NCWQA Amicus Brief Filed in NC Supreme Court's Review of *Quality Built Homes* Appeal, September 2017

On June 21, NCWQA weighed in on the ongoing challenge to impact fees charged by the Town of Carthage to support the construction of necessary water and sewer infrastructure to serve new development by filing an amicus brief with the N.C. Supreme Court. Our brief is a partnership with several individual communities and supported by the NCLM. The Court is presently reviewing a N.C. Court of Appeals decision from late December 2016 that dealt a significant blow to cities and towns by ruling that the Town is liable to return impact fees charged within the ten years preceding the case.

As members may recall, the NC Supreme Court ruled in *Quality Built Homes v. Town of Carthage* in August 2016 that the Public Enterprise Statute (N.C. Gen. Stat. § 160A-314) does not authorize cities and towns in the state to impose impact fees for services "to be furnished." The Court's ruling does not apply to localities that have obtained individual legislative authority to charge the fees, or to Water and Sewer Authorities under § 162A-9, Metropolitan Water and Sewer Districts under §§162A-49, -72, -85.13, and County Water and Sewer Districts under §162A-88. The Supreme Court sent the case back to the Court of Appeals to determine whether the Town of Carthage must refund the impact fees it collected and pay the attorneys' fees of the developers who brought the suit.

The Court of Appeals held in December 2016 that the fees must be refunded. In doing so, it rejected Carthage's argument that the fees should not be refunded because the developers had accepted the benefits provided by those fees (i.e., water and sewer infrastructure). The court also held that the catchall ten-year statute of limitations in NC Gen. Stat. § 1-56 should apply to the developers' claims. That means that any unauthorized fees charged within that ten-year window would have to be refunded if the affected developer files suit before the end of the ten-year period. Those rulings are back before the N.C. Supreme Court for discretionary review.

NCWQA's *amicus* brief asserts several arguments in support of limiting the potential liability faced by localities. First, the brief argues that applying a ten-year statute of limitations period on the developers' claims would create a crippling financial liability for the Town and for municipalities throughout the state facing copycat suits. Instead, the brief argues that any one of four shorter statutes of limitations (NCGS 1-54(10) 1-53(1), 1-52(2), and 1-52(5)) are applicable to the developers' claims. If the Court adopts one of these shorter statutes of limitations periods, the developers' ability to seek fees would be limited to those charged in either the past one, two, or three years. Lastly, the brief argues that the developers should not be allowed to recover any of the fees because they benefitted from the water and sewer infrastructure that was constructed with those fees.

Union County filed a separate amicus brief on August 17. The County prefaces its argument by noting that it is currently facing ten different lawsuits by 50 plaintiffs seeking millions of dollars in past

impact fees. Its brief does an excellent job of emphasizing for the Court the applicability of the two-year statute of limitations in NCGS 1-53(1). A ruling is expected later this fall.