

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

VTAL REAL ESTATE, LLC)	
)	
Plaintiff,)	CIVIL ACTION NO. SPCV21-00789-CO
)	
v.)	
)	
MAYOR AND ALDERMEN OF THE)	
CITY OF SAVANNAH)	
)	
Defendants.)	

NAMED PLAINTIFF’S SIXTH AMENDED VERIFIED CLASS ACTION COMPLAINT

COMES NOW Plaintiff VTAL Real Estate, LLC. (“Named Plaintiff”) and makes and files this Verified Sixth Amended Complaint on behalf of itself and prospective class members for refund under the City of Savannah 2021 Revenue Ordinance, Article U. §12 for fees illegally assessed and collected and for a tax refund and prejudgment interest pursuant to O.C.G.A. § 48-5-380 (the “Refund Statute”) to recover illegal taxes levied and collected and for attorneys’ fees and costs under O.C.G.A. § 13-6-11, and other relief and representing to the Court as follows:

INTRODUCTION

1.

This is a refund class action for fees collected under the City of Savannah 2021 Revenue Ordinance, Article U (the “Utility Service Fees Ordinance”) and for refund under the Refund Statute for illegal taxes levied and collected under the Utility Service Fees Ordinance.¹ Four (4) separate fees were assessed to Named Plaintiff based on its proposed work on its commercial

¹ All sections of the Utility Service Fees Ordinance quoted herein are taken from the City of Savannah 2021 Revenue Ordinance. However, the sections quoted contain the same language in the City of Savannah 2022 Revenue Ordinance.

building. These fees were not authorized by the plain language of the Utility Service Fees Ordinance. Additionally, upon information and belief, these same four (4) fees as well as three (3) additional fees were assessed against certain prospective class members. To the extent that these fees are deemed taxes or license fees, assessing these fees amounts to levying an invalid tax or amounts to assessing an invalid license fee on Named Plaintiff and the prospective class members in violation of Georgia law.

IDENTIFICATION OF THE PARTIES, JURISDICTION and VENUE

2.

Named Plaintiff VTAL Real Estate, LLC is a limited liability company organized and operating under the laws of the State of Georgia, whose principal office is located at 6500 Waters Avenue, Savannah, Georgia 31406.

3.

Defendant Mayor and Aldermen of the City of Savannah is a municipal entity organized under the Constitution and laws of the State of Georgia (“Defendant” or “the City of Savannah”). The City of Savannah may be served by delivering a copy of the Summons and Complaint to the City Council.

4.

Jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

Overview

5.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-4 as if set forth herein verbatim.

6.

Named Plaintiff operates von Trapp Animal Lodge at 6500 Waters Avenue, Savannah, Georgia.

7.

The von Trapp Animal Lodge offers daycare, boarding and rehabilitation services for dogs and cats.

8.

Named Plaintiff desired to expand the von Trapp Animal Lodge by approximately 1,500 square feet to add eleven (11) kennels for boarding small animals, twenty-two (22) kennels for day care of small animals and a break room and rest room for staff (the "Proposed Work").

9.

On or about March 9, 2021 Named Plaintiff submitted a Water & Sewer Approval Form For Commercial Building Renovations to the City of Savannah Water & Sewer Planning & Engineering Department for the Proposed Work. A true and correct copy of the Water & Sewer Approval Form For Commercial Building Renovations (the "Approval Form") is attached hereto as Exhibit ("Ex.") "A".

10.

As stated on page 1 of the Approval Form, a copy of the signed Approval Form had to be included with Named Plaintiff's Commercial Building Permit Submittal to Development Services for the Proposed Work.

11.

Named Plaintiff answered on the Approval Form that the building where the Proposed Work was taking place had an existing water meter and that the building will not require a new

water meter.

12.

The Approval Form provides that “Water & Wastewater fees, if required for the project, are determined using Exhibit 7. Fee payments are made at the office of the Water & Sewer Planning & Engineering Dept. (702 Stiles Ave.) by check payable to ‘The City of Savannah’”. Ex. A, p. 1.

13.

The Approval Form provides that the fees “**must be paid prior to receiving Certificate of Occupancy/Certificate of Completion.**” Id. (Emphasis in original).

14.

There are two (2) exhibits attached to the Approval Form – an “Exhibit 5” entitled “Fire System and Backflow Prevention Devices Owner/Client Declaration” and an “Exhibit 7” entitled “Equivalent Residential Unit (ERU) Calculation”.

15.

“Exhibit 7” entitled “Equivalent Residential Unit (ERU) Calculation” lists four (4) fees that were assessed to Named Plaintiff in order to receive approval for the Proposed Work and which had to be paid before Named Plaintiff received a Certificate of Occupancy/Certificate of Completion:

- (a) Water Tap-in Fees in the amount of \$354.00
- (b) Sewer Tap-in Fees in the amount of \$236.00
- (c) Reclaimed Water Fees in the amount of \$354.00
- (d) Treatment Plant Fees in the amount of \$1,347.50

See Exhibit 7, “Equivalent Residential Unit (ERU) Calculation” to Ex. “A”.

16.

The total for these fees assessed by the City of Savannah to Named Plaintiff was \$2,271.50.

Id.

17.

On or about March 15, 2021 Daslin M. Garçon, P.E., City of Savannah Senior Civil Engineer for Water & Sewer Planning and Engineering provided concurrence to the Proposed Work described on the Approval Form subject to payment of the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees and the Treatment Plant Fees. See Ex. A, p. 2.

18.

On or about June 2, 2021 Named Plaintiff paid \$2,271.50 for the fees assessed for the Proposed Work. A true and correct copy of a check made payable to the City of Savannah for the fees is attached as Exhibit "B".

19.

"Exhibit 7" entitled "Equivalent Residential Unit (ERU) Calculation" also lists three (3) additional fees which if assessed have to be paid in order to receive approval for any proposed work of either a commercial or residential building and which must be paid before a Certificate of Occupancy/Certificate of Completion will be issued:

- (a) Water Additional Fees
- (b) Sewer Area Additional Fees
- (c) Sewer Site Additional Fees

See Ex. A, Exhibit 7.

20.

Upon information and belief, Water Additional Fees, Sewer Area Additional Fees and

Sewer Site Additional Fees were assessed against certain prospective class members despite the fact that the prospective class members were not new customers as a water and/or sewer account already existed for the property.

Utility Service Fees Ordinance: Water Tap-in Fees

21.

The Utility Service Fees Ordinance provides for a Water Tap-in Fee to “be paid to the Revenue Department prior to the connection of any service line to the City’s water system according to the following schedule (a) Inside City: \$600.00 per residential unit, or equivalent resident unit or any fraction thereof ...”. Revenue Ordinance Article U. §4(D)(1) (emphasis supplied).

22.

Regarding applicability of the Water Tap-in Fee, the Utility Service Fees Ordinance provides that the Water Tap-in Fee “shall be charged for any water meter service application submitted to the City on or after July 1, 1995.” Revenue Ordinance Article U. §4(D)(3) (emphasis supplied).

23.

Named Plaintiff’s Proposed Work did not include “the connection of any service line to the City’s water system” as set forth in Revenue Ordinance Article U. §4(D)(1).

24.

Stated differently, Named Plaintiff did not, nor was it required to submit a water meter service application as Named Plaintiff already had a water meter.

25.

Under the plain language of Revenue Ordinance Article U. §4(D)(3) a water Tap-in Fee

may only be required where a water meter service application is submitted.

26.

Nevertheless, Named Plaintiff was assessed and paid to the City of Savannah a Water Tap-in Fee in the amount of \$354.00 for Named Plaintiff's Proposed Work. See Ex. A and Ex. B.

Utility Service Fees Ordinance: Sewer Tap-in Fees

27.

The Utility Service Fees Ordinance provides for a Sewer Tap-in Fee to "be paid to the Revenue Department *prior to the issuance of a permit to connect to a sanitary sewer line*. The tap-in fee shall be based on residential unit or equivalent residential unit, or any fraction thereof." The sewer tap-in rate for inside the City of Savannah shall be "\$400.00 per residential unit, or equivalent residential unit, or any fraction thereof." Revenue Ordinance Article U. §4(E)(1), (2)(a) (emphasis supplied).

28.

Named Plaintiff's Proposed Work did not require "the issuance of a permit to connect to a sanitary sewer line" as set forth in Revenue Ordinance Article U. §4(E)(1) as a permit to connect to the sanitary sewer line already existed.

29.

Furthermore, as part of Named Plaintiff's Proposed Work, no request for a permit to connect a sanitary sewer line was submitted by Named Plaintiff.

30.

Nevertheless, Named Plaintiff was assessed and paid to the City of Savannah a Sewer Tap-in Fee in the amount of \$236.00 for Named Plaintiff's Proposed Work. See Ex. A and Ex. B.

Utility Service Fees Ordinance: Reclaimed Water Fees

31.

The Utility Service Fees Ordinance provides for a Reclaimed Water Project Connection Fee “for funding reclaimed water projects ...[to] be paid to the Revenue Department prior to the connection of any new service line to the City’s water and/or sewer system. The fee shall be computed at the rate of \$600.00 per residential unit, or equivalent residential unit, or any fraction thereof.” Revenue Ordinance Article U. §4(F)(1) (emphasis supplied).

32.

Regarding applicability of the Reclaimed Water Project Connection Fee, the Utility Service Fees Ordinance provides that “[t]he Reclaimed Water Project Connection Fee shall be charged for any water meter service application submitted to the City on or after January 1, 2010.” Revenue Ordinance Article U. §4(F)(3) (emphasis supplied).

33.

Named Plaintiff did not, nor was it required to, submit a water meter service application in order to complete its Proposed Work as set forth in Revenue Ordinance Article U. §4(F)(1).

34.

Nevertheless, Named Plaintiff was assessed and paid to the City of Savannah Reclaimed Water Fees in the amount of \$354.00 for Named Plaintiff’s Proposed Work. See Ex. A and Ex. B.

Utility Service Fees Ordinance: Treatment Plant Fees

35.

The Utility Service Fees Ordinance does not provide for assessing a utility fee called a “Treatment Plant Fee” for treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant.

36.

Under the Utility Service Fees Ordinance, the City of Savannah is authorized to charge Water Service Fees (Article U. §2), Sewer Service Fees (Article U. §3), Sale and Installation of Small Meters (Article U. §4(A)), Sale of Large Water Meters (Article U. §4(B)), Fee of Water Line Tap by the City (Article U. §4(B²)), Water Tap-in Fee (Article U. §4(D)), Sewer Tap-in Fee (Article U. §4(E)), Reclaimed Water Project Connection Fee (Article U. §4(F)) and Water and Sewer Additional Connection Fees (Article U. §5).

37.

None of the fees authorized by Utility Service Fees Ordinance references a “Treatment Plant Fee” for any treatment plant other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant.

38.

Upon information and belief, the City of Savannah improperly assessed certain prospective class members a Treatment Plant Fee for treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant under Section 5 of the Utility Service Fees Ordinance which provides for additional connection fees but does not reference a “Treatment Plant Fee”.

Utility Service Fees Ordinance: Water and Sewer Additional Connection Fees

39.

The Utility Service Fees Ordinance provides for Water and Sewer Additional Connection Fees and states that “[a]ll new customers connecting to the City’s water and sewer system within

² This appears to be typographical error in the Utility Service Fees Ordinance and should be subsection “C” not “B”.

a service area for which an additional connection fee has been established shall pay such fee prior to connecting to the water or sewer system. Revenue Ordinance Article U. §5(A) (emphasis supplied).

40.

Under Section 5 of the Utility Service Fees Ordinance [t]he additional connection fee shall be based on a residential unit, or equivalent residential unit, or any fraction thereof. The amount of the fee shall be determined by the terms of the water and sewer agreement if the location to be served is covered by a current agreement. If the location is not covered by a current water and sewer agreement, the additional connection fee per residential unit, or equivalent residential unit shall be as follows[]...” The Utility Service Fees Ordinance provides a list of various service areas with associated costs for water and sewer.

41.

Upon information and belief, the Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees listed on “Exhibit 7” entitled “Equivalent Residential Unit (ERU) Calculation” are the Water and Sewer Additional Fees set forth in Section 5 of the Utility Service Fees Ordinance.³

42.

Certain prospective class members, upon information and belief, were assessed Water Additional Fees even though they were not new customers as a water and/or sewer account already existed in the name of the prospective class member for the property at the time of the Building Permit Application.

³ It is unclear from the Utility Service Fees Ordinance what the difference is between the “Sewer Area Additional Fees” and “Sewer Site Additional Fees”.

43.

Nevertheless, upon information and belief, certain prospective class members paid Water Additional Fees and/or Sewer Area Additional Fees and/or Sewer Site Additional Fees to the City of Savannah for their proposed work.

Refunds For Illegally Assessed and Collected Fees

44.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Water Tap-in Fees when work is performed that does not require a connection be made to the City of Savannah's water system. That is, a water meter already existed and/or a water service meter application was not required.

45.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Sewer Tap-in Fees when work is performed that does not require a connection be made to the City of Savannah's sewer system. That is, a sewer line already existed and/or a permit to connect to the sewer line was not issued.

46.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Reclaimed Water Fees when commercial or residential building work is performed that does not require a connection be made to the City of Savannah's water or sewer system. That is, a service line to the City of Savannah's water system and/or sewer system already existed and/or a water meter application was not submitted.

47.

There is no provision in the Utility Service Fees Ordinance that allows the City of Savannah

to assess and collect Treatment Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant when commercial or residential building work is performed that does not require a connection be made to the City of Savannah's water or sewer system.

48.

The City of Savannah therefore assessed and collected Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees and Treatment Plant Fees for treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant from Named Plaintiff and the prospective class members in violation of the Utility Service Fee Ordinance.

49.

The City of Savannah also assessed a fee called "Treatment Plant Fees" for treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant which are not provided for in the Utility Service Fee Ordinance.

50.

The City of Savannah therefore assessed and collected "Treatment Plant Fees" from certain prospective class members in violation of the Utility Service Fee Ordinance.

51.

There is also no provision in the in the Utility Service Fees Ordinance that allows the City of Savannah to assess and collect Water Additional Fees, Sewer Area Additional Fees or Sewer Site Additional Fees where the prospective class member is not a new customer.

52.

Upon information and belief, the City of Savannah therefore assessed and collected Water

Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees from certain prospective class members who were already existing customers at the time such fees were collected in violation of the Utility Service Fees Ordinance.

53.

Section 12 of the Utility Service Fee Ordinance provides for the refund of fees assessed and collected.

54.

Section 12 of the Utility Service Fee Ordinance provides that “[i]f evidence provided by a customer or appearing in City records shows that a utility account has been billed and paid incorrectly as a result of error by either the customer or the City, the following corrective actions are authorized: ... Refund shall be limited to the actual amount of overpayment for a period of three years prior to the date of discovery and correction of the error. Any additional billing and any refund under such circumstances shall be without interest.” Revenue Ordinance Article U §12.

55.

Therefore, under Section 12 of the Utility Service Fee Ordinance, Named Plaintiff and the prospective class members are entitled to refunds of illegally assessed and collected Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees from July 30, 2018 to the present.

56.

The refund due to Named Plaintiff under Section 12 of the Utility Service Fee Ordinance

is \$2,271.50.

Refunds For Illegally Assessed and Collected Taxes or License Fees

57.

The Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees assessed to Named Plaintiff and/or prospective class members constitute taxes or license fees within the meaning of O.C.G.A. § 48-5-380.

58.

Taxes assessed by the City of Savannah cannot violate the Constitution of the State of Georgia or Georgia state laws and must satisfy the constitutional requirements of uniformity and equalization.

59.

To the extent that the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees constitute taxes, the City of Savannah, through the extraction of fees from Named Plaintiff and the prospective class members, levied and collected illegal taxes in violation of the constitutional and statutory requirements of uniformity and equalization, resulting in the overpayment of taxes by Named Plaintiff and the prospective class members and the collection by the City of Savannah of illegal taxes.

60.

To the extent that the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees,

Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees constitute license fees, the City of Savannah assessed and collected illegal license fees in violation of the Utility Service Fees Ordinance.

61.

As a result of the above, Named Plaintiff and the prospective class members are entitled to refunds of the illegal taxes assessed and collected and/or illegal license fees assessed and collected from July 30, 2016 to the present, plus prejudgment interest. See Hojeij Branded Foods, LLC v. Clayton County, Georgia, et al., 355 Ga. App. 222, 843 S.E.2d 902 (2020) (cert denied Dec. 07, 2020) (Subsection (g) of the Refund Statute allows for the filing of a suit for a tax [or license fee] refund within five (5) years of the date the disputed taxes [or license fees] were paid).

62.

The refund due to Named Plaintiff under the Refund Statute is \$2,271.50 plus prejudgment interest.

CLASS ACTION ALLEGATIONS

63.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-62 as if set forth herein verbatim.

64.

This action is brought by Named Plaintiff as a class action, on its own behalf and on behalf of all prospective class members, under the provisions of O.C.G.A. § 9-11-23 for damages, and relief incident and subordinate thereto, including attorney's fees and costs.

65.

Named Plaintiff seeks certification of five (5) classes.

(1) The first class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Water Tap-in Fees where no water meter service application was submitted (hereinafter “Class 1”).

(2) The second class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Sewer Tap-in Fees where no request for a permit to connect to a sanitary sewer line was submitted (hereinafter “Class 2”).

(3) The third class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Reclaimed Water Fees where no water meter application was submitted (hereinafter “Class 3”).

(4) The fourth class consists of all Commercial or Residential Building Permit Applicants who were assessed and paid Water Additional Fees, Sewer Area Additional Fees or Sewer Site Additional Fees but were not a new customer (hereinafter “Class 4”).

(5) The fifth class consists of all Commercial or Residential Building Permit Applicants similarly situated who, like Named Plaintiff, were assessed and paid Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant (hereinafter the “Class 5”).

66.

The Class 1, Class 2, Class 3, Class 4 and Class 5 are hereinafter referred to as the “Refund Classes”.

67.

The Refund Classes so described are comprised of numerous members seeking the following relief for each year at issue: (a) refunds under Section 12 of the Utility Service Fee

Ordinance for the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and/or Sewer Site Additional Fees illegally assessed and collected from July 30, 2018 to the present; (b) refunds under O.C.G.A. § 48-5-380 for illegally extracted taxes and/or illegally assessed license fees under the Utility Service Fee Ordinance paid from July 30, 2016 to the present; and (c) prejudgment interest from July 30, 2016 to the present based on the levying and collecting an illegal tax in violation of the Constitution of the State of Georgia and Georgia law and/or the assessing and collecting an illegal license fee in violation of Georgia Law.

68.

The members of the Refund Classes are so numerous that joinder of individual members herein is impracticable.

69.

There are common questions of law and fact in the action that relate to and affect the rights of members of the Refund Classes and the relief sought is common to the members of the Refund Classes.

70.

The claims of Named Plaintiff, as set forth herein, who is representative of class members, are typical of the claims of the members of the Refund Classes, in that the claims of all members of the Refund Classes, including Named Plaintiff, depend on the showing of the acts and/or omissions of the City of Savannah or its agents or instrumentalities giving rise to the right of Named Plaintiff to the relief sought herein. There is no conflict as between Named Plaintiff and class members with respect to this action, or with respect to the claims for relief herein set forth.

71.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(A) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for any party opposing the classes.

72.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(B) in that prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

73.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(3) inasmuch as the questions of law and fact common to the classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

74.

Named Plaintiff is the representative party for the Refund Classes, and is able to, and will, fairly and adequately protect the interests of class members. Roberts Tate, LLC, one of the firms representing Named Plaintiff, is experienced in class action litigation and has successfully represented claimants in other class litigation. Of the attorneys designated as counsel for Named Plaintiff, those undersigned attorneys will actively conduct and be responsible for Named Plaintiff's case herein as well as the case of all other class members.

**COUNT I – REFUND UNDER SECTION 12 OF
THE UTILITY SERVICE FEE ORDINANCE**

75.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-74 as if set forth herein verbatim.

76.

From July 30, 2018 to the present the City of Savannah assessed and collected Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees when commercial or residential building work was performed in violation of the Utility Service Fee Ordinance.

77.

Under Section 12 of the Utility Service Fee Ordinance Named Plaintiff and the members of the Refund Class 1 are entitled to refunds of all Water Tap-in Fees, the members of Refund Class 2 are entitled to refunds for all Sewer Tap-in Fees, the members of Refund Class 3 are entitled to refunds for all Reclaimed Water Fees, the members of Refund Class 4 are entitled to refunds for all Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees and the members of Refund Class 5 are entitled to refunds for all Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant assessed and collected from July 30, 2018 to present. Accordingly, all illegally assessed and collected Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees and Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President

Street Plant or Travis Field Treatment Plant must be refunded to Named Plaintiff and the members of the Refund Classes.

COUNT II- REFUND UNDER O.C.G.A. § 48-5-380

78.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-77 as if set forth herein verbatim.

79.

The Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees constitute illegal taxes or license fees.

80.

To the extent that the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees constituted taxes, from July 30, 2016 to the present the City of Savannah levied and collected illegal taxes in violation of Georgia state laws, and in violation of the due process and equal protection clauses of Article I Section I Paragraph I of the Constitution of the State of Georgia resulting in the voluntary or involuntary payment of illegally and erroneously levied taxes.

81.

To the extent that the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant,

Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees constituted license fees, from July 30, 2016 to the present the City of Savannah assessed and collected illegal license fees resulting in the voluntary or involuntary payment of illegally and erroneously assessed license fees.

82.

Under O.C.G.A. § 48-5-380, Named Plaintiff and the members of Refund Class 1 are entitled to refunds of all Water Tap-in Fees, the members of Refund Class 2 are entitled to refunds for all Sewer Tap-in Fees, the members of Refund Class 3 are entitled to refunds for all Reclaimed Water Fees, the members of Refund Class 4 are entitled to refunds for all Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees assessed and collected from July 30, 2016 to present and the members of Refund Class 5 are entitled to a refund of all Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant assessed and collected from July 30, 2016 to present. Accordingly, all illegal taxes levied and collected and/or all illegal license fees assessed and collected along with prejudgment interest must be refunded to Named Plaintiff and the members of the Refund Classes.

COUNT III - VIOLATION OF UNIFORMITY REQUIREMENT, DUE PROCESS AND EQUAL PROTECTION

83.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-82 as if set forth herein verbatim.

84.

To the extent that the Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant,

Georgetown, President Street Plant or Travis Field Treatment Plant, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees constitute taxes, the City of Savannah levied and collected illegal taxes under the Utility Service Fee Ordinance from Named Plaintiff and members of the Refund Classes in violation of the constitutional and statutory requirements of uniformity and equalization.

85.

“All taxes shall be levied and collected under general laws and for public purposes only...[A]ll taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” Ga. Const. Art. 7, § 1, ¶ III.

86.

The City of Savannah has violated the constitutional and statutory rights of Named Plaintiff and the members of the Refund Classes in violation of the due process and equal protection clauses of Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

87.

Named Plaintiff and the members of the Refund Classes are entitled to a refund of all illegal taxes paid, whether voluntarily or involuntarily paid, and that were illegally and erroneously levied and collected in violation of the due process and equal protection clauses of the Constitution of the State of Georgia.

88.

Accordingly, all illegal taxes collected under the Utility Service Fees Ordinance must be refunded to Named Plaintiff and the members of the Refund Classes along with prejudgment interest.

COUNT IV- ATTORNEY'S FEES FOR BAD FAITH AND STUBBORN LITIGIOUSNESS

89.

Named Plaintiff realleges and incorporates the allegations set forth in paragraphs 1-88 as if set forth herein verbatim.

90.

Defendant has acted in bad faith, been stubbornly litigious and has caused Named Plaintiff unnecessary trouble and expense, entitling Named Plaintiff to recover its costs of this litigation, including reasonable attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, having filed this Verified Complaint Named Plaintiff prays that:

- a) That process issue and be served on Defendant in accordance with Georgia law;
- b) That Named Plaintiff and the Refund Classes recover all illegally assessed and collected Water Tap-in Fees, Sewer Tap-in Fees, Reclaimed Water Fees, Water Additional Fees, Sewer Area Additional Fees and Sewer Site Additional Fees and Treatment Plant Fees for any treatment plants other than the Crossroads Sewage Plant, Georgetown, President Street Plant or Travis Field Treatment Plant from July 30, 2018 to present;
- c) That Named Plaintiff and the Refund Classes recover all illegally and erroneously levied taxes and/or recover all illegally and erroneously assessed license fees for July 30, 2016 to the present plus prejudgment interest as set forth above;
- d) That this Court enter an Order requiring Defendant to pay all of Named Plaintiff's attorney's fees and costs of litigation associated with this action; and
- e) That Named Plaintiff and prospective class members have all other and further relief deemed just and appropriate by this Court.

RESPECTFULLY SUBMITTED, this 2nd day of June, 2023.

ROBERTS TATE, LLC

MANLY SHIPLEY, LLP

BY: /s/ James L. Roberts, IV

BY: /s/ John Manly

James L. Roberts IV
Georgia Bar No. 608580
jroberts@robertstate.com

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104 West State Street, Suite 220
P.O. Box 10840
Savannah, GA 31412

2487 Demere Road, Suite 400
P.O. Box 21828
St. Simons Island, GA 31522

ATTORNEYS FOR NAMED
PLAINTIFF

ATTORNEYS FOR NAMED
PLAINTIFF

CERTIFICATE OF SERVICE

I, James L. Roberts, IV, do hereby certify that, on this date, I served a copy of the within and foregoing NAMED PLAINTIFF'S SIXTH AMENDED VERIFIED CLASS ACTION COMPLAINT upon the following counsel of record by mailing a copy, postage prepaid to:

R. Bates Lovett
Jennifer H. Herman
Office of the City Attorney
P.O. Box 1027
Savannah, Georgia 31402
BLovett@savannahga.gov
JHerman@savannahga.gov

Patrick T. O'Connor
Patricia T. Paul
218 W. State Street
P.O. Box 10186
Savannah, Georgia 31412
pto@olivermaner.com
ppaul@olivermaner.com

This 2nd day of June, 2023.

/s/ James L. Roberts, IV
James L. Roberts, IV

Exhibit “A”



Water & Sewer Approval Form For Commercial Building Renovations

- ✧ This form must be submitted to the Water & Sewer Planning & Engineering Dept. and approved prior to submitting for a Building Permit. ✧
 ✧ Submit your Water & Sewer Approval Form via fax (912) 650-7839, via email to behret@savannahga.gov or in person at 702 Stiles Ave. ✧
 ✧ Contact Water & Sewer Planning & Engineering at (912) 651-6573 for assistance. ✧

- A copy of this signed approved form must be included with your Commercial Building Renovation Building Permit Submittal to Development Services.
- Exhibit 3 – Sizing and Selection of Water Meters and Exhibit 7 – Equivalent Residential Unit (ERU) Calculation (and supporting information) are required if the project proposes a change in building use or an increase in water use (including a proposed landscape irrigation system).
- Exhibit 5 – Fire System and Back Flow Prevention Devices is required for all submittals.

Proposed Project

Project Name: Von Trapp Animal Lodge Date: February 24, 2021
 Project Address: 6502 Waters Avenue, Savannah, GA 31405 PIN: _____
 Applicant: Betsy Von Trapp
 Telephone: 912-225-3130 Email Address: betsy@vontrappanimalodge.com

Description of Work

Complete Description of Work: Addition of 11 kennels for boarding small animals and 22 kennels for small animals daycare, only.

Current / Prior Use and Proposed Use of Existing Building

Current and/or Prior Use of the Building: Animal lodging and daycare
 Proposed Use of the Building: Expanded quantity of animal lodging and daycare

Water & Wastewater Fees

Water & Wastewater fees, if required for the project, are determined using Exhibit 7. Fee payments are made at the offices of the Water & Sewer Planning & Engineering Dept. (702 Stiles Ave.) by check or money order payable to "The City of Savannah". Fees must be paid prior to receiving Certificate of Occupancy/Certificate of Completion.

Water Meter

A City-approved water meter must be provided on every water service line (except fire). Water meters 8" or smaller must be purchased from the City. Existing water meters may need to be upgraded or replaced.

Does the building have an existing water meter? Yes No

Is this a master meter that will serve multiple units? Yes No No Existing Meter

Will the new use require a new water meter? Yes No

- If yes, provide the standard construction detail(s).

Meter fee payments are made at the offices of the Water & Sewer Planning & Engineering Dept. (702 Stiles Ave.). Payment shall be by check or money order payable to "The City of Savannah". Meters may be picked up at the Meter Shop (704 Stiles Ave) after payment of meter fee.

Fire Sprinkler System

Does the building have an existing fire sprinkler system? Yes No

Is a new or expanded fire sprinkler system proposed for the new use? Yes No

- If yes, provide plans, specifications, and hydraulic calculations for subject sprinkler system to include tie-in and approved backflow prevention device in accordance with the City of Savannah specifications. A Site Development Permit may be required.

Landscape Irrigation System

Is a landscape irrigation system proposed for the new use? Yes No

- If yes, provide plans, specifications, and hydraulic calculations for subject irrigation system to include tie-in, approved backflow prevention device and water meter in accordance with the City of Savannah specifications. A Site Development Permit may be required.

Backflow Prevention Device (BFP)

Does the building have an existing Backflow Prevention Device? Yes No

- If yes, request a free inspection of the existing BFP by contacting the City of Savannah Water & Sewer Planning & Engineering Dept. If the use of the building has changed, the device may need to be upgraded or replaced.
- If no, a new backflow prevention device must be provided on every water service line. Contact the City of Savannah Water & Sewer Planning & Engineering Dept. for assistance with the selection of a new BFP. Provide the construction details for the installation of a new BFP on any unprotected line(s).

Has the existing BFP been tested in the past year by a Georgia certified BFP tester? Yes No No BFP

- If unsure, contact the City of Savannah Water & Sewer Planning & Engineering Dept. to verify that the City has an up-to-date (tested within one year) Backflow Certificate on file.
- If no, the BFP will need to be tested as part of the project by a Georgia Certified Backflow Tester with a copy of the certification provided to the City.
- If existing BFP is not operating properly, the owner shall hire a Georgia licensed utility contractor or licensed plumber to repair or replace the BFP, and have the BFP retested by a Georgia Certified Backflow Tester.

Pre-Treatment Devices (Grease Interceptor (Trap), Oil / Water Separator, or Sand Trap)

Grease Interceptors are required for food service establishments (e.g. restaurant and coffee shop). Oil / Water Separators are required for facilities discharging wastewater containing oil or any petroleum product (e.g. garages and manufacturing). Sand Interceptors (Traps) are required at facilities with sand or any heavy solid in the wastewater discharge (e.g. car wash).

Does the proposed use require any Pre-Treatment Device(s)? Yes No

Indicate type of required Pre-Treatment Device(s): Grease Interceptor Oil/Water Separator Sand Trap

Does the building have an existing Pre-Treatment Device? Yes No

- If Yes, is it: Inside Outside Volume: _____

If a new pre-treatment device is required, contact the Water & Sewer Planning & Engineering Dept. for sizing & location requirements. If the device is proposed to be located outside of the building, provide a scaled sketch plan showing the sewer lateral and the location, size, and details of the device. A Site Development Permit may be required.

Exhibits & Documents Included with this Submittal

Check all the below items that are included in this Water & Sewer Approval submittal:

<input type="checkbox"/> Exhibit 3 – Sizing & Selection of Water Meters	<input type="checkbox"/> Fire Sprinkler System Hydraulic Calculations
<input type="checkbox"/> Exhibit 5 – Fire System & Backflow Prevention Devices	<input type="checkbox"/> Site Plan showing Pre-Treatment Device(s)
<input checked="" type="checkbox"/> Exhibit 7 – Equivalent Residential Unit (ERU) Calculation	<input type="checkbox"/> Irrigation System Plans, Specifications & Calcs

Applicant Certification

I hereby certify that I am the owner or authorized agent of the commercial building being proposed for renovation, and that I have answered all of the questions contained herein and know the same to be true and correct. I understand that any permit issued, based upon false information or misrepresentation provided by the applicant, will be null and void and subject to penalty as provided by law and ordinance. I understand that based on the responses provided on this form, a site development permit could be required.

Betsy Von Trapp  3/2/21
 Printed Name of Applicant (Not Company Name) Signature of Applicant Date

FOR OFFICE USE ONLY			
<input checked="" type="checkbox"/> Concurrence	<input type="checkbox"/> Revisions Needed	<input type="checkbox"/> Site Development Permit Required	<input type="checkbox"/> WS Approval Form not Required
WSPE Reviewer: <u>Daslin M. Garcon</u>	Signature: _____	Date: <u>03-15-2021</u>	



Exhibit 5
Fire System and Backflow Prevention Devices Owner/Client Declaration

1. The owner/client will be responsible for maintaining and operating the fire system from the tapping valve up to and including the backflow prevention device, along with the internal fire system.
2. The owner/client has the responsibility to operate and maintain the backflow prevention device at subject location and to test the device on an annual basis as required by the City of Savannah Water Operations Cross Connection Policy. The backflow devices are the property of the owner/client and the City will not be liable for any flooding that may occur from any backflow devices installed on the premises. If City-owned water meters are permitted for inside installation, it shall be the owner/client's liability for any flowing that may occur.

Mark where applicable:

Fire system

Fire system backflow device

Exact location of installation: _____

Existing Back Flow Device
Cornell Street, Savannah, Georgia 31405

Domestic system backflow device

Exact location of installation: _____

North West Corner of Building on
Cornell Street and Waters Avenue

Irrigation system backflow device

Exact location of installation: _____

Site Address: 6500 Waters Avenue, Savannah, Georgia 31405

Owner/Client Name (Please Print): Betsy Von Trapp, Von Trapp Animal Lodge

Owner/Client Address: _____

Owner/Client Telephone: 912-225-3130

Owner/Client Facsimile: _____

Owner/Client Email Address: betsy@vontrappanimalodge.com

Signature of Acceptance: _____

Elizabeth von Trapp

Date: 3/9/21



Exhibit 7
Equivalent Residential Unit (ERU) Calculation

Project: Von Trapp Animal Lodge

Location: 6500 Waters Avenue, Savannah, Georgia 31405

Description of Use	Water Use Standard based on current City of Savannah Revenue Ordinance ¹	Quantities used in Flow Rate Calculation	Flow (gpd)
Animal Lodge	300 gpd/ 3000 Sq.Ft.	1763 SF X 300/3000	176.3

1. Refer to Article U, Section 4 (E) (4) of the City of Savannah's Revenue Ordinance for determining the applicable Water Use Standard.
2. One (1) ERU = 300 gallons per day
3. Contact the Water and Sewer Planning and Engineering office for assistance in determining the fee schedule for the project.

Total Flow (gpd) – Water 176.3 gpd
 Total ERU's – Water² 0.59

Total Flow (gpd) – Reclaimed Water 176.3 gpd
 Total ERU's – Reclaimed Water² 0.59

Total Flow (gpd) – Sanitary Sewer 176.3 gpd
 Total ERU's – Sanitary Sewer² 0.59

(Treatment Plant Service Area)	# of ERU's	\$/ERU ³	Total (\$)
Water Tap-In Fees	0.59 gpd	600	354.00
Sewer Tap-In Fees	0.59 gpd	400	236.00
Water Additional Fees			
Reclaimed Water Fees	0.59 gpd	600	354.00
Treatment Plant Fees	0.59 gpd	2,250	1,347.50
Sewer Area Additional Fees			
Sewer Site Additional Fees			

Grand Total \$2,271.50

Calculated By: Charles F. VandenBulck, P.E.

(Please Print Name, Firm)

Signature: *C. F. VandenBulck*

Date: 03/09/21

Exhibit “B”

SECURITY FEATURES INCLUDE TRUE WATER MARK PAPER HEAT SENSITIVE ICON AND FOIL HOLOGRAM

VON TRAPP ANIMAL LODGE INC

608 E 49TH ST
SAVANNAH, GA 31405-2453

52100045121-4589

1071

64-175761Z

DATE 10/21/21

CHECK NUMBER

PAY TO THE ORDER OF

City of Savannah

\$ 271.50

Two thousand two hundred seventy one and 50/100 DOLLARS

Ameris Bank



92

FOR Water & Sewer fees
for 6502 waters Ave

Detsy Overtrapp
Animal Lodge

Security Features Included