

## Brooks Pierce Class Action Certification Upheld

12.22.2020

The Supreme Court of North Carolina recently upheld the class action certification of a group of plaintiffs in Orange County, North Carolina, being represented by Brooks Pierce attorneys Matt Tynan and Bob King. This ruling allows the lawsuit, which could result in millions of dollars in impact fees being returned to residential developers and individuals, to proceed as a class action on behalf of all people similarly situated.

At issue in the lawsuit, *Zander v. Orange County*, are fees charged to individuals and builders who constructed new residences in Orange County between Jan. 1, 2009, and Dec. 31, 2016. During that time, the County charged a purported “school impact fee” for all new residential construction, with fees as high as \$11,423 for a single family home.

The named plaintiffs in the suit bought a property in Chapel Hill to build a home for themselves, with a construction budget of about \$200,000. The school impact fee ended up costing them more than 5 percent of their total construction budget.

The plaintiffs filed a lawsuit against Orange County and Chapel Hill, challenging the legality of the fees on behalf of themselves and other individuals and developers who built homes in Orange County while the fees were in place. The lawsuit argues that, while state law may have allowed the imposition of impact fees, the fees charged by the defendants were unlawful. Plaintiffs also contend that an Orange County ordinance requires the County to refund certain portions of the fees collected.

To have the case certified as a class action, Brooks Pierce had to show that numerous parties who paid the fees possessed common issues of law or fact that predominated over individual issues.

Shortly after the Superior Court Order certifying the class action was entered in August 2018, the defendants filed a notice of appeal to the North Carolina Supreme Court contending that the classes could not be certified because certain statutes of limitations had run and therefore many class members could not recover. In an Opinion issued on Dec. 18, 2020, [linked here](#), the Supreme Court rejected the defendants’ arguments. The case will now return to the trial court for a determination of liability and the amount of damages suffered by class members.

Additional information regarding the case can be found [here](#).

**PEOPLE**

Robert King III

Matthew Tynan

**SERVICES**

Class Action

Construction & Development