TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
Susan M. Lancaster, Assistant City Attorney SML
DATE: January 5, 2011
SUBJECT: Michigan Association of Home Builders, et. al. v. City of Troy

---

Enclosed please find a copy of a lawsuit that was recently filed against the City of Troy by the Michigan Association of Home Builders, Associated Builders and Contractors of Michigan and Michigan Plumbing and Mechanical Contractors Association. The Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in the Oakland County Circuit Court. On the date of filing, the Plaintiffs also filed a Motion for Preliminary Injunction and Order to Show Cause.

Plaintiffs allege that the City of Troy has violated Section 22 of Michigan's Stille-DeRossett Hale Single State Construction Code Act by collecting fees for building department services that are not reasonably related to the cost of providing building department services. They are alleging that the City of Troy has illegally entered into a contract with Safe Built of Michigan, Inc. for building services that provides for an 80%-20% division of permit fees between Safe Built of Michigan, Inc. and the City of Troy. It is Plaintiff's allegation that the 20%, which is deposited with the City, is "surplus" used for general revenue purposes and not for services reasonably related to the cost of building department services.

The Plaintiffs also allege a violation of the Headlee Amendment, arguing that the 20% received by the City is a disguised tax that was not approved by the voters. Plaintiffs are asking for a declaratory judgment, as well as an order for the City to deposit the 20% building permit revenue into a segregated account, which could then be returned to the applicants. Plaintiffs also request an order, requiring the City to reduce its building department fees.

The City of Troy was served with the Complaint and the Motion for Preliminary Injunction and Order for Show Cause on Wednesday, December 15, 2010. The Order for Show Cause required the parties to appear at Court on December 22, 2010. However, no action was taken at that time, and the matter was adjourned to Wednesday, January 19, 2011 at 1:30 p.m. The Court staff also encouraged the parties to do some preliminary discovery, in an effort to resolve this matter.

A resolution authorizing our office to defend the City is proposed for your consideration. If you have any questions, please let us know.

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN
6th JUDICIAL DISTRICT
JUDICIAL CIRCUIT
COUNTY PROBATE

SUMMONS AND COMPLAINT

OAKLAND COUNTY 10-115620-CZ
JUDGE SHALINA KUMAR
MICHIGAN ASSO v TROY CITY

Court address
1200 N. Telegraph Rd., Dept. 404, Pontiac, MI 48341-0404

Telephone no.
248-452-2159

Plaintiff's name(s), address(es) and telephone no(s).		Defendant's name(s), address(es), and telephone no(s).
Michigan Association of Home Builders, et al. 6427 Centurion Drive #150B Lansing, MI 48917 517-322-0224	v	City of Troy 500 W. Big Beaver Rd. Troy, MI 48084 248-524-3300
Plaintiff's attorney, bar no., address, and telephone no. Gregory L. McClelland (P28894) McClelland & Anderson, LLP 1305 S. Washington Ave., Ste. 102 Lansing, MI 48910 517-482-4890		

SUMMONS **NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file an answer with the court** and serve a copy on the other party **or to take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
DEC 15 2010	MAR 16 2011	RUTH JOHNSON

*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Lansing, Eaton County, MI	City of Troy, Oakland County, MI
Place where action arose or business conducted City of Troy, Oakland County, MI	

December 14, 2010
Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Michigan Association of Home Builders

Plaintiff,

v

City of Troy

Defendant.

NO: 10-115620-CZ
HON. SHALINA KUMAR

ORDER DENYING EX PARTE RELIEF

Plaintiff has submitted a request for the ex parte relief requesting a show cause hearing pursuant to MCR 3.207 and/ or MCR 3.310(B). The Court has reviewed the motion and attached exhibits, if any. The request is denied for the following reasons:

- ☐ The moving party failed to submit a motion or verified pleading. MCR 3.207(B)(1); MCR 3.310(B)(1)
- ☐ The request was not supported by affidavit or verified pleading. MCR 3.207(B)(1); MCR 3.310 (B)(1).
- ☐ The moving party failed to demonstrate by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice or that notice itself will precipitate adverse action before an order can be issued. MCR 3.207(B); MCR 3.310 (B)(1)(a).
- ☐ The moving party's attorney failed to certify in writing the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required. MCR 3.310 (B)(1)(b).
- ☐ The moving party failed to provide an order in compliance with MCR 3.310(B)(2)(b) and/or MCR 3.207(B)(6).
- ☐ The moving party failed to cite sufficient authority to support its position thereby abandoning its position. MCR 2.119(B)(2); *Mitcham v City of Detroit*, 355 Mich 182, 203 (1952); *Wilson v Taylor*, 457 Mich 232, 243 (1998).
- ☒ This matter is set for a show cause hearing on 12/22/2010 @ 3:00. Plaintiff must serve Defendant on or before 12/15/2010.
- ☐ Other:

DATED: DEC 15 2010

SHALINA KUMAR

HON. SHALINA KUMAR
CIRCUIT COURT JUDGE

NOTICE
THIS ORDER CONTAINS A DATE SET BY THE COURT. YOU WILL NOT RECEIVE FURTHER NOTICE OF THIS DATE.
IN CHAMBERS

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk - Register of Deeds
By _____ Deputy

OAKLAND COUNTY 10-115620-CZ
JUDGE SHALINA KUMAR
MICHIGAN ASSO v TROY CITY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MICHIGAN ASSOCIATION OF HOME BUILDERS; ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN; and MICHIGAN PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION, Michigan nonprofit corporations,

Plaintiffs,

v

CITY OF TROY, a Michigan Home Rule City,

Defendant.

Case No. 10- -CZ

Hon.

RECEIVED FOR FILING
2010 DEC 15 PM 12:58
DEPUTY CLERK

Gregory L. McClelland (P28894)
Jared A. Roberts (P55182)
McCLELLAND & ANDERSON, LLP
Attorneys for Plaintiffs
1305 S. Washington Ave., Ste. 102
Lansing, MI 48910
(517) 482-4890

MOTION FOR PRELIMINARY INJUNCTION AND ORDER TO SHOW CAUSE

NOW COME Michigan Association of Home Builders (the "Home Builders"), Associated Builders and Contractors of Michigan (the "Associated Builders"), and Michigan Plumbing and Mechanical Contractors Association (the "Contractors Association") (collectively, the "Builders"), by their attorneys, McClelland & Anderson, LLP, and move for entry of a Preliminary Injunction and Order to Show Cause. The facts, arguments and

OAKLAND COUNTY 10-115620-CZ
JUDGE SHALINA KUMAR
MICHIGAN ASSO v TROY CITY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MICHIGAN ASSOCIATION OF HOME BUILDERS; ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN; and MICHIGAN PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION, Michigan nonprofit corporations,

Plaintiffs,

v

CITY OF TROY, a Michigan Home Rule City,

Defendant.

Case No. 10- -CZ

Hon.

Gregory L. McClelland (P28894)
Jared A. Roberts (P55182)
McCLELLAND & ANDERSON, LLP
Attorneys for Plaintiffs
1305 S. Washington Ave., Ste. 102
Lansing, MI 48910
(517) 482-4890

RECEIVED
2010 DEC 15 PM 12: 55
DEPUTY CLERK

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint. MCR 2.113(C)(2)(a).

NOW COME Plaintiffs, the Michigan Association of Home Builders; Associated Builders and Contractors of Michigan; and Michigan Plumbing and Mechanical Contractors Association by their attorneys, McClelland & Anderson, LLP, and for their Verified Complaint for Declaratory and Injunctive Relief, state as follows:

authorities in support of Plaintiff's Motion are set forth in the Brief in Support of Motion and the Verified Complaint, being served concurrently.

WHEREFORE, Plaintiffs request an order that requires the Defendant City of Troy to account for monthly surplus building department funds realized from July 1, 2010 to date, to transfer such funds to a segregated account consistent with the Construction Code Act, to deposit all future building department funds and surpluses into this segregated account, and to only use such segregated funds for purposes allowed under the Construction Code Act. MCL 125.1522(1).

McCLELLAND & ANDERSON, L.L.P.
Attorneys for Plaintiffs

By: _____
Gregory L. McClelland (P28894)
Jared A. Roberts (P55182)
Business Address:
1305 S. Washington Ave., Ste. 102
Lansing, MI 48910
Telephone: (517) 482-4890

Date: December 14, 2010

G:\docs\1000\C1029\M108\mtn-prelimin injunct.wpd

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, the Michigan Association of Home Builders (the "Home Builders"), is a Michigan nonprofit corporation, with its principal place of business in the City of Lansing, which conducts business in the City of Troy and statewide.

2. Plaintiff the Associated Builders and Contractors of Michigan (the "Associated Builders"), is a Michigan nonprofit corporation, with its principal place of business in the City of Lansing, which conducts business in the City of Troy and statewide.

3. Plaintiff the Michigan Plumbing and Mechanical Contractors Association (the "Contractors") is a Michigan nonprofit corporation, with its principal place of business in the City of Lansing, which conducts business in the City of Troy and statewide.

4. Plaintiffs Home Builders, the Associated Builders and the Contractors are collectively referred to as the "Builders" herein.

5. The Builders represent and count among their members numerous home builders, contractors, subcontractors, construction companies, construction laborers, suppliers, building tradespeople, and supporting businesses such as attorneys, accountants, architects, banks and insurance professionals, that conduct business in, obtain permits from, seek building plan review in, request inspections by, and seek building and construction-related authorizations (such as plan approval, interim and final inspections and occupancy permits) from Defendant and its Building Department.

6. Therefore, the Builders and their members are uniquely and directly injured by and have substantial and concrete interest in the conduct of Defendant that is

challenged herein, as the Builders and their members that do business with Defendant and its Building Department either absorb the cost of plan review, permitting, certification, and inspections or are forced to pass them along to the end consumer. Passing costs along puts the sale (or lease) of new construction at a competitive disadvantage with the sale or lease of existing structures.

7. The Builders' members also include taxpayers in this State, and residents of and taxpayers residing and doing business in the City of Troy.

8. The concrete and particularized injuries to the Builders and their members may be fully redressed through the declaratory and injunctive relief sought herein.

9. Defendant City of Troy is a municipal corporation organized under Michigan's Home Rule Cities Act, and it is located in Oakland County, Michigan.

10. This Court has subject matter jurisdiction as the Builders are seeking equitable relief, and as MCL 600.308a(1) confers circuit court subject matter jurisdiction over actions seeking to enforce Const 1963, Act IX, § 31 (the "Headlee Amendment").

11. Venue is proper in Oakland County as Defendant resides in Oakland County, and the challenged conduct giving rise to the claim occurred in Oakland County.

GENERAL ALLEGATIONS

12. Effective July 1, 2010, Defendant essentially privatized its Building Department by entering into a contract with Safe Built of Michigan, Inc. ("Safe Built") for Safe Built to perform, as an independent contractor, activities previously performed by Defendant's Building Department. This Contract is attached and incorporated at Exhibit A.

13. The Contract (with exhibits) was approved by the City pursuant to Resolution Number 2010-06-122. Exhibit A, Contract, p 22.

14. The Contract requires Safe Built to perform inspections, plan review, administer building codes and related ordinances, and generally perform the functions once performed by Defendant's Building Department, save for a discreet list of specific duties retained for the Defendant's Building Code Official. Exhibit B, Contract Exhibit entitled "Duties of City Building Code Official".

15. Under the Contract, Defendant compensates Safe Built by paying it 80% of the fees Defendant collects for Building Department services, and Defendant retains 20% of those fees. If the fees exceed $1,000,000 during any fiscal year during the three-year term of the Contract, Defendant will retain 25% of all fees (and Safe Built will be paid 75% of those fees) during the subsequent contract year or years. Exhibit A, Contract, § 3.2, p 2.

16. More specifically, the Contract states:

> Compensation. Safe Built shall receive eighty (80%) of building permit fees, plan review fees, certificates of occupancy fees and inspection fees that are collected by the City each month. The City shall retain the remaining twenty (20%) of the fees. If these fees total over $1,000,000.00 for any fiscal year (July 1st to June 30th) then Safe Built's compensation shall be reduced to seventy-five (75%) of the total of building permit fees, plan review fees, certificate of occupancy fees and inspection fees that are collected by the City each month, beginning the July 1st of the fiscal year immediately following the fiscal year in which the $1,000,000.00 total was achieved and continuing through to the termination of the Agreement. The City shall retain the remaining twenty-five (25%) of the fees.

Exhibit A, Contract, § 3.2, p 2.

17. In addition, pursuant to the Contract, the Defendant City generates an unknown additional amount of revenue (and correspondingly reduces the overhead involved with Building Department services) through leasing office space to Safe Built, Exhibit A, Contract, § 6, pp 6-8, leasing City-owned vehicles to Safe Built, *id.* § 7, pp 8-11, and leasing computers and office equipment to Safe Built. *Id.* § 8, pp 11-12.

18. A key feature of Safe Built's program (and Safe Built's marketing of it) is that local government clients, in this case Defendant, can pay Safe Built with a portion of Building Department fees and generate revenue through the 20% (or potentially 25%) of fees retained by the local government. Exhibit C, Safe Built website excerpt.

19. Defendant does not use the surplus funds generated under the Contract to finance Building Department operations. Instead, Defendant treats this surplus as general revenue and deposits it in Defendant's general fund. Correspondence from Defendant's City Attorney supporting this allegation is attached at Exhibit D (the "City Attorney Letter").

20. The fact that the Defendant City deposits surplus Building Department revenue into its general fund, and does not segregate it in a separate account as required by law is also reflected in the City's "Receipts by Payment Code" Reports for the months of July, August and September, 2010, which all bear the notation that Building Department funds are deposited in the City's "General" bank account. Exhibit E, City Payment Code Reports.

21. A comparison of Safe Built's July, August and September, 2010 monthly invoices, Exhibit F, against corresponding monthly City Accounts Receivable Reports, Exhibit G, reveals that significant monthly surpluses are retained by the Defendant City. Gross surplus

for these three months combined amounts to $140,607.83 ($47,293.93 for July; $38,197.29 for August and $55,116.61 for September, 2010).

22. The practice of retaining 20% (or potentially retaining 25%) of Building Department fees (along with leasing fees) as profit or general revenue violates Michigan law as described more fully below and herein and has injured the Builders and their constituent members by, *de facto* causing plan review, permit, inspection, and related fees to far exceed the reasonable cost to Defendant of providing Building Department services, and by having the effect of a tax increase that was not authorized by voters in violation of the Headlee Amendment.

23. Defendant's conduct, in turn, artificially increases the cost of doing business in the City of Troy for the Builders and their members who must either absorb this artificially inflated cost or reduce their competitive advantage by passing this inflated cost onto others.

COUNT I

VIOLATION OF STATE CONSTRUCTION CODE ACT

24. The Builders incorporate by reference paragraphs 1 through 23 of this Complaint as if fully set forth here.

25. Section 22 of Michigan's Stille-DeRossett-Hale Single State Construction Code Act (the "Construction Code Act") specifically mandates that Defendant establish "reasonable fees" for Building Department services (the "Reasonable Fee" Provision), which

"bear a reasonable relation to the cost" of providing those services (the "Reasonable Relation to Costs" Provision). MCL 125.1522(1).

26. The Construction Code Act also mandates that the Defendant "shall only use fees generated under this section" for Building Department services and/or a construction board of appeals, and further mandates that Defendant "shall not use the fees for any other purpose," (the "Restricted Use of Funds" Provisions). MCL 125.1522(1).

27. More specifically, the Construction Code Act states:

> Sec. 22. (1) The legislative body of a governmental subdivision shall establish **reasonable fees to be charged by the governmental subdivision** for acts and services performed by the enforcing agency or construction board of appeals under this act, which fees shall be intended **to bear a reasonable relation to the cost**, including overhead, to the governmental subdivision of the acts and services, including, without limitation, those services and acts as, in case of an enforcing agency, issuance of building permits, examination of plans and specifications, inspection of construction undertaken pursuant to a building permit, and the issuance of certificates of use and occupancy, and, in case of a board of appeals, hearing appeals in accordance with this act. The enforcing agency shall collect the fees established under this subsection. The legislative body of a governmental subdivision **shall only use fees generated *under this* section** for the operation of the enforcing agency or the construction board of appeals, or both, and **shall not use** the fees for **any other purpose**.

MCL 125.1522(1) (emphasis added).

28. Consistent with Art. IX, Section 21 of Michigan's Constitution (authorizing the Legislature to provide for uniform accounting systems for local governments) and Michigan's Uniform Budgeting and Account Act, MCL 141.421, *et seq.* (the legislation implementing this constitutional requirement), Michigan's Department of Treasury interprets section 22 of the

Construction Code Act, MCL 125.1522(1) and its Reasonable Fee, Reasonable Relation to Costs, and its Restricted Use of Funds Provisions as requiring reasonable Building Department fees and as prohibiting Defendant from using surplus Building Department funds for general fund or general revenue purposes.

29. More specifically, when providing guidance to local governments for implementing the accounting policies mandated by the Construction Code Act, the Treasury department issued "Numbered Letter 2000-2" and "Numbered Letter 2000-6," attached and incorporated at Exhibits H and I respectively. These Numbered Letters provide that:

a. Building Department fees must be "reasonable" and "bear a reasonable relationship" to the cost of operating the Building Department. Exhibit H, Numbered Letter 2000-2 (quoting the Construction Code Act).

b. Reasonable Building Department fees may only be used for statutorily-authorized Building Department services, and because the Construction Code Act limits the purpose of the funds, "a separate special revenue fund must be established to account for the [building] department enforcement activities." *Id.*

c. Indirect "overhead" costs may be charged to this discrete fund, but "the allocation of costs [as overhead] should not include those offices required by statute, such as the clerk and treasurer," as a

"local unit of government would incur those costs, regardless of the decision to [locally] enforce the state building code." *Id.*

d. Establishing a separate fund for Building Department revenues is mandatory, unless the Building Department revenue is not intended to cover the full costs of the service and the local government has the ability to track the full costs and revenue of Building Department activities without creating a separate fund. Numbered Letter 2006-6; Exhibit I.

e. Any new fund established to account for the Construction Code Act's Restricted Use of Funds Provisions "should not begin with a deficit." *Id.*

f. Any surplus fees collected by the Building Department must be included in the balance of the requisite segregated fund. *Id.*

30. Defendant, by entering into and operating pursuant to the Contract, has violated the "Reasonable Fee" and "Reasonable Relation to Costs" Provisions of MCL 125.1522(1) in that Defendant is *de facto* collecting a 20% premium on Building Department fees and, in the future, has a likelihood of collecting a 25% premium on Building Department fees, and as the Defendant also generates leasing revenue from Safe Built.

31. Defendant has violated and is violating the "Restricted Use of Funds" Provisions of MCL 125.1522(1) to the extent that the 20% of surplus fees Defendant retains (along with leasing revenue) is being used for a purpose other than Building Department

services and a construction board of appeals, such as supplementation of the general fund, payment for other non-building code related activities, or payment of previous annual deficits incurred by the Building Department.

32. These violations of the Construction Code Act are the direct and proximate cause damage to the Builders and their members as stated herein.

WHEREFORE, the Builders respectfully request declaratory and injunctive relief in their favor and against Defendant as further described herein, along with costs, attorney fees, and any further relief this Honorable Court deems appropriate under the circumstances.

COUNT II

VIOLATION OF MICHIGAN CONSTITUTION 1963
ARTICLE IX § 31 (the "HEADLEE AMENDMENT")

33. The Builders incorporate by reference paragraphs 1 through 32 of this Complaint as if fully set forth here.

34. The Defendant City, in entering into the Contract with Safe Built, Exhibit A, caused a result whereby Building Department fees, as of July 1, 2010, *defacto* exceed the costs of providing Building Department services by approximately 20%, and there is a substantial likelihood that Building Department fees may exceed the cost of providing Building Department services by approximately 25% in the future.

35. Surplus Building Department fees are not used by Defendant for lawful Building Department purposes but instead are used to supplement the City's general fund or are used for general revenue purposes.

36. Surplus funds generated under the Contract do not serve a regulatory purpose, are not proportionate to the costs to the City of providing Building Department services, and are not voluntary from the standpoint of the Builders.

37. The City's entry into the Contract is tantamount to and legally indistinguishable from a present 20% increase (and likely future 25% increase) in co-called Building Department "fees," insofar as surplus "fees" are used for general fund or general revenue purposes. These fees should therefore be held to be a disguised tax, and in effect, a tax increase.

38. The Headlee Amendment prohibits the Defendant City from raising taxes or instituting new taxes not in place as of the Amendment's 1978 ratification without approval of the majority of the electorate.

39. The Contract and City Resolution No. 2010-06-122, Exhibit A, Contract, p. 22, and the disguised tax increase they represent, were not approved by a majority vote of the requisite electorate. As such, the City has violated the Headlee Amendment.

WHEREFORE, the Builders respectfully request declaratory and injunctive relief in their favor and against Defendant as further described herein, along with costs, attorney fees, and any further relief this Honorable Court deems appropriate under the circumstances.

COUNT III

DECLARATORY AND INJUNCTIVE RELIEF

40. The Builders incorporate by reference paragraphs 1 through 39 of this Complaint as if fully set forth here.

41. The alleged violations of the Construction Code Act, the Headlee Amendment and other acts and omissions of Defendant raised herein present a case of actual controversy within this Honorable Court's jurisdiction, consistent with MCR 2.605(A).

42. This Honorable Court has the power to grant any necessary and proper relief, including injunctive relief, in connection with or based upon any declaratory relief that this Court may grant consistent with MCR 2.605(F) as a remedy for Defendant's violations of Michigan law as alleged herein.

WHEREFORE, the Builders request declaratory, injunctive, and other relief in their favor and against Defendant in the nature as follows:

a. Declare that the Defendant has violated and is violating the Construction Code Act "Reasonable Fee," "Reasonable Relation to Costs," "Restricted Use of Funds" Provisions set forth under MCL 125.1522(1), and Mich Const 1963, Art IX, § 31 (the "Violations").

b. Declare that the Violations have harmed and will, if not redressed, continue to harm the Builders and their constituent members.

c. Enter a preliminary and/or permanent injunction prohibiting Defendant from violating the Construction Code Act and prohibiting Defendant from charging any permit, inspection, plan review, or other Building Department fees that are not reasonable

and which do not bear a reasonable relation to the cost of the services provided.

d. Enter a preliminary and/or permanent injunction prohibiting Defendant from violating the Construction Code Act and prohibiting Defendant from using any funds derived from or representing Building Department fees for any purpose other than providing Building Department services and a construction board of appeals as mandated by MCL 125.1522(1).

e. Enter a preliminary and/or permanent injunction prohibiting Defendant from violating the Construction Code Act and prohibiting Defendant from using any funds derived from placing any fees generated through its Building Department into its general fund or any fund other than a discrete fund dedicated to purposes allowable under the Construction Code Act consistent with MCL 125.1522(1).

f. Enter a preliminary and/or permanent injunction prohibiting Defendant from violating the Construction Code Act and requiring Defendant to return any surplus Building Department funds already deposited in Defendant's general accounts into a discrete fund dedicated to the purposes allowable under the Construction Code Act consistent with MCL 125.1522(1).

g. Enter a permanent injunction prohibiting Defendant from violating the Construction Code Act and requiring Defendant to adjust its Building Department fees downward, so that they bear a reasonable relation to the cost of providing Building Department services consistent with MCL 125.1522(1).

h. Enter a permanent injunction prohibiting Defendant from violating the Michigan Constitution and Headlee Amendment, Const 1963, Art IX, § 31, and requiring Defendant to adjust its Building Department fees downward, so that they serve a regulatory purpose and bear the requisite reasonable relation to the costs of providing Building Department services.

i. Award the Builders costs, attorney fees, and any further relief this Court deems appropriate under the circumstances.

McCLELLAND & ANDERSON, L.L.P.
Attorneys for Plaintiffs

By: _____
Gregory L. McClelland (P28894)
Jared A. Roberts (P55182)
Business Address:
1305 S. Washington Ave., Ste. 102
Lansing, MI 48910
Telephone: (517) 482-4890

Date: December 14, 2010

G:\docs\1000\C1029\M108\compl headlee.wpd

VERIFICATION

MICHIGAN ASSOCIATION OF HOME BUILDERS

By: _____
Lee Schwartz
Its: Executive Vice President of Government Relations
(on behalf of all Plaintiffs)

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

On this 14th day of December, 2010, in Ingham County, Michigan, before me, a notary public, personally appeared Lee Schwartz, who is personally known to me and who did state that he is the Executive Vice President of Government Relations for the Michigan Association of Home Builders, that he has read the foregoing Verified Complaint and its exhibits and is familiar with the contents thereof; and that the information contained therein is true to the best of his knowledge and belief; and that the documents attached as exhibits hereto are true and accurate copies of the documents described in and incorporated in this Verified Complaint.

_____
Judie K. Bridleman, Notary Public
Eaton County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: 11/30/2013