

# **Whitefish Agrees To Federal Class Action Settlement**

## **Nearly 450 Whitefish Property Owners Due Refunds For Impact Fee Overcharges**

The City of Whitefish and its consultant, FCS Group, have agreed to a \$1.4 million settlement with Whitefish property owners. This settlement was negotiated through a mediation judge whose recommendation was agreed to by all parties including the plaintiff representatives. Property owners who paid impact fees from 2019 through 2023 will be refunded checks beginning as early as Sept, 2024, once the final settlement has been approved by the Federal Court. No inspection of the property is necessary, as originally demanded by Whitefish in a letter sent to hundreds of property owners in the City. Although Whitefish previously agreed that it overcharged residents \$200K, this Settlement is \$1.2 M greater than the City admitted. The settlement culminates over 2 years of legal proceedings.

### **History**

In Sept, 2021, two Whitefish residents presented a report to the City Council outlining impact errors committed by the City Manager and FCS. The Council, however, unanimously rejected the whistleblowers' request for an independent audit of its impact fees after the City Manager trivialized the problems identified in this report and understated her role in creating these inflated fees. In Feb, 2022, a Class Action lawsuit was filed using this same whistleblower report. Subsequently, Whitefish sued its Impact Fee consultant, FCS Group.

City officials and FCS were accused of inflating impact fees and overcharging Whitefish builders and residents by engaging in the following unlawful practices as detailed in the Class Action lawsuit:

1. Double counting home fixtures used to calculate impact fees. (Whitefish Pilot, 2021)
2. Fabricating phantom public works projects to increase fees. (NBC MT, 2021)
3. Adding \$millions of undocumented expenses to project costs. (Class Action, 2022)
4. Doctoring collection charts to bloat fees beyond legal limits. (Class Action, 2022)
5. Inflating consumer water demand used to compute impact fees. (Missoulain, 2023)

Just prior to the settlement agreement, the U.S. Supreme Court issued a landmark property rights decision regarding impact fees in a separate case - *Sheetz vs El Dorado County*. According to the LA Times, this ruling meant that "*Impact Fees may be unconstitutional if builders and developers are forced to pay an unfair share of the cost of public projects*". This was the basis for the Federal class action lawsuit filed against the City of Whitefish.

### **New Impact Fee Problems**

Even with this settlement, the City of Whitefish has denied wrongdoing and has taken no corrective action to ensure and verify that fees are calculated correctly in the future. In 2023, new impact fees were developed for Whitefish by consulting firm TischlerBise Inc and approved by the City Council. These fees were 30% higher than those produced by FCS. The same whistleblowers reviewed these new fees and again found serious problems, which were verified by a professional utility engineer. The residents wrote an Open Letter that was submitted to the Mayor and Council outlining \$millions of overcharges due to errors by the City officials and TischlerBise. The Council rejected the request for an independent review of these fees.

A video has been produced that outlines the events that led up to the Class Action lawsuit, the Settlement, and the new impact fees developed by TischlerBise. The video can be viewed here: <http://www.callingcare.com/Whitefish-impact-fee-abuses-video.htm>

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