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IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

Utah Valley Homebuilders Association on behalf of its members and FieldStone Homes Utah, LLC, Fieldstone Utah Investors, LLC on their own behalf and on behalf of a class of similarly situated persons and entities, Plaintiffs, vs. The City of Cedar Hills, a Municipal Corporation and political subdivision of the State of Utah, and John Does 1-10; Defendants.	**COMPLAINT** Civil No. 120400574 Judge Low

Plaintiffs, Utah Valley Home Builders Association on behalf of its members, FieldStone Homes Utah LLC, and Fieldstone Utah Investors, LLC on their own behalf and on behalf of a class of all those similarly situated persons described below (hereinafter "UVHBA", "Plaintiffs" or "Class Plaintiffs") complain and allege as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to the applicable provisions of the Utah Code Annotated 11-36a-701 et. seq., and 11-36a-101 et. seq. generally.

VENUE

2. Venue is properly located in this Court pursuant to the applicable sections of the Utah Code.

PARTIES

3. Utah Valley Homebuilders Association ("UVHBA") is a duly organized Utah Corporation maintaining its principal business location in Orem, State of Utah. Plaintiffs bring this action on their own behalf, their association members, and on behalf of a class of all persons or entities who have paid impact fees to The City of Cedar Hills under its current impact fee schedule.

4. FieldStone Homes Utah, LLC is a limited liability company duly organized under the laws of the State of Utah and doing business in Utah County, State of Utah.

5. FieldStone Utah Investors, LLC is a limited liability company duly organized under the laws of the State of Utah and doing business in Utah County, State of Utah.

6. The City of Cedar Hills (herein after "Defendant" or "City") is a municipal corporation and a political subdivision of the State of Utah within Utah County, Utah. John Does 1-10 are persons or entities that were involved with the City in the improper acts set forth hereafter and/or

who have liability for the actions taken or damages suffered as a result thereof.

7. The John Doe Defendants are persons or entities whose identities are presently unknown who may be necessary to join in the litigation for whatever reason, or who may share liability with the City for the causes of action set forth below.

NATURE OF THE ACTION

8. Plaintiffs bring this action as a Class Action pursuant to Rules 23(a) and (b) of the Utah Rules of Civil Procedure on behalf of all persons who have paid development impact fees to the City under the current and prior impact fee schedules of the City, which became effective on or about October 10, 1995 and thereafter (the commencement of the "Class Period") on the basis that impact fees assessed or obtained by the City during the Class Period are improper, illegal, and contrary to and violate controlling constitutional, statutory and case authority. The damages in this action exceed the Tier 3 damages described in Rule 26(c)(5) being in excess of $300,000.

CLASS ACTION ALLEGATIONS

9. Plaintiffs bring this class action on behalf of themselves and all current and former property owners or developers who paid RF Impact Fees to the City since 1995, which on information and belief became effective on or about October 10, , 1995.

10. Plaintiffs do not know the exact size of the Class because such information is in the exclusive control of Defendants. Nonetheless, there are potentially hundreds of Class members who paid RF Impact Fees to the City under its impact fee schedule.

11. The Class is so numerous that joinder of all Class members, whether required or permitted, is impracticable.

12. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs, like all Class Members, were assessed and paid illegal impact fees to the City and are entitled to a refund for the entire amount paid or a portion of that amount. Similarly, Plaintiffs, like all Class Members, have been damaged by Defendants' unlawful fees and charges, in violation of Utah state law during the class period.

13. Plaintiffs will fairly and adequately protect the interests of the Class because Plaintiffs' interests are coincident with, and not antagonistic to, those of the Class. Plaintiffs have paid the exact amounts during the same time frames as all other similarly situated individuals and will be entitled to the exact same damages as all members of the Class. Plaintiffs have retained counsel with substantial experience in impact fees, illegal exactions, inverse takings, and related legal issues central to this class action litigation, and class action litigation.

14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to individually seek redress for the wrongful conduct alleged herein.

15. Questions of law and fact that are common to the members of the Class predominate over questions that affect only individual members. Among the questions of law and fact that are

common to the class are the inappropriate collection of impact fees based upon incorrectly established levels of service, the failure of the city to refund impact fee money not spent or encumbered within the appropriate time frame, and the uses of impact fee money for inappropriate projects and improvements.

GENERAL ALLEGATIONS

16. The Plaintiffs and the members of Plaintiff UVHBA own or previously owned certain properties located within the jurisdictional boundaries of the City that they are in the process of developing, or which they have developed (the "Properties"), or in which they have an interest and have suffered damages relating to those interests, or for which they have standing and a right to sue the City and the John Doe Defendants, including without limitation, for the improper, illegal impact fees set forth hereafter.

17. At various times, as early as 1995, the City adopted impact fee enactments, which imposed impact fees on new development within the boundaries of the City.

18. At the time of several of these impact fee enactments, the City relied upon a Capital Facilities Plan ("CFP") and an Impact Fee Analysis ("IFA") to support the enactment of the impact fees.

19. At the time of other impact fee enactments, the City relied upon much less extensive documentation to support the enactment of the impact fees.

20. According to the City's financial records, as of June 30, 2010, the City had

"Unexpended Fees Collected Prior to FY 2005" of $1,412,724 in its "Recreational Facilities" impact fee accounts, $18,094 in its "Sewer (80 Rod)" impact fee accounts, and $27,891 in its "Sewer ($ Aqueduct)" impact fee accounts. *See* Exhibit A.

21. According to the City's financial records, as of June 30, 2011, the City had "Unexpended Fees Collected Prior to FY 2006" of $1,489,393 in its "Recreational Facilities" impact fee accounts and $35,827 in its "Sewer (80 Rod)" impact fee accounts. *See* Exhibit B

22. As of June 30, 2011, the City had $2,475,353, more or less, on hand in its "Recreation Facilities" impact fee fund that was described in the City's impact fee accounting reports as "Total Impact Fees On Hand 6/30/2011". *See* Exhibit B.

23. The Utah Code provides, at Section 11-36a-602(2) that impact fees must be expended or encumbered within six years of their receipt, unless a local political subdivision identifies, in writing, an extraordinary and compelling reason why the fees should be held longer than six years and an absolute date by which the fees will be expended.

24. The City has neither expended nor encumbered the funds collected within six years of receipt nor provided the required written identifications.

25. According to documents obtained from the City under the Government Records Access and Management Act, the most recent and current Recreational Facilities Impact Fee ("RF Fees") enactment that the City has adopted is dated June 6, 2000 (the "2000 Enactment").

26. In the 2000 Enactment, the City stated that the RF Impact Fees were to be spent on a "Pool & Rec. Center", and also states "Due to economies of scale, the City does not currently

have a swimming pool or recreation center. However, the City will need a swimming pool and recreation center at build out population of 11,000." *See* Exhibit C.

27. As of June 30, 2011, the City reported the intent to spend $2,125,353 on a "Community Events and Fitness Center" and $350,000 on a "Splash Pad". *See* Exhibit B

28. The "Community Events and Fitness Center" is in fact a golf club house, located at 10640 North Clubhouse Drive, and described in the golf course website as its "club house". *See* Exhibit D.

29. The 2010 Capital Improvements Plan, adopted by the City Council of the City on March 16, 2010, states that the "Sunset Center" to be built at the golf course is not the "Community Recreation and Aquatics Center", which will be built later. It also states that the "Sunset Center" is being built "100%" with impact fees. *See* Exhibit E.

FIRST CAUSE OF ACTION
(Refund of Impact Fees Held Beyond the Statutory Timeframe)

30. The foregoing paragraphs are incorporated by reference.

31. Utah Code Ann. 11-36a-602(2)(a) and its predecessor 11-36a-302 require that all impact be expended for a permissible use "within six years of their receipt"

32. The amount collected by the City that was not expended within six years of its collection is not certain, but it was reported by the City to exceed $1,500,000 in the documents that the City is required to file with the Utah State Auditor.

33. U.C.A. 11-36a-603 and its predecessor 11-36-303 provide that a local political subdivision shall expend or encumber the impact fees for a permissible use within six years of

their receipt.

34. Some of the fees collected by the City were not expended or encumbered within six years of their receipt and cannot therefore be either expended or encumbered after that time, because the City did not make the required written identifications required by the statute to avoid that deadline, or made insufficient identifications to meet the statutory requirement imposed by Utah Code Ann. 11-36a-603(2)(b).

35. Since the City does not have the right under statute to hold the fees for longer than six years, and may not expend or encumber them after six years, then the City can only refund the fees to those who paid them.

36. The City ordinances also have illegally purported to require that any person seeking a refund of impact fees held for more than six years must make a demand for payment of those fees to the Mayor of the City within 180 days of the date that the fee has been held for more than six years without being expended or encumbered. Such provisions are found in various enactments, such as the City's Ordinance 4-6-2000B at Section XI, Refund of Fees Paid.

37. These provisions also illegally purport to provide that any refund is to be paid to the current landowner of property for which impact fees were paid, and not to the person who paid them.

38. These provisions violate Utah Code Ann. 11-36a-602, in that they allow the city to hold funds more than six years without either expending them or encumbering them.

39. These provisions also violate other provisions of state law and the common law by

refusing refunds to the persons who paid the fee, making demands for refunds difficult and impractical and are otherwise contrary to principles of justice and equity.

SECOND CAUSE OF ACTION
(Inappropriate Use of Impact Fee Funds)

40. The foregoing paragraphs are incorporated by reference.

41. According to Utah Code Ann. 11-36a-602(1) and identical statutes in place prior to the 2011 recodification of this section of the code, a local political subdivision may expend impact fees only for a system improvement identified in the impact fee facilities plan and for the specific public facility type for which the fee was collected.

42. The Recreational Facilities Impact Fee ("RF Fee") was established by the City to collect money to build a recreation and aquatic center in the City, according to the enactment documents adopted when the RF Fee was first enacted and the 2000 enactment documents which remain in effect and upon which the current RF Fees are based.

43. The use of RF Fees to build a golf club house is not for a system improvement identified in the impact fee facilities plan and is not the specific public facility type for which the fee was collected.

44. The RF Fees expended on the golf club house must therefore be restored to the impact fee fund and held for the use for which they were collected, if that use can be accomplished within six years of the receipt of those fees, as outlined in the first cause of action. Any fees not encumbered or expended for a recreation and aquatic center within six years of receipt must also be refunded.

THIRD CAUSE OF ACTION
(Enhancements to the Level of Service)

45. The foregoing paragraphs are incorporated by reference.

46. According to Utah Code Ann. 11-36a-202(1)(ii), an impact fee cannot be used to raise the "level of service" that a community enjoys in a given public facility. A "level of service" is defined to be the per capita benefit that the population enjoys from a public facility, such as acres of parks or miles of trails per 1000 residents (see the City's supporting CFP and IFA for its parks impact fees adopted in 2007 and incorporate by reference in to Ordinance 8-21-2007A).

47. The City has collected "recreational facilities" impact fees as a separate category of impact fees for a number of years, thus setting that category aside as representing a different level of service.

48. The City did not have any "recreation facilities" prior to 2011, and thus had no previous "level of service" for recreational facilities. Any such facilities provided through impact fees must therefore represent an increase in the level of service, which is prohibited by statute.

49. According to the City's 2010 Capital Improvement Plan, the "Sunset Center" or golf club house was paid for "100%" with impact fees. *See* Exhibit E

50. The use of the RF Fees to build the club house, or any recreational facility, was therefore illegal and contrary to statute.

FOURTH CAUSE OF ACTION
(Other Violations of the Impact Fee Act)

51. The foregoing paragraphs are incorporated by reference.

52. Strict requirements for documentation supporting an impact fee enactment are imposed by the Utah Impact Fee Act, at Title 11, Chapter 36a, Utah Code Annotated.

53. The impact fees imposed by the City are not supported by adequate documentation, including the lack of analysis required by Utah Code Ann. 11-36a-304; the documentation of costs and proposed expenditures required by 11-36a-305; the certification requirements of 11-36a-306; and the enactment provisions required by 11-36a-402.

54. The impact fees also violate other requirements of the Act, including prohibitions against using impact fees to enhance the level of service of a public facility, to cure existing deficiencies in public facilities, to provide improvements which are not system improvements, and other provisions of 11-36a-202.

FIFTH CAUSE OF ACTION
(Exactions and other Damages)

55. Plaintiffs have been damaged as a result of the illegal imposition of impact fees, including without limitation that Plaintiffs have been required by the City to pay the illegal impact fees as an exaction imposed in order to obtain development approvals and/or building permits. Plaintiffs and class members have been required by the City to pay impact fees to obtain approvals to develop their properties, or any portion thereof.

56. If the Plaintiffs, or any member of the class, refused to pay the impact fees, they would not have been able to develop their properties, to occupy them, or to utilize them in any manner reflecting an economically viable use.

57. Impact fees are exactions as defined by Utah Code Ann. 10-9a-508, and must therefore

only be imposed to offset burdens created by development and in a manner which is roughly equivalent or proportionate to the burdens created by development.

58. The City's impact fees are disproportionate and illegal in that they are not utilized to offset burdens created by development and do not impose burdens which are roughly equivalent to the burdens created by development.

59. As a consequence, Plaintiffs and class members are entitled to recover as damages just compensation for the taking or damaging of private property without the payment of just compensation as required by Article I, Section 22 of the Utah Constitution and the Fifth Amendment to the Constitution of the United States.

60. Plaintiffs and class members are also entitled to recover other damages suffered as a result of the imposition of the impact fees. These damages will be in an amount established at the time of trial though they are in excess of $300,000.

61. Plaintiffs and class members are also entitled to recover court costs, attorney's fees and pre-judgment and post-judgment interest to the full extent permitted by law.

SIXTH CAUSE OF ACTION
(Injunctive Relief)

62. The foregoing paragraphs are incorporated by reference.

63. The development, study, adoption and collection of the impact fee is not only illegal, but is inequitable and improper, violating fundamental principles of equity.

64. Plaintiffs are entitled to injunctive relief preventing and enjoining the City from assessing or collecting the impact fees, because the assessment and collection of such fees is

illegal, unconstitutional and inequitable. Plaintiffs are also entitled to injunctive relief requiring the City to refund all or part of the impact fees paid to and collected by the City.

SEVENTH CAUSE OF ACTION
(Attorney's Fees)

65. The foregoing paragraphs are incorporated by reference.

66. Plaintiffs are also entitled to recovery of attorneys fees under the applicable provisions of the Utah Impact Fee Act at Utah Code Ann. 11-36a-703(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

1. That this Court certify this action as a class action under Rule 23(b)(1), 23(b)(2) and 23(b)(3);

2. Under the First Cause of Action, that the Court enter a finding that the provisions of the City's ordinances which violate state law related to refunds are null and void, and that impact fees paid by the Plaintiff and class members which were not expended or encumbered within six years of receipt be refunded to the Plaintiffs and class members.

3. Under the Second Cause of Action that the impact fees used for inappropriate purposes, which were not or cannot be expended or encumbered for appropriate purposes within six years of receipt, be refunded to the Plaintiffs and class members.

4. Under the Third Cause of Action for the refund of all impact fees collected for recreational facilities to the Plaintiffs and class members.

5. Under the Fourth Cause of Action, for a damage award in favor of Plaintiffs and all

class members for all damages suffered as a result of the illegal or inappropriate impact fees, including the refund of all such fees collected.

6. Under the Fifth Cause of Action, for a damage award in favor of Plaintiffs and all class members for all just compensation and other damages suffered as a result of the illegal or inappropriate impact fees, including the refund of all such fees collected.

7. Under the Sixth Cause of Action for injunctive relief preventing the assessment of any additional impact fees and compelling the refund and reimbursement of any impact fees paid to the City within the statutory time period allowed by law.

8. Under the Seventh Cause of Action, for an award of attorneys fees under statutory and common law doctrines and authorization.

9. For an award court costs and interest accruing on any award, both before and after judgment at the highest legal rate.

10. For such other and further relief as the Court deems just and proper.

DATED this 18 day of April, 2012.

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