

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

SHAMROCK HOMES, Inc.,
Individually, and through
Class Representation Of a
Class Consisting of Out-of-City
Wastewater Consumers of the City
of Eustis, Florida,

Case No.
Division

Plaintiffs,

vs.

CITY OF EUSTIS, a Municipal
Corporation in the State of Florida,

Defendant.

COMPLAINT

Plaintiffs, Shamrock Homes, Inc., a Florida Corporation, individually, and as Class Representative of a class consisting of Out-of-City Wastewater Consumers of the City of Eustis (those residing outside the municipal boundaries of the City of Eustis that receive wastewater utility services from the city of Eustis hereinafter collectively referred to as "out-of-city Consumers"), sue Defendant, the City of Eustis, a municipal corporation in the state of Florida (hereinafter referred to as "the City"), and allege as follows:

General Allegations

1. The City of Eustis, is a municipal corporation of the state of Florida engaged in, inter alia, the business of providing wastewater services to Lake County residents who reside outside the municipal boundaries of the City and to Lake County residents who reside inside the municipal boundaries of the City. Wastewater services to out-of-city consumers and in-city-consumers are provided by the City pursuant to Eustis City Ordinance 95-11 enacted June 1, 1995, which created the City's Sewerage Utility District.
2. Shamrock Homes, Inc., a Florida corporation, whose principal place of business is in Lake County, owns property located outside the City's municipal boundaries in the Sewerage Utility District and is a user of wastewater services provided by the City to out-of-city Consumers.
3. On June 1, 2000, the City enacted an Ordinance increasing wastewater rates for out-of-city Consumers to 1 ½ times the rate imposed on in-city wastewater users. A copy of the City's Ordinance is attached hereto as Exhibit "A."
4. Under Florida law, § 180.191 (1) *Florida Statutes* (2000), a municipality is permitted to charge wastewater fees to out-of-city Consumers up to 1 ½ times the fees imposed on in-city consumers provided that the fees are "just and equitable and based upon the same factors used

in fixing the rates, fees, and charges for consumers inside the municipal boundaries." § 180.191 (1) (b) *Florida Statutes* (2000).

5. In an attempt to justify the rate increase, the City provided a memorandum supporting the Ordinance and attempting to explain the analysis used to calculate the alleged total costs of future expansion and the subsequent increased amount each out-of-city Consumer would have to pay in wastewater fees for the costs of future expansion. According to the City, the costs of expansion to out-of-city Consumers will be \$1,654,540.00. See City Memorandum 00-27, p. 2, attached hereto as Exhibit "B."

6. According to the City's memorandum, the City added a 6% per annum future value fee to the \$1,654,540.00 expansion costs estimate alleging that that over the next twenty years, the actual expansion costs to out-of-city Consumers will be \$5,306,334.00. See City Memorandum 00-27, p. 2, attached hereto as Exhibit "B." Therefore, in order to pay for expansion costs associated with providing wastewater services, the City raised monthly wastewater rates for out-of-city Consumers to 1 ½ times the fees imposed on in-city consumers.

7. In addition to paying for the costs of expansion through monthly wastewater rates as indicated in the City's memorandum, out-of-city Consumers are charged and have paid substantial sewer impact fees to the City prior to obtaining necessary building permits. The current sewer impact fee each out-of-city Consumer pays is \$1,470.00.

8. The sewer impact fees paid by out-of-city Consumers, are collected by the City to fund the expansion costs of providing future wastewater services to out-of-city Consumers. City Ordinance 94-357 requires that "all funds collected from sewer impact fees shall be used solely for the purpose of providing capital improvements to sewer facilities and shall not be used for maintenance or operations." See City of Eustis Ordinance 94-357. In addition, City Ordinance 94-355 states, in relevant part, wastewater impact fees "shall only be used for expanding and increasing the capacity of the city wastewater system, including all connected engineering, architectural, legal, and fiscal costs and all costs of collecting or preserving the wastewater capacity fund."

9. Over the next twenty years, the City estimates that there will be "2,286 new customers" i.e., additional out-of-city Consumers. See City Memorandum 00-27, p. 2, attached hereto as Exhibit "B." Thus, over the next twenty years, the city will receive \$3,360,420.00 to pay for the costs of expansion through impact fees ($\$1,470.00$ (impact fee) \times 2,286 (new out-of-city Consumers) = \$3,360,420.00). The City acted in error when imposing the rate increase on out-of-city Consumers because the City did not account for the thousands of dollars in impact fees out-of-city Consumers have already paid and the \$3,360,420.00 that future out-of-city Consumers shall pay to the City to defray the costs of expansion.

10. Because the City and its Ordinance do not account for the substantial impact fees paid and to be paid by out-of-city Consumers, out-of-city Consumers are paying millions of dollars more for expansion costs than necessary.

11. In addition to not accounting for impact fee revenue already paid and to be paid by out-of-city Consumers for expansion costs, the City did not use the same factors when setting wastewater rates for out-of-city Consumers as the City used for setting the wastewater rates for users inside the municipal boundaries of the City. By example and not limitation, one factor the City used when setting rates for out-of-city Consumers but did not use when setting rates for in-

city users is a 6% future value fee. See City Memorandum 00-27, p. 3, attached hereto as Exhibit "B."

12. Over the next twenty years, this 6% future value fee requires out-of-city Consumers to pay \$3,651,794.00 more for the expansion projects than today's total estimated costs of the projects, \$1,654,540.00. See City Memorandum 00-27, p. 3. Unlike out-of-city Consumers, in-city users are not charged a 6% future value charge for the costs of in-city expansion.

13. The City makes no finding recited in the Ordinance or Memorandum at issue that the rate increase for out-of-city Consumers is "based upon the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries." § 180.191 (1) (b) *Florida Statutes* (2000).

14. The city provides no justification for charging out-of-city Consumers a 6% future value fee.

15. The City, when setting wastewater rates for out-of-city Consumers indicated that there were only "89" existing users. See letter from City's legal counsel attached hereto as Exhibit "C." Four months after the ordinance at issue was enacted, the City, in response to the class representative's public records request, indicated that no list of the current users existed and charged the class representative for alleged work performed in compiling the list of current users. The list of current out-of-city Consumers prepared by the City for the class representative shows that the city erred in using only 89 existing users when setting rates for out-of-city Consumers when in fact, there were over 150 out-of-city Consumers at the time the ordinance at issue was enacted. A copy of the City's response to the class representative's public records request is attached hereto as Exhibit "D."

16. Consumers have notified the City of the deficiencies in the Ordinance and the City has failed to cure the deficiencies in the Ordinance.

17. All conditions precedent to this action have been satisfied.

18. Out-of-city Consumers, through its class representative, have retained and are obligated to pay their attorneys a reasonable fee for their services and out-of-city Consumers are entitled to collect their costs, including a reasonable attorney's fee, as well as treble damages under §180.191 *Florida Statutes* (2000) for exposing the imposition of prohibitive charges by the City.

Class Representation Allegations

19. Plaintiffs incorporate the allegations contained in Paragraphs one (1) through eighteen (18), as fully set forth herein.

20. An adjudication as to an individual class member's challenge of the validity of the City's Ordinance, Ordinance 00-17, would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications. Therefore, this claim, is appropriate on behalf of the class of out-of-city Consumers.

21. This claim involves common questions of law and fact to the class representative and all members of the class, namely, whether the ordinance at issue is invalid because it is unjust and inequitable to out-of-city Consumers and whether the ordinance is invalid because it treats out-of-city Consumers differently from in-city wastewater users. These common questions of law

and fact predominate over any question of law or fact affecting only individual members of the class and class representation is superior to other available methods for the fair and efficient adjudication of the controversy at issue.

22. The representative party is a member of the class because the representative party is a out-of-city wastewater Consumer and, like all other members of the class, has paid the City for wastewater fees pursuant the ordinance at issue.

23. The representative party and out-of-city Consumers comprise a community of legal interests and rights because they have been consistently and uniformly overcharged in an unjust, unreasonable, unlawful, and inequitable manner. The representative party and each member of the potential certified class have the same claim against the Defendant; the ordinance enacted by the City authorizes a rate increase which is unjust, inequitable, and based on different factors in setting the rates for consumers inside the municipal boundaries. The representative party's claim and is the typical claim of each member of the potential certified class grounded in § 180.191 *Florida Statutes* (2000).

24. The approximate number of the class is 160.

25. The class is defined as each person who has paid and who is or shall be allegedly obligated to pay the City for wastewater services pursuant to Ordinance 00-17, the validity of which is questioned. Ordinance 00-17 is attached hereto as Exhibit "A."

26. The class representative will fairly and adequately protect and represent the interests of each member of the class because (1) the class representative has the resources to litigate this matter against the City, (2) the class representative has substantially similar, if not the same, damages suffered by each member of the class, (3) the class representative is familiar with the complex issues involved in this matter and has already investigated this matter to ascertain the validity of the ordinance at issue, (4) the class representative is the developer of the Park Place on Lake Joanna subdivision, the residents of which comprise over 90% of the class, (5) the remedies requested by the class representative are the remedies available under § 180.191 *Florida Statutes* (2000) and are the remedies available to each member of the class, and (6) the class representative permits and requests this court to allow members to opt-out of the member so desire.

27. This action may be maintained as a class action because the facts and circumstances concerning the parties' interests in this action are substantially the same. By example and not limitation, the class representative and each member of the class were damaged and continue to suffer damages because the City enacted an Ordinance imposing unjust, unlawful, unreasonable, and inequitable rate increases on the class representative and each member of the class and used different factors when setting rates for in-city consumers than the factors used for setting the rates for out-of-city Consumers and the class representative. The factual issues of the City's rate increase methodology is common to all class members and the class representative in that any methodological deficiencies in setting the rates for out-of-city Consumers commonly damaged the class representative and each member of the class.

Count I
Declaratory Judgment

28. This is an action for damages which exceed \$15,000.00, exclusive of interest, costs, and attorney's fees.

29. Out-of-city Consumers reallege the allegations contained in Paragraphs one (1) through twenty-seven (27), as fully set forth herein.

30. This is an action for a Declaratory Judgment pursuant to Chapter 86 FLORIDA STATUTES, 2000, and § 180.191 *Florida Statutes* (2000), to declare that the rates charged and collected by the City are unjust, unreasonable, unlawful, and inequitable and that the Ordinance imposing such rates violates of Florida law.

31. Out-of-city Consumers have notified the City and contend that the rate increase is unjust, inequitable, unlawful, unreasonable, and in error, but the City has failed to correct the deficiencies and continues to impose on out-of-city Consumers unlawful charges.

32. The City's contends that imposed wastewater rates are lawful and that the Ordinance at issue is valid, requiring no remedy.

33. A real, present, substantial, and bona fide controversy between the City and out-of-city Consumers exists and a justiciable question arises as to what the legal relationship between the parties is in light of § 180.191 *Florida Statutes* (2000) and the common law of Florida.

34. Out-of-city Consumers have retained and are obligated to pay their attorneys a reasonable fee for their services and out-of-city Consumers are entitled to collect their costs, including a reasonable attorney's fee, as well as treble damages under §180.191 *Florida Statutes* (2000) for exposing the imposition of prohibitive charges by the City.

WHEREFORE, Out-of-city Consumers, pursuant § 180.191 (1) *Florida Statutes* (2000), respectfully demand a declaration by this Court that (1) the Ordinance at issue is unlawful, (2) the wastewater rate increases for out-of-city Consumers are unjust, inequitable, in error, unlawful, unreasonable, and (3) the ordinance is void ab initio, and that this Court award out-of-city Consumers its attorneys' fees, costs, prejudgment interest, treble damages, and any other remedy this Court deems proper to render justice for the public, including certification of the class.

Count II **Permanent Injunction**

35. Plaintiffs incorporate the allegations contained in Paragraphs one (1) through twenty-seven (27), as if fully set forth herein.

36. The City has enacted an ordinance increasing out-of-city Consumers' wastewater rates. The increased rates are unjust, unreasonable, unlawful, inequitable, and violative of § 180.191 (1) *Florida Statutes* (2000). Because the City has engaged in acts prohibited by § 180.191 (1) *Florida Statutes* (2000), aggrieved out-of-city Consumers request a permanent injunction pursuant to § 180.191 (2) *Florida Statutes* (2000), to stop the City from the continued imposition of unlawful charges on the public authorized by the unlawful ordinance at issue.

37. Out-of-city Consumers have no adequate remedy at law and will suffer irreparable harm should this injunctive relief not be granted because the City's wrong is continuous in nature, will be committed in the future, and consumers are entitled to injunctive relief to avoid a multiplicity of actions in law.

Wherefore, out-of-city Consumers, pursuant to § 180.191 *Florida Statutes* (2000), demand this Court issue a permanent injunction against Defendant preventing Defendant from enforcing the unjust wastewater rates on out-of-city Consumers, award out-of-city Consumers its attorneys' fees, costs, prejudgment interest, treble damages, and any other remedy this Court deems proper to render justice for the public, including certification of the class.

Count III
Individual Restitution

38. Pursuant to § 180.191 *Florida Statutes* (2000), this is an action for damages which does not exceed \$15,000.00, to collect monies paid to the City in wastewater fees by the class representative, Shamrock Homes, Inc., individually.

39. The class representative, Shamrock Homes, Inc., individually, realleges the allegations contained in Paragraphs one (1) through twenty-seven (27), as fully set forth herein.

40. Pursuant to the Ordinance at issue, the class representative's, Shamrock Homes, Inc., individually, monthly wastewater rates increased by 50% for the last ten months approximately totaling \$116.40.

41. The City, through the unlawful ordinance at issue, has wrongfully collected over \$116.40 from the class representative, Shamrock Homes, Inc., individually, to which it was not entitled.

WHEREFORE, the class representative, Shamrock Homes, Inc., individually, pursuant § 180.191 *Florida Statutes* (2000), respectfully demands that this Court award the class representative, Shamrock Homes, Inc., individually a refund of all monies paid pursuant to the unlawful ordinance at issue, its attorneys' fees, costs, prejudgment interest, treble damages, and any other remedy this Court deems proper to render justice.

Count IV
Class Restitution

42. Pursuant to § 180.191 *Florida Statutes* (2000), this is an action for damages by out-of-city Consumers which exceed \$15,000.00, exclusive of interest, costs, treble damages, and attorney's fees, to collect monies paid to the City in wastewater fees by out-of-city Consumers.

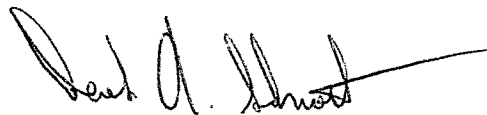
43. Out-of-city Consumers reallege the allegations contained in Paragraphs one (1) through twenty-seven (27), as fully set forth herein.

44. The approximate monthly increase for each average out-of-city Consumer, pursuant to the ordinance at issue, is \$11.60. See City Memorandum 00-27, p. 3, attached hereto as Exhibit "B."

45. Because there are approximately 160 out-of-city Consumers who have paid the increased amount pursuant to the ordinance at issue for 10 months, the approximate amount of damages incurred by out-of-city Consumers is \$18,560.00 ($\$11.60 \times 160 = \$1,856.00 \times 10 = \$18,560.00$).

46. The City, through the unlawful ordinance at issue, has wrongfully collected almost \$20,000.00 from out-of-city Consumers to which it was not entitled.

WHEREFORE, Out-of-city Consumers, pursuant § 180.191 *Florida Statutes* (2000), respectfully demand that this Court award out-of-city Consumers a refund of all monies paid pursuant to the unlawful ordinance at issue, its attorneys' fees, costs, prejudgment interest, treble damages, and any other remedy this Court deems proper to render justice for the public, including certification of the class.



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