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N.C. Supreme Court Ruling Limits Ability of Local Governments to Assess Impact Fees

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On Aug. 19, the North Carolina Supreme Court reversed a Court of Appeals decision and invalidated “impact fees” imposed by North Carolina municipalities. Robinson Bradshaw represented the North Carolina Home Builders Association as an amicus curiae supporting the plaintiff builders and developers before the Supreme Court.

[You can read the full Supreme Court decision here. \(https://appellate.nccourts.org/opinions/?c=1&pdf=34625\)](https://appellate.nccourts.org/opinions/?c=1&pdf=34625)

In *Quality Built Homes, Inc. et al. vs. Town of Carthage*, the court rejected the town’s argument that the North Carolina Public Enterprise statutes gave it broad authority to impose fees and charges to operate, maintain and expand water and sewer infrastructure. The court implied that while the town may be able to set water and sewer rates, charged to all system users, to generate revenue for system expansion, it could not shift expansion costs to builders and developers via impact fees to be paid in exchange for building permits.

This important decision sets the stage for further litigation across the state by builders and developers that have paid impact fees to cities and towns that lacked special legislative permission to impose such fees. The Supreme Court remanded the case to the Court of Appeals – which, like the trial court, had upheld impact fees – to determine whether the plaintiffs could reach back just one, three or as many as 10 years in their claim to reimbursement for impact fees.

Surveys suggest many North Carolina cities and towns have relied on impact fees to fund growth and to shore up operational budgets. These municipalities are now exposed to litigation from builders and developers to recover impact fees paid even before the Great Recession. The risk to municipal budgets vulnerable both to these claims and to the prospective budget shortfalls that elimination of impact fees will create is substantial.

Ted Hennessey focuses his practice on the efficient and creative resolution of complex public and close corporation merger and shareholder rights matters, along with health care, construction, real estate and other commercial disputes. He represents clients in the real estate development, construction contracting, investment banking, hedge and other investment fund management, and transportation industries.

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