

STATE OF NORTH CAROLINA  
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Case No. 19-cvs-2999

STIER CONSTRUCTION COMPANY, )  
INC. and BRYAN HUMPHREY )  
DESIGN BUILD, INC., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
TOWN OF CAROLINA BEACH, )  
 )  
Defendant. )

**ORDER GRANTING PRELIMINARY  
APPROVAL  
OF SETTLEMENT, CERTIFYING  
CLASSES FOR PURPOSES OF  
SETTLEMENT, DIRECTING NOTICE  
TO THE CLASS,  
AND SCHEDULING FINAL APPROVAL  
HEARING**

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WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Settlement, Certification of Class for Purposes of Settlement, and Approval of the Notice Plan (the "Motion") filed by Plaintiffs Stier Construction Company, Inc. and Bryan Humphrey Design Build, Inc. individually, on behalf of themselves and all others similarly situated (collectively, "Class Plaintiffs").

WHEREAS, the Court finds that it has jurisdiction over this action and the parties;

WHEREAS, this Court is otherwise fully advised of the facts and circumstances of the proposed settlement;

IT IS HEREBY ORDERED THAT:

**The Settlement Agreement is Preliminarily Approved**

1. The Court preliminarily approves the Stipulation of Settlement and Release (the "Settlement"), between Class Plaintiffs and Defendant Town of Carolina Beach ("Carolina Beach") subject to further consideration thereof at the Final Approval Hearing provided for below. The Settlement calls for Carolina Beach to provide benefits to Class Members in

accordance to which fee they paid Carolina Beach as a precondition to receiving water and sewer service. Settlement Class members may make a claim to receive a partial refund of the Facility Fees they paid Carolina Beach minus attorneys fees, costs, and Service Awards. Carolina Beach has agreed not to object to a Service Award to the Class Plaintiffs up to \$5,000.00. In addition, Carolina Beach has separately agreed to pay up to a total of \$50,000 for a notice plan. Additionally, Carolina Beach has agreed not to oppose Class Counsel's request for attorneys' fees and expenses as long as that request does not exceed one third of the maximum value of the settlement. Altogether, Carolina Beach has agreed to pay no more than \$850,000 in full satisfaction of its obligations under the Settlement, this Order, and any Final Judgment and Order that may be entered in this action (the "Settlement Fund"), and any Final Settlement amount shall not exceed the Settlement Fund. The Settlement was entered into after extensive litigation and arm's length negotiation by experienced counsel for the parties, assisted by a neutral mediator after a contentious and lengthy mediation. The Court finds that the Settlement is sufficiently within the range of reasonableness so that notice of the settlement should be given as provided in this Order.

### **The Settlement Classes are Preliminarily Approved**

2. The Court preliminarily finds that the proposed Settlement Classes, for the purpose of this settlement only, meet the applicable requirements of North Carolina Rule of Civil Procedure 23 and hereby conditionally certifies the following Settlement Classes for settlement purposes only:

Settlement Class shall be defined as:

All builders, developers, and individuals who paid Facility Fees to the Town of Carolina Beach pursuant to the Town of Carolina Beach Code of Ordinances from August 9, 2016 to June 30, 2018 which are at issue in this Action.

3. The Court preliminarily finds that Plaintiffs Stier Construction Company, Inc. and Bryan Humphrey Design Build, Inc. are adequate representatives of Settlement Class for settlement purposes only.

4. If the Settlement is terminated or is not consummated for any reason, the certification of the Settlement Classes shall be void, and Plaintiffs and Defendant shall be deemed to have reserved all of their rights to propose or oppose any and all certification and class representation issues.

5. The Court further preliminarily finds that the following attorneys fairly and adequately represent the interests of the Settlement Class and hereby appoints them as Class Counsel for settlement purposes only as follows:

Daniel K. Bryson  
Scott C. Harris  
J. Hunter Bryson  
WHITFIELD BRYSON LLP  
900 W. Morgan Street  
Raleigh, North Carolina 27603

6. The Court preliminarily approves the allocation and distribution of settlement proceeds as described in the Settlement. In addition to the settlement proceeds, Carolina Beach will also pay the costs of the Settlement Administrator, attorneys' fees and expenses, costs, and Service Awards awarded by the Court, all pursuant to the terms and conditions specified in the Settlement.

**The Notice Plan and Schedule are Approved**

7. The Court has reviewed and hereby approves the notice plan described in Plaintiffs' memorandum in support of preliminary approval. The Court finds that the notice to be provided to the Settlement Classes as set forth in Plaintiffs' Memorandum in Support of

Preliminary Approval to be the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of North Carolina Rule of Civil Procedure 23 and due process.

8. The Court appoints Angeion Group as the Settlement Administrator. Responsibilities of the Settlement Administrator include: (i) disseminating the Settlement Notice to the Settlement Class Members; (ii) establishing and maintaining a website for purposes of posting the notices, the complaint and other case pleadings, and related documents; (iii) accepting and maintaining documents sent from Settlement Class Members, including Claim Forms, exclusion requests, objections, and other documents relating to settlement administration; (iv) processing Claim Forms; (v) communicating with Class Counsel and counsel for Carolina Beach concerning settlement administration; (vi) determining the benefits due to eligible Settlement Class Members in strict accordance with the terms and conditions of the Settlement; and (vii) carrying out any other tasks assigned to the Settlement Administrator by the Settlement Agreement.

9. The Court hereby orders the Settlement Administrator to implement the events identified in Plaintiffs' Memorandum in Support of Preliminary Approval, pursuant to the following schedule:

**EVENT**

**DATE**

*Notice Plan to Begin*

9/6/2020  
(no later than 10 days from the date of this Order)

*End of Notice Plan*

11/25/2020  
(90 days from the date of this Order)

*Post-Notice Declaration of Settlement  
Administrator and Notice Administrator  
Attesting to their Compliance with this Order*

10/16/2020  
(10 days before Final Approval  
Hearing)

**Procedures for Objections to the Settlement are Approved**

10. Any member of the Settlement Classes who objects to the Settlement shall file a written objection with the Court, with a written copy delivered to Class Counsel, Carolina Beach's counsel, and the Clerk of Superior Court for New Hanover County pursuant to the schedule below.

**EVENT**

**DATE**

*Deadline to File, Postmark, and Send  
Objections*

9/28/2020  
(30 days from the originally scheduled  
date of the Final Approval Hearing)

11. A written statement of objection must: (a) contain a caption or title that identifies it as "Objection to Class Settlement in *Stier Construction Company, Inc. et. al, v. Town of Carolina Beach*, (New Hanover Co. No. 19-CVS-2999)" (b) identify whether the objection is to the Settlement Class; (c) set forth the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court's attention and all factual evidence the Settlement Class Member wishes to introduce in support of the objection; (d) include the name and address of the Settlement Class Member; (e) be personally signed by the Settlement Class Member; (f) include an identification, by case style and number, of any other class settlements the objector or the objector's attorney(s) have asserted an objection; and (g) include an identification of all attorneys having a financial interest or stake in the objection (f) include three different dates within the calendar month you are submitting the objection in which you will make yourself available for a deposition.

**Requests to Be Excluded from the Settlement**

12. Any member of the Settlement Classes who wishes to be excluded from the Settlement shall mail a written notice of exclusion to the Settlement Administrator and mail copies of that written request for exclusion to Class Counsel and Carolina Beach’s Counsel at the addresses provided in the respective Settlement Notice, pursuant to the schedule below.

**EVENT**

**DATE**

*Deadline to Postmark and Send Notice of Exclusion*

9/28/2020  
(30 days before the originally scheduled Final Approval Hearing)

13. Any notice of exclusion shall include the following: (a) contain a caption or title that identifies it as “Request for Exclusion in *Stier Construction Company, Inc. et. al, v. Town of Carolina Beach,* (New Hanover Co. No. 19-CVS-2999)” (b) include the Settlement Class Member’s name, business address, and address of the property where the alleged Facility Fees were paid and date of payment; (c) specify that he or she wants to be excluded from the Settlement Class; and (d) be personally signed by the Settlement Class Member for an applicable property. To be effective, a request for exclusion must be executed and notarized (if applicable) by the putative class member.

14. Any member of the Settlement Class who submits a timely request for exclusion that complies with the requirements set forth in this Order shall not be bound by the Settlement or the Final Order and Judgment. The Settlement Administrator shall file with the Court, no later than ten (10) days before the Final Approval Hearing, a list reflecting all requests for exclusion it has received. The list shall also identify which of those requests for exclusion were timely and complied with the requirements of this Section 6, which requests for exclusion were received

late, and which requests for exclusion failed to comply with the requirements of this Section 6 of the Settlement.

15. To be effective, a request for exclusion must be executed and notarized (if applicable) by the putative class member. If all such putative class members do not execute a request for exclusion, it shall be rendered ineffective and the property where such Facility Fees were paid shall remain within the class and subject to the terms of this Agreement. The requirements for submitting a timely and valid request for exclusion shall be set forth in the Settlement Notice.

16. Any member of the Settlement Class who does not properly and timely mail a notice of exclusion as set forth herein shall remain in the Settlement Class and shall be bound by the terms of the settlement, Settlement, and Final Order and Judgment if the Settlement is approved, whether or not such member of the Settlement Class shall have otherwise objected to the settlement or sought exclusion, and whether or not such member submits a claim or participates in the settlement.

17. Any member of the Settlement Class who submits a notice of exclusion that complies with the requirements of this Order and also objects to the settlement shall be deemed to have excluded himself or herself from the Settlement Class and his or her objections shall not be considered by the Court.

**The Filing and Administration of Claim Forms are Approved**

18. To effectuate the Settlement and the provisions of the Notice Plan, the Settlement Administrator shall be responsible for the receipt of all notices of exclusion and Claim Forms. The Settlement Administrator shall preserve all notices of exclusion, Claim Forms, and any and all other documents received from members of the Settlement Class in response to the notices for

a period of five (5) years, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from members of the Settlement Class relating to the Settlement shall be available at all reasonable times for inspection and copying by Class Counsel and Carolina Beach's counsel.

19. To participate in the settlement, each member of the Settlement Class shall take the following actions and be subject to the following requirements:

- a. A Settlement Class member who wishes to receive a refund shall timely submit a valid Claim Form by the Claim Form Deadline.
- b. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall make a determination about which claims should be allowed.
- c. There shall only be one claim per fee per property address.
- d. Each member of the Settlement Class who submits a Claim Form shall thereby expressly submit to the jurisdiction of the Court with respect to the claims submitted and shall (subject to final approval of the Settlement) be bound by all the terms and provisions of the Settlement Agreement.

20. Any member of the Settlement Class who wishes to submit a Claim Form shall do so in accordance with the procedures set forth in the Claim Form, in the Settlement Agreement and in this Order. Other filings by the parties or any Class Member shall be made pursuant to the following schedule: A hearing on final settlement approval (the "Final Approval Hearing") shall be held before this Court, at the New Hanover County Superior Court, 316 Princess Street, Wilmington, NC 28401 in person or by Web-Ex, on the date set forth below, to consider matters relating to the settlement, including the following: (a) whether the Settlement Classes should be

finally certified, for settlement purposes only; (b) the fairness, reasonableness and adequacy of the Settlement, the dismissal with prejudice of the action as to Carolina Beach, and the entry of final judgment; (c) whether Class Counsel’s application for attorneys’ fees, expenses, and Service Awards for the Class Plaintiffs (the “Fee Petition”), and should be granted; and (d) whether to approve the proposed plan of allocation and distribution of the settlement proceeds. The Court orders Class Counsel to file with the Court any memoranda or other materials in support of final approval of the Settlement and any Fee Petition pursuant to the schedule set forth below.

**EVENT**

**DATE**

*Deadline to Postmark and Send Claim Form*

12/26/2020  
(60 Days after the Effective Date)

**Final Approval Hearing**

21. Any Settlement Class Member who properly files and serves a timely written objection as described in Section 7 of the Settlement may appear at the Final Approval Hearing in person or through personal counsel hired at the Settlement Class Member’s own expense. However, any Settlement Class Member who intends to make an appearance at the Final Approval Hearing must include a statement to that effect in his or her objection. If a Settlement Class Member hires his or her own personal attorney to represent him or her in connection with an objection, and if the attorney wishes to appear at the Final Approval Hearing, the attorney must: (a) file a notice of appearance with the Clerk of Court in the Action; and (b) serve and deliver a copy of that notice of appearance to Class Counsel and Carolina Beach’s Counsel no later than thirty (30) days before the originally scheduled date of the Final Approval Hearing (if the Final Approval Hearing is continued, the deadline runs from the first-scheduled Final Approval Hearing).

22. Any Settlement Class Member who fails to strictly comply with these deadlines shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and will be deemed to have consented to the jurisdiction of the Court, to be part of the Settlement Class, and to be bound by all subsequent proceedings, orders, and judgments in the Action, including, but not limited to, the Release.

23. Any Settlement Class Member who objects to the Settlement but does not file an exclusion request shall, unless he or she is subsequently excluded by Order of the Court, remain a Settlement Class Member and therefore be entitled to all of the benefits, obligations and terms of the Settlement if this Agreement and the terms contained therein are approved and the Final Settlement Date is reached.

24. The date and time of the Final Approval Hearing and related filings as identified herein shall be as follows:

**EVENT**

**DATE**

*Deadline for Notices of Appearance of Objectors Represented by Attorneys*

9/28/2020  
(30 days before the originally schedule date for the Final Approval Hearing)

*Motions for Final Approval, Attorneys' Fees and Expenses, and Service Awards to be Filed by Class Counsel*

10/17/2020  
(10 days before Final Approval Hearing)

*Final Approval Hearing to be Held*

10/27/2020  
(no earlier than 60 days from the date of this Order )

25. The date and time of the Final Approval Hearing shall be set forth in the notice to be disseminated pursuant to this order and Settlement Notice, but shall be subject to adjournment

by the Court without further notice other than that which may be posted at the Court, on the Court's website, and/or the website to be established pursuant to the Notice Plan.

26. Upon entry of the Final Order and Judgment, each and every term and provision of the Settlement (except as may be modified by the Court) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth therein and shall have the full force and effect of an Order of the Court.

**Service of Objections, Notices of Intent to Appear and Other Documents**

27. When this Order directs that papers, briefs, objections, notices and other documents be served upon Class Counsel and Carolina Beach's counsel and the Clerk of Superior Court, service shall be made to the attorneys listed below by United States Mail, first class, addressed as follows:

Class Counsel

Daniel K. Bryson  
Scott C. Harris  
J. Hunter Bryson  
Whitfield Bryson LLP  
900 W. Morgan Street  
Raleigh, North Carolina 27603

Carolina Beach's Counsel

Dan Hartzog Jr.  
Hartzog Law Group  
1903 N. Harrison Ave.  
Suite 200  
Cary, NC 27513

Clerk of Superior Court

New Hanover County Superior Court  
316 Princess St,  
Wilmington, NC 28401

### **Status of Litigation and Settlement**

28. All proceedings and deadlines in this action are stayed and suspended, pending the Final Settlement Date, except for such proceedings as are provided for in the Settlement, or which may be necessary to implement the terms of the Settlement, or this Order. Pending Final Approval, no Settlement Class Member, either directly, representatively, or in any other capacity (other than a Settlement Class Member who validly and timely elects to be excluded from the Settlement Classes), shall commence, continue or prosecute against any or all Released Parties any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released upon Final Approval pursuant to the Settlement, and are hereby enjoined from so proceeding.

29. Upon entry of the Final Order and Judgment, all Settlement Class Members who do not file a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement, and any such Settlement Class Member shall be deemed to have forever released the Released Parties from the Released Claims.

30. In the event the Settlement is terminated in accordance with the provisions of the Settlement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in the Settlement, and without prejudice to the *status quo ante* rights of Settlement Classes or Carolina Beach.

31. Neither this Order nor the Settlement nor any filings in support of the Settlement shall constitute any evidence or admission of liability by any Carolina Beach, or an admission regarding the propriety of any certification of any particular class for purposes of litigation, nor shall they be offered in evidence in this or any other proceeding except to consummate or

enforce the Settlement Agreement or the terms of this Order, or by any Released Party in connection with any action asserting Released Claims.

SO ORDERED this 27 day of August, 2020.

/s/ Phyllis M Gorham

The Honorable Phyllis M. Gorham