

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

**JOSEPH G. GRIFFIN, AND  
CHRISTINA GRIFFIN,  
Plaintiffs,**

**v.**

**Case No. 20-181196-CZ  
Hon. Yasmine I. Poles**

**CITY OF MADISON HEIGHTS,  
Defendant,**

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**OPINION AND ORDER RE: PLAINTIFFS’  
MOTION FOR CLASS CERTIFICATION**

This matter is before the Court on Plaintiffs’ Motion for Class Certification pursuant to MCR 3.501. The Court heard oral argument on February 10, 2021, and took the matter under advisement.

This case arises from the allegations that Defendant City of Madison Heights (the “City”) has violated the Headlee Amendment to the Michigan Constitution. Plaintiffs challenge a mandatory “Stormwater System Utility Fee” (hereinafter the “Stormwater Charge”) imposed by the City on all owners of real property in the City.

With respect to Count I – Violation of Headlee Amendment, Plaintiffs ask the Court to certify a class of all persons and entities who/which have paid or incurred the Stormwater Charge at any time since May 12, 2019 or who/which have paid or incurred the Stormwater Charges during the pendency of this action. With respect to Counts II and III – Violation of MCL 141.91, Plaintiffs ask the Court to certify a class of all persons and entities who/which have paid or incurred the Stormwater Charges at any time since July 1, 2016, or who/which have paid or incurred the

Stormwater Charges during the pendency of this action. Further, Plaintiffs ask the Court to certify this action to be a proper class action with Plaintiffs as Class Representatives and Kickham Hanley PLLC designated Class Counsel.

In response, Defendant argues that class certification is not appropriate because there is an inherent conflict within the class, namely that some class members have benefits from the City's methodology of assessing the charge. Further, Defendant argues that Plaintiffs fail to satisfy the requirement that a question common to the class predominates over individual questions and fail to establish ascertainably and numerosity.

Certification of a class is controlled by court rule. "Pursuant to MCR 3.501(A)(1), members of a class may only sue or be sued as a representative party of all class members if the prerequisites dictated by the court rule are met." *Henry v Dow Chemical Co*, 484 Mich 483, 496 (2009). MCR 3.501(A)(1) provides:

- (1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
  - (a) the class is so numerous that joinder of all members is impracticable;
  - (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
  - (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
  - (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
  - (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

“These prerequisites are often referred to as numerosity, commonality, typicality, adequacy, and superiority.” *Henry, supra* at 488. “The burden of establishing that the requirements for a certifiable class are satisfied is on the party seeking to maintain the certification.” *Michigan Ass’n of Chiropractors v Blue Cross Blue Shield of Mich*, 300 Mich App 577, 586 (2013). And, “a party seeking class certification is required to provide the certifying court with information sufficient to establish that each prerequisite for class certification in MCR 3.501(A)(1) is in fact satisfied.” *Henry supra*, at 502.

The certifying court may not simply “rubber stamp” a party’s allegations that the class certification prerequisites are met. *Id.* The Court is to independently determine that the plaintiff has at least alleged a statement of basic facts and law which are adequate to support the prerequisites. *Id.* at 505. The court may make its determination on the pleadings alone, only if such pleadings set forth sufficient information that satisfies the court that each prerequisite is in fact met. *Id.* at 502. Where the pleadings are insufficient, the court is to look to additional information beyond the pleadings to determine whether class certification is proper. *Id.* at 503. However, at the class certification stage of the proceedings, a court is to avoid making determinations on the merits of the underlying case. *Id.* at 488. The court is to “analyze any asserted facts, claims, defenses, and relevant law without questioning the actual merits of the case.” *Id.* at 504.

### **Numerosity**

Numerosity was addressed in *Zine v Chrysler Corp*, 236 Mich App 261, 287-88; 600 NW2d 384 (1999).

There is no particular minimum number of members necessary to meet the numerosity requirement, and the exact number of members need not be known as

long as general knowledge and commonsense indicate that the class is large. Because the court cannot determine if joinder of the class members would be impracticable unless it knows the approximate number of members, the plaintiffs must adequately define the class so potential members can be identified and must present some evidence of the number of class members or otherwise establish by reasonable estimate the number of class members. (Internal citations omitted).

The Court finds that Plaintiffs have met their burden in establishing the numerosity requirement. Here, Plaintiffs propose to certify a class that could potentially be 29,000 members comprised of all persons who have paid the Stormwater Charge. This is supported by the U.S Census Bureau Quickfacts stating that as of July 1, 2019, the City had a population estimate of 29,886. (Plaintiffs' Exhibit 27). Certainly, joinder of the proposed class members would be impracticable.

Further, Plaintiffs have defined the class so potential members can be identified. Here, the class is defined as all persons and entities who/which have paid or incurred the Stormwater Charges during the applicable period. To support this factor, Plaintiffs contend that each property owner is assess the Stormwater Charges at issue and records of the same are kept by the City. (*See* Plaintiff's Exhibits 29, 30).

In response, Defendant argues that the class is not identifiable because the City does not maintain precise records of who pays the Stormwater Charge. The records only reflect the address for which the charge was assessed, not the individual or entity. As such, Defendant argues that identity of the individuals who paid the Stormwater Charge would require extensive individualized fact finding. Here, although the records are by property address and not individual customer, the evidence does show that there are records regarding the assessment of the Stormwater Charges from which the identity of the class members can be ascertained.

## **Commonality**

The second factor is whether there is a common question of fact or law that applies to the entire class. Under this factor, Plaintiffs must establish that “all members of the class had a common inquiry that could be demonstrated with generalized proof, rather than evidence unique to each class member.” *A&M Supply Co v Microsoft Corp*, 252 Mich App 580, 599; 654 NW2d 572 (2002). As such, Plaintiffs must show that the issues of fact and law common to the class predominate over issues only relevant to individual class members. *Duskin v Dep’t of Human Services*, 304 Mich App 645, 654; 848 NW2d 455 (2014).

Defendant argues that the general legal issue of whether the Stormwater Charge is unlawful requires individualized proof. Specifically, Defendant argues that the determination of whether a charge is a valid user fee, or an unlawful tax requires the Court to consider, among other things, whether the fee is proportionate. Defendant argues that this inquiry will require individualized factual determinations for each member of the class. The Court disagrees.

Here, the common facts relevant to the class are that each member paid or incurred the Stormwater Charge imposed by the City. The common issue of law is the legality of the Stormwater Charge itself. If, as argued by Plaintiffs, the Stormwater Charge is unlawful, the Stormwater Charge would be unlawful to every member of the class. While there would be individualized damages, the Court does not find that this predominates over the commonality of the class. Based on the same, the Court finds that Plaintiffs have demonstrated that all members of the class have a common injury that can be demonstrated with generalized proof. *Tinman v Blue Cross & Shield*, 264 Mich App 546, 563-64; 692 NW2d 58 (2004). As such, the commonality factor has been met.

### **Typicality**

The next factor that Plaintiffs must satisfy is typicality. Under this factor, the class representatives' claims must have the same "essential characteristics" as the claims of the other members of the class. *Neal v James*, 252 Mich App 12, 21; 651 NW2d 181 (2002), overruled in part on other grounds by *Henry*, *supra* at 505. The claims, even if based on the same legal theories, must all contain a common "core of allegation." *Id.*

Defendant argues that Plaintiffs' claims are not typical because the Stormwater Charge is individualized based on each parcel. Based on the same, Defendant argues that examination of the Stormwater Charge will require an examination into individual parcels. Plaintiffs' claims, however, raise the same legal issues that arise from a common course of conduct; namely, the Stormwater Charge assessed by the City. Based on the same, the Court finds that the typicality requirement has been met.

### **Adequacy**

Next, a party seeking class certification must meet the adequacy requirement. This factor requires a showing that the class representatives "can fairly and adequately represent the interests of the class as a whole." *Neal*, *supra* at 22. There must be a showing that there are no conflicts of interest between the representative plaintiff and the class and that there is a likelihood of vigorous prosecution of the case by competent counsel." *Id.*

Defendant argues that a conflict of interest exists because of Plaintiffs' challenge to the City's methodology in assessing the Stormwater Charge. Defendant argues that based on Plaintiffs' argument, some members of the class would be assessed more than their share of the stormwater

system, while others may be underassessed. Defendant argues that this could create a favorable resolution to some members of the class at the expense of others. Further, Defendant argues that Plaintiffs are not familiar and are uninformed regarding the claims itself. In summation, Defendant argues that there is no actual party behind counsel's prosecution of the action.

Conversely, Plaintiffs argue that they will fairly and adequately represent the class. Plaintiffs contend that there is no conflict of interest since the claims of the class arise from the City's imposition of the Stormwater Charge, which are the same type for each member of the proposed class. Further, Plaintiffs argue that lead counsel, Kickham Hanley PLLC, is well qualified and will adequately represent the class. And, Plaintiffs argue that they are permitted to rely on their counsel to advance their legal claims.

Here, although different properties may be assessed a different amount for the Stormwater Charge, Plaintiffs' assertion that the Stormwater Charge is an unlawful tax affects the class, regardless of the amount actually assessed. As such, the Court finds that there is not a conflict of interest between Plaintiffs and the class. Further, the Court is satisfied that Plaintiffs' counsel is well qualified and will adequately represent the class. Based on the same, the Court finds that the adequacy requirement has been met.

### **Superiority**

This factor requires Plaintiffs to demonstrate that "maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice." MCR 3.501(A)(1)(e). "In deciding this factor, the court may consider the practical problems that can arise if the class action is allowed to proceed." *A&M Supply, supra* at

601, citing *Dix v American Bankers Life Assurance Co of Florida*, 429 Mich 410, 414; 416 NW2d 206 (1987). The relevant concern is whether “the issues are so disparate” that a class action would be unmanageable. *A&M Supply, supra* at 602, citing *Lee v Grand Rapids Bd of Ed*, 184 Mich App 502, 504-06; 459 NW2d 1 (1989).

Further, MCR 3.501(A)(2) provides:

In determining whether the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice, the court shall consider among other matters the following factors:

- (a) whether the prosecution of separate actions by or against individual members of the class would create a risk of
  - (i) inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; or
  - (ii) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
- (b) whether final equitable or declaratory relief might be appropriate with respect to the class;
- (c) whether the action will be manageable as a class action;
- (d) whether in view of the complexity of the issues or the expense of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
- (e) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action; and
- (f) whether members of the class have a significant interest in controlling the prosecution or defense of separate actions.



The City does not address this factor. Plaintiffs, however, argue that a class action is the superior way for the class to seek redress for the wrongfully imposed Stormwater Charge. Additionally, Plaintiffs argue that denial of a class action would create the risk of conflicting judgments. Plaintiffs further argue that individual class members have not suffered an injury that warrants the cost of separate litigation. The Court agrees.

The Court finds that Plaintiffs have established superiority. As stated, the relevant concern is whether “the issues are so disparate” that a class action would be unmanageable. *A&M Supply, supra* at 602. Here, there are not disparate issues. The issue here is the legality of the City’s Stormwater Charge. A class action would be superior and more manageable than adjudications of separate actions brought by all the individuals who have paid the Stormwater Charge to the City. This is especially so in light of the fact that the same evidence and legal issues would necessarily be presented in the individual cases.

Based on the foregoing, Plaintiffs’ motion for class certification is GRANTED.

**IT IS SO ORDERED.**

February 25, 2021  
Date

/s/ Yasmine I. Poles  
Hon. Yasmine I. Poles, Circuit Court Judge