

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

_____-CVS-____

2017 MAY 19 P 3:51

GERALD W. CURRIN BUILDERS, S.C.)
INC.,)

Plaintiff)

v.)

TOWN OF HOLLY SPRINGS,)
Defendant)

**COMPLAINT
(Class Action)**

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff Gerald W. Currin Builders, Inc. (hereinafter "Plaintiff" or "Currin Builders") by and through the undersigned counsel complaining of Defendant Town of Holly Springs (hereinafter "Defendant" or "Holly Springs") and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff, on behalf of itself and others similarly situated, brings this action as a collection action to obtain redress arising from the unlawful collection of "Capacity Replacement Fees", also called "Impact Fees", by a municipality without authority to do so from the General Assembly or the North Carolina Supreme Court.
2. This case arises under *Quality Built Homes, Inc. v. Town of Carthage*, 789 S.E.2d 454 (N.C. 2016), other case law, and the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, *et seq.*
3. This is a class action, filed pursuant to Rule 23 of the North Carolina Rules of Civil Procedure on behalf of Plaintiff and others similarly situated who constructed or developed any structure in Holly Springs in which Holly Springs pursuant to Holly Springs' standardized policies and procedures have, in the past ten (10) years or will in the future collect Capacity Replacement Fees pursuant to Sec. 16-181(a) of the Holly

Springs Code of Ordinances in violation of North Carolina law as further set forth herein.

JURISDICTION AND VENUE

4. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.
5. This Court has jurisdiction over the parties and this action pursuant to N.C. Gen. Stat. § 1-254 because the rights of Plaintiff are directly and adversely affected by the ordinance.
6. Venue is proper under N.C. Gen. Stat. § 1-82 in that Defendant is a body politic and a corporate municipality in in Wake County, North Carolina.
7. A copy of this complaint has been served on the Attorney General of North Carolina pursuant to N.C. Gen. Stat. § 1-260.

PARTIES

8. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.
9. Plaintiff is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Wake County, and is sometimes referred to as Currin Builders.
10. Defendant Town of Holly Springs is a body politic and a corporate municipality with the capacity to be sued as provided in N.C. Gen. Stat. § 160A-11.
11. Holly Springs is not entitled to any governmental or legislative immunity because it undertook functions beyond its governmental and propriety immunity.
12. Holly Springs is not entitled to sovereign immunity or any other immunities, and has, to the extent it has purchased insurance or participates in a risk pool arrangement, has waived sovereign immunity and all other immunities.

BACKGROUND

13. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.
14. Upon information and belief, at all times relevant to the allegations contained herein, Defendant has maintained a uniform policy of requiring any builder or developer who builds a residential or commercial structure in Holly Springs to pay a “Capacity Replacement Fees” to Holly Springs.
15. Pursuant to the 2016-2017 schedule of fees adopted by Holly Springs, said Capacity Replacement Fees range from \$6,650 to \$42,350 for sewer connections and \$2,850 to \$18,150 for water connections. Plaintiff is informed and believes that similar fees, although perhaps lower, existed at all relevant times set forth herein. Said Capacity Replacement Fees are in addition to the regular fees for sewer and water. Regular fees would include connection or tap fees, user fees, and any other fee that is for the actual usage or maintenance of water and sewer services.
16. Upon information and belief, Holly Springs justifies payment of the Capacity Replacement Fee under Sec. 16-181(a) of the Holly Springs Code of Ordinances, that states:

For the purpose of defraying a portion of the cost of providing capacity in the collection and treatment of wastewater, there shall be a sewer availability charge levied and collected for any building, structure or the like built after January 1, 1986 in order to discharge wastewater into the town's public sewer system. In addition, tap on fees shall be levied to cover the cost of the actual hook up. The availability charge shall consist of two separate fees to be paid at the time of issuance of a building permit, discharge permit and/or approval of a residential subdivision as follows:

(1) *Acreage fees.* **The purpose of the acreage fee is to recover a portion of the cost of providing capacity** in the wastewater transport and pumping station and shall be based on the size of the property to be served, in acres.

(2) *Impact fees.* The purpose of the impact fee is **to recover a portion of the cost of providing capacity** for wastewater treatment and shall be based on demand on the POTW treatment facility as represented by the water meter size.

[Emphasis supplied]

17. By its express terms Sec. 16-181(a), provides that only a portion of the Fees are used to provide or defray the costs of capacity for wastewater treatment for the residence (hereinafter referred to as “Capacity Replacement Fees”).
18. Upon information and belief, a portion of the Capacity Replacement Fees charged by Holly Springs pursuant to Section 16-181(a), to Plaintiff and others similarly situated, are for potential expansion or future water or sewer services or systems, rather than for the contemporaneous or actual usage of said services or systems. This is unlawful.
19. Holly Springs has no town ordinance that sets out any authorization by the General Assembly to charge Capacity Replacement Fees for future expansion of its water and sewer systems or for services to be furnished.
20. Upon information and belief, Holly Springs collects and uses the unlawful Capacity Replacement Fees as described herein without express or implied legal authority.
21. Holly Springs is not authorized to charge a Capacity Replacement Fee pursuant to the enabling statute of N.C. Gen. Stat. § 160A-311 (“Public Enterprise Statute”) or any other statute for future expansion of its water and sewer systems or for services to be furnished.
22. The Public Enterprise Statute only allow Holly Springs to charge for the contemporaneous use of its water and sewer systems, and the plain language of said

Statutes clearly fail to empower Holly Springs to impose Capacity Replacement Fees for future expansion of water or sewer systems or for services to be furnished.

23. Upon information and belief, Holly Springs charged and collected improper Capacity Replacement Fees pursuant to Sec. 16-181(a) of the Holly Springs Code of Ordinances and its schedule of fees, without authorization by the General Assembly of North Carolina to charge such fees and is in violation of the Supreme Court's holding in *Quality Built Homes, Inc. v. Town of Carthage* and other applicable case law.

FACTS SPECIFIC TO PLAINTIFF GERALD W. CURRIN BUILDERS, INC.

24. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.
25. On or about August 3, 2009, Plaintiff paid \$8,000 in Capacity Replacement Fees to Holly Springs pursuant to Sec. 16-181(a) of the Holly Springs Code of Ordinances, in connection with a home located at 137 Raleigh St, Holly Springs, NC 27540. See attached **Exhibit A**.
26. Upon information and belief, Holly Springs used a portion if not all of said Capacity Replacement Fees for an unlawful purpose as explained herein.
27. Plaintiff should have only had to pay a Capacity Replacement Fee for contemporaneous or actual usage of said services or systems.
28. Plaintiff is also an adequate representative of the class in that the Plaintiff does not have antagonistic or conflicting claims with the other members of the class; Plaintiff has a sufficient interest in the outcome to ensure vigorous advocacy; and Plaintiff's counsel have the requisite qualifications and experience to conduct the proposed litigation competently and vigorously.

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

COMMON CLASS ALLEGATIONS:

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

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

All natural persons or corporations who (a) at any point within the ten (10) year period preceding the filing of Plaintiff's Complaint and during its pendency (b) paid Capacity Replacement Fees to the Town of Holly Springs pursuant to the schedule of fees adopted by the Town of Holly Springs.

32. The Class members are so numerous that joinder of all is impractical. The names and addresses of potential Class members are readily identifiable through the business records maintained by Defendant, and the Class members may be notified of the pendency of this action by published and/or mailed notice.

33. Plaintiff requested the names of potential class members pursuant to the public records law but Defendant has refused to provide such records as of the date of the filing of this complaint. See **Attached Exhibit B**.

34. Upon information and belief, within the ten (10) year period preceding the filing of Plaintiff's Complaint, Defendants have collected unlawful Capacity Replacement Fees from hundreds of potential Class members.

35. The requirements of Rule 23 are met in that this class, upon information and belief, consists of hundreds present and former developers, entities and individuals, who have either already paid, or will pay, Capacity Replacement Fees to Holly Springs pursuant to

the schedule of fees adopted by the Holly Springs.

36. Common questions of law and fact predominate over any individual issues that may be presented, because Defendant has a pattern, practice, and policy of collecting said Capacity Replacement Fees from developers. Common questions include, but are not limited to:
 - a. Whether Defendant's pattern, practice, and policy of collecting Capacity Replacement Fees violates applicable North Carolina law;
 - b. Whether Holly Springs improperly charged and collected Capacity Replacement Fees under Sec. 16-181(a) of the Holly Springs Code of Ordinances for future expansion of its water and sewer systems or for services to be furnished, without being specifically authorized by the General Assembly of North Carolina to charge such fees; and
 - c. Whether Plaintiff has been deprived of their property interests by action of the Holly Springs which has no rational relation to a valid governmental objective;
37. Plaintiff's claims are typical of the claims of each Class member and all are based on the same facts and legal theories in that Holly Springs has a specific policy of collecting an improper Capacity Replacement Fee from each member of the proposed Class through the schedule of fees adopted by the Holly Springs.
38. Plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.
39. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of collection of unlawful municipal fees in the context of class action litigation.
40. Neither Plaintiff nor its counsel have any interests that might cause them not to vigorously pursue this action. Plaintiff is aware of his responsibilities to the putative class and has accepted such responsibilities.

41. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.
42. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action. Plaintiff further alleges that certification of the Class is appropriate in that:
 - a. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individuals' actions would engender;
 - b. Each and every member of the proposed Class is subject to the same ordinance and schedule of fees as set forth herein;
 - c. Class treatment will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein; and
 - d. Absent a class action, the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages, and if Defendants' conduct continues to proceed without remedy, it will continue to reap and retain the proceeds of their ill-gotten gains.

FIRST CLAIM FOR RELIEF

(Declaration that the City's Adoption and Enforcement of the Challenged Fees Exceeds the Authority of the Town and is *Ultra Vires*.)

43. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.
44. Pursuant to N.C. Const. Art. VII, Sec. 1 and N.C. Gen. Stat. §160A-4, municipalities in North Carolina only have the authority to exercise powers, duties, privileges and immunities conferred upon them by the General Assembly.
45. The General Assembly has not authorized municipalities to charge and collect fees for Capacity Replacement by a municipality for the future expansion of its water and sewer

systems or for services to be furnished.

46. In charging the Capacity Replacement Fees, Holly Springs has illegally exacted a fee for development approval that is not specifically authorized by law.
47. Plaintiff is entitled to a Declaratory Judgment Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.* declaring that Holly Springs' Capacity Replacement Fees are unlawful for the reason that the City has exceeded its authority by adopting and imposing Capacity Replacement Fees as alleged herein.

SECOND CLAIM FOR RELIEF

(Violation of N.C. Gen. Stat. § 160A-314(a) and Return of Fees Plus 6% Interest Pursuant to N.C. Gen. Stat. §160A-363(e))

48. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.
49. N.C. Gen. Stat. § 160A-363(e) provides that if a city is found to have exacted a fee for development approval that is not specifically authorized by law, the city shall return the fee plus 6% interest per annum.
50. Our Supreme Court in *Quality Built Homes, Inc. v. Town of Carthage*, held that local governments, such as Holly Springs, under the Public Enterprise Statute, N.C. Gen. Stat. § 160A-314(a) (2015), a municipality may not charge for the future expansion of water and sewer systems or for services to be furnished.
51. Holly Springs' Capacity Replacement Fee is a fee collected in part or in whole for the future expansion of water and sewer systems or for services to be furnished without express or implied legislative authority.
52. Holly Springs has collected illegal a Capacity Replacement Fee from Plaintiff and Class members.

53. Plaintiff and class members are entitled to the return of a portion or all Capacity Replacement Fees paid to Holly Springs from September 1, 2006 to date plus 6% interest per annum, plus attorneys' fees and costs as allowed by law.

THIRD CLAIM FOR RELIEF

(The Town's Adoption and Enforcement of the Challenged Ordinances Violates Plaintiffs' Rights to Equal Protection and Substantive Due Process under N.C. Const. Art. I, Sec. 19)

54. The preceding paragraphs are reincorporated by reference as if fully set forth herein.
55. Pursuant to N.C. Const. Art. VII, Sec. 1 and N.C. Gen. Stat. § 160A-4, municipalities in North Carolina do not have authority to exercise powers contrary to State law.
56. Holly Springs' Capacity Replacement Fees are unlawful, *ultra vires*, and not authorized by law, as Holly Springs lacks authority from the General Assembly to charge fees for the expansion of its water and sewer systems or for services to be furnished by Holly Springs in the future.
57. Holly Springs' adoption and imposition of unlawful Capacity Replacement Fees as a condition to development approval is contrary to State law.
58. The imposition of unlawful fees by Holly Springs as a condition to development approval is arbitrary and capricious and constitutes an abuse of discretion.
59. By adopting and imposing unlawful Capacity Replacement Fees as a condition to development approval, Holly Springs has subjected Plaintiffs' to disparate treatment under the laws without a rational basis in derogation of Plaintiffs' fundamental rights, and Holly Springs has acted outside the legitimate objective permitted for ordinances enacted by municipalities in North Carolina.
60. By adopting and imposing unlawful Capacity Replacement Fees as a condition to development approval, Holly Springs has violated Plaintiff's and the Class' rights to

equal protection and to substantive due process as provided by Article 1, Sec. 19 of the North Carolina Constitution.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all issues so triable.

PRAYER FOR RELIEF

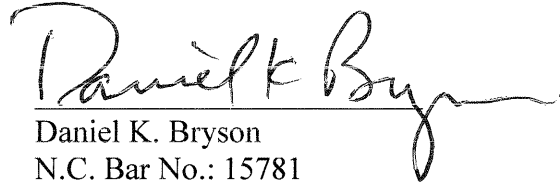
WHEREFORE, Plaintiff Gerald W. Currin Builders Inc. and members of the Class respectfully request that this Court:

1. Declare Holly Springs' Capacity Replacement Fees unlawful;
2. Certify the Class and appointing Plaintiff and his counsel to represent the Class;
3. Issue a declaratory judgment that Defendant's actions as set forth herein violated Plaintiff's and each member of the Class' rights pursuant to N.C. Gen. Stat. § 1-253;
4. That Plaintiff and Class Members have and recover from Defendant all Capacity Replacement Fees paid by the Plaintiff and Class Members for the future expansion of its water and sewer systems or for services to be furnished, together with interest and attorney fees as allowed by law;
5. That Plaintiff and Class Members be awarded reasonable attorney fees pursuant to N.C. Gen. Stat. §§ 6-21.7, and 132-9(c), and the Court order Holly Springs to provide all public records previously requested to and to be requested.
6. That Plaintiff and Class Members have and recover damages, costs, and attorney's fees pursuant to Article I, Section 19 of the North Carolina Constitution for deprivation of their property rights;
7. Tax the costs of this action to Defendant; and
8. Grant Plaintiff and the members of the Class such other and further relief as the Court

deems just and proper.

Respectfully submitted, this the 19th day of May, 2017.

WHITFIELD BRYSON & MASON LLP



Daniel K. Bryson

N.C. Bar No.: 15781

John Hunter Bryson

N.C. Bar No.: 50602

900 W. Morgan Street

Raleigh, North Carolina 27603

Telephone: (919) 600-5000

Facsimile: (919) 600-5035

dan@wbmlp.com

hunter@wbmlp.com

*Attorneys for Plaintiff Gerald W. Currin
Builders Inc.*

THE TOWN OF
Holly Springs
 NORTH CAROLINA

UTILITY TAP WORKSHEET

Fees Due at Building Permit Time

For use only with:

- Single Family Residential Building Permit NOT inside NEWER Subdivisions
- Non-Residential Site
- Irrigation Meters

PAID

8/18/09

09.06.09

Name: Curvin Builders Date: 8-3-09
 Address: _____ Telephone No. _____
 Service Address: 137 Raleigh St Acreage: _____

I HEREBY UNDERSTAND THAT THESE FEES, IN ADDITION TO OTHER APPLICABLE BUILDING PERMIT AND INSPECTION FEES, MUST BE PAID BEFORE UTILITY TAPS WILL BE INSTALLED FOR MY PROPERTY.
 CUSTOMER SIGNATURE _____ DATE _____

ACREAGE FEES

<input checked="" type="checkbox"/> Residential			
24 322.21/24-373-14	Wastewater	Units @ \$400/Unit	\$ <u>400.00</u>
23 322.11/23-383-14	Water	Units @ \$400/Unit	\$ <u>400.00</u>
<input type="checkbox"/> Non-Residential			
24 322.21/24-373-14	Wastewater	Acres @ \$1300/Acre	\$ _____
23 322.11/23-383-14	Water	Acres @ \$1300/Acre	\$ _____

FEES IN LIEU OF ASSESSMENT

24 233.81/24-373-30	Wastewater	<u>60.01</u> LF @ \$7.60/LF	\$ <u>456.075</u>
23 323.51/23-388-01	Town Water	<u>60.01</u> LF @ \$7.60/LF	\$ <u>456.075</u>
23 323.62/23-398-02	So. Wake Water Line	LF @ \$10.50/LF	\$ _____
24 323.63/24-373-32	Middle Creek WW	Acres @ \$500/Acre	\$ _____
24 323.62/24-373-31	Fee in Lieu of Pump Station Upgrade as Calculated =		\$ _____

CAPACITY REPLACEMENT FEES

24 322.23/24-373-15	Wastewater (\$4000)	Units @ 4000/Unit (3/4" meter) ²	\$ <u>4000</u>
30 322.13/31-332-15	Water (\$2000)		\$ _____
23 322.13/23-383-15	Water (\$2000)	Units @ \$4000/Unit (3/4" meter) ²	\$ <u>4000</u>

²varies for non-residential based on meter size

TAP FEES FOR TOWN-INSTALLED TAPS

30 308.02/31-333-12	Wastewater	Non-Res \$1500/lot ³ / Res \$800	\$ <u>800</u>
30 308.01/31-332-12	Water	Non-Res \$1500/lot ³ / Res \$800	\$ <u>800</u>
10 320.09/11-315-18	2 - Street Cut <input checked="" type="checkbox"/>	\$500 each ³	\$ <u>1000</u>
10 320.09/11-315-18	C&G Crossing	\$250 each ³	\$ _____
10 320.09/11-315-18	1 - Street Bore <input checked="" type="checkbox"/>	\$500 each ³	\$ <u>500</u>

³or actual cost, whichever is greater

IRRIGATION METERS

30 308.01/31-332-12	Tap Fee	Non-Res \$1500 each (3/4" split service only) Res \$800	\$ _____
30 322.17/31-332-19	Backflow Inspection Fee	\$25	\$ _____
30 322.17/31-332-19	Service reconnection fee for lapse in annual Backflow Certification	\$50	\$ _____

WATER METER DEPOSIT

30 322.16/31-332-22	Water Meter Removal Fee	\$25	\$ _____
30 322.16/31-332-22	Water Meter Reconnection Fee	\$25	\$ _____

TOTAL AMOUNT FEES DUE \$ 12,800.15

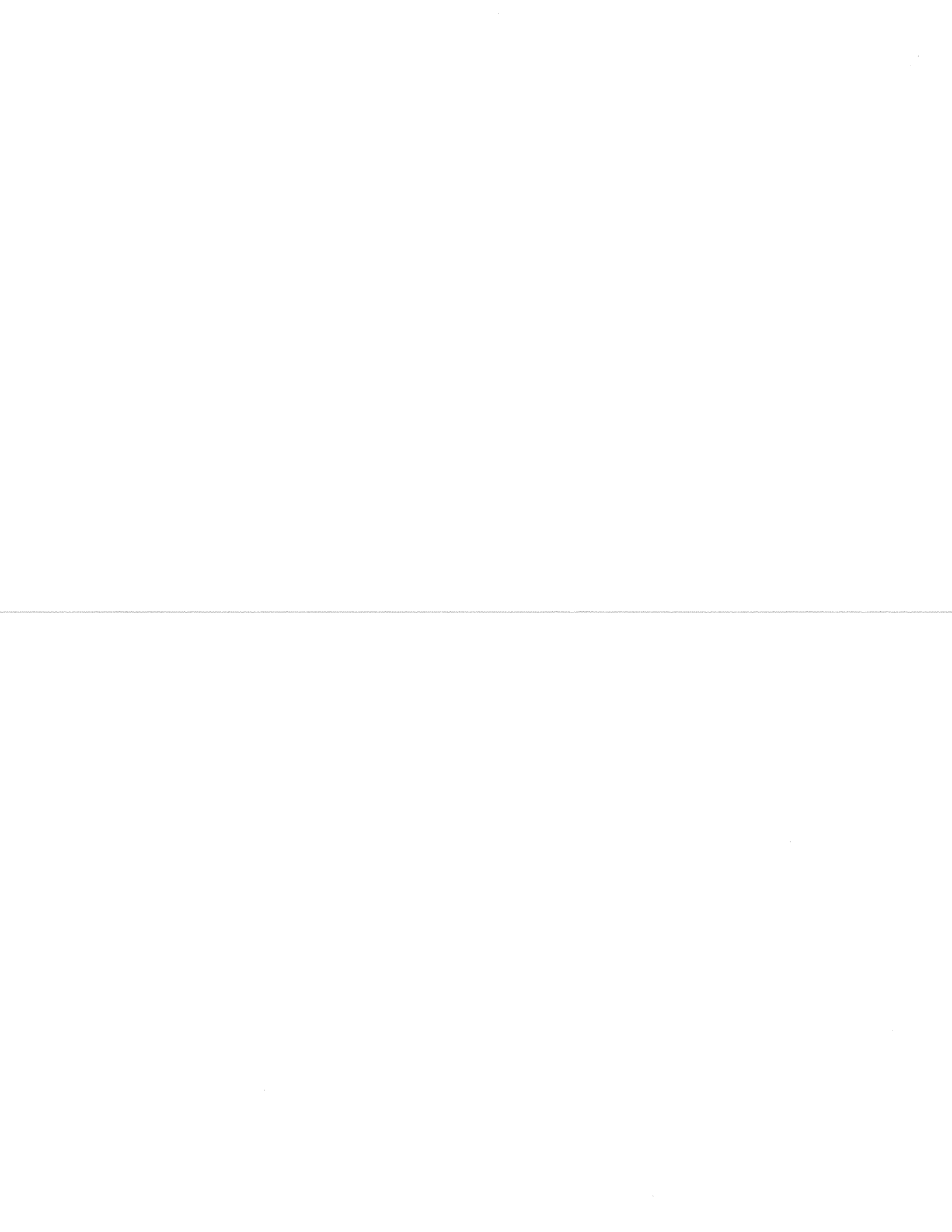
Note: Fee amount is not approved for payment unless both approval signatures and the customer signature are completed. This fee worksheet expires within 90 days of preparation, or upon amendment of fee schedule by the Town Board, whichever occurs first.

Prepared by: Darwin Davis Date: 8/11/09
 Received by Public Works: [Signature] Approved by: [Signature] Date: 8/14/09
 Received by Engineering: [Signature] Approved by: [Signature] Date: 8/14/09

Paid On: _____
 Paid Copies To: Finance Engineering Inspections Public Works Customer

Town of Holly Springs Engineering Department • PO Box 8 • Holly Springs, NC 27540 • (919) 557-3938 • FAX (919) 552-9881
 7015 Effective July 1, 2009

28519





WHITFIELD BRYSON
& MASON LLP
ATTORNEYS AT LAW

EXHIBIT B

John C. Whitfield *#*
Daniel K. Bryson * *
Gary E. Mason > ^ *
Scott C. Harris * *
Matthew E. Lee * *
Caroline Ramsey Taylor * * *
Natasha Camenisch Farmer * *
Ben Branda > *
Jeremy R. Williams *
Patrick M. Wallace *
Jennifer S. Goldstein *
Danielle L. Perry *
J. Hunter Bryson *
Charles A. Schneider *
Martha B. Schneider > *
Roger N. Braden * *

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State Bar Admissions:
KY * DC > NC * FL * TN *
NY * MD * IL * MO * CA *
Of Counsel *

Hunter@wbmlp.com
Tel: 919-600-5023

Via Email and USPS Mail

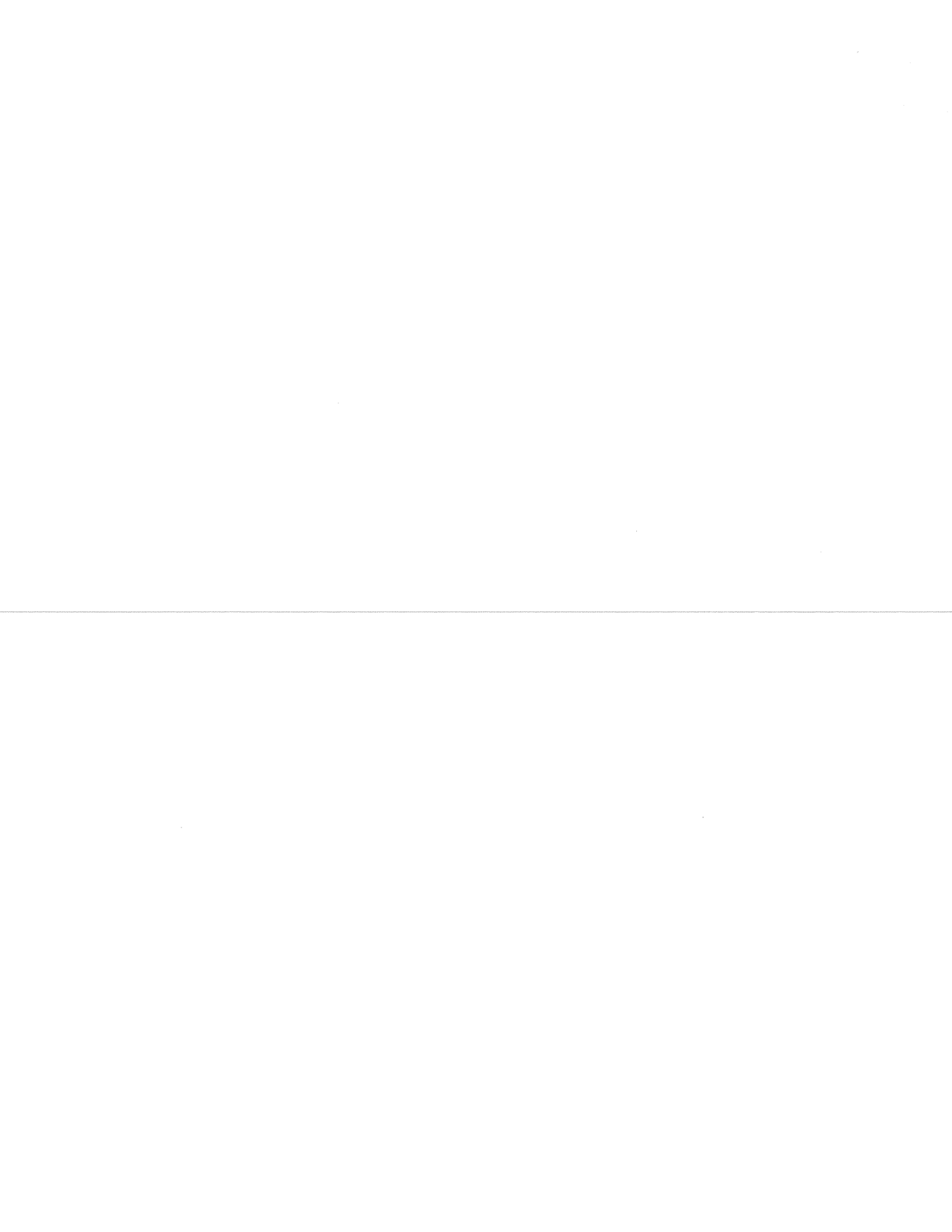
Joni Powell
Town Clerk
128 S. Main St.
P.O. Box 8
Holly Springs, NC 27540
joni.powell@hollyspringsnc.us

November 18, 2016

Dear Town Clerk,

Under the North Carolina Public Records Law, G.S. 132-1 *et seq.*, I am requesting copies or an opportunity to inspect public records pertaining to the following:

1. The identity of all persons or entities who have paid a water and/or sewer "acreage fee" and /or "impact fee", pursuant to Sec. 16-181 of the Town of Holly Springs code of ordinances for the Town of Holly Springs since August 1, 2006 to date. This request includes, but is not limited to, the name and address of each payor, the amount paid by the payor, the date the fees were paid, and the identification of the subject property which relates to the payment of the fees. This request includes both residential and commercial capacity fees.
2. Any documents which the Town of Holly Springs contends constitutes a delegation of authority from the North Carolina General Assembly for the Town of Holly Springs to charge its water and/or sewer "acreage fee" and /or "impact fee" including any specific delegations of authority, such as a local ordinance.
3. All written agreements, if any, between the Town of Holly Springs and payors requiring the payment of water and/or sewer "acreage fees" and /or "impact fees" since August 1, 2006 to date.



Joni Powell
November 18, 2016
Page 2 of 2

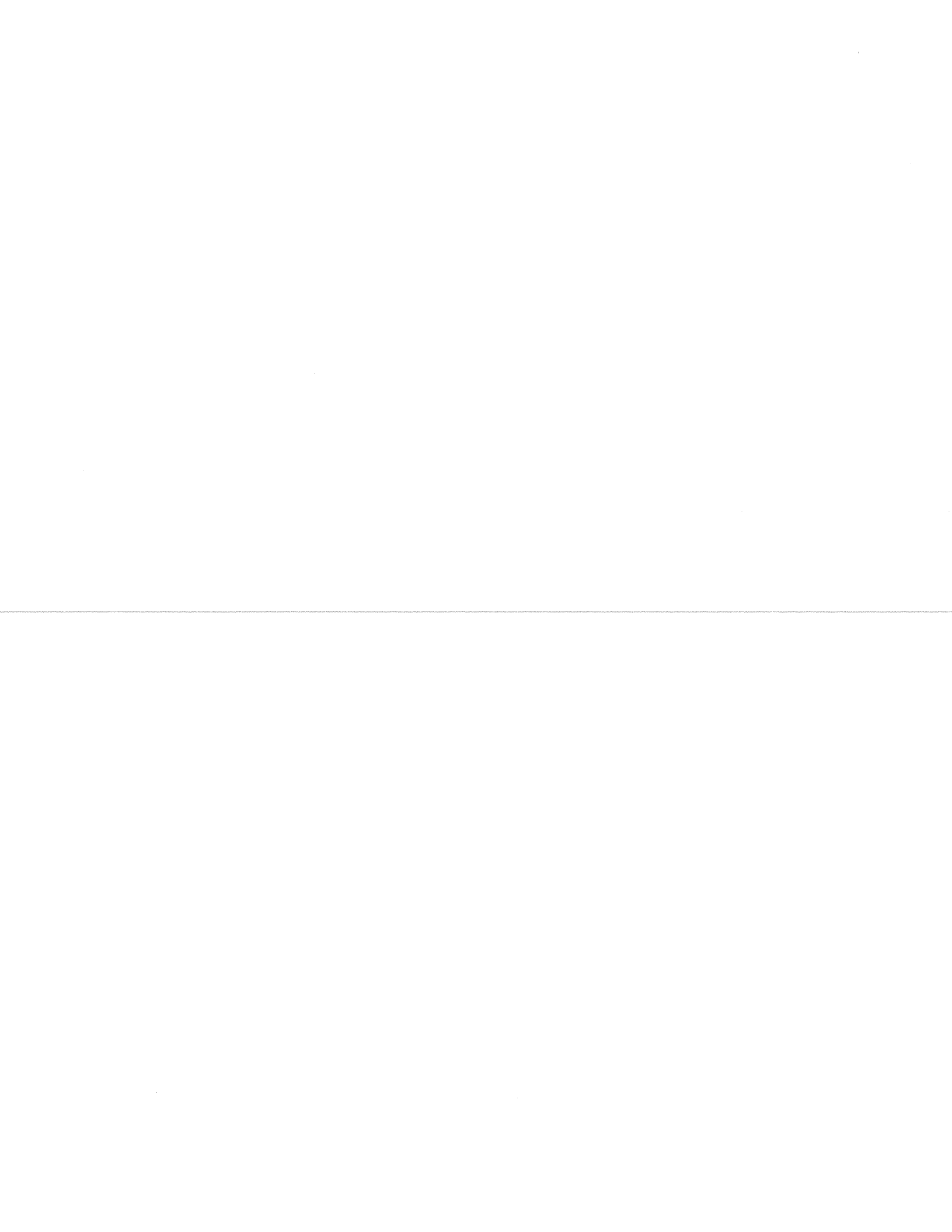
EXHIBIT B

If there are any fees for searching or copying these records, please inform me of the cost. However, I would request a waiver of any such fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of water and/or sewer "acreage fee" and /or "impact fee" and how the Town of Holly Springs uses the fees for the public good.

If you deny any or all of this request, please cite each specific exemption you feel justifies refusal to release the information requested.

Very Truly Yours,


Hunter Bryson



From: Scott Heldman
Sent: Tuesday, November 29, 2016 5:34 PM
To: 'joni.powell@hollyspringsnc.us'
Cc: Hunter Bryson
Subject: RE: City Water and Sewer Fees: Water and Sewer Fees (Potential): Public Records Request
Attachments: Bryson Letter to Town of Holly Springs 11.18.16.pdf

Dear Town Clerk,

By now you should have received our written request for records pursuant to North Carolina Public Records Law, G.S. 132-1, *et seq.* We have not as of November 29, 2016 received the requested records or a response from you office. I have attached a courtesy copy of the letter. Please confirm receipt and advise when we can expect a response.

Sincerely,
Scott E. Heldman, Paralegal on behalf of Hunter Bryson, Attorney
WHITFIELD BRYSON & MASON LLP
900 W. Morgan St | Raleigh, North Carolina 27603
P: 919.600.5013 | F: 919.600.5035
sheldman@wbmlp.com

From: Scott Heldman
Sent: Friday, November 18, 2016 11:33 AM
To: 'joni.powell@hollyspringsnc.us'
Cc: Hunter Bryson
Subject: Water and Sewer Fees (Potential): Public Records Request

Dear Town Clerk,

Attached is a letter from Hunter Bryson to the Town of Holly Springs regarding a North Carolina Public Records Law, G.S. 132-1, *et seq.* request which is being sent via USPS.

Scott E. Heldman, Paralegal on behalf of Hunter Bryson, Attorney
WHITFIELD BRYSON & MASON LLP
900 W. Morgan St | Raleigh, North Carolina 27603
P: 919.600.5013 | F: 919.600.5035
sheldman@wbmlp.com

Scott Heldman

From: Scott Heldman
Sent: Friday, November 18, 2016 11:33 AM
To: 'joni.powell@hollyspringsnc.us'
Cc: Hunter Bryson
Subject: Water and Sewer Fees (Potential): Public Records Request
Attachments: Bryson Letter to Town of Holly Springs 11.18.16.pdf

Dear Town Clerk,

Attached is a letter from Hunter Bryson to the Town of Holly Springs regarding a North Carolina Public Records Law, G.S. 132-1, *et seq.* request which is being sent via USPS.

Scott E. Heldman, Paralegal on behalf of Hunter Bryson, Attorney
WHITFIELD BRYSON & MASON LLP
900 W. Morgan St | Raleigh, North Carolina 27603
P: 919.600.5018 | F: 919.600.5035
sheldman@wbmlp.com

STATE OF NORTH CAROLINA

File No. 17CV006244

WAKE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: Gerald W. Currin Builders, Inc.
Address
City, State, Zip

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS

Name Of Defendant(s): Town of Holly Springs

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: Town of Holly Springs, c/o Charles Simmons, Town Manager, P.O. Box 8, Holly Springs NC 27540

Name And Address Of Defendant 2: Town of Holly Springs, c/o Joni Powell, Town Clerk, P.O. Box 8, Holly Springs NC 27540

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Daniel K. Bryson, Whitfield Bryson & Mason LLP, 900 W. Morgan St., Raleigh NC 27603

Date Issued: 5-19-17, Time: 3:00 PM, Signature: [Handwritten Signature], Deputy CSC, Assistant CSC, Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement, Time: AM PM, Signature, Deputy CSC, Assistant CSC, Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (*specify*)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (*specify*)

- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA

File No. 17CV006244

WAKE County

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
Gerald W. Currin Builders, Inc.

GENERAL

CIVIL ACTION COVER SHEET

INITIAL FILING SUBSEQUENT FILING

Rule 5(b), General Rules of Practice For Superior and District Courts

Name And Address Of Plaintiff 2

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Daniel K. Bryson
Whitfield Bryson & Mason LLP
900 W. Morgan St.

VERSUS

Name Of Defendant 1
Town of Holly Springs

Raleigh NC 27603

Telephone No. 919-600-5000 Cellular Telephone No. 919-815-4843

NC Attorney Bar No. 50602 Attorney E-Mail Address hunter@wbmlp.com

Summons Submitted Yes No

Initial Appearance in Case Change of Address

Name Of Defendant 2

Name Of Firm
Whitfield Bryson & Mason LLP

FAX No. 919-600-5035

Counsel for
All Plaintiffs All Defendants Only (list party(ies) represented)

Summons Submitted Yes No

Jury Demanded In Pleading
Complex Litigation

Amount in controversy does not exceed \$15,000
Stipulate to arbitration

TYPE OF PLEADING

- (check all that apply)
Amend (AMND)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Assess Costs (COST)
Answer/Reply (ANSW-Response) (see Note)
Change Venue (CHVN)
Complaint (COMP)
Confession Of Judgment (CNJF)
Consent Order (CONS)
Consolidate (CNSL)
Contempt (CNTP)
Continue (CNTN)
Compel (CMPL)
Counterclaim (CTCL) Assess Court Costs
Crossclaim (list on back) (CRSS) Assess Court Costs
Dismiss (DISM) Assess Court Costs
Exempt/Waive Mediation (EXMD)
Extend Statute Of Limitations, Rule 9 (ESOL)
Extend Time For Complaint (EXCO)
Failure To Join Necessary Party (FJNP)

- (check all that apply)
Failure To State A Claim (FASC)
Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
Improper Venue/Division (IMVN)
Including Attorney's Fees (ATTY)
Intervene (INTR)
Interplead (OTHR)
Lack Of Jurisdiction (Person) (LJPN)
Lack Of Jurisdiction (Subject Matter) (LJSM)
Modification Of Child Support In IV-D Actions (MSUP)
Notice Of Dismissal With Or Without Prejudice (VOLD)
Petition To Sue As Indigent (OTHR)
Rule 12 Motion In Lieu Of Answer (MDLA)
Sanctions (SANC)
Set Aside (OTHR)
Show Cause (SHOW)
Transfer (TRFR)
Third Party Complaint (list Third Party Defendants on back) (TPCL)
Vacate/Modify Judgment (VCMD)
Withdraw As Counsel (WDCN)
Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

CLAIMS FOR RELIEF

- | | | |
|--|--|---|
| <input type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Minor Settlement (MSTL) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Money Owed (MNYO) | <input checked="" type="checkbox"/> Other (<i>specify and list each separately</i>) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | 1. Declaration that the City's Adoption and Enforcement of the Challenged Fees Exceed the Authority of the Town and is Ultra Vires. |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Other (NEGO) | 2. Return of Fees Plus 6% Interest Pursuant to N.C. Gen. Stat. §160A-363(e). |
| <input type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Motor Vehicle Lien G.S. 44A (MVLN) | 3. Violation of N.C. Const. Art. I, Sec. 19. |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP) | |
| <input type="checkbox"/> Injunction (INJU) | | |

Date 5/19/17

Signature Of Attorney/Party
Janet R. Bryan

FEES IN G.S. 7A-308 APPLY

- Assert Right Of Access (ARAS)
- Substitution Of Trustee (Judicial Foreclosure) (RSOT)
- Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)

No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted
