

LEGAL NOTICE

PUBLICATION DATE: _____

Re: CAPTSTONE BUILDERS INC. v. CITY OF ELM SPRINGS

Washington County Circuit Court Case No. 72CV-18-3021

If you are a person or entity that has paid the “Capacity Fees” charged by the City of Elm Springs on or after November 8, 2008, you may be entitled to a refund of a portion of the fees you paid under a Settlement Agreement approved by the Court.

If you are a person or entity that has paid the Elm Springs Connection Fee charged by the City of Elm Springs after November 18, 2008, you have a right to object to the Settlement Agreement.

On November 8, 2018, a lawsuit was filed by Capstone Builders, Inc. on behalf of itself and all individuals similarly situated against the City of Elm Springs alleging that the City had illegally charged individuals and/or companies “Capacity Fees” to access the City’s sewer lines. These alleged illegal “Capacity Fees” fees include:

- a \$2,000 sewer capacity fee
- a \$2,500 sewer capacity fee

Plaintiff alleges that these fees constitute an illegal tax and/or expenditure. Accordingly, Plaintiff has asked the Court to enjoin the future collection of these fees and order the City to refund the fees it has already collected to every individual or company that has paid them since November 8, 2008.

The City of Elm Springs disputes the allegations, contends that the fees in dispute are valid and legal, and is defending itself against the lawsuit.

WHAT KIND OF LAWSUIT IS THIS?

The pending lawsuit is an illegal exaction lawsuit, one that is established by the Arkansas Constitution. An illegal exaction lawsuit is a class action as a matter of law. The Plaintiff class (the “Class”) is established by the Arkansas Constitution and automatically includes all persons or entities that paid the Capacity Fees that are alleged to be illegal. Class members may not opt out of the class and will be bound by any judgment or settlement. Class members may wish to become named parties to have greater input in the remedy sought. Class members may wish to become named parties to assure there is no collusion or friendly lawsuits, and to have input in the amount of attorney’s fees granted by the court, if any. Class members may declare any alleged illegal tax voluntarily paid and seek removal from the illegal exaction suit.

HOW WAS A SETTLEMENT AGREEMENT REACHED?

The Plaintiffs obtained summary judgment wherein the Court ordered the City to refund the money's paid by the class members after first subtracting 1/3 of the recovery for attorney fees. The City appealed this decision. That appeal is pending before the Arkansas Court of Appeals. To avoid the uncertainty of an appeal and the time delay associated with an appeal, the parties have reached a settlement of the claims. The settlement agreement was approved by the Representative of the Plaintiffs' Class. The Settlement Agreement was approved by the Elm Springs City Council on July 22, 2021.

WHO IS ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT?

If you are a person or entity that paid the Elm Springs Capacity Fee after November 8, 2008 you may be entitled to a refund of a portion of the fees you paid under the Settlement Agreement.

WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?

There has been set aside \$14,000.00 for those persons or entities who paid the City's Capacity Fee between November 8, 2008 through November 8, 2015. These persons or entities are entitled to a \$500.00 refund for each Capacity Fee paid. However, under no circumstance shall the recovery for this category of claimants exceed fourteen thousand dollars \$14,000.00.

There has been set aside thirty-eight thousand five hundred dollars \$38,500.00 for those persons or entities who paid the City's Capacity Fee between November 8, 2015 and November 8, 2018 (the date this action was filed). These persons or entities are entitled to a \$700.00 refund for each Capacity Fee paid. However, under no circumstance shall the total recovery for this category of claimants exceed \$38,500.00.

There has been set aside \$191,240.00 for those persons or entities who paid the City's Capacity Fee after November 8, 2018 (the date this action was filed). These persons or entities are entitled to a \$1,366.00 refund for each Capacity Fee paid. However, under no circumstance shall the total recovery for this category of claimants exceed \$191,240.00.

The City will further pay counsel for the Plaintiffs' Class \$112,260.00 in attorney fees and pay Capstone Builders, Inc., as class representative an enhancement award of \$14,000.00

Person or entities that are entitled to a claim identified above will have 30 days to submit the below claim form to counsel for the Plaintiffs. A claim form may also be requested by emailing class counsel at thutchinson@rmp.law or may be requested by mail to the address: P.O. Box 1788, Fayetteville, AR 72702.

Any funds not claimed within the 30-day window will be used to pay costs associated with this lawsuit and then returned to the City of Elm Springs.

Upon final approval of this settlement agreement, this lawsuit will be dismissed, and the City of Elm Springs will no longer be liable for any claims associated with its Capacity Fees.

WHAT SHOULD I DO IF I WANT TO PARTICIPATE IN THE SETTLEMENT?

You should fill out the attached claim form and send it to Tim Hutchinson at P.O. Box 1788, Fayetteville, AR 72702 or by email at thutchinson@rmp.law. You have 30 days to submit your claim. If mailed, your claim form must be post-marked by the deadline date. If you have already submitted a claim form, you do not need to submit another claim form.

If you do not want a reimbursement of any moneys paid by you, you may claim that your payment of the fees was voluntary, and you will not be rewarded any claim proceeds. If you choose not to file a claim, you will not be able to bring another lawsuit on your own.

You may view the entire case file at the Washington County Circuit Clerk’s office.

WHO MAY OBJECT TO THE SETTLEMENT?

You may object to the Settlement if you are a member of the class (a person or entity that paid the Capacity Fees charged by the City of Elm Springs),

WHAT DO I NEED TO DO IF I WANT TO OBJECT TO THE SETTLEMENT?

If you want to object to the settlement, you, or your lawyer on your behalf, should file a Notice of Objection before October 12, 2021. You should file your Notice of Objection with the Circuit Clerk of Washington County describing the factual and legal basis of your objection. Any Notice of Objection filed should contain a reference to the Case No.: 72CV-18-3021. If you are an entity such as a corporation or LLC, you must be represented by an attorney when filing an objection (no attorney is required to file a claim).

WHEN WILL THE SETTLEMENT BE COMPLETE?

The Court will hold a final approval hearing on October 12, 2021 at 10:00 a.m. at the Washington County Courthouse. Without further notice, the Court may adjourn and reconvene the final approval hearing and set it for a different time.

The settlement will be complete when, and if, the Court has entered an order finally approving the settlement and any appeals of the final order are resolved. If the Court does not enter an Order finally approving the settlement, or if the appellate court reverses the Court’s approval, then, depending on the circumstances then existing, the settlement may be delayed, modified, or rendered null and void. If the settlement is rendered null and void, the litigation will continue as if this settlement had never been reached.

ADDITIONAL INFORMATION

You are automatically represented by Counsel for the Plaintiffs class, RMP, LLP. You are not responsible for their attorney fees. If you hire another lawyer to represent you in filing an objection, you will be responsible for that lawyer’s attorney fees. If you believe that you are affected by this lawsuit or have any questions regarding this lawsuit, you may call Tim Hutchinson at 479-443-2705.

You may view the entire case at the Washington County Circuit Clerk’s Office.