

EXHIBIT C

STATE OF SOUTH CAROLINA  
 COUNTY OF HORRY  
 The Cottages at Garden City Beach, LP,  
 Appellant,  
 vs.  
 Murrells Inlet-Garden City Fire District,  
 Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
 IN THE COURT OF COMMON PLEAS  
 CASE NO.: 2022-CP-26-02575

**Order Denying Appellant’s Motion for Reconsideration**

**RECEIVED**  
**Mar 13 2023**  
 SC Court of Appeals

*General Discussion*

The matter is before the Court on Appellant The Cottages at Garden City Beach, LP’s Motion for Reconsideration claiming the Court incorrectly ruled Respondent Murrells Inlet-Garden City Fire District’s (MIGC) order assessing a 2% impact fee against Appellant in the present case was not affected by an error of law; it was not clearly erroneous in view of the substantial evidence in the record, nor was it arbitrary, capricious, or characterized by an abuse of discretion. *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 594, 654 S.E.2d 284, 287 (Ct. App. 2007).

Respondent MIGC is a state administrative agency. *S.C. Code Ann. § 4-23-20*. The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. *Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995); *South Carolina Dep't of Motor Vehicles v. Nelson*, 364 S.C. 514, 519, 613 S.E.2d 544, 547 (Ct.App.2005); *Broughton v. South of the Border*, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct.App.1999). “A court cannot substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's

findings are clearly erroneous in view of the reliable probative and substantial evidence on the whole record.” *Summersell*, 334 S.C. at 363, 513 S.E.2d at 622; see also *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 466 S.E.2d 357 (1996). “Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.” *Nelson*, 364 S.C. at 519, 613 S.E.2d at 547; see also *Palmetto Alliance, Inc. v. South Carolina Public Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) (declaring substantial evidence is something less than weight of evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence). The circuit court essentially sits as an appellate court in reviewing an administrative agency's final decision for alleged errors. *Kiawah Resort Assocs. v. South Carolina Tax Comm'n*, 318 S.C. 502, 458 S.E.2d 542 (1995).

MIGC presented substantial evidence to show the entire Swells Cottages’ commercial development was all “commercial construction.” The evidence shows all 221 dwelling places in the Swells Cottages’ development are located on a single 25 acre tract of land. The Swells Cottages development does not contain any single family residential lots. Appellant rents out all of the units. Appellant owns and provides commercial communal amenities to all dwelling places located on the 25 acre tract. Some individual dwelling places share general parking areas. Appellant manages commercial rentals of the dwelling places through an on-site commercial rental/business office.

*Specific Issues Raised by Appellant*

The Court makes the following findings in response to the specific issues mentioned in Appellant's Motion to Reconsider:

**1. EFFECT OF MIGC'S FIRE IMPACT FEE MANUAL**

MIGC's Fire Impact Fee Manual does not control the application of Act 272 of 1985. The allocation of a 2% fee versus a 1% fee is mandated by Act 272 of 1985. MIGC does not have the authority to limit or rewrite the standards of Act 272 of 1985. That act mandates: " The fee is one percent of the cost of construction of single family residences and two percent of the cost of construction of condominiums and townhouses, high rise buildings, and all commercial construction." *Act 272 of 1985*.

Although MIGC's manual does not control *Act 272 of 1985's* mandate, MIGC's manual expressly states: "Residential structures shall be single or multi-family structures *not constructed for commercial use...*" (emphasis added). MIGC contends Appellant's claims in connection with MIGC's manual are based on an incorrect attempt to conflate "structure" and "construction." MIGC contends the phrase "not constructed for commercial use" expresses MIGC's position that the owners' underlying purpose for the construction controls the determination of Act 272 of 1985's tax assessment allocation. While other developers may seek profits from their construction, their underlying purpose is to construct single family residences to be sold or rented to individuals on individual single family residential lots. However, in the present case, Appellant's underlying purpose was found to be to construct commercial rental dwellings and commercial amenities on a single 25 acre tract. MIGC's finding that Appellant's

construction of the 221 dwellings at the Swells Cottages was commercial construction within the meaning of Act 272 of 1985 was reasonable in light of the facts of the present case. MIGC's determination was not an error of law, was not clearly erroneous in view of the substantial evidence in the record, or was not arbitrary, capricious, or characterized by an abuse of discretion. *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 594, 654 S.E.2d 284, 287 (Ct. App. 2007).

Appellant cites the case of *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 731 S.E.2d 869, (2012) to support its claim that ambiguities in tax statutes must be resolved in favor of the taxpayer. MIGC contends that case is distinguishable from the present case. See *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 173 (Ct. App. 2016). *Alltel Communications*, 399 S.C. at 321, 731 S.E.2d at 873, holds that the enforcement of tax statutes should be construed in favor of the taxpayer if the statutes are ambiguous. However, *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) clarifies that decision by holding statutes regarding tax credits or exemptions should construed against the taxpayer if the statutes are ambiguous. In the present case Appellant is seeking the equivalent of a partial exemption from the 2% impact fee. Appellant's assessment allocation claim is most closely akin to a homestead exemption and the cases concerning tax exemptions control the present case if there were any ambiguity in Act 272 of 1985. *Id.* Further, the presumption of the correctness of MIGC's determination as a state administrative agency has not been overcome by Appellant in light of the language in the statute

and the evidence in the record of the present appeal. See *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 140, 796 S.E.2d 165, 173 (Ct. App. 2016).

## **2. EFFECT OF SALES VS. RENTALS OF DWELLING UNITS**

- a) Appellant cites *Cnty. Servs. Assocs., Inc. v. Wall*, 421 S.C. 575, 585, 808 S.E.2d 831, 836 (Ct. App. 2017) and *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014) and claims the fact that these residences are rented instead of owned does not render them commercial. The Court disagrees. The two cases cited by Appellant are not applicable to the present appeal. Those cases construe specific restrictive covenants that contain written restrictions that are different from Act 272 of 1985.
- b) In *Community Services*, the court found that use of a portion of a residential structure for a “bed and breakfast” did not violate the residential requirements of the applicable restrictive covenants because the covenant in question permitted owners of single family dwelling with a guest suite to stay in a guest suite themselves while renting out the remaining space.
- c) In *Kinard*, the court found a violation of the single family residence restriction because the property owners used a portion of their lot to board horses for third parties.

## **3. THE NATURE OF THE CONSTRUCTION DOES NOT CONTROL**

- a) Appellant claims the nature of the construction of the dwellings controls the interpretation of Act 272 of 1985. MIGC contends there is nothing in the language of that act that indicates the legislature’s intent to classify the tax allocation based on the nature of the construction of the structures.

Further, the general inclusion of “all commercial construction” in the allocation of the 2% impact fee suggests that if the dwelling is not a single family residence as defined by the tax codes, it is included in the catch all provision for “commercial construction.” The Court agrees with MIGC.

The primary purpose in interpreting statutes is to ascertain and effectuate the intent of the legislature. *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010). If the legislature had intended to classify the impact fee on dwellings based solely on the nature of the construction as found in the International Building Code, it could have easily done so. See *Lewis v. Gaddy*, 254 S.C. 66, 173 S.E.2d 376 (1970).

- b) Using the definitions found in the State’s tax statutes, a homestead exemption’s definition of a legal residence is consistent with MIGC’s determination the Appellant’s dwellings are not single family residences. See *S.C. Code Ann. § 12-43-220* and *S.C. Code Ann. Regs. 117-1800* (*Definition of Legal Residence. For property tax purposes the term “Legal Residence” shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.*) In the present case, the owner of the 221 dwelling places is a single corporation. The tenants are not the owners. The structures are not built on single family residential lots. Appellant would not be entitled to claim homestead exemptions for their use of the dwelling places. See *S.C. Code Ann. § 12-43-220*. The owner does not live in any of the dwelling places. The owner uses its 25 acre tract solely for commercial profits.

#### **4. HORRY COUNTY'S DEFINITIONS**

MIGC contends Horry County's definitions and permits for the nature of a dwelling's construction do not apply and they do not govern the Court's interpretation of Act 272 of 1985's category for commercial construction. The Court agrees. For example, Horry County's zoning ordinance specifically excludes Appellant's development from single family residential zoning districts. The zoning use of property in a single family residential zoning district is controlled by § 505 of the current Horry County Zoning Code. § 505 states a single family residential district only permits one principal building on a single family residential lot. *§ 505 Horry County Code of Zoning Ordinances.*

#### **5. UNIFORM TAX ALLOCATION ON REAL PROPERTY**

- a) Appellant's claim that the structures in the Swells Cottages are in the same class as other developments selling single family residences. The Court disagrees. Real property taxes focus on the use of the lot or tract. As stated above, Appellant's use of its tract is a commercial use. There are not any single family residential lots in the Swells Cottages development. The 221 dwelling places in the Swells Cottages are all located on Appellant's 25 acre tract of land. Appellant rents out all of the units, provides a commercial rental office, commercial amenities, and common parking areas for its tenants.

#### **6. SUBSEQUENT CHANGES IN MIGC'S MANUAL.**

- a) Appellant has requested the Court to supplement the record with MIGC's Revised Impact Fee Administration Manual. MIGC contends that any

revisions to its Impact Fee Administration Manual do not affect the Court's decision to affirm MIGC's decision. The Court agrees. As stated above MIGC does not mandate or limit the allocation of 2% assessment fees versus 1% fees under Act 272 of 1985. The legislature mandates the allocation of 2% assessment fees versus 1% fees under Act 275 of 1985. Further, MIGC's revisions to its manual do not conflict with its position on Appellant's commercial construction allocation. MIGC's manual revisions clarify the decision MIGC's board made in the present appeal. See *Eagle Container Co., LLC v. Cnty. of Newberry*, 379 S.C. 564, 567, 666 S.E.2d 892, 894 (2008) (*subsequent amendment had no effect on the proper use classification*).

The Court finds MIGC's board's determination that the structures in the Swells Cottages were "commercial construction" under Act 272 of 1985 is reasonable. MIGC's determination was not affected by an error of law, it was not clearly erroneous in view of the substantial evidence in the record. MIGC's determination that the structures in the Swells Cottages were classified as commercial construction was not arbitrary, capricious, or characterized by an abuse of discretion.

**NOW THEREFORE**, Appellant's Motion for Reconsideration is denied and Appellant's appeal is hereby dismissed with prejudice.

*(Judge Kristi F. Curtis' signature on following page.)*



## Horry Common Pleas

**Case Caption:** Cottages At Garden City Beach LP VS Murrells Inlet Garden City Fire District

**Case Number:** 2022CP2602575

**Type:** Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762