ($68,469,000)[1]

2) (*less*) Funding from Outside Sources (SPLOST, TSPLOTS, GRANTS, etc.) ($21,659,000)[2]

**Equals**: $46,810,000 in total development impact fees to be levied

3) (*multiplied by*) Growth factor of 80.7%[3]

**Equals**: Total improvement costs attributable to new growth ($37,775,670)

4) (*divided by*) Total demand in terms of Vehicles Per Day ("VPD"), the projected increase in traffic by 2030 (57,000 VPD)[4]

[1] *See* Ex. "C" at 14, 24.
[2] *Id.*
[3] *Id.* at 14, 24, 28–29.
[4] *Id.*

**Equals**: Cost Per Trip ($662.75)[5]

5) Cost Per Trip is then applied to an "Average Daily Trip Factor," purportedly furnished by the Institute of Traffic Engineers, to arrive at the development impact fee levied against individual developments.[6]

40.

With reference to the Georgia Governor's Office of Planning and Budget's population projections for Bryan County, the County anticipates the population of Bryan County to increase from 40,165 in 2020 to 51,924 by 2030. *See* Ex. "C" at 7; Ex. "D" at 17.

41.

Stated another way, the County anticipates a **29% increase** in the population of Bryan County between 2020 (present day) and 2030.[7]

42.

Notwithstanding a mere 29% increase in projected population growth, for purposes of the DIFO, the County predicts an **80.7% increase in traffi**c in Bryan County during the same period (2020 to 2030) **owing to** "**individuals that do not live [in Bryan County] today**." *See* Ex. "C" at 27.

43.

The County uses the 80.7% traffic increase figure to determine the "total *fair share* of the costs of the [Capital Improvements Project]" attributable to new growth. *See* Ex. "C" at 27–29.

[5] *Id.*
[6] *Id.* at 14, 15, 24, 28–29.
[7] ([51,924 – 40,165] / 40,165 x 100).

44.

In other words, according to Defendants, *the 12,000 new residents anticipated over the next ten years should be responsible for 80.7% of the cost of the County's desired transportation projects,* to be funded by impact fees.

45.

Supporting data giving rise to the County's 80.7% factor is not included in the Transportation CIE.

46.

The County has identified five roadway projects to be funded by impact fees. *See* Ex. "C" at 26, Table 7.

47.

The largest of these projects is the Harris Trail lane addition project (the "Harris Trail Project"), **which accounts for $41,000,000 of the total cost of improvements, or 85% of the total funds to be generated by impact fees**. *See* Ex. "C" at 29, Table 9.

48.

Despite allocating a "*cost* attributable to *growth*" for the entire $46 million project (using the 80.7% factor), the County makes no projection regarding the increase in vehicular traffic burdening Harris Trail. *See* Ex. "C" at 28, Table 8.

49.

The County's failure to make a growth prediction associated with the Harris Trail Project dramatically inflates the impact fee schedules.

50.

Tables 8 and 9, pasted below from the Transportation CIE, complete the County's impact fee calculations and demonstrate the foregoing (*emphasis added*):

Table 8

**South Bryan County Transportation Impact Fee District**
**Current & Projected Daily Traffic Volume**

| | Average Vehicles Per Day | 2030 Average VPD | % Attributable To Growth |
|---|---|---|---|
| Belfast - Keller Road (South Bryan Loop) | 2,500 | 27,000 | |
| Belfast River Road | 3,000 | 10,000 | |
| Harris Trail (South of Belfast River Road | 2,500 | - | |
| Highway 144 (South of Belfast River Road) | 3,000 | 10,000 | |
| Commercial Industrial Area | - | 10,000 | |
| Total: | 11,000 | 57,000 | 80.7% |

TABLE 9
**South Bryan County Transportation Impact Fee District Cost Per Trip Calculation**

| Project Number | Project Description | Estimated Cost |
|---|---|---|
| Tran-04-2018 | Port Royal - Harris Trail Roundabout | $ 1,200,000 |
| Tran-01-2019 | Belfast River - Harris Trail Roundabout | 1,200,000 |
| Tran-05-2019 | Belfast River / Belfast Keller | 1,200,000 |
| Tran-03-2025 | Hwy 144 / Spur 144 | 1,610,000 |
| Tran-03-2030 | Harris Trail (Timber Trail to Belfast River) | 41,600,000 |
| | **Total** | **$ 46,810,000** |

| | | |
|---|---|---|
| % Attributable To Growth | | 80.7% CIP |
| Costs Attributable To Growth | $ | 37,776,491 2030 Average |
| Vehicles Per Day (Trips) | | 57,000 |
| **Cost Per Trip** | **$** | **662.75** |

51.

Table 8 shows a blank space for projected growth in terms of Vehicles Per Day (VPD) assigned to the Harris Trail Project.

52.

Table 9 shows that "57,000 VPD in 2030"—the projected traffic impact calculated according to Table 8—is the divisor by which the costs attributable to growth is to be divided in order to ultimately calculate the impact fee.

53.

This VPD/divisor is computed, with reference to Table 8, by adding all the 2030 VPD per project predictions.

54.

Because the Transportation CIE does not assign any projected growth to Harris Trail (in terms of VPD), the divisor is a smaller number that it could be, ***resulting in a much larger Cost Per Trip, and ultimately, a substantially outsized impact fee assessment***.

55.

Reference to the County's Comprehensive Plan, however, shows a projected increase in vehicles per day on Harris Trail from **3500 to 19,000** by 2030. *See* Ex. "D" at 59.

56.

The present day VPD assigned to Harris Trail on Table 8 shows **2500** VPD, which is less than the 3500 VPD reported in the Comprehensive plan.

57.

The discrepancy described above has the effect of skewing growth measurements, namely the Cost Per Trip used to arrive at the development impact fee to be assessed.

58.

Defendants reporting defects and inconsistencies are latent, and Plaintiff is unable to assess the full measure of Defendants' creative calculations until further discovery is completed.[8]

59.

The County multiplies the Cost Per Trip by an Average Daily Trip factor to ultimately reach the impact fee it will assess per project. A true and correct copy of the Impact Fee Schedule is attached hereto as Exhibit "E" and is incorporated herein by this express reference.

60.

Applying the County's impact fee schedule, as described above, results in excessive fee assessments against prospective permittees, as follows by way of example:

| | | |
|---|---|---|
| i. | Gas station/convenience market: | **$500,000** ($190k per 1000 sf, at 3000 sf) |
| ii. | Supermarket: | **$630,000** ($14,000 per 1000 sf, at 45,000 sf) |
| iii. | Fast Food Restaurant: | **$310,000** ($62,000 per 1000 sf, at 5000 sf) |
| iv. | Restaurant: | **$90,000** ($15,000 per 1000 sf, at 6000 sf) |
| v. | Church: | **$30,000** ($2,000 per 1000 sf, at 15,000 sf) |
| vi. | Hospital: | **$175,000** ($3500 per 1000 sf, at 50,000 sf) |
| vii. | Medical Offices: | **$70,000** ($11,500 per 1000 sf, at 6000 sf) |
| viii. | Residential Homes: | **$3,128** per dwelling unit |

[8] By way of example and not limitation, using a value of 19,000 VPD in Table 8 for Harris Trail's 2030 traffic projection, would result in an increased divisor value of 76,000 VPD on Table 9, which results in a *decreased* Cost Per Trip value of $497.06, and ultimately a decreased impact fee value.

61.

The fees above, calculated according to the Defendants' Impact Fee Schedule, far exceed the representative permittees' *fair share* of the cost associated with the new or improved roadways that are necessary to serve the new development.

62.

The above-described impact fees are prohibitive to new growth and development, impractical and excessive.

63.

Notwithstanding the County's determination that 80.7% of the project costs will be attributable to new growth,[9] the County still intends to raise the full total of $46,810,000 from development impact fees.

64.

In other words, notwithstanding the County's assertion that new development is responsible for 80.7% of the costs associated with the Transportation improvements, the County intends to assess the full cost of the improvements against new permittees.

65.

The DIFO provides a mechanism by which non-residential builders may apply for an exemption from the fees (the "DIFO Exemption"). *See* Ex. "B" at Section 6.

[9] As noted above, Plaintiff rejects Defendants' 80.7% projection, which has no historical basis and contravenes Defendants' projections regarding population growth in Bryan County.

66.

The DIFO Exemption states as follows (emphasis added):

**6.1 <u>Exemption Policy</u>**. Bryan County recognizes that certain *non-residential* development projects provide extraordinary benefit in support of the economic diversification and advancement of the county's citizens over and above the access to jobs, goods and services that such uses offer in general.

**6.3 <u>Exemption Criteria-*Non-residential* extraordinary economic development employment growth and community facilities</u>**. All *non-residential* projects may be considered for an exemption, in whole or in part, from the payment of transportation/mobility impact fees otherwise required by the chapter. The intent herein is to encourage economic development diversification and job creation or the creation of community gathering places of unincorporated South Bryan County. The following conditions must be met:

(1) The development project must have a capital investment of at least $1,000,000 in the construction or renovation of floor area, and

(2) Create 10 or more jobs that meet or exceed the average wage level within the county for the type jobs (sic) created, or

(3) Create a public gathering space with a capacity of 100 or more persons, or

(4) Create a public recreation or cultural opportunity for the citizens of the county.

67.

The public policy which supports the exemption is not stated in the Defendant County's Comprehensive Plan. *See* Ex. "D" at 44–49; O.C.G.A. § 36-71-4(l).

68.

As written, the DIFO Exemption establishes that residential homebuilders are the only class of permittees who are categorically ineligible to apply for an exemption from the DIFO.

69.

As written, the DIFO Exemption creates a situation that would allow for almost all major development projects to avoid impact fees.

70.

If homebuilders are the only permittees assessed impact fees, the County could continue to exact fees against a single class of permittees for a protracted period of time, resulting in an undue burden on this class, targeted to carry the entire burden of the project costs outlined in the Transportation CIE, in a blatant violation of the Enabling Act's prohibition of charging new development with any amount more than its "proportionate share" of cost.

71.

In its Transportation CIE, Bryan County anticipates 5,870 dwelling units will be added to the community over the next ten (10) years to meet the projected 29% population growth by 2030. *See* Ex. "C" at 17.

72.

The Transportation CIE provides no support for this number of projected dwelling units.

73.

The Bryan County Comprehensive Plan, however, reports that during the six years spanning 2010 to 2016, only 1,445 new housing units were added to the community. See Ex. "C" at 68.

74.

If Bryan County assesses impact fees on 5,870 residential dwelling units, it will raise approximately $18,361,360 in revenues to fund the transportation projects outlined in the

Transportation CIE, leaving $28,448,640 in revenues left to be collected by impact fees assessed against *all other types of developers*.

75.

As written in the Transportation CIE, Defendants intend to charge residential homebuilders with 39% of all impact fees to be collected according to the County's projections.

76.

The DIFO passed by unanimous vote of the Defendant BOC on January 8, 2019, and Defendants will implement it against developers on April 1, 2019.

**FACTS RELATING TO THE INTERIM DEVELOPMENT ORDINANCE**

77.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

78.

On October 9, 2018, the BOC unanimously voted to adopt the Interim Development Ordinance (the "IDO"). A copy of the IDO is attached hereto as Exhibit "F" and incorporated herein by this express reference.

79.

Section 11 of the IDO prohibits building materials that are otherwise permitted under the International Building Code (*e.g.*, vinyl siding and the use of more than two different materials on the front of a residence).

80.

Section 11 of the IDO promulgates architectural restrictions that increase building costs

without any benefit whatsoever to public health and welfare (*e.g.*, requiring garage entry setbacks, minimum roof pitches, and four roof planes visible from the front property line, and restricting garages to less than 50% of the house façade).

81.

Section 11 of the IDO places unreasonable restrictions on apartments (*e.g.*, restrictions against more than 6 units in a single building and requirements that apartments must have private gardens, yards, patios or balconies).

82.

Section 11 of the IDO adds development restrictions that are intended to inhibit larger developments (*e.g*., requiring developments of more than 20 lots to have secondary road access), among other indefensible restrictions.

83.

The zoning regulations imposed by the IDO, as outlined above, are arbitrary, capricious, irrational and subjective, creating higher costs for homebuilders and homebuyers, and creating additional costs and difficulty associated with government agencies administering architectural standards throughout Bryan County.

84.

The zoning regulations set forth in the IDO, and as outlined above, have the effect of diminishing housing availability or affordability for medium and lower income homebuyers.

85.

The zoning regulations set forth in the IDO, and as outlined above, do not amount to legitimate zoning powers, which are intended to promote health and welfare, but rather, improper

exclusions that target economic or social characteristics.

86.

The IDO passed by unanimous vote of the Defendant BOC on October 9, 2018.

87.

Amendments to the IDO passed by unanimous vote of the Defendant BOC on January 8, 2019, which are intended to take immediate effect.

88.

No legitimate purpose, concern or evidence was presented for consideration by Defendants, which would support the adoption of the IDO as written.

89.

The conditions and restrictions imposed by the IDO on new residential development comprise an abuse of the discretionary authority of the BOC and an ultra vires act.

90.

As a result of the IDO, Plaintiff and various of its members have suffered and will continue to suffer significant detriment, without any corresponding protection or benefit to public health, safety or welfare whatsoever.

91.

The Bryan County community is a logical area for development and growth, as demonstrated by the County's historical population growth and future projections, outlined in the Transportation CIE.

92.

But for the DIFO and the IDO, development in the community would be expected to

continue at a steady rate.

93.

Various members of Plaintiff own property in Bryan County impacted by the IDO.

94.

Various members of Plaintiff own property in Bryan County for which said members expended funds in furtherance of development plans in reliance upon the preexisting development ordinance, which plans are no longer compliant under the IDO.

95.

Members of Plaintiff as described above have development plans that will be delayed or aborted due to the IDO's stringent and cost-prohibitive conditions on residential development.

96.

Plaintiff now brings the following before the Superior Court for review:

(a) The IDO's restriction on building materials that are otherwise permitted under the International Building Code (*e.g.*, vinyl siding and the use of more than two different materials on the front of a residence);

(b) The IDO's architectural restrictions that increase the building costs without benefit to public health and welfare (*e.g.*, requiring four roof planes to be visible from the front property line and restricting garages to less than 50% of the house façade);

(c) The IDO's unreasonable restrictions on apartments (*e.g.*, restrictions against more than 6 units in a single building and requirements that apartments must have private gardens, yards, patios or balconies); and

(d) The IDO's imposition of various development requirements that are intended to inhibit

larger developments (*e.g.*, requiring developments of more than 20 lots to have secondary road access).

97.

The foegoing IDO provisions (and others) affirmatively discourage the development of affordable housing in the community and thereby have the intended effect of excluding persons of low or moderate incomes from the community.

98.

The mere existence and threatened enforcement of the ordinance materially and adversely affects values and curtails opportunities of all property regulated in the market.

99.

Plaintiff does not have an adequate legal remedy.

100.

Plaintiff will be irreparably harmed if Defendants are not enjoined from enforcing the IDO as written.

**COUNT I: UNLAWFUL IMPACT FEE ORDINANCE**

101.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

102.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance fails to protect the public health, safety, and general welfare of the citizens of the State of Georgia as required by. O.C.G.A. § 36-71-1(b).

103.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that (i) new growth and development is required to pay more than its proportionate share of the cost of public facilities needed to serve new growth and development, in violation of O.C.G.A. § 36-71-2(16), and (ii) the DIFO does not prevent duplicate and ad hoc development exactions, in violation of O.C.G.A. § 36-71-1(b)(4).

104.

The DIFO as adopted by Bryan County violates the provisions of the Enabling Act in that, pursuant to said ordinance, Bryan County plans to fund the entire $46,810,000 by way development impact fees, burdening new growth and development with 100% of the costs of the Transportation improvements ($46,810,000), although Bryan County asserts that new growth and development's proportionate share of these costs are 80.7% ($37,775,670), in violation of O.C.G.A. §§ 36-71-1(b)(4); 36-71-2(16).

105.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance was not preceded by the adoption of a comprehensive plan setting out the "projected needs for system improvements," as required by O.C.G.A. §§ 36-71-2(2), 36-71-3(a).

106.

Specifically, the Transportation CIE as written fails to set forth any allocation of anticipated impact associated with its largest improvements component – a $41 million highway expansion. *See* Ex. "C" at 28, Table 8.

107.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance fails to base the development impact fees assessed on actual system improvement costs or reasonable estimates of such costs as required by O.C.G.A. § 36-71-4(q).

108.

The unsupported and often arbitrary and inconsistent numbers, outlined above, and utilized by Defendants to calculate the impact fee to be imposed pursuant to the DIFO, undermine any reasonable correlation (or nexus) between the fee levied and the Transportation improvements to be constructed, in violation of O.C.G.A. §§ 36-71-2(b), (b)(4); 36-71-4(q).

109.

Defendants' cost projections are not based on actually anticipated future growth to support the requisite nexus between the fee levied and the Transportation improvements to be constructed because, in computing the impact fee, the Defendants did not assign an "anticipated future growth" value, in terms of Vehicles Per Day, to the Harris Trail Project.

110.

Defendants' cost projections may not be based on actually anticipated future growth to support the requisite nexus between the fee levied and the Transportation improvements to be constructed because neither bids for the construction projects nor studies giving rise to the 80.7% factor have been made available to the public for a determination of reasonableness.

111.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance improperly calculates the fees imposed, setting forth data with no

indication of the source or legitimacy thereof in some instances (*e.g.*, 2030 traffic projections for Bryan County), and in other instances, having a blank space in its variables, which blank space has the effect of inflating the fee calculations (*i.e.,* the 2030 traffic projection for the Harris Trail project, the project comprising 85% of the total improvement costs for which fees are imposed).

112.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance lacks the requisite nexus between the fee levied and the specific improvements to be constructed (here, transportation improvements). Impact fees must be calculated and designed to ensure a reasonable correlation (nexus) between the fee levied and the reasonable estimate of actual system improvement costs.

113.

Specifically, the County's costs projections are not based upon actually anticipated future growth and the related burden on roadways and transportation the future growth and development will create, as demonstrated by the unreasonably exorbitant and prohibitive cost projections outlined above (*e.g.*, $630,000 in impact fees as a condition upon a supermarket, or $310,000 in impact fees as a condition upon a fast food restaurant), and as demonstrated by the unsupported and arbitrary projection that Bryan County will see an "80.7% increase in traffic from new residents" in just 11 years (2030), notwithstanding population growth charts projecting a mere 29% increase in population by 2030.

114.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance includes an exemption available to all developers and types of

developments *except homebuilders and residential developments*, but the public policy which supports the DIFO Exemption as written is not contained in the Defendant's Comprehensive Plan, as required by O.C.G.A. § 36-71-4(l).

115.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance sets forth an exemption which would permit the County to exempt all permittees except residential builders and home buyers, and charges impact fees disproportionately to residential builders and home buyers, even though the County has in fact allocated portions of cost to each category of development in its impact fee schedule. To charge all costs against a single class, where the County acknowledges that all developments should be attributed some cost associated with respective impact, defies the express intent of the Enabling Act, which prohibits charging new development with any amount more than its "proportionate share" of cost.

116.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling Act in that said ordinance improperly seeks to impose fees to remedy already existing problems, such as lack of capacity. O.C.G.A. § 36-71-2(8) requires that the impact fees must be used to pay for a development's proportionate share of the cost of improvements necessary to *serve new growth and development*. The DIFO imposes impact fees in order to fund improvements to preexisting roadway issues identified by the County as early as 2015, predating the DIFO by three years. *See* Ex. "C" at 20–21, Table 3.

117.

The DIFO as adopted by the Bryan County BOC violates the provisions of the Enabling

Act in that said ordinance, and its corresponding Comprehensive Plan, anticipate that Defendant will shift funds from its impact fee fund to Defendant's general revenue fund in order to reimburse expenditures from SPLOST and TSPLOST, in violation of the Act, which requires that expenditures of development impact fees shall be made "only for the category of system improvements and in the service area for which the development impact fee was imposed." O.C.G.A. §§ 36-71-4(m), 36-71-8(b); *See* Ex. "C" at 12–13.

118.

Plaintiff shows that it is entitled to a declaration of these rights, and a declaration with respect to its legal relations thereto. It is Defendants' intention to begin collection of the fees described in Exhibit "E" attached hereto on April 1, 2019, in accordance with the fee structure included in the DIFO and as further shown in the Transportation CIE. Because Defendants intend to begin prompt implementation of the DIFO, Defendants should be restrained and enjoined by this Court from implementation of same pending the adjudication of questions raised in this Complaint.

119.

Members of Plaintiff will suffer irreparable harm unless their rights and obligations can be determined prior to incurring other and further costs.

120.

Plaintiff shows that the Court should issue a temporary restraining order enjoining the Defendant from implementing the DIFO as adopted by the Bryan County BOC pending a full hearing on the issuance of an interlocutory injunction. Plaintiff further shows that the Court should designate a time for such interlocutory injunction hearing not later than thirty (30) days after the

issuance of the temporary restraining order, and that process issue thereon for a trial of this controversy.

**COUNT II: UNCONSTITUTIONAL IMPACT FEE ORDINANCE (FIFTH AMENDMENT)**

121.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

122.

There is no essential nexus between a legitimate state interest and the payment of a development impact fee as calculated by the DIFO, which nexus is required by the Enabling Act.

123.

There is insufficient connection between the development impact fees charged by Defendants and the projected impact of each anticipated development that would be charged a fee under the ordinance. In fact, the Harris Trail Project, comprising 85% of total projected costs (or $41 million of a $48 million total projected project cost), reports a *blank space* where a projected traffic impact should be input. *See* Ex. "C" at 28, Table 8.

124.

Defendants have assigned no impact giving rise to or associated with this project cost, notwithstanding the Enabling Act's clear directive that impact fees must be calculated based on *reasonable projections of actual costs* associated with future developments. With no actual impact or cost associated with the Harris Trail Project, there can be no degree of connection, no nexus, between the development impact fees charged by Defendants and the projected impact of each

anticipated development.

125.

Defendants intend to raise the full total of $46,810,000 from development impact fees, and thereby necessarily intend to charge new growth and development with 100% of the costs of the Transportation improvements ($46,810,000), although Bryan County asserts that new growth and development's proportionate share of these costs are 80.7% ($37,775,670), in violation of O.C.G.A. §§ 36-71-1(b)(4); 36-71-2(16), and undermining a reasonable nexus.

126.

Defendants' cost projections are not based on actually anticipated future growth to support the requisite nexus between the fee levied and the Transportation improvements to be constructed, as outlined above.

127.

The BOC has failed to make an individualized determination of the nature and extent of the anticipated impact of each development that would be charged a fee pursuant to the DIFO.

128.

Insofar as Defendants have failed to establish an essential nexus between a legitimate state interest and the payment of a development impact fee and insofar as Defendants have failed to establish the required degree of connection between the payment of the fee and the projected impact of each proposed development, namely, the Harris Trail Project, the development impact fees charged by Defendants violate the Takings Clause of the Fifth Amendment of the United States Constitution.

**COUNT III: UNCONSTITUTIONAL IMPACT FEE ORDINANCE (EQUAL PROTECTION)**

129.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

130.

The DIFO as adopted by the Bryan County BOC violates the Equal Protection Clauses of the Georgia and United States Constitutions in that said ordinance sets forth an exemption, which singles out a class of permittees for disparate treatment without justification rationally related to any legitimate government purpose.

131.

The DIFO as adopted by the Bryan County BOC violates the Equal Protection Clauses of the Georgia and United States Constitutions in that said ordinance sets forth an exemption that singles out residential homebuilders as the only class of permittees categorically ineligible for an exemption from impact fees.

132.

The DIFO as adopted by the Bryan County BOC violates the Equal Protection Clause of the Georgia and United States Constitutions in that said ordinance sets forth an exemption that permits Defendants to exempt all permittees except residential builders, and charge impact fees disproportionately to those residential homebuilders, even though the County has in fact allocated portions of cost to each category of development in its impact fee schedule

133.

Defendants have not stated any policy or government purpose justifying the exemption as written and as required to be stated in the Comprehensive Plan.

**COUNT IV: DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW (DIFO)**

134.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

135.

Plaintiff is entitled to a declaration from the Court that the BOC had no objective, factual basis to support the Impact Fee Schedule as calculated, attached hereto as Exhibit "E" and incorporated into the DIFO by its express terms; and, therefore, the BOC has violated Plaintiff's due process rights, which are protected by Article I, Section I, Paragraph I of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States.

**COUNT V: DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW (IDO)**

136.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

137.

Plaintiff is entitled to a declaration from the Court that the IDO is an unlawful, unconstitutional ordinance imposing arbitrary, capricious, and irrational conditions upon development, demonstrating a manifest abuse of Defendants' discretion and a denial of Plaintiff's

and others similarly situated rights to substantive and procedural due process guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and further guaranteed by Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

138.

Plaintiff is entitled to a declaration from the Court that the BOC had no objective factual basis to support the IDO as written; and, therefore, the BOC has violated Plaintiff's due process rights, which are protected by Article I, Section I, Paragraph I of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States.

**COUNT VI: UNCONSTITUTIONAL IDO (EQUAL PROTECTION AND EXCLUSIONARY ZONING)**

139.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

140.

Plaintiff is entitled to a declaratory judgment that the IDO and its restrictions on affordable housing are void because so many of the guidelines and restrictions lack any substantial relation to the public health, safety, morality, or general welfare of the community, amounting to unconstitutional exclusionary zoning as a matter of law.

141.

Plaintiff is entitled to a declaratory judgment that the IDO and its costly regulations on residential development are not a legitimate use of Defendants' zoning powers but are an improper

exclusion targeting economic and social characteristics such that the risk of discrimination associated with the IDO overwhelms any public interest Defendants may have therein.

142.

Plaintiff is entitled to a declaratory judgment that the IDO and its regulatory restrictions on affordable housing has the nefarious effect of excluding low to moderate income home buyers from Bryan County, amounting to exclusionary zoning in violation of Plaintiff, its members, and other similarly situated individuals and entities' right to equal protection Under Article I, Section I, Paragraph II of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States.

143.

Plaintiff is entitled to a declaratory judgment that the IDO and each of its costly regulations on residential development, as outlined above, are void on their face because they do not bear a substantial relation to the public health, safety, morality, or general welfare.

144.

Plaintiff is entitled to a declaratory judgment that the IDO and each of its costly regulations on residential development, as outlined above, constitutes exclusionary zoning on its face and serves no governmental or constitutionally permissible public interest, and discriminates between Plaintiff, its members, and other similarly situated individuals and entities in violation of Plaintiff's right to equal protection Under Article I, Section I, Paragraph II of the 1983 Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States.

145.

Plaintiff is entitled to a declaratory judgment that the primary purpose of the IDO, as crafted

by Defendants, is to prevent the entrance of newcomers, including, in particular, low and moderate income newcomers who cannot afford to pay an 'initiation fee."

146.

Plaintiff is entitled to a declaratory judgment declaring that the IDO presents a zoning scheme that creates an exclusionary result and manifests an exclusionary intent to zone out natural growth.

**COUNT VII: UNCONSTITUTIONAL IDO (FREE SPEECH)**

147.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

148.

The First Amendment to the Constitution of the United States protects the rights of Plaintiff, its members, and those similarly situated to speak, to decline to speak, to create speech, to decline to create speech, to sell speech, to operate an expressive business, to associate with others for the purpose of engaging in expression, to decline to associate with others for the purpose of engaging in expression, to be free from content and viewpoint discrimination, to be free from unconstitutional conditions on expression, to be free from vague laws giving unbridled discretion to government officials regarding expression, and to be free from overbroad laws regulating speech.

149.

Members of Plaintiff and those similarly situated engage in constitutionally protected speech when they engage in the architectural and aesthetic design of residences.

150.

The homes that Plaintiff's members design are their business product.

151.

Neighborhood developers produce homes and neighborhoods for consumer purchase, which homes are designed according to builders' and home buyers' specific preferences to express an aesthetic message and/or brand for marketing purposes.

152.

Single or small-scale residential builders design homes according to their or their buyers' artistic and/or architectural sensibilities.

153.

The guidelines and restrictions set forth in the IDO and governing the specific architectural design of residential homes infringe the First Amendment free speech rights of Plaintiff, its members, and others similarly situated.

154.

The IDO does so by forcing Plaintiff, its members, and other similarly situated persons and businesses to express themselves according to the architectural and design restrictions in the IDO and not according to the Plaintiff or its members' personal aesthetic preferences.

155.

Plaintiff, its members and others similarly situated currently suffer ongoing harm owing to the IDO and its regulations because, until the County is enjoined from implementing the Ordinance, Plaintiff, its members, and others similarly situated, will be forced to design homes and express themselves according to the government's subjective preference, expressed in the

IDO, regarding how a home should look, or what materials it must include, or where it can be located, or how even permissible building materials must be arranged or displayed on the home.

156.

Defendants do not show that the IDO and its regulations on architectural design of residential homes furthers any important government interest substantially related to the regulations.

157.

Accordingly, the IDO as written violates the First Amendment free speech rights of Plaintiff, its members and others similarly situated.

**COUNT VIII: TAXATION WITHOUT CONSTITUTIONAL AUTHORITY UNDER THE CONSTITUTION OF THE STATE OF GEORGIA**

158.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

159.

Because the impact fees described above exceed (i) the reasonable cost of the services and improvements contemplated under the County's Comprehensive Plan and/or Transportation CIE and (ii) the proportionate amount of such costs that pertains to new development, the imposition of such impact fees constitutes an unlawful exercise of the power of taxation without a conferral of authority from the Constitution or General Assembly.

## COUNT IX: INVERSE CONDEMNATION

160.

Plaintiff realleges and reincorporates each of the foregoing paragraphs as though fully restated herein.

161.

The actions of Defendants as described hereinabove constitute an inverse condemnation of property for which compensation is required by law.

WHEREFORE, Plaintiff prays as follows:

(a) Summons and process issue as required by law;

(b) That Defendants file an answer as required by law;

(c) That Defendants be restrained and enjoined from implementation of the DIFO until further order of the Court and that Defendants be required to show cause why the temporary restraining order and injunction should not be granted;

(d) That, pursuant to O.C.G.A. § 9-4-5, a consolidated hearing on the mater be expedited and held as soon as practicable during the expiration of thirty (30) days after service;

(e) That the Court enter a judgment declaring that the DIFO as set forth in Exhibit "B" violates Georgia law, and, in particular, the provisions of O.C.G.A. § 36-71-1 *et seq*.;

(f) That the Court enter a judgment declaring that the DIFO as set forth in Exhibit "B" is unconstitutional on its face pursuant to the Fifth Amendment for failure to establish a nexus between the development impact fees to be assessed and any legitimate state interest;

(g) That the Court enter a judgment declaring that the DIFO as set forth in Exhibit "B"

is unconstitutional on its face pursuant to the Equal Protection Clauses of the Georgia and United States Constitutions for singling out residential homebuilders and homebuyers for disparate treatment by making this class of permittees categorically ineligible for an exemption from the development impact fees;

(h) That the Court enter a judgment declaring that the BOC had no objective factual basis to support the Impact Fee Schedule as calculated, attached hereto as Exhibit "E" and incorporated into the DIFO by its express terms; and, therefore, the BOC has violated Plaintiff's due process rights, which are protected by Article I, Section I, Paragraph I of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States;

(i) That the Court enter a judgment declaring that the BOC had no objective factual basis to support the IDO, as written and attached hereto as Exhibit "F"; and, therefore, the BOC has violated Plaintiff's due process rights, which are protected by Article I, Section I, Paragraph I of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States;

(j) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F," is an unlawful, unconstitutional ordinance imposing arbitrary, capricious, and irrational conditions upon development, demonstrating a manifest abuse of Defendants' discretion and a denial of Plaintiff's and others similarly situated rights to substantive and procedural due process guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and further guaranteed by Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the state of Georgia;

(k) That the Court enter a judgment declaring that the BOC had no objective factual

basis to support the IDO as written; and, therefore, the BOC has violated Plaintiff's due process rights, which are protected by Article I, Section I, Paragraph I of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States;

(l) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F," and its restrictions on affordable housing is void on its face and lacks any substantial relation to the public health, safety, morality, or general welfare of the community, therefore amounting to unconstitutional exclusionary zoning as a matter of law;

(m) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F," and its costly regulations on residential development is not a legitimate use of Defendants' zoning powers but is an improper exclusion targeting economic and social characteristics such that the risk of discrimination associated with the IDO overwhelms any public interest Defendants may have therein;

(n) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F," and its regulatory restrictions on affordable housing has the nefarious effect of excluding low to moderate income home buyers from Bryan County, amounting to exclusionary zoning in violation of Plaintiff, its members, and other similarly situated individuals and entities' right to equal protection Under Article I, Section I, Paragraph II of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States;

(o) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F," and its regulations on residential development constitutes exclusionary zoning on its face and serves no governmental or constitutionally permissible public interest, and discriminates between Plaintiff, its members, and other similarly situated individuals and entities in violation of Plaintiff's

right to equal protection Under Article I, Section I, Paragraph II of the Constitution of the State of Georgia and the Fourteenth Amendment to the Constitution of the United States;

(p) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F," has at its primary purpose the unconstitutional prevention of newcomers to Bryan County who cannot afford to pay an "initiation fee";

(q) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F," presents a zoning scheme that creates an exclusionary result and manifests an exclusionary intent to zone out natural growth;

(r) That the Court enter a judgment declaring that the IDO as set forth in Exhibit "F" presents arbitrary design schemes that unconstitutionally infringe upon the First Amendment free speech rights of Plaintiffs, its members, and others similarly situated, to make a free, expressive choice regarding the aesthetic design of a residence;

(s) That the Court enter a judgment declaring that the actions of Defendants as described hereinabove constitute taxation without constitutional authority under the Constitution of the State of Georgia;

(t) That the Court enter a judgment declaring that actions of Defendants as described hereinabove constitute an inverse condemnation of property for which compensation is required by law;

(u) That all costs of this action, including reasonable attorneys' fees, be cast upon the Defendants; and

(v) That the Court award such other relief as it regards to be just and proper.

RESPECTFULLY SUBMITTED, this 7th day of February, 2019.

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