



NORTH CAROLINA
ORANGE COUNTY

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

ELIZABETH ZANDER and EVAN
GALLOWAY,

Plaintiffs,

v.

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

Defendants.

**FIRST AMENDED CLASS ACTION
COMPLAINT**

NOW COME Plaintiffs Elizabeth Zander and Evan Galloway (collectively, "Plaintiffs"), and allege as follows:

1. Plaintiffs are individuals who are residents of Orange County, North Carolina.
2. Defendant Orange County ("Orange County" or the "County") is a county duly organized and created under the laws of the State of North Carolina.
3. Defendant Town of Chapel Hill ("Chapel Hill") is a municipality duly organized and created under the laws of the State of North Carolina.
4. This Court has jurisdiction over the subject matter and parties and Orange County is a proper venue.
5. Jurisdiction and venue are proper pursuant to Chapter 1 and Chapter 7A of the North Carolina General Statutes. This action has been filed within all applicable statutes of limitation and repose.
6. Plaintiffs bring class claims on behalf of themselves and all persons similarly situated, including: (1) the class of all persons who paid a fee or otherwise satisfied the requirement to pay a fee in the amounts established by Orange County Code of Ordinances Section 30-33

(“School impact fees imposed on new residential dwelling units”) during the period January 1, 2009, to December 31, 2016; (2) the subclass of all persons who paid a fee as set forth in Orange County Code of Ordinances Section 30-33 during the period January 1, 2009, to December 31, 2016 or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside; (3) the class of all persons from whom Chapel Hill collected a fee in the amounts set forth in Orange County Code of Ordinances Section 30-33 during the period January 1, 2009, to December 31, 2016; and (4) the subclass of all persons from whom Chapel Hill collected a fee in the amounts set forth in Orange County Code of Ordinances Section 30-33 during the period January 1, 2009, to December 31, 2016 as a condition to obtaining a certificate of occupancy for a housing unit in which such person intended to reside.

7. The classes and subclasses discussed herein consist of Plaintiffs and numerous others.

8. Plaintiffs have personal interests in the illegality of the fees set forth in Orange County Code of Ordinances Section 30-33 that are in common with members of the relevant classes and subclasses.

9. The illegality of the fees predominates over issues affecting only individual class members.

10. The members of the classes and subclasses so numerous that it would be impracticable to bring all class and subclass members before the court.

11. Plaintiffs will adequately represent members of the classes and subclasses.

THE CHALLENGED FEES

12. The General Assembly authorized Orange County to “provide by ordinance for a system of impact fees to be paid by developers to help defray the costs to the County of

constructing certain capital improvements, the need for which is created in substantial part by the new development that takes place within the County.” 1987 N.C. Sess. Laws 460, secs. 17(a) and 18(a).

13. Session Law 1987-460 provides that “the term capital improvements includes . . . capital improvements to . . . schools.” 1987 N.C. Sess. Laws 460, secs. 17(b) and 18(b).

14. Impact fees paid to support capital improvements for public schools are referred to herein as “school impact fees.”

15. In setting the amount of any school impact fees under the authority granted by the General Assembly, Orange County must:

- (1) Estimate the total cost of school capital improvements that will be needed to provide in a reasonable manner for the public health, safety, and welfare of persons residing in the County during a reasonable planning period not to exceed 20 years;
- (2) Establish a percentage of the total costs of school capital improvements that should fairly be borne by those paying the impact fee; and
- (3) Establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments.

See 1987 N.C. Sess. Laws 460, secs. 17(c) and 18(c).

16. In 1991, the General Assembly modified Orange County’s authority to allow the County to charge school impact fees for development occurring within the corporate limits and extraterritorial planning jurisdiction of any city, town, or municipal corporation within Orange County. 1991 N.C. Sess. Laws 324.

17. In 1993, the Orange County Board of Commissioners (the “Board”) adopted an ordinance (as promulgated and subsequently amended, the “Fee Ordinance”) that provides that no certificate of occupancy can be issued for any new residential dwelling unit within Orange County until the fee for that dwelling unit has been paid in full.

18. In December 2008, the Board amended the Fee Ordinance to provide the following schedule of fees:

Chapel Hill – Carrboro City Schools District				
	Effective January 1, 2009	Effective January 10, 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 10, 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

Orange County Ord. 2008-114 (“Orange County Educational Facilities Impact Fee Ordinance”) (hereinafter, the “2008 Amendment”), sec. 3 (“School impact fees imposed on new residential dwelling units”), (Dec. 11, 2008), *codified at* Orange County Code Sec. 30-33 (2015).

19. The fee amounts established by the 2008 Amendment are based on estimates of the “maximum supportable” impact fees (“MSIF”) for each housing unit type as calculated in two

reports produced by TischlerBise, *School Impact Fees: Chapel Hill-Carrboro City Schools* (Dec. 31, 2007) and *School Impact Fees: Orange County Schools* (Dec. 31, 2007) (collectively, the “2007 TischlerBise reports”).

20. The 2007 TischlerBise reports recognize that school impact fees could be calculated by determining the total costs of a specified set of capital improvements identified by a facility plan and then allocating those costs among new developments, but decline to take that approach.

21. Instead, the 2007 TischlerBise reports calculate the MSIF for each housing unit type by estimating (1) the average cost of certain existing elementary, middle, and high school facilities per student, with various adjustments, (“net local capital cost per student”) and (2) the average number of elementary, middle, and high school students produced per year by each type of housing unit (the “student generation rate”). The student generation rates and net local capital costs per student are then multiplied and summed to derive the MSIF for each housing type. The 2007 TischlerBise reports refer to this as an “incremental expansion fee calculation.”

22. The 2007 TischlerBise reports do not estimate or otherwise calculate the total cost of school capital improvements that will be needed to provide in a reasonable manner for the public health, safety, and welfare of persons residing in the County during a reasonable planning period not to exceed 20 years.

23. The 2007 TischlerBise reports do not project or otherwise estimate the need for school capital improvements. That is, the TischlerBise reports do not examine or consider whether the facilities in existence in 2007 would be adequate or whether additional school capital improvements would be needed over any planning period.

24. The 2007 TischlerBise reports do not constrain estimated costs for school capital improvements to any planning period.

25. In particular, the 2007 TischlerBise reports do not constrain such estimated costs to a planning period less than or equal to 20 years.

26. The 2007 TischlerBise reports do not establish a percentage of the total costs of school capital improvements that should fairly be borne by those paying the impact fee.

27. The 2007 TischlerBise reports do not establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments.

28. The Board set the fee amounts established by the 2008 Amendment by multiplying the MSIF amounts calculated in the 2007 TischlerBise reports by various percentages (32% of MSIF for fees paid in 2009, 40% of MSIF for fees paid in 2010, 50% of MSIF for fees paid in 2011, and 60% of MSIF for fees paid in 2012 and thereafter).

29. In establishing the amount of the fees in the 2008 Amendment, the Board did not estimate the total cost of school capital improvements that would be needed to provide in a reasonable manner for the public health, safety, and welfare of persons residing in the County during a reasonable planning period not to exceed 20 years.

30. In establishing the amount of the fees in the 2008 Amendment, the Board did not project or otherwise estimate the need for school capital improvements. That is, in setting the fee amounts, the Board did not examine or consider whether the facilities in existence in 2007 would be adequate or whether or when additional school capital improvements would be needed.

31. In establishing the amount of the fees in the 2008 Amendment, the Board did not constrain estimated costs for school capital improvements to any planning period.

32. In particular, the Board did not constrain such estimated costs to a planning period less than or equal to 20 years.

33. In establishing the amount of the fees in the 2008 Amendment, the Board did not establish a percentage of the total costs of school capital improvements that should fairly be borne by those paying the impact fee.

34. In establishing the amount of the fees in the 2008 Amendment, the Board did not establish a formula that fairly and objectively apportions the total costs that were to be borne by those paying impact fees among various types of developments.

35. According to the TischlerBise reports, school impact fees are intended to reflect the proportionate demand by type of dwelling unit, that is, the need for school improvements is measured by the number of public school-age children projected to be generated by (i.e., live in) each new development.

36. The fees enacted by the 2008 Amendment are intended to capture capital costs associated with the students who will live in each dwelling unit and attend public schools in Orange County.

37. The fees are intended to pay costs related to school facilities, that is, the physical plant of public schools within Orange County.

38. The Fee Ordinance, Sec. 6, Orange County Code of Ordinances section 30-36 ("Credits"), provides that a landowner may obtain a credit against any required fee by conveying land to the County or municipality within the County for a public school site or by constructing new facilities.

39. By interlocal agreement, Chapel Hill collects fees under the Fee Ordinance on behalf of Orange County for new residential development within Chapel Hill and remits those funds to Orange County.

40. During the period January 1, 2009, to December 31, 2016, Chapel Hill would not issue a certificate of occupancy for a new dwelling unit unless the Orange County fee established for that housing unit by the 2008 Amendment had been paid.

2016 FEE REDUCTION

41. On November 15, 2016, the Board promulgated Orange County Ordinance 2016-034 (“An Ordinance Amending Chapter 30, Article II – Educational Facilities Impact Fee of the Orange County Code of Ordinances”) (hereinafter, the “2016 Amendment”).

42. Among other things, the 2016 Amendment modified the schedule of fees, setting new fee amounts as shown in the following tables:

Chapel Hill - Carrboro City Schools District					
Dwelling Unit Type	Fee Effective January 1, 2017	Fee Effective January 1, 2018	Fee Effective January 1, 2019	Fee Effective January 1, 2020	Fee Effective January 1, 2021
Single Family Detached 0-3 Bedrooms	\$5,639	\$6,623	\$7,606	\$8,590	\$9,573
Single Family Detached 4+ Bedrooms	\$10,810	\$12,695	\$14,581	\$16,466	\$18,351
Single Family Detached < 800 sq. ft.	\$1,655	\$1,943	\$2,232	\$2,520	\$2,809
Single Family Attached, 0-2 Bedrooms	\$4,414	\$5,184	\$5,954	\$6,724	\$7,494
Single Family Attached, 3+ Bedrooms	\$7,058	\$8,289	\$9,520	\$10,751	\$11,982

Multifamily, 0-2 Bedrooms & Accessory Dwelling Units, 0-2 Bedrooms	\$1,910	\$2,243	\$2,576	\$2,909	\$3,242
Multifamily, 3+ Bedrooms & Accessory Dwelling Units, 3+ Bedrooms	\$8,133	\$9,552	\$10,970	\$12,389	\$13,807
Manufactured Home	\$3,010	\$3,534	\$4,059	\$4,584	\$5,109
Age Restricted Unit	\$325	\$382	\$438	\$495	\$552

Orange County Schools District					
Dwelling Unit Type	Fee Effective January 1, 2017	Fee Effective January 1, 2018	Fee Effective January 1, 2019	Fee Effective January 1, 2020	Fee Effective January 1, 2021
Single Family Detached 0-3 Bedrooms	\$5,179	\$6,082	\$6,986	\$7,889	\$8,792
Single Family Detached 4+ Bedrooms	\$3,849	\$4,521	\$5,192	\$5,864	\$6,535
Single Family Detached < 800 sq. ft.	\$1,426	\$1,675	\$1,924	\$2,173	\$2,421
Single Family Attached, 0-2 Bedrooms	\$1,576	\$1,851	\$2,126	\$2,401	\$2,675
Single Family Attached, 3+ Bedrooms	\$2,390	\$2,807	\$3,224	\$3,640	\$4,057
Multifamily, 0-2 Bedrooms & Accessory Dwelling Units, 0-2 Bedrooms	\$1,142	\$1,341	\$1,540	\$1,740	\$1,939

Multifamily, 3+ Bedrooms & Accessory Dwelling Units, 3+ Bedrooms	\$8,891	\$10,442	\$11,993	\$13,543	\$15,094
Manufactured Home	\$3,495	\$4,104	\$4,714	\$5,323	\$5,933
Age Restricted Unit	\$268	\$315	\$361	\$408	\$455

2016 Amendment, codified at Orange County Code Sec. 30-33 (“School impact fees imposed on new residential dwelling units”).

43. The Board modified the schedule of fees after receiving two new reports produced by TischlerBise: the *Chapel Hill-Carrboro City Schools School Impact Fee Study* (Aug. 15, 2016) and the *Orange County Schools Impact Fee Study* (Sept. 1, 2016) (collectively, the “2016 TischlerBise reports”).

44. Like the 2007 TischlerBise reports, the 2016 TischlerBise reports use an incremental expansion fee calculation methodology to derive MSIF values for various housing unit types.

45. For each housing unit type, and for both Orange County and Chapel Hill-Carrboro City Schools districts, every MSIF value determined by the 2016 TischlerBise reports exceeded the corresponding fee applicable under the 2008 Amendment.

46. Thus, the results of the 2016 TischlerBise reports did not require Orange County to decrease any fee amount specified by the 2008 Amendment.

47. In fact, according to the 2016 TischlerBise reports, Orange County had the option to *increase* the fee amount for every housing unit type.

48. The Board, under the impression that fees for all housing unit types must be the same percentage of the TischlerBise-calculated MSIF, determined that it would reduce the percent MSIF from the 60% of MSIF for fees paid from January 1, 2012, to December 31, 2016, to only 43% of MSIF for fees paid during 2017.

49. The Board chose this lower percentage of MSIF to avoid sudden, significant increases in the fee amounts payable for multifamily housing units that would result if fees were set at 60% of the MSIF amounts calculated by the 2016 TischlerBise reports.

50. Nothing in N.C. Session Law 1987-460 or its subsequent amendments, or any other applicable law, requires Orange County to charge the same percentage of MSIF to all housing unit types.

51. Lowering the percent of MSIF from 60% to 43% caused a significant reduction in the fee amounts payable for housing units in 2017 compared to the corresponding fees applicable under the 2008 Amendment during the period January 1, 2009, to December 31, 2016.

52. The reduction in fees applicable in 2017 as specified in the 2016 Amendment relative to those established by the 2008 Amendment was not due to an updated school impact fee study.

53. On the contrary, all fee amounts could have been *increased* according to the 2016 TischlerBise reports.

54. Rather, the reductions in fees applicable in 2017 relative to those established by the 2008 Amendment were due to reasons other than an updated school impact fee study.

55. Specifically, the reduction in fees was due to policy determinations of the Board including the Board's self-imposed requirement that all housing unit types pay the same percent of MSIF and the Board's desire not to increase certain fee amounts.

PLAINTIFFS

56. On or about September 25, 2015, Plaintiffs purchased a parcel located at 155 Dixie Drive (now 310 Collums Rd), Chapel Hill, North Carolina, with the intent of constructing a home thereon to serve as their residence. This parcel is within the planning jurisdiction of Chapel Hill.

57. Plaintiffs sought to keep their expenses within a modest budget. As part of those efforts, Plaintiff Elizabeth Zander's father, who is an architect, designed the home with input from Plaintiffs. Plaintiffs also performed a significant amount of the labor required to construct their home. For the remaining construction, Plaintiffs took additional measures to reduce costs, including that Plaintiff Elizabeth Zander acted as Plaintiffs' general contractor in overseeing construction of the home.

58. In or about November 2015, Plaintiffs learned that they would be required to pay something called a school impact fee in the amount of \$11,423 before Chapel Hill would issue a certificate of occupancy to allow them to actually occupy the house.

59. On or about December 10, 2015, Plaintiffs sought a waiver of the fee.

60. By letter dated December 15, 2015, Craig Benedict, the Orange County Director of Planning and Inspections, denied the waiver request.

61. On or about February 23, 2016, through counsel, Plaintiffs sought a waiver of the fee by letter to John L. Roberts, Orange County Attorney.

62. On or about March 24, 2016, John L. Roberts notified counsel for Plaintiffs that no waiver of the fee was possible, although there are exemptions provided in the Orange County ordinance setting forth the fee requirement.

63. Plaintiffs do not qualify for any exemption provided in the Fee Ordinance.

64. There is no administrative appeal process available to challenge the fee or its amount.

65. On May 4, 2016, Plaintiffs paid \$11,423 to Chapel Hill to satisfy the fee requirement to obtain a certificate of occupancy from Chapel Hill.

66. On June 16, 2016, Plaintiffs obtained a certificate of occupancy for their home.

67. Plaintiffs intend to live in this home indefinitely.

68. Plaintiffs' obtaining a certificate of occupancy and residing in their home do not create in substantial part the need for public school capital improvements.

FIRST CLASS ACTION CLAIM FOR RELIEF
**(Violation of N.C. Const. Art. I, § 15, Art. IX, §§ 2, 5, 6 & 7, and N.C. Gen. Stat. § 115C-1
by Defendant Orange County)**

69. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

70. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, to include each person who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside.

71. The class consists of Plaintiffs and numerous others.

72. The North Carolina Constitution provides that the people of the State have a right to the privilege of education, and it requires the State and each county to provide a uniform system of free public schools.

73. The obligation to provide free public schools requires the provision of a tuition free education.

74. N.C. Gen. Stat. § 115C-1 provides that “[t]uition shall be free of charge to all children of the State, and to every person of the State less than 21 years old, who has not completed a standard high school course of study.”

75. A tuition free education is provided only when public funds are used to pay for school physical plant and personnel salaries.

76. The fees collected by Orange County under the 2008 Amendment are used for provision of public school physical facilities.

77. The only impact, if any, on the need for public school facilities within Orange County resulting from class members’, including Plaintiffs’, obtaining a certificate of occupancy will be the attendance of their children at public schools within Orange County, particularly when considered over a period of 20 years or less from the issuance of such certificate.

78. Orange County lacks authority to require class members, including Plaintiffs, to pay fees to recoup capital costs for school facilities based on the attendance or projected attendance of class members’ (including Plaintiffs’) children at public schools within Orange County.

79. As charged to class members including Plaintiffs, the fees required by the 2008 Amendment are a tuition charge in violation of N.C. Const. Art. I, § 15, Art. IX, §§ 2, 5, 6, and 7, and N.C. Gen. Stat. § 115C-1.

80. The class of persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside is so numerous that it would be impracticable to bring all class members before the court.

81. Plaintiffs have a personal interest in whether fees set by the 2008 Amendment constitute an illegal tuition charge when paid by an individual would-be homeowner and this issue is common to all class members.

82. The common issue of law whether fees set by the 2008 Amendment constitute an illegal tuition charge when paid by an individual would-be homeowner predominates over issues affecting only individual class members.

83. Plaintiffs will adequately represent members of the class.

84. Each class member, including Plaintiffs, is entitled to recover damages equal to the entire amount of the fee paid or otherwise satisfied, plus interest.

SECOND CLASS ACTION CLAIM FOR RELIEF
**(Violation of N.C. Const. Art. I, § 15, Art. IX, §§ 2, 5, 6 & 7, and N.C. Gen. Stat. § 115C-1
by Defendant Chapel Hill)**

85. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

86. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, to include each person from whom Chapel Hill collected a fee specified by the 2008 Amendment to Chapel Hill as a condition of obtaining a certificate of occupancy for a housing unit in which such person intended to reside.

87. The class consists of Plaintiffs and numerous others.

88. As charged to class members including Plaintiffs, the fees collected by Chapel Hill are a tuition charge in violation of N.C. Const. Art. I, § 15, Art. IX, §§ 2, 5, 6, and 7, and N.C. Gen. Stat. § 115C-1.

89. The class of persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a

housing unit in which such person intended to reside is so numerous that it would be impracticable to bring all class members before the court.

90. Plaintiffs have a personal interest in whether fees set by the 2008 Amendment constitute an illegal tuition charge when paid by an individual would-be homeowner and this issue is common to all class members.

91. The common issue of law whether the challenged fees constitute an illegal tuition charge when paid by an individual would-be homeowner predominates over issues affecting only individual class members.

92. Plaintiffs will adequately represent members of the class.

93. Each class member, including Plaintiffs, is entitled to recover from Chapel Hill damages equal to the amount of the fee paid to Chapel Hill, plus interest.

THIRD CLASS ACTION CLAIM FOR RELIEF
(The challenged fees are *ultra vires* as required by Defendant Orange County)

94. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

95. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons who paid a fee or otherwise satisfied the requirement to pay a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016.

96. The class consists of Plaintiffs and numerous others.

97. The fee amounts established by the 2008 Amendment are *ultra vires* and illegal because the Board did not follow the mandatory requirements for establishing the amount of impact fees as set forth in 1987 N.C. Sess. Laws 460, secs. 17(c) and 18(c).

98. The fee amounts established by the 2008 Amendment exceed those that could lawfully have been enacted as impact fees if the Board had complied with the requirements of 1987 N.C. Sess. Laws 460, secs. 17(c) and 18(c).

99. The fees charged under the 2008 Amendment are not impact fees authorized by 1987 N.C. Sess. Laws 460, as amended.

100. The fees specified in the 2008 Amendment and codified in Orange County Code section 30-33 are not a system of impact fees authorized by 1987 N.C. Sess. Laws 460, as amended.

101. Plaintiffs have a personal interest in whether the fees established in the 2008 Amendment are *ultra vires* that is in common with all members of the class.

102. The issue whether the fees are *ultra vires* predominates over issues affecting only individual class members.

103. The class of persons who paid the challenged fees to Orange County or otherwise satisfied Orange County's fee requirement from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court.

104. Plaintiffs will adequately represent members of the class.

105. Class members, including Plaintiffs, are entitled to recover damages equal to the entire amount of the fee paid or otherwise satisfied by them, plus interest.

FOURTH CLASS ACTION CLAIM FOR RELIEF
(The challenged fees are *ultra vires* as enforced by Defendant Chapel Hill)

106. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

107. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons from whom Chapel Hill collected a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016.

108. The class consists of Plaintiffs and numerous others.

109. Chapel Hill lacked authority to collect *ultra vires* fees.

110. Chapel Hill lacked authority to condition issuance of certificates of occupancy on payment of *ultra vires* fees.

111. Plaintiffs have a personal interest in whether the fees specified in the 2008 Amendment are *ultra vires* that is in common with all members of the class.

112. The issue whether the fees are *ultra vires* predominates over issues affecting only individual class members.

113. The class of persons who paid fees required by the 2008 Amendment to Chapel Hill from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court.

114. Plaintiffs will adequately represent members of the class.

115. Class members, including Plaintiffs, are entitled to recover from Chapel Hill damages equal to the amount of the fees each paid to Chapel Hill, plus interest.

FIFTH CLASS ACTION CLAIM FOR RELIEF
(Violation of substantive due process, N.C. Const. Art. I, Sec. 19,
by Defendant Orange County)

116. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

117. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons who paid a fee or otherwise satisfied the requirement to pay a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016.

118. The class consists of Plaintiffs and numerous others.

119. The fees established by the 2008 Amendment are *ultra vires* and illegal because the Board did not follow the mandatory requirements for establishing the amount of impact fees as set forth in 1987 N.C. Sess. Laws 460, secs. 17(c) and 18(c), and otherwise lacks authority to impose any similar fee.

120. The fee amounts established by the 2008 Amendment exceed those that could lawfully have been enacted as impact fees if the Board had complied with the requirements of 1987 N.C. Sess. Laws 460, secs. 17(c) and 18(c).

121. Plaintiffs have a personal interest in the illegality of the fees established by the 2008 Amendment that is in common with all members of the class.

122. The illegality of the fee amounts predominates over issues affecting only individual class members.

123. The class of persons who paid fees to Orange County or otherwise satisfied Orange County's fee requirement from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court.

124. Plaintiffs will adequately represent members of the class.

125. Class members including Plaintiffs had a property right in the property used to satisfy the applicable Orange County fee requirement.

126. Orange County's requirement that class members pay a fee in the amount established by the 2008 Amendment to obtain a certificate of occupancy has no rational relation to a valid state objective because the County lacked authority to charge fees in any amount not established according to the method prescribed by statute.

127. Orange County's requirement that class members, including Plaintiffs, pay a fee to obtain a certificate of occupancy has no rational relation to a valid state objective because Orange

County lacks authority to charge a fee for development that does not create in substantial part the need for public school capital improvements.

128. By requiring class members including Plaintiffs to pay a fee in the amounts established by the 2008 Amendment, Orange County deprived class members of property in violation of the substantive due process rights guaranteed by N.C. Const. Art. I, Sec. 19.

129. Class members, including Plaintiffs, are entitled to recover damages equal to the amount of the fees paid or otherwise satisfied by them, plus interest.

SIXTH CLASS ACTION CLAIM FOR RELIEF
**(Violation of substantive due process, N.C. Const. Art. I, Sec. 19,
by Defendant Chapel Hill)**

130. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

131. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons from whom Chapel Hill collected a fee as specified in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016.

132. The class consists of Plaintiffs and numerous others.

133. Chapel Hill lacked authority to collect *ultra vires* fee amounts.

134. Chapel Hill lacked authority to condition issuance of certificates of occupancy on payment of *ultra vires* fees.

135. Plaintiffs have a personal interest in the illegality of the fees established by the 2008 Amendment that is in common with all members of the class.

136. The illegality of the fees predominates over issues affecting only individual class members.

137. The class of persons who paid the challenged fees to Chapel Hill from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court.

138. Plaintiffs will adequately represent members of the class and subclass.

139. Class members, including Plaintiffs, had a property right in the fees paid to Chapel Hill.

140. Chapel Hill's requirement that class members pay a fee in the amounts established by the 2008 Amendment to obtain a certificate of occupancy has no rational relation to a valid state objective because there was no lawful authority to require such a fee.

141. By requiring class members including Plaintiffs to pay a fee in the amounts established by the 2008 Amendment, Chapel Hill deprived class members of property in violation of the substantive due process rights guaranteed by N.C. Const. Art. I, Sec. 19.

142. Class members, including Plaintiffs, are entitled to recover from Chapel Hill damages equal to the amount of the fees each paid to Chapel Hill, plus interest.

SEVENTH CLASS ACTION CLAIM FOR RELIEF
(Taking in violation of N.C. Const. Art. I, Sec. 19, by Defendant Orange County)

143. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

144. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons who paid a fee or otherwise satisfied the requirement to pay a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016, including the subclass of all persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside.

145. The class and subclass each consist of Plaintiffs and numerous others.

146. The fee amounts required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the actual impacts caused by fee payers.

147. The fee amounts required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the reasonably expected impacts caused by fee payers.

148. Accordingly, by requiring payment of the fees as a condition of obtaining a certificate of occupancy, Orange County effected a taking without just compensation in violation of Art. I, Section 19 of the North Carolina Constitution.

149. Plaintiffs have a personal interest in the illegality of the fee amounts established by the 2008 Amendment that is in common with all members of the class and all members of the subclass.

150. The illegality of the fee amounts predominates over issues affecting only individual class and subclass members.

151. The class of persons who paid the challenged fees to Orange County from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court. Likewise, the subclass of all persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside is so numerous that it would be impracticable to bring all subclass members before the court.

152. Plaintiffs will adequately represent members of the class and subclass.

153. Class members and subclass members, including Plaintiffs, are entitled to damages equal to the amount of all fees paid or otherwise satisfied by them, plus interest.

EIGHTH CLASS ACTION CLAIM FOR RELIEF

(Taking in violation of N.C. Const. Art. I, Sec. 19 by Defendant Chapel Hill)

154. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

155. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons who paid a fee to Chapel Hill in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016, including the subclass of all persons who paid such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside.

156. The class and subclass each consist of Plaintiffs and numerous others.

157. The fee amounts required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the actual impacts caused by fee payers.

158. The fee amounts required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the reasonably expected impacts caused by fee payers.

159. Accordingly, by requiring payment of the fees as a condition of obtaining a certificate of occupancy, Chapel Hill effected a taking without just compensation in violation of Art. I, Section 19 of the North Carolina Constitution.

160. Plaintiffs have a personal interest in the illegality of the fee amounts established by the 2008 Amendment that is in common with all members of the class and all members of the subclass.

161. The illegality of the fee amounts predominates over issues affecting only individual class and subclass members.

162. The class of persons who paid the challenged fees to Chapel Hill from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class

members before the court. Likewise, the subclass of all persons who paid such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside is so numerous that it would be impracticable to bring all class members before the court.

163. Plaintiffs will adequately represent all members of the class and subclass.

164. Class members and subclass members, including Plaintiffs, are entitled to damages equal to the amount of all fees paid or otherwise satisfied by them, plus interest.

NINTH CLASS ACTION CLAIM FOR RELIEF
(42 U.S.C. § 1983 claim for violation of rights under U.S. Const. Fifth and Fourteenth Amendments by Defendant Orange County)

165. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

166. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons who paid a fee or otherwise satisfied the requirement to pay a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016, and including the subclass of all persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside.

167. The class and subclass each consist of Plaintiffs and numerous others.

168. Class and subclass members including Plaintiffs had a property right in the property used to satisfy the applicable Orange County fee requirement.

169. Orange County's requirement that class members pay fees in the amounts established by the 2008 Amendment to obtain a certificate of occupancy has no rational relation to a valid state objective because Defendants lacked authority to charge fees in any amount not established according to the method prescribed by statute.

170. By requiring class members including Plaintiffs to pay a fee in the amounts established by the 2008 Amendment, Orange County deprived class members of property in violation of the substantive due process rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

171. In the alternative, the fee amounts required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the actual impacts caused by fee payers.

172. The fee amounts required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the reasonably expected impacts caused by fee payers.

173. Accordingly, by requiring payment of the fees as a condition of obtaining a certificate of occupancy, Orange County effected a taking without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

174. Plaintiffs have a personal interest in the illegality of the fees established by the 2008 Amendment that is in common with all members of the class and subclass.

175. The illegality of the fees predominates over issues affecting only individual class members.

176. The class of persons who paid the challenged fees to Orange County or otherwise satisfied Orange County's fee requirement from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court. Likewise, the subclass of all persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside is so numerous that it would be impracticable to bring all subclass members before the court.

177. Plaintiffs will adequately represent members of the class and subclass.

178. Class and subclass members, including Plaintiffs, are entitled to recover damages equal to the entire amount of the fee paid or otherwise satisfied by them, plus interest.

TENTH CLASS ACTION CLAIM FOR RELIEF
(42 U.S.C. § 1983 claim for violation of rights under U.S. Const. Fifth and Fourteenth Amendments by Defendant Chapel Hill)

179. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

180. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons from whom Chapel Hill collected a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016, and including the subclass of all persons who paid a fee as set forth in the 2008 Amendment, to obtain a certificate of occupancy for a housing unit in which such person intended to reside.

181. The class and subclass each consist of Plaintiffs and numerous others.

182. Class and subclass members including Plaintiffs had a property right in the property used to satisfy the applicable Orange County fee requirement.

183. Chapel Hill's requirement that class members pay fees in the amounts established by the 2008 Amendment to obtain a certificate of occupancy has no rational relation to a valid state objective because Defendants lacked authority to charge fees in any amount not established according to the method prescribed by statute.

184. By requiring class members including Plaintiffs to pay a fee in the amounts established by the 2008 Amendment, Chapel Hill deprived class members of property in violation of the substantive due process rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

185. In the alternative, the fees required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the actual impacts caused by fee payers.

186. The fee amounts required by the 2008 Amendment are excessive and lack a rational nexus and rough proportionality to the reasonably expected impacts caused by fee payers.

187. Accordingly, by requiring payment of the fees as a condition of obtaining a certificate of occupancy, Chapel Hill effected a taking without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

188. Plaintiffs have a personal interest in the illegality of the fees established by the 2008 Amendment that is in common with all members of the class and subclass.

189. The illegality of the fee amounts predominates over issues affecting only individual class members.

190. The class of persons who paid the challenged fees to Chapel Hill from January 1, 2009, to December 31, 2016, to obtain a certificate of occupancy is so numerous that it would be impracticable to bring all class members before the court. Likewise, the subclass of all persons who paid a fee as set forth in the 2008 Amendment to obtain a certificate of occupancy for a housing unit in which such person intended to reside is so numerous that it would be impracticable to bring all subclass members before the court.

191. Plaintiffs will adequately represent members of the class and subclass.

192. Class and subclass members, including Plaintiffs, are entitled to recover damages equal to the entire amount of the fee paid or otherwise satisfied by them, plus interest.

ELEVENTH CLASS ACTION CLAIM FOR RELIEF
(Declaratory Judgment against both Defendants)

193. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

194. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons who paid a fee or otherwise satisfied the requirement to pay

a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016, and including the subclass of all persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside.

195. The class and subclass each consist of Plaintiffs and numerous others.

196. For the foregoing reasons, the fees required by Defendants as a condition of obtaining a certificate of occupancy are unlawful, including when required to be paid by an individual who intended to reside in the new dwelling subject to the fee.

197. Furthermore, because the Fee Ordinance is unconstitutional or otherwise invalid, any fees collected unlawfully must be refunded with interest.

198. Plaintiffs have a personal interest in the illegality of the fees established by the 2008 Amendment that is in common with all members of the class and subclass.

199. The illegality of the fee amounts predominates over issues affecting only individual class members.

200. The class of persons who paid the challenged fees to Orange County or otherwise satisfied Orange County's fee requirement from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court. Likewise, the subclass of all persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside is so numerous that it would be impracticable to bring all subclass members before the court.

201. Plaintiffs will adequately represent members of the class and subclass.

202. Plaintiffs seek a declaration that all fees or alternative satisfaction thereof required by Defendants pursuant to the 2008 Amendment as a condition of obtaining a certificate of occupancy are unlawful, including when required to be paid by an individual who intends to reside in the new dwelling subject to the fee, and further that each fee paid by such persons must be refunded to the person who paid them, with interest.

TWELFTH CLASS ACTION CLAIM FOR RELIEF
(Claim for refund of reduced fees against Defendant Orange County)

203. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

204. Because the fee amounts specified in the 2008 Amendment were reduced by the 2016 Amendment for reasons other than an updated school impact fee study, under the terms of the 2016 Amendment, Orange County is obligated to return to the fee payer any difference between the fee paid under the 2008 Amendment and the applicable lower fee amount payable under the 2016 Amendment.

205. The class consists of Plaintiffs and numerous others.

206. Plaintiffs bring this claim on behalf of themselves and all persons who paid a fee under the 2008 Amendment for a housing unit for which the corresponding fee was reduced under the 2016 Amendment.

207. Plaintiffs have a personal interest in whether Orange County owes a refund subsection (e)(2) of Orange County Code Section 30-35 (“Collection of fees”) as amended by the 2016 Amendment and this issue is in common with all class members.

208. Orange County’s legal obligation to refund the fee amounts predominates over issues affecting only individual class members.

209. The class of persons who paid the fees to Orange County or otherwise satisfied Orange County's fee requirement from January 1, 2009, to December 31, 2016, is so numerous that it would be impracticable to bring all class members before the court.

210. Plaintiffs will adequately represent members of the class.

211. Plaintiffs seek a declaration on behalf of all class members the refunds required by Orange County Code Section 30-35(e)(2) are due and payable.

THIRTEENTH CLASS ACTION CLAIM FOR RELIEF
(Claim for attorneys' fees and costs against both Defendants)

212. The allegations of each of the preceding paragraphs are hereby realleged and incorporated by reference.

213. Plaintiffs bring this claim on behalf of themselves and the class of all similarly situated persons, including all persons who paid a fee or otherwise satisfied the requirement to pay a fee in the amounts established by the 2008 Amendment during the period January 1, 2009, to December 31, 2016, and including the subclass of all persons who paid a fee as set forth in the 2008 Amendment or otherwise satisfied the requirement to pay such a fee to obtain a certificate of occupancy for a housing unit in which such person intended to reside.

214. The class and subclass each consist of Plaintiffs and numerous others.

215. Pursuant to N.C. Gen. Stat. § 6-21.7, class and subclass members may recover reasonable attorneys' fees and costs in any action in which a city or county is a party, upon a finding by the court that the city or county acted outside the scope of its legal authority.

216. Defendants acted outside the scope of their legal authority in requiring class and subclass members to pay the fees specified by the 2008 Amendment.

217. Pursuant to 42 U.S.C. § 1988, Plaintiffs may recover reasonable attorneys' fees in an action to enforce 42 U.S.C. § 1983.

218. Plaintiffs have a personal interest in the recoverability and recovery of attorneys' fees that is in common with members of the class and subclass.

219. The issue whether attorneys' fees are recoverable predominates over issues affecting only individual class and subclass members.

220. Plaintiffs will adequately represent members of the class.

221. The class and subclass are so numerous that it would be impracticable to bring all class members before the court.

222. Class and subclass members including Plaintiffs are entitled to recover their reasonable attorneys' fees as court costs from Defendants pursuant to N.C. Gen. Stat. § 6-21.7 and 42 U.S.C. § 1988.

WHEREFORE, Plaintiffs respectfully pray that the Court:

1. Enter judgment in favor of all class and subclass members, including Plaintiffs, for damages in the amount of any fee paid, plus interest from the date of payment;

2. Enter a declaratory judgment declaring that all fees required by Defendants pursuant to the 2008 Amendment as a condition of obtaining a certificate of occupancy are unlawful, including when required to be paid by an individual who intends to reside in the new dwelling subject to the fee, and further that each fee paid by such persons must be refunded to the person who paid them, with interest;

3. Enter a judgment in favor of all class members, including Plaintiffs, for damages in the amount of any difference between the fee paid under the 2008 Amendment and the corresponding fee that would have been owed in 2017 under the 2016 Amendment, plus interest, pursuant to Orange County Code Section 30-35(e)(2);

4. Award class and subclass members reasonable attorneys' fees and costs against Defendants pursuant to N.C. Gen. Stat. § 6-21.7 and/or 42 U.S.C. § 1988;
5. Allow jury trial on all issues so triable; and
6. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this 2nd day of March, 2017.



Matthew B. Tynan
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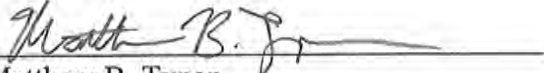
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **FIRST AMENDED CLASS ACTION COMPLAINT** was served on all parties to this action by mailing a copy thereof in the United States mail, postage prepaid, to the following:

Roger Stancil, Town Manager
Town of Chapel Hill
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405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

James R. Morgan
Womble, Carlyle, Sandridge & Rice
One West Fourth Street
Winston-Salem, NC 27101
Attorney for Defendant Orange County, North Carolina

This the 2nd day of March, 2017.


Matthew B. Tynan