

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ORANGE COUNTY

018 AUG -3 A 11: 55

CASE NO. 17 CVS 166

ELIZABETH ZANDER and EVAN
GALLOWAY, for themselves and all other
persons similarly situated,

ORANGE CO., C.S.C.

BY



Plaintiffs,

v.

ORANGE COUNTY, NC, and the TOWN
OF CHAPEL HILL,

Defendants.

**ORDER GRANTING CLASS
CERTIFICATION AND APPOINTMENT
OF CLASS COUNSEL**

THIS MATTER came before the Honorable Judge C. Winston Gilchrist for consideration of Plaintiffs' Motion to Certify a Class and Appointment of Class Counsel (the "Motion") pursuant to Rule 23 of the North Carolina Rules of Civil Procedure. The Court, after considering the Motion, the record, the memorandum of law submitted to the Court, the various affidavits submitted, and the arguments of counsel, determines that Plaintiff's Motion to Certify Classes and Subclasses and Appointment of Counsel should be granted, and makes the following findings of fact and conclusions of law:

1. A proposed class action is pending in this Court against Defendants, Orange County and the Town of Chapel Hill ("Chapel Hill") (collectively, "Defendants");

2. The action challenges the legality of fees referred to as "school impact fees" set forth in Orange County's Educational Facilities Impact Fee Ordinance, ORD-2008-114, sec. 3 ("School impact fees imposed on new residential dwelling units"), *codified at* Orange County Code Sec. 30-33 (the "2008 Fee Ordinance"); and seeks a refund of certain fee amounts collected under the 2008 Fee Ordinance in excess of fees that would have been owed under a 2016

amendment to the fee schedule, Orange County Ordinance 2016-034 (“An Ordinance Amending Chapter 30, Article II – Educational Facilities Impact Fee of the Orange County Code of Ordinances”) (the “2016 Amendment”), which refunds Plaintiffs contend are owed pursuant to Orange County Code Sec. 30-35(e)(2);

3. Plaintiffs have met their burden in showing that certain classes (as defined below in ordering paragraph 1) exist because the named and unnamed members of each class have an interest in the same issues of law and fact—specifically, (1) whether the actions of Orange County in setting the amount of fees were *ultra vires*, as asserted in Plaintiffs’ Third, Eleventh, and Thirteenth Class Action Claims for Relief in the First Amended Class Action Complaint, which determination depends upon the County’s compliance with statutory requirements rather than any individualized facts; and (2) whether refunds are owed pursuant to Orange County Code Sec. 30-35(e)(2), as asserted in Plaintiffs’ Twelfth Class Action Claim for Relief, which determination depends upon the reason(s) the fees were reduced rather than any individualized facts; and those issues predominate over any issues affecting only individual members;

4. The named Plaintiffs Elizabeth Zander and Evan Galloway will fairly and adequately represent the interests of all members of the classes; the named Plaintiffs have no conflicts of interest with other members of classes; the named Plaintiffs have a genuine interest in the outcome of the case, and the named Plaintiffs will adequately represent the interests of members of the class outside this State;

5. The class members for each class are so numerous—numbering in the hundreds—that it is impractical to bring them all before this Court;

6. In this case, a class action is superior to other available methods of adjudication of this controversy because it will serve the useful purpose of preventing a multiplicity of suits and

inconsistent rulings, and because the amounts recoverable for many individual class members likely would not justify individual actions;

7. The Notice of Class Action attached as **Exhibit A** to this Order (the “Class Notice”) is in proper form for notice to the classes of their rights in this Action;

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiffs’ Motion to Certify Classes and Subclasses and Appoint Class Counsel is **GRANTED IN PART**. The Court, therefore, and pursuant to North Carolina Rule of Civil Procedure 23, certifies the following two classes:

- (1) All persons who paid a fee in the amounts established in the 2008 Fee Ordinance during the period March 3, 2014, to December 31, 2016 (the “Feepayer Class”); and
- (2) All persons who paid a fee under the schedule of fees enacted in the 2008 Fee Ordinance for a housing unit for which the corresponding fee payable effective January 1, 2017 under the 2016 Amendment would have been less (the “Refund Class”).

Excluded from the classes are: (a) any judge or magistrate presiding over this action and members of their families; and (b) all persons who properly submit a timely request for exclusion from the classes.

2. The Feepayer Class is certified as to the Third, Eleventh, and Thirteenth Class Action Claims for Relief in the First Amended Class Action Complaint, and those claims may proceed as class claims against Orange County on behalf of the Feepayer Class.

3. The Refund Class is certified as to the Twelfth Class Action Claim for Relief in the First Amended Class Action Complaint, and that claim may proceed as a class claim against Orange County on behalf of the Refund Class.

4. Plaintiffs Elizabeth Zander and Evan Galloway are hereby appointed as Class Representatives for both the Feepayer Class and the Refund Class;

5. Attorneys Robert J. King III and Matthew B. Tynan, of the law firm Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, are hereby appointed to serve as Class Counsel for both the Feepayer Class and the Refund Class;

6. No later than September 15, 2018 the Plaintiffs shall, at Plaintiffs' cost and expense:

(a) Cause a notice substantially in the form of the Feepayer Class Notice attached hereto as **Exhibit A** to be mailed to the permit applicants (or other fee payers) identified in the records of Orange County, Chapel Hill, and Carrboro, whose addresses are reasonably ascertainable;

(b) Cause a notice substantially in the form of the Refund Class Notice attached hereto as **Exhibit B** to be mailed to the permit applicants (or other fee payers) identified in the records of Orange County, Chapel Hill, and Carrboro, whose addresses are reasonably ascertainable, whose fees would have been less if paid on January 1, 2017;

(b) Cause the Feepayer Class Notice and Refund Class Notice to be posted to www.brookspierce.com/impactfeeclassaction; and

(c) Cause each Class Notice to be published in at least one newspaper;

7. Any individual or entity who a) qualifies as a member of either Class and b) desires to be excluded from the Class may opt out by completing and mailing an opt out notice (described in each Notice of Class Action) to Attn: Impact Fee Class Member Opt-Out, Brooks Pierce LLP, P.O. Box 26000, Greensboro, NC, 27420, postmarked no later than November 15, 2018.

8. Should any member of either class ask any questions of any of the Defendants as

to the nature, claims, or status of the Class Action, as part of any response the Defendants and their agents shall respond to such inquiry(ies) by producing a copy of the Feepayer Class Notice and the Refund Class Notice, and advising the person to contact Class Counsel at the location provided in said Notices.

9. For purposes of paragraphs 8 only, the word “Defendants” shall include the managers, directors, officers, employees, agents, and assigns of the Defendants.

10. Within 5 business days of the date this Order is served on Defendant Orange County, Orange County shall produce all of the impact fee receipts in its possession, custody, or control for any fee paid on or after June 3, 2014, and all impact fee receipts in its possession, custody, or control for any fee payment that would qualify the feepayer as a member of the Refund Class.

IT IS SO ORDERED.

This the 18 day of July, 2018.

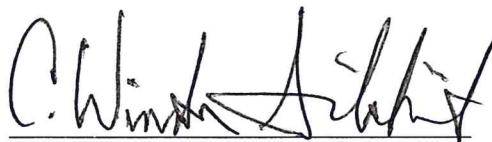

The Honorable C. Winston Gilchrist
Superior Court Judge Presiding

EXHIBIT A

NORTH CAROLINA

ORANGE COUNTY

ELIZABETH ZANDER and EVAN
GALLOWAY, for themselves and all other
persons similarly situated,

Plaintiffs,

v.

ORANGE COUNTY, NC, and the TOWN
OF CHAPEL HILL,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 17 CVS 166

NOTICE OF PENDENCY OF CLASS ACTION

TO: ALL PERSONS WHO PAID A SCHOOL IMPACT FEE TO ORANGE COUNTY DURING THE PERIOD MARCH 3, 2014, TO DECEMBER 31, 2016.

The purpose of this notice is to inform you of a collective action in which you are potentially “similarly situated” to the named Plaintiffs and to advise you of how your rights may be affected by this action.

I. Description of the action.

On March 3, 2017, an action was filed against Defendants Orange County, NC, and the Town of Chapel Hill, on behalf of named Plaintiffs Elizabeth Zander and Evan Galloway, and all other similarly situated individuals who paid a school impact fee to Defendants during the period January 1, 2009, to December 31, 2016, in order to receive a certificate of occupancy for a new residential unit. Specifically, the action alleges that the impact fees exceeded Orange County’s statutory authority to charge impact fees and were therefore unlawful. The Court has approved a class including (1) the class of all persons who paid a school impact fee during the period March 3, 2014, to December 31, 2016, under the fee schedule enacted in 2008.

Defendants deny Plaintiffs’ allegations and maintain that the school impact fees were proper.

II. Persons eligible to receive this notice.

The Orange County Superior Court has ordered that this notice be distributed to all persons who paid a school impact fee during the period March 3, 2014, to December 31, 2016, in the amounts established by Orange County’s Educational Facilities Impact Fee Ordinance, ORD-2008-114, sec. 3. This notice has been mailed to all permit applicants (or other fee payers) identified in the

public records of Orange County, Chapel Hill, and Carrboro who paid an impact fee during the period March 3, 2014, to December 31, 2016.

III. Effect of joining this action and opt-out procedure.

If you join this action, you and Defendants will be bound by any ruling, judgment, or settlement, whether favorable or unfavorable. If you wish to join this action, no action on your part is needed at this time. Notice will be provided to you of any ruling, judgment, or settlement in this case.

If you choose not to join this lawsuit, you may opt out. If you opt-out, (a) you will have no right to receive any money under any settlement or judgment entered in this action, (b) you will not be bound by any settlement or judgment, and (c) you may bring action on your own. If you opt out of this lawsuit and bring or participate in a separate lawsuit, you may lose your case and receive nothing, or you may obtain less money than you could get under this lawsuit even if you prevail, and it may take several years to obtain such money. To opt out of this lawsuit, you must submit a written notice stating that you want to opt out to the following address: Attn: Impact Fee Class Member Opt-Out, Brooks Pierce LLP, P.O. Box 26000, Greensboro, NC, 27420. The written notice must state:

I wish to opt out of the Feepayer Class in the case Zander et al. v. Orange County et al., No. 17 CVS 166, Orange County Superior Court. I understand that by requesting to be excluded from the class approved in this action, that I will receive no money under any settlement or judgment entered in this case. I understand that if I am excluded from this action, I may bring a separate action. I understand that in any separate lawsuit, I may receive nothing or less than I would have received if I had remained a participant in this action.

To be timely, your opt-out statement must be postmarked no later than Thursday, November 15, 2018.

IV. Statute of limitations.

The statute authorizing Orange County to charge impact fees had a nine-month statute of limitations, which could apply to some claims asserted in this case; otherwise, state-law claims asserted in this case have a three-year period of limitations. If you choose to join this lawsuit, you may be entitled to recover if you paid a fee within three years of March 3, 2017. If you choose not to join this lawsuit or file your own action, some or all of your potential claims may later be barred by the applicable statute of limitations.

V. Your legal representation if you join.

Your interests will be represented by Plaintiffs' counsel:

Robert J. King
Matthew B. Tynan

Brooks, Pierce, McLendon, Humphrey & Leonard LLP
230 North Elm Street
2000 Renaissance Plaza
Greensboro, NC 27401
T: (336) 373-8850
F: (336) 378-1001
e-mail: rking@brookspierce.com
mtynan@brookspierce.com
impactfeeclassaction@brookspierce.com
Website: www.brookspierce.com

The attorneys are being paid on a contingency fee and/or statutory basis which means that if there is no recovery, there will be no attorneys' fees. You will not have to pay the attorneys out of your own pocket. If there is a recovery, the attorneys will receive part of any settlement obtained or money judgment entered in favor of all members of the classes.

VI. Further information.

If you would like further information, please do not call or contact the court. Instead, please contact class counsel using the contact information provided above. More information is also available at www.brookspierce.com/impactfeeclassaction.

EXHIBIT B

NORTH CAROLINA

ORANGE COUNTY

ELIZABETH ZANDER and EVAN
GALLOWAY, for themselves and all other
persons similarly situated,

Plaintiffs,

v.

ORANGE COUNTY, NC, and the TOWN
OF CHAPEL HILL,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 17 CVS 166

NOTICE OF PENDENCY OF CLASS ACTION

TO: ALL PERSONS WHO PAID A SCHOOL IMPACT FEE TO ORANGE COUNTY DURING THE PERIOD JANUARY 1, 2009, TO DECEMBER 31, 2016, WHOSE IMPACT FEE WOULD HAVE BEEN LOWER UNDER THE FEE SCHEDULE APPLICABLE ON JANUARY 1, 2017.

The purpose of this notice is to inform you of a collective action in which you are potentially “similarly situated” to the named Plaintiffs and to advise you of how your rights may be affected by this action.

VII. Description of the action.

On March 3, 2017, an action was filed against Defendants Orange County, NC, and the Town of Chapel Hill, on behalf of named Plaintiffs Elizabeth Zander and Evan Galloway, and all other similarly situated individuals who paid a school impact fee to Defendants during the period January 1, 2009, to December 31, 2016, in order to receive a certificate of occupancy for a new residential unit. The action alleges that Orange County is required to refund certain fees as a result of a 2016 ordinance that (1) reduced impact fees for certain housing types and (2) obligated the County to refund impact fees whenever the fees were reduced under certain circumstances, which the action asserts exist. The Court has approved a class consisting of all persons who paid an impact fee during the period January 1, 2009, to December 31, 2016, whose fee would have been lower if paid under the fee schedule applicable on or after January 1, 2017.

Defendants deny Plaintiffs’ allegations and maintain that no refunds are owed.

VIII. Persons eligible to receive this notice.

The Orange County Superior Court has ordered that this notice be distributed to all persons who paid a school impact fee during the period January 1, 2009, and December 31, 2016, in the amounts established by Orange County's Educational Facilities Impact Fee Ordinance, ORD-2008-114, sec. 3, whose fee would have been lower under the schedule of fees applicable on January 1, 2017, according to the following fee schedules below:

2008 School Impact Fee Schedule

Chapel Hill – Carrboro City Schools District				
	Effective January 1, 2009	Effective January 1, 2010	Effective January 1, 2011	Effective January 1, 2012
Single-Family Detached	\$6,092	\$7,616	\$9,520	\$11,423
Single-Family Attached	\$3,525	\$4,406	\$5,508	\$6,610
Multifamily	\$686	\$858	\$1,072	\$1,286
Manufactured Homes	\$2,634	\$3,293	\$4,116	\$4,939

Orange County Schools District				
	Effective January 1, 2009	Effective January 1, 2010	Effective January 1, 2011	Effective January 1, 2012
Single-Family Detached	\$3,000	\$3,749	\$4,686	\$5,623
Single-Family Attached/Multifamily	\$930	\$1,162	\$1,453	\$1,743
Manufactured Homes	\$1,428	\$1,785	\$2,232	\$2,678

2016 School Impact Fee Schedule

Chapel Hill Carrboro City Schools District	
Dwelling Unit Type	Fee Effective January 1, 2017
Single Family Detached 0-3 Bedrooms	\$ 5,639
Single Family Detached 4+ Bedrooms	\$ 10,810
Single Family Detached < 800 sq. ft.	\$ 1,655
Single Family Attached, 0-2 Bedrooms	\$ 4,414
Single Family Attached, 3+ Bedrooms	\$ 7,058
Multifamily, 0-2 Bedrooms & Accessory Dwelling Units, 0-2 Bedrooms	\$ 1,910
Multifamily, 3+ Bedrooms & Accessory Dwelling Units, 3+ Bedrooms	\$ 8,133
Manufactured Home	\$ 3,010
Age Restricted Unit	\$ 325

Orange County Schools District	
Dwelling Unit Type	Fee Effective January 1, 2017
Single Family Detached 0-3 Bedrooms	\$ 5,179
Single Family Detached 4+ Bedrooms	\$ 3,849
Single Family Detached < 800 sq. ft.	\$ 1,426
Single Family Attached, 0-2 Bedrooms	\$ 1,576
Single Family Attached, 3+ Bedrooms	\$ 2,390
Multifamily, 0-2 Bedrooms & Accessory Dwelling Units, 0-2 Bedrooms	\$ 1,142
Multifamily, 3+ Bedrooms & Accessory Dwelling Units, 3+ Bedrooms	\$ 8,891
Manufactured Home	\$ 3,495
Age Restricted Unit	\$ 268

This notice has been mailed to all permit applicants (or other fee payers) identified in the public records of Orange County, Chapel Hill, and Carrboro whose fee would have been lower if paid on January 1, 2017.

IX. Effect of joining this action and opt-out procedure.

If you join this action, you and Defendants will be bound by any ruling, judgment, or settlement, whether favorable or unfavorable. If you wish to join this action, no action on your part is needed at this time. Notice will be provided to you of any ruling, judgment, or settlement in this case.

If you choose not to join this lawsuit, you may opt out. If you opt-out, (a) you will have no right to receive any money under any settlement or judgment entered in this action, (b) you will not be bound by any settlement or judgment, and (c) you may bring action on your own. If you opt out of this lawsuit and bring or participate in a separate lawsuit, you may lose your case and receive nothing, or you may obtain less money than you could get under this lawsuit even if you prevail, and it may take several years to obtain such money. To opt out of this lawsuit, you must submit a written notice stating that you want to opt out to the following address: Attn: Impact Fee Class Member Opt-Out, Brooks Pierce LLP, P.O. Box 26000, Greensboro, NC, 27420. The written notice must state:

I wish to opt out of the Refund Class in the case Zander et al. v. Orange County et al., No. 17 CVS 166, Orange County Superior Court. I understand that by requesting to be excluded from the classes approved in this action, that I will receive no money under any settlement or judgment entered in this case. I understand that if I am excluded from this action, I may bring a separate action. I understand that in any separate lawsuit, I may receive nothing or less than I would have received if I had remained a participant in this action.

To be timely, your opt-out statement must be postmarked no later than Thursday, November 15, 2018.

X. Statute of limitations.

The statute authorizing Orange County to charge impact fees had a nine-month statute of limitations, which may apply to some claims asserted in this case; otherwise, state-law claims asserted in this case may have a three-year or a ten-year period of limitations. If you choose to join this lawsuit, you may be entitled to recover if you paid a fee within nine months, three years, or ten years of March 3, 2017, depending on the Court's determination of the applicable statute of limitations. If you choose not to join this lawsuit or file your own action, some or all of your potential claims may later be barred by the applicable statute of limitations.

XI. Your legal representation if you join.

Your interests will be represented by Plaintiffs' counsel:

Robert J. King
Matthew B. Tynan
Brooks, Pierce, McLendon, Humphrey & Leonard LLP
230 North Elm Street
2000 Renaissance Plaza
Greensboro, NC 27401
T: (336) 373-8850
F: (336) 378-1001
e-mail: rking@brookspierce.com
mtynan@brookspierce.com

impactfeeclassaction@brookspierce.com

Website: www.brookspierce.com

The attorneys are being paid on a contingency fee and/or statutory basis which means that if there is no recovery, there will be no attorneys' fees. You will not have to pay the attorneys out of your own pocket. If there is a recovery, the attorneys will receive part of any settlement obtained or money judgment entered in favor of all members of the classes.

XII. Further information.

If you would like further information, please do not call or contact the court. Instead, please contact class counsel using the contact information provided above. More information is also available at www.brookspierce.com/impactfeeclassaction.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the attached or foregoing document was served on the parties listed below by mailing a copy thereof to each of said parties, addressed, postage prepaid, as follows:

Matthew B. Tynan
Robert J. King, III
P.O. Box 26000
Greensboro, NC 27420

Sonny S. Haynes
James R. Morgan, Jr.
Patricia I. Heyen
One West Fourth Street
Winston-Salem, NC 27101

This the 18th day of July, 2018.


Natalie Munz
Superior Court Trial Court Coordinator
Judicial District 11A
P.O. Box 1045
Lillington, NC 27546