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SC Court of Appeals

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

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

v.

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

FINAL BRIEF OF APPELLANT

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Myrtle Beach, South Carolina
October 19, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes & Legislation

South Carolina Rules of Civil Procedure

International Building and Residential Codes

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KEY POINTS

Appellant has developed a residential community known as Swells Cottages, consisting entirely of detached single family residences within the MIGC district. Each of the homes in the Swells Cottages neighborhood has been submitted for single family residence permitting under the International Residential Code.[1] Each home has received a separate Residential Building Permit as "New Single Family Residential"[2] and received a Certificate of Occupancy as "Occupancy Type: Residential".[3] The residents of the Swells Cottages homes live in these dwellings and the homes are used solely for residential purposes.

MIGC is authorized by the General Assembly to impose impact fees on new construction. The fees are used to purchase and maintain fire fighting equipment. The enabling legislation empowers MIGC to impose a fee of one percent (1%) for single family residences and two percent (2%) for commercial construction. Neither "single family residences" nor "commercial construction" are defined by the enabling legislation. MIGC adopted and published to the public a Fire Impact Fee Administration Manual which defines these terms.[4] The Manual defines the terms "single family residences" and "commercial construction" by deferring to the International Building Code, which in turn, references and incorporates the International Residential Code.[5]

MIGC has improperly imposed a 2% fee on the Swells Cottages homes deeming these dwellings "commercial construction". This wrongful classification is based primarily upon the fact that the homes are rented rather than owned. MIGC has disregarded (and now disclaims) its own Manual in reaching this result.

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[1] Letter from the Architect. R. pp. 123-124.
[2] Horry County Residential Building Permits. R. pp. 125-130.
[3] Horry County Certificate of Occupancy. R. p. 338.
[4] MIGC Fire Impact Fee Administration Manual. R. pp. 241-251.
[5] Id. at 4, 6. R. pp. 244, 246.

STATEMENT OF THE ISSUES ON APPEAL

I. The decision of MIGC to impose a 2% fire impact fee on the Swells Cottages and the Circuit Court's affirmation of that decision is affected by an error of law and clearly erroneous because the fact that the Swells Cottages homes are rented instead of owned does not render them commercial.

II. The decision of MIGC to impose a 2% fire impact fee on the Swells Cottages and the Circuit Court's affirmation of that decision is affected by an error of law and clearly erroneous because the MIGC Manual controls the application of the enabling legislation.

III. MIGC's disregard of the Opinion of the Attorney General and decision to charge the Swells Cottages differently than like structures and the Circuit Court's affirmation of those decisions is arbitrary, capricious, and characterized by an abuse of discretion.

STATEMENT OF THE CASE

MIGC first imposed the 2% fire impact fee on Appellant in July of 2021. Appellant demanded a hearing in front of the MIGC Board to contest the application of the 2% fire impact fee.

On August 23, 2021, Appellant presented its arguments to the Board of Directors of MIGC during a Board of Directors Meeting. After this meeting, the Board of Directors sought an Opinion from the Office of the Attorney General of South Carolina on this matter. The Attorney General's Office found in favor of Appellant and concluded that the Swells Cottages should be charged the one percent impact fee as single family residences. The Attorney General's Opinion is included in the Record on Appeal.

Seven months after Appellant presented its position to the Board of Directors, the Board rejected the Opinion of the Attorney General's Office and voted 5 – 0 to deny the request of the Appellant for a refund of impact fees paid. Appellant received written notice of the Board's decision on March 28, 2022.

Appellant filed a Notice of Appeal with the Fifteenth Judicial Circuit Court in Horry County on April 22, 2022. The Circuit Court heard the appeal on November 29, 2022 via Web Ex. On December 8, 2022 the Court issued an Order affirming the decision of MIGC.

Appellant filed a Motion to Reconsider Pursuant to Rule 59(e), SCRCP and to Supplement the Record on December 15, 2022. On February 10, 2023, the Court issued an Order, without hearing oral arguments, denying Appellant's Motion to Reconsider while allowing the supplement to the Record.

Appellant filed and served its Notice of Appeal to this Court on March 13, 2023.

STATEMENT OF FACTS

Swells Cottages

Swells Cottages is a residential neighborhood developed by Appellant which consists of 221 detached single family residences. Please see Exhibit 1 of Appellants' Brief to the MIGC Board which provides several pictures of the Swells Cottages neighborhood.[6] Each house is a stand-alone home being one or two stories with its own separate means of ingress and egress.[7] Exhibit 2 of Appellants' Brief to the MIGC Board provides an example of a house in Swells Cottages.[8] The residents who live in these homes enjoy spaces for living, sleeping, eating, cooking, and bathing.[9] Exhibit 3 of Appellants' Brief to the MIGC Board shows the floor plans of each house design as well as a look inside the home.[10] Not one of the homes has a roof, wall, or floor in common with any other dwelling.[11] The Swells Cottages are not condominiums, they

[6] Pictures of Swells Cottages. R. pp. 108-110.
[7] Picture of a Home in Swells Cottages. R. p. 111; Floor Plans and Interior of the Homes in Swells Cottages. R. pp. 112-120; Affidavit of the Owner of Swells Cottages. R. pp. 121-122; Letter from the Architect. R. pp. 123-124.
[8] Picture of a Home in Swells Cottages. R. p. 111.
[9] Floor Plans and Interior of the Homes in Swells Cottages. R. pp. 112-120; Affidavit of the Owner of Swells Cottages. R. pp. 121-122; Letter from the Architect. R. pp. 123-124.
[10] Floor Plans and Interior of the Homes in Swells Cottages. R. pp. 112-120.
[11] Letter from the Architect. R. pp. 123-124.

are not townhouses, they are not high rise buildings. They are not commercial construction. The Swells Cottages are single family residences.

John Morrison of The Cottages at Garden City Beach, LP, executed an affidavit in connection with this matter to assure the MIGC Board of Directors that the Swells Cottages are in fact single family detached houses.[12] The affidavit is Exhibit 4 of Appellants' Brief to the MIGC Board. In his affidavit, Mr. Morrison affirms that the homes in Swells Cottages are single family residences and that any commercial activity conducted in the homes is prohibited and a violation of the residential only requirement.[13] The prohibition against commercial activity is documented in the leases signed by each resident.

Gregory Huddy of C3 Studio, LLC is the architect of the Swells Cottages community. Mr. Huddy wrote a letter to MIGC which addresses the residential nature of the homes in Swells Cottages.[14] This letter is Exhibit 5 of Appellants' Brief to the MIGC Board. Mr. Huddy highlights several important factors which demonstrate that these houses are single family residences:

- The Swells Cottages houses are independent living facilities including spaces for living, sleeping, eating, cooking, and sanitation just like any other residence;[15]
- Each of the 221 dwellings were separately submitted for single family residence permitting under the International Residential Code;[16]
- These are detached single family residential cottages that are designed for and occupied by not more than one family with a separate means of egress and having no roof, wall or floor in common with any other dwelling unit. By the virtue of these characteristics, the occupancy of these structures are detached one-family dwellings.[17]

[12] Affidavit of the Owner of Swells Cottages. R. pp. 121-122.
[13] Id. R. pp. 121-122.
[14] Letter from the Architect. R. pp. 123-124.
[15] Id. R. pp. 123-124.
[16] Id. R. pp. 123-124.
[17] Id. R. pp. 123-124.

Horry County has likewise defined these homes as residential. This is evidenced by the fact that *the homes in Swells Cottages are each individually permitted as Single Family Residential.*[18] *Building Permits issued by the County are as stand-alone single family homes.*[19] *It is particularly instructive that each Permit lists the Description of the Work as "New Single Family Residential".*[20] *Horry County has also issued each home a separate Certificate of Occupancy stating that the Occupancy Type is Residential*.[21]

The decision of MIGC is in direct opposition to governmental approvals of the County within which it functions and from which it receives a substantial portion of its income. In fact, its own Manual (addressed below) defers to the County's designation wherein it states, "Definitions for terms found in this manual relative to occupancy or construction practices shall be consistent with the definitions found in the edition of the International Building and Fire Code in use by either the Georgetown County Building Department, Georgetown County, SC, or the Horry County Code Enforcement Department, Conway, SC."[22]

Fire Impact Fee: Enabling Legislation & Manual

In 1985, the General Assembly of South Carolina granted MIGC authority to impose a fire impact fee on all new construction.

> 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.
>
> S. 639, S.C. Gen. Assemb. 106th Sess. (1985-1986).

This enabling legislation fails to define "single family residences" or "commercial construction".

[18] Horry County Residential Building Permits. R. pp. 125-130.
[19] Id. R. pp. 125-130.
[20] Id. R. pp. 125-130.
[21] Horry County Certificate of Occupancy. R. p. 338.
[22] MIGC Fire Impact Fee Administration Manual, 4. R. p. 244.

In implementing the enabling legislation, MIGC adopted a Fire Impact Fee Administration Manual which defines the terms "single family residences" and "commercial construction".[23] The Manual states:

> 5.0 Definitions
> **Definitions for terms found in this manual relative to occupancy or construction practices shall be consistent with the definitions found in the edition of the International Building and Fire Code** in use by either the Georgetown County Building Department, Georgetown County, SC, or the Horry County Code Enforcement Department, Conway, SC within their respective jurisdictions except where said definitions conflict with the definition herein contained. Where said definitions do conflict with the definitions herein contained, then the definition herein contained will control.[24]
>
> …
>
> 6.1 Residential Structures
> **Residential Structures shall be single or multi-family structures not constructed for commercial use**, or any permanent structure of value that is ancillary to any such residential structure shall, at the time of permitting for construction, be charged a fire impact fee of 1.0 percent of the value of construction.[25]
>
> 6.2 Commercial Structures
> **A new building or structure, as defined by the currently adopted edition of the International Building Code as an assembly, Business, Educational, Factory and Industrial, High Hazard, Institutional, Commercial Use Residential, Storage, or Utility and Miscellaneous or other uses not specifically listed as Residential**; or any permanent building or applicable structure of value that is ancillary to any such structure shall, at the time of permitting for construction, be charged a fire impact fee of 2.0 percent of the value of construction.[26]
>
> Emphasis added.

The Manual classifies the type of construction through reference and incorporation of the International Building Code which specifically excludes structures regulated by the International Residential Code, such as the Swells Cottages. The International Residential Code applies to the

[23] Id. at 4, 6. R. pp. 244, 246.
[24] Id. at 4. R. p. 244.
[25] Id. at 6. R. p. 246.
[26] Id. at 6. R. p. 246.

construction of detached one and two family dwellings not more than three stories with a separate means of egress. International Residential Code (2018), § 101.2. A dwelling is defined by the International Residential Code as "any building that contains one or two dwelling units used, intended, or designed to be built, used, *rented*, leased, let or hired out to be occupied, or that are occupied for living purposes." Id., § 202. (Emphasis added). There is no factual dispute that the single family dwellings of Swells Cottages are designed, permitted, built, and regulated in accordance with the International Residential Code.

Fire Impact Fee Application to Similarly Situated Properties

Numerous rental-only properties in the MIGC district have been charged a single family residence impact fee of 1%. Two examples are located at 1311 S. Waccamaw Drive, Garden City and 1465 S. Waccamaw Drive, Garden City.[27] These buildings operate solely as short term rentals and have more rooms accommodating more occupants than the Swells Cottages homes.

Similarly, countless Tract Home subdivisions have been built by National Builders within the MIGC district and have been charged the 1% fee. The only difference between the Tract Home subdivisions and the Swells Cottages are that the National Builders sell the homes and the residents make payments to the bank each month while the Swells Cottages are rented and payments are made to Appellant each month instead of the bank. The use remains the same.

[27] Rental Listings of Like Properties. R. pp. 141-142.

Changes to the Manual – No Long Term Effect of This Decision

On August 22, 2022, MIGC revised its Manual for the first time in over two and a half years.[28] These revisions coincided with the Appeal of the MIGC decision to the Circuit Court. The amendments made by MIGC specifically change the definitions of single family residences and commercial construction and directly impact the assessment of the fire impact fees.[29] Therefore, the decision on this matter will not operate prospectively.

Current Posture

Appellant has paid the two percent impact fee based on the agreement of the parties that fees paid above one percent will be held in escrow until the resolution of this matter.[30] These funds are still being held in escrow. The Appellant must be refunded the fees paid over and above one percent of the construction costs.

STANDARD OF REVIEW

The only facts in the Record on Appeal are those submitted by Appellant. Accordingly, there exist no issues of fact in this matter.

This Court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings or conclusions are affected by an error of law, clearly erroneous in view of the substantial evidence in the record, or 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); Sanders v. S.C. Dep't of Motor Vehicles, 431 S.C. 374, 382, 848 S.E.2d 768, 772–73 (2020).

[28] Revised MIGC Fire Impact Fee Administration Manual. R. pp. 330-337.
[29] Id. at 4, 6. R. pp. 333, 335.
[30] Letter from the Bellamy Law Firm to MIGC. R. pp. 255-256.

ARGUMENT

I. The decision of MIGC to impose a 2% fire impact fee on the Swells Cottages and the Circuit Court's affirmation of that decision is affected by an error of law and clearly erroneous because the fact that the Swells Cottages homes are rented instead of owned does not render them commercial.

The South Carolina Court of Appeals along with courts in numerous jurisdictions have considered whether rental homes should be categorized as residential or commercial. See Cmty Servs. Asocs. v. Wall, 421 S.C. 575, 808 S.E.2d 831 (Ct. App. 2017); Erthal v. May, 223 N.C. App. 373, 736 S.E.2d 514 (2012); Russell v. Donaldson, 222 N.C. App. 702, 731 S.E.2d 535 (2012) (citing Slaby v. Mt. River Estates Residential Ass'n, 100 So. 3d 569 (Ala. Civ. App. 2012)); Santa Monica Beach Prop. Owners Ass'n v. Acord, 219 So. 3d 111 (Fla. Dist. Ct. App. 2017). This question is typically analyzed in the context of whether short term rentals violate either zoning or covenants restricting lots to residential purposes and prohibiting commercial use. In South Carolina, this question is answered by looking to the use within the property; not ownership. See Cmty Servs. Asocs. v. Wall, 421 S.C. 575, 808 S.E.2d 831 (Ct. App. 2017). The South Carolina Court of Appeals has considered and ruled that short term rentals did not violate a requirement that all lots shall be used for residential purposes. Id.

The South Carolina Court of Appeals holding is consistent with courts from the majority of other jurisdictions which have uniformly held that covenants prohibiting business and commercial use of property do not bar short term rentals. Russell, 731 S.E. 2d 535, 538-39 (2012) (citing Yogman v. Parrott, 325 Ore. 358, 937 P.2d 1019, 1021 (Or. 1997); Silsby v. Belch, 2008 ME 104, 952 A.2d 218, 222 (Me. 2008); Slaby v. Mt. River Estates Residential Ass'n, 100 So. 3d 569, 571, 580 (Ala. Civ. App. 2012)); Santa Monica Beach Prop. Owners Ass'n, 219 So. 3d 111, 114 (Fla. Dist. Ct. App. 2017) (citing cases from Kentucky, Colorado,

Washington, New Mexico, North Carolina, Alabama, Indiana, Virginia, Maryland, Missouri, Idaho, Oregon, Ohio, Tennessee, and Texas).

The critical question in these cases has been whether the renters are using the property for ordinary living purposes such as eating, sleeping, and engaging in recreation normally incident thereto. See Id.; see also Cmty Servs. Asocs. v. Wall, 421 S.C. 575, 808 S.E.2d 831 (Ct. App. 2017). The residents of the Swells Cottages homes rent these properties long term to use solely for residential purposes.

II. The decision of MIGC to impose a 2% fire impact fee on the Swells Cottages and the Circuit Court's affirmation of that decision is affected by an error of law and clearly erroneous because the MIGC Manual controls the application of the enabling legislation.

The Circuit Court's first Order affirming MIGC's decision did not address the MIGC Manual relative to the application of the enabling legislation.[31] The argument that the MIGC Manual does not control first appeared in Respondent's Memo in Opposition to Appellant's Motion to Reconsider.[32] This argument was then adopted by the Circuit Court in its Order denying Appellant's Motion to Reconsider.[33]

As a state administrative agency, MIGC is afforded deference in defining the enabling legislation. The deference doctrine in South Carolina provides that where an agency charged with administering a statute or regulation has construed the statute or regulation, courts will defer to the agency's explanation absent compelling reasons. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014).

[31] Order of the Circuit Court affirming the decision of MIGC. R. pp. 003-005.
[32] MIGC Response to Motion for Reconsideration, 3 – 4. R. pp. 193-194.
[33] Order of the Circuit Court Denying Motion to Reconsider, 3 – 5. R. pp. 008-010.

Applying statutes and regulations administered by an administrative agency is a two-step process. Id. at 717. The Court must first determine whether the language of a statute or regulation directly speaks to the issue. Id. If so, the Court must utilize the clear meaning of the statute or regulation. Id. (citing Brown v. Bi–Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)). However, if the statute or regulation is silent or ambiguous with respect to the specific issue, the Court must give deference to the agency's application of the statute or regulation, assuming the application is worthy of deference. Id. (citing Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)); Brown v. Bi–Lo, 354 S.C. at 440, 581 S.E.2d at 838.

In this State, the construction given to enabling legislation by an administrative agency is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. Id. at 718 (citing Read Phosphate Co. v. South Carolina Tax Commission, 169 S.C. 314, 168 S.E. 722 (1933)). Thus, South Carolina Courts give deference to administrative agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations. Id. As repeatedly stated in South Carolina jurisprudence, the deference doctrine provides that courts defer to an agency's explanations with respect to the enabling legislation entrusted to its administration or its own regulations unless there is a compelling reason to differ. Id. (citing S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005)); see also, e.g., Barton v. S.C. Dep't of Prob., Parole & Pardon Servs., 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013); CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011); Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006); Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515. 560 S.E.2d 410,

414 (2002); Glover by Cauthen v. Suitt Constr. Co., 318 S.C. 465, 469, 458 S.E.2d 535, 537 (1995); Faile v. S.C. Employment Sec. Comm'n, 267 S.C. 536, 540, 230 S.E.2d 219, 222 (1976); Hadden v. S.C. Tax Comm'n, 183 S.C. 38, 48, 190 S.E. 249, 253 (1937).

In implementing the enabling legislation, MIGC drafted, adopted, and published its Fire Impact Fee Administration Manual. MIGC posted this Manual online on their website for the public to rely upon to understand how the fire impact fee is administered. The Manual specifically states "**This manual provides guidance for the consistent and equitable collection of Fire Impact Fees** for the Murrells Inlet-Garden City Fire District by the Fire District, Georgetown County Building Department, and Horry County Code Enforcement Department personnel."[34] (Emphasis added). The enabling legislation does not define single family residences and does not define commercial construction. MIGC undertook to define these provisions and did so by adopting definitions found in the International Building and Fire Code, which in turn, reference and incorporate the International Residential Code. MIGC cannot now abandon its position and its assessment of the fire impact fee.

Article 5.0 of the MIGC Fire Impact Fee Administration Manual captioned "Definitions" specifically adopts definitions as are found in the International Building and Fire Code, which in turn, references and incorporates the International Residential Code.[35] The definitions as to "residential' versus "commercial" construction as recited therein are instrumental to resolution of this case. Determining whether a new structure should be charged 1% of the cost of construction or 2% of the cost of construction requires a stepped analysis. We are required to consider:

- The General Assembly Enabling Legislation;
- The MIGC Fire Impact Fee Administration Manual;
- The International Building Code; and
- The International Residential Code.

[34] MIGC Fire Impact Fee Administration Manual, 2. R. p. 242.
[35] Id. at 4. R. p. 244.

Enabling Legislation – S. 639, S.C. Gen Assemb. 106th Sess. (1985-1986)
"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."

Fire Impact Fee Administration Manual Section 3.0 – Power to Collect Fire Impact Fees
"A fire impact fee of one percent of the cost of construction of single family residences and two percent of the cost of construction of condominiums, high rise buildings, and all commercial construction…"

Fire Impact Fee Administration Manual Section 6.1 – Residential Structures
"Residential structures shall be single or multi-family structures not constructed for commercial use… shall… be charged a fire impact fee of 1.0 percent of the value of construction."

Fire Impact Fee Administration Manual Section 6.2 – Commercial Structures
"A new building or structure, as defined by the currently adopted edition of the *International Building Code* as an assembly, Business, Educational, Factory and Industrial, High Hazard, Institutional, Commercial Use Residential, Storage, or Utility and Miscellaneous or other uses not specifically listed as Residential… shall… be charged a fire impact fee of 2.0 percent of the value of construction."

The language of the Enabling Legislation, the Administration Manual, the International Building Code, and the International Residential Code make it clear that if the International Building Code classifies a structure as governed by the International Residential Code, then it is not commercial. Article 310 of the International Building Code governs. This Article identifies certain "sleeping purpose" structures such as Hotels and Apartments which are obviously commercial.

International Building Code Section 310
"Residential Group R includes… the use of a building or structure… for sleeping purposes… when not regulated by the International Residential Code."

International Residential Code Section 101.2
"The provisions of this code shall apply to the construction… and occupancy… of detached one- and two-family dwellings."

If governed by the International Residential Code, then a structure is not commercial by definition. There is no factual dispute that the single family dwellings of the Swells Cottages are designed, permitted, built, and regulated in accordance with the International Residential Code.

The substantial evidence in the record does not support MIGC's decision to impose a 2% impact fee upon the Swells Cottages. The evidence as detailed in the above Statement of Facts and the stepped analysis clearly shows that the Swells Cottages are single family residences which must be charged the 1% impact fee based on the enabling legislation and MIGC's application of the legislation in its Fire Impact Fee Administration Manual.

Even if MIGC's construction of the enabling legislation is ambiguous, any substantial doubt in the application of the 2% impact fee must be resolved in favor of the Appellant. See Alltel Communications, Inc. v. South Carolina Dept. of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012). As noted by the Circuit Court, this rule of law does not apply to statutes regarding tax credits or exemptions. However, this is not such a scenario. Contrary to the Court's ruling, the 1% impact fee charged to single family residences and the 2% impact fee charged to commercial construction are tax classifications based on use, not credits or exemptions. See Holzwasser v. Brady, 262 S.C. 481, 205 S.E.2d 701 (1974) (holding that the General Assembly may classify property according to its use for taxation).

III. MIGC's disregard of the Opinion of the Attorney General and decision to charge the Swells Cottages differently than like structures and the Circuit Court's affirmation of those decisions is arbitrary, capricious, and characterized by an abuse of discretion.

A. MIGC has rejected the Opinion of the South Carolina Attorney General's Office which MIGC sought for guidance on its decision.

After Appellant's hearing in front of the MIGC Board on this issue, the Board sought the opinion of the Attorney General's Office for guidance as to the impact fee which should be imposed upon the Swells Cottages. As it must, the Attorney General's Office correctly relied upon the MIGC Manual and its reference to the International Building Code and International Residential Code and succinctly stated, "We believe that it should be charged the one percent impact fee as a single family residence."[36] The Attorney General's Office concluded:

[36] Opinion of the South Carolina Attorney General's Office, 4. R. p. 019.

> Based on 1985 S.C. Act 272, the Murrells Inlet – Garden City Fire District Fire Impact Fee Administration Manual (Jan 1. 2020), the International Business Code (2021), and the International Residential Code (2018), it is our opinion that a detached single-family house not more than three stories with a separate means of egress that is rented or leased to be occupied for living purposes should be charged the one percent impact fee as a single family residence.[37]

Despite the Attorney General's Opinion, the MIGC Board of Directors voted in favor of awarding itself more money.

B. MIGC has charged Appellant a 2% impact fee, but has charged other rental properties and like structures a 1% impact fee.

South Carolina law requires that taxes imposed upon properties of the same class must be uniform. Holzwasser v. Brady, 262 S.C. 481, 488, 205 S.E.2d 701, 704 (1974). All members belonging to this class must be treated alike for taxation purposes. Id.

The Cottages have demonstrated that other indistinguishable structures have been charged 1% of the cost of construction. If these buildings are charged the single family residence fire impact fee, the Swells Cottages must also be charged the single family residence fire impact fee.

CONCLUSION

For the foregoing reasons, 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.

[37] Id. R. p. 019.

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