THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000435

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SC Court of Appeals

The Cottages at Garden City Beach, LP, ...Appellant,

v.

Murrells Inlet-Garden City Fire District, ...Respondent,

REPLY BRIEF OF APPELLANT

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843)448-2400
dmiller@bellamylaw.com
zcrowl@bellamylaw.com
Attorneys for Appellant

s/ Zachary J. Crowl
David B. Miller, SC Bar #10296
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina
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ARGUMENT

All arguments raised by Appellant in its prior Brief are reiterated and incorporated herein by reference. The following is intended to address the primary arguments raised in Respondent's Brief.

I. Deference must be given to the Fire Impact Fee Administration Manual which MIGC drafted, adopted, and published to define the enabling legislation and administer impact fees.

The Fire Impact Fee Administration Manual which MIGC drafted, adopted, and published is fatal to its case. MIGC recognizes this problem and now seeks to disclaim its own Manual.

Pursuant to its authority under South Carolina law, MIGC undertook to implement the enabling legislation by adopting a Manual which defines the categories by which impact fees are administered. By the very definitions MIGC put forth in its Manual, the Swells Cottages homes are single family residences entitled to the 1% impact fee. MIGC's arguments now seek to misdirect the Court to completely disregard its own interpretation of the enabling legislation which it set forth in its own Manual published for the public to rely upon. MIGC cannot now abandon the Manual. Pursuant to the deference doctrine, MIGC's Manual is the interpretation which must be given deference, not the Board's decision to disregard its own Manual.

It is undisputed that MIGC "is a body politic and exercises and enjoys all the rights and privileges of such." S.C. Code Ann. § 6-11-100.[1] One such privilege is that courts defer to an agency's administration of enabling legislation, specifically when the legislation is silent or ambiguous on a specific issue. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (citing Chevron, U.S.A., Inc. v. Natural Res. Def. Council,

[1] Respondent's Br. 5.

Inc., 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). In this case, "[t]he phrase 'single family residence' is not defined in the [enabling legislation]."[2] In fact, the enabling legislation "did not define expressly any of the categories on which the impact fees were to be imposed."[3] Accordingly, and pursuant to the South Carolina deference doctrine, MIGC undertook to define the categories by which the impact fees are imposed. It is uncontested that MIGC had the right to adopt its Manual. MIGC cannot now disregard its Manual and the standard by which it collects impact fees.

Based on the ambiguities of the enabling legislation, the only definitive source of information concerning the administration and enforcement of fire impact fees is the Manual. It is evident that MIGC is aware of this fact as it states several times in its Manual that the Manual is meant for the consistent, fair, and equitable computation and collection of fire impact fees.[4] Even now, as MIGC contends that the Manual does not matter and the definitions contained therein should be disregarded, MIGC continues to publish the Manual and has even made changes, during the course of this appeal, to redefine the categories by which impact fees are imposed.[5] Such revisions would not be necessary if MIGC did not intend for the Manual to govern its administration of the impact fees.

MIGC's administration of the enabling legislation as set forth in the Manual must be given deference.

[2] Respondent's Br. 10.
[3] Id. at 5
[4] MIGC Fire Impact Fee Administration Manual, 2, 9. Designation No. 1.
[5] Revised MIGC Fire Impact Fee Administration Manual. Designation No. 16.

II. The Swells Cottages homes are not townhouses and the fact that they are detached single family residences regulated by the International Residential Code is relevant to the administration of fire impact fees.

MIGC contends that the fact that the Swells Cottages homes are designed, permitted, built, and regulated by the International Residential Code is not relevant to the administration of impact fees. MIGC's argument is based on the fact that townhouses are also regulated by the International Residential Code. MIGC's argument fails to consider the simple determinative fact that even though townhouses are regulated by the International Residential Code, the General Assembly specifically carved townhouses out of the residential category of impact fees and directed that they are to be charged the 2% impact fee.

The underlying premise is simple: The International Residential Code states that if a structure is not governed by the International Building Code, then it is not commercial; the Swells Cottages are not governed by the International Building Code. Therefore, the Swells Cottages are not commercial.

The enabling legislation states that "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."[6] While townhouses are regulated by the International Residential Code, the enabling legislation makes a specific point to include them in the 2% impact fee category. The Swells Cottages homes are not townhouses. They are detached residential dwelling units, as explained in the Letter from architect Gregory Huddy.[7] The Swells Cottages homes are also not condominiums or high rise buildings. Therefore, to be charged the 2% impact fee, the Swells Cottages homes would have to be

[6] S. 639, S.C. Gen. Assemb. 106th Sess. (1985-1986)
[7] Letter from the Architect. Ex 5 of Designation No. 3.

commercial construction. As referenced above, the Manual put forth by MIGC undertakes to define this term and does so by reference to the International Building Code which specifically excludes structures regulated by the International Residential Code, such as detached single family dwellings like the Swells Cottage homes. Since the Swells Cottages homes are detached single family dwellings regulated by the International Residential Code, they are not commercial structures as defined by MIGC.

The Swells Cottage homes are not condominiums, townhouses, high rise buildings, or commercial construction and may not be charged the 2% impact fee. These homes are single family residences which must be charged the 1% impact fee.

III. There exists no requirement in the enabling legislation, the Manual, the International Building Code, or the International Residential Code that single family residences must be located on individual lots.

Throughout its Brief, MIGC contends that the fact that the Swells Cottages homes are all located on one tract of land and not separated into individual lots somehow precludes these homes from being defined as single family residences. This is not true.

As MIGC acknowledges, "[t]he phrase 'single family residence' is not defined in the [enabling legislation]."[8] MIGC undertook to define this term in its Manual simply as "single or multi-family structures not constructed for commercial use."[9] MIGC then defined commercial structures by reference to the International Building Code which specifically excludes structures regulated by the International Residential Code. Nowhere in the enabling legislation, the Manual (as it existed during the construction of the Swells Cottages), the International Building Code, or

[8] Respondent's Br. 10
[9] MIGC Fire Impact Fee Administration Manual, 6. Designation No. 1.

the International Residential Code does there exist any prohibition on multiple single family residences existing on one tract of land or any requirement that single family residences must be located on individual lots.

However, this requirement does now appear in MIGC's newly revised Manual which MIGC adopted and published during the course of this appeal. MIGC amended the original Manual so that "Single-Family Residences" as defined in the Definitions Section and again defined in the Section specifically entitled "Single-Family Residence" are now required to be "located on deeded individual lots".[10] This requirement was absent from the previous Manual. MIGC now seeks to give this new requirement retroactive effect.

MIGC cannot take a new requirement which it just created during the course of this appeal and retroactively impose it on the Cottages as if it existed at the time of construction.

IV. MIGC's argument that it may adjust impact fees on a case by case basis is taken out of context and attempts to misdirect the Court.

Despite its disregard of the Manual throughout its Brief, MIGC contends that it can change the category by which the Cottages are assessed fire impact fees based on a provision of the Manual which permits the Board of Directors to adjust fire impact fees on a case-by-case basis. This provision is taken out of context. Below is the entirety of Section 7.0 upon which MIGC relies:

> Fire impact fees on a case-by-case basis may be adjusted in the sole opinion and determination of the Board of Directors for special circumstances determined by the Board of Directors to be with merit. Any such requests shall be made in writing to the Board of Directors of the Murrells Inlet-Garden City Fire District. At the sole discretion of the Board, the requestor may be required to appear before the Board at a regularly scheduled meeting to present such request in person.

[10] Revised MIGC Fire Impact Fee Administration Manual, 4, 6. Designation No. 16.

> Requests for adjustment of fire impact fees should be received by the Board of Directors at least two calendar months in advance of the anticipated date of application for a building permit. All other requests for adjustment shall be accompanied by a receipt as proof of payment of the full fire impact fee due and, if approved by the Board of Directors, shall result in reimbursement of the difference from the Fire District.
>
> If approved in advance by the Board of Directors, the adjusted fire impact fee shall be paid directly to the Administrative Assistant at the Fire District headquarters and the Fire District shall issue to the requestor a receipt therefor following which the requestor shall present said receipt to the respective county building office when making application for a building permit. The respective county building office, upon being presented with said receipt, may process and approve, if applicable, the requestor's application for a building permit without the necessity of collecting any additional fire impact fee.[11]

MIGC attempts to pull a single sentence of this section out of context to support an argument that its Manual provides the Board of Directors the authority to disregard the defined categories and simply apply impact fees as it sees fit. This argument attempts to misdirect the Court. The adjustment contemplated in this section relates to a request for a reduction in the payment of impact fees due, not a challenge of the categorical assessment. The scenario contemplated by this section of the Manual is not at issue in this case. Here, MIGC decided to go against the definitions it set forth in its Manual and placed the Cottages in the wrong category of impact fee assessment. The Cottages did not request a reduction in the payment of impact fees due as contemplated in Section 7. Instead, the Cottages dispute its placement in the incorrect category and raised this issue to the Board in accordance with Section 8 of the Manual.[12]

Furthermore, MIGC makes this argument for the first time in its Initial Brief. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

[11] MIGC Fire Impact Fee Administration Manual, 9. Designation No. 1.
[12] Id. at 9-10.

CONCLUSION

For the foregoing reasons and the reasons set forth in Appellant's prior Brief, the Circuit Court's Order affirming the decision of MIGC to impose a 2% impact fee upon the Appellant should be reversed and the matter remanded to overturn the decision of MIGC.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843)448-2400
dmiller@bellamylaw.com
zcrowl@bellamylaw.com
Attorneys for Appellant

s/ Zachary J. Crowl
David B. Miller, SC Bar #10296
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina
August 4, 2023