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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W Dickson, Circuit Court Judge

Case No 2009-CP-18-2674

The Home Builders Association of South Carolina and
the Charleston-Trident Home Builders Association, Inc

Appellants,

v

School District No 2 of Dorchester County and
the Board of Trustees for Dorchester School District No 2

Respondents

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
2009 CP-18-2674

The Home Builders Association of South
Carolina and the Charleston-Trident Home
Builders Association, Inc ,

Plaintiffs,

**ORDER GRANTING
DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

School District No 2 of Dorchester County
and the Board of Trustees for Dorchester
School District No 2,

Defendants

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HEK L BRYANT
CLERK OF COURT
DORCHESTER COUNTY

This matter is before the court by way of Defendants' Motion for Judgment on the Pleadings. Defendants filed this motion and memorandum in support, pursuant to Rule 12(c), South Carolina Rules of Civil Procedure, on the grounds that 2009 S C Acts 99 violates neither South Carolina Constitution Art III, § 34 (IX) nor Art VIII, § 14 (6), on January 29, 2010. The Court held a hearing on Defendants' motion on September 9, 2010, with the Honorable Edgar Warren Dickson presiding. Charlton deSaussure appeared for Defendants, and Frederick A Gertz appeared for Plaintiffs. Plaintiffs presented a Memorandum in Opposition to Motion for Judgment on the Pleadings at the hearing.

Following a review of the memoranda submitted by both parties, case law, exhibits and arguments of counsel, the Court issues this Order **GRANTING** Defendants' Motion for Judgment on the Pleadings.

PROCEDURAL/FACTUAL BACKGROUND

On February 26, 2009, the South Carolina General Assembly passed Senate Bill 235 which became 2009 S C Acts 99 (the "Act") The Act, which is quoted in its entirety in Plaintiffs' Complaint, provides the following synopsis

SYNOPSIS AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES FOR DORCHESTER SCHOOL DISTRICT NO 2 TO IMPOSE AN IMPACT FEE ON ANY DEVELOPER FOR EACH NEW RESIDENTIAL DWELLING UNIT CONSTRUCTED BY THE DEVELOPER WITHIN THE SCHOOL DISTRICT, TO PROVIDE THAT THE FUNDS ONLY MAY BE USED FOR THE CONSTRUCTION OF PUBLIC EDUCATION FACILITIES FOR GRADES K-12 WITHIN THE DISTRICT AND FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON EXISTING OR NEW BONDS ISSUED BY THE DISTRICT, AND TO PROVIDE THAT THE IMPACT FEE SHALL BE SET AT AN AMOUNT NOT TO EXCEED THE COST THAT EACH ADDITIONAL DWELLING UNIT IMPOSES ON THE SCHOOL DISTRICT FOR PUBLIC EDUCATION FACILITIES

(Plaintiffs' Complaint, ¶ 7)

As indicated in the synopsis, the Act authorizes the Board of Trustees for School District No 2 of Dorchester County (the "Board") to impose an impact fee on developers of new residential dwelling units within School District No 2 of Dorchester County (the "School District") for residential construction The Act provides that funds so collected must be held in a separate interest bearing account and must be appropriated only for (1) the construction, including preparation costs, of new public education facilities for grades K-12 within the School District, and (2) the payment of principal and interest on existing or new bonds issued by Dorchester School District No 2 for the construction of public education facilities for grades K-12 Section I, Paragraph G of the Act limits the impact fee to an amount not to exceed \$2,500 per dwelling unit

On June 23, 2009, the Board enacted a resolution (the "Resolution") on behalf of the School District establishing and adopting a public facilities impact fee of \$2,500 per dwelling

unit Thus the Resolution is consistent with the Act which as stated above limits the impact fee to an amount "not to exceed the cost that each additional dwelling unit imposes on the school district for public education and specifically imposes a \$2,500 limit per dwelling unit As stated in the Resolution, a study by In Re Financial, LLC determined that new residential development on average (Dwelling Units) generates a demand for Public Education Facilities of 5 students per Dwelling unit The Resolution explains as follows

Thus, a residential development of 1,600 Dwelling Units is expected to result in 800 students At the \$2,500 Impact Fee per Dwelling Unit, a total of 1,600 Dwelling Units would produce total Impact Fees of \$4,000,000 The cost of a single Public Education Facility for 800 students is estimated to be \$22,870,000 which is the product of the 90,000 square feet required for such a facility multiplied by the now prevailing construction/equipping cost per square foot Thus, the amount of the Impact Fee authorized herein is significantly less than the cost of the Public Education Facilities the School District might be expected to provide by virtue of new residential development

Resolution Section IV, B 1

In addition to limiting the fee imposed on developers of new residential construction in the School District, the Act provides for an appeal process and limits the Act's application to new residential construction which has not been issued a certificate of occupancy

On September 29, 2009, the Home Builders Association of South Carolina and the Charleston-Trident Home Builders Association, Inc ("Plaintiffs") filed a Complaint, asserting that the Act's application "to a single school district without any peculiar or unique conditions, resulting in special treatment, violates Article III § 34 (limiting "special legislation") and Article VIII § 14(6) (requiring statewide uniformity)" (Complaint, ¶ 23) Contrary to Plaintiffs' allegations, the Court finds that the Act and its application are authorized by South Carolina Supreme Court precedent which leaves no legally viable claim which could entitle Plaintiffs to the relief requested

STANDARD OF REVIEW

Pursuant to South Carolina Civil Procedure Rule 12(c) SCRPC, any party may move for judgment on the pleadings. A motion for judgment on the pleadings tests not whether Plaintiffs will prevail on the merits, but whether Plaintiffs have stated a legally viable claim. Where the pleadings are fatally deficient in substance or fail to state a cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. *Rosenthal v Unarco Industries Inc*, 278 S C 420, 297 S E 2d 638 (1982) (holding that judgment on the pleadings was proper in dismissing plaintiff's challenge to constitutionality of state door closing statute)

In construing an act of the General Assembly, "all reasonable doubt must be resolved in favor of the constitutionality of the act. If a constitutional construction of a statute is possible, that construction should be followed in lieu of an unconstitutional construction." *Crow v McAlphine*, 277 S C 240, 242 285 S E 2d 355 (1981) (quoting *Bauer v South Carolina State Housing Authority*, 271 S C 219, 226, 246 246 S E 2d 869 (1978)). The Constitution and all laws concerning local governments are to be liberally construed in the local entity's favor. S C Constitution, Article VIII, § 17. In addition, the Court must give great deference to the legislatively created classifications in the statute and must sustain them if they are not plainly arbitrary or if any reasonable hypothesis can be found to support them. *Foster v SCDIPT*, 306 S C 519, 413 S E 2d 31 (1992). Indeed, "[t]hose attacking the validity of the legislation have the burden to negate every conceivable basis which might support it" not just those believed to be in the minds of the General Assembly at the time of its passage. *Lee v Dept of Natural Resources*, 339 S C 463, 530 S E 2d 112, note4(2000)(citing *Federal Communications Comm'n v Beach Communications Inc* 508 U S 307 (1993))

“[The Court] will not declare a statute unconstitutional as a special law unless its repugnance to the Constitutional is clear beyond a reasonable doubt *Medical Society of South Carolina v Medical University of South Carolina*, 334 S C 270, 279, 513 S E 2d 352, 357 (1999) ‘[The Court] will not overrule the legislature’s judgment that a special law is necessary unless there has been a clear and palpable abuse of legislative discretion” *Id* 513 S E 2d at 357

ANALYSIS

I THE ACT DOES NOT VIOLATE ARTICLE III, § 34(IX)

Article III, § 34(IX) of the South Carolina Constitution prohibits the South Carolina General Assembly from passing a special law where a general law can be made applicable. The Supreme Court of South Carolina has explained that Article III, § 34(IX) does not prohibit all special legislation. In *Bradley v Cherokee School District No. One of Cherokee County*, 322 S C 181, 470 S E 2d 570 (1996), the South Carolina Supreme Court considered whether an act allowing a particular school district to impose a sales tax was unconstitutional special legislation pursuant to Article III, § 34(IX). The Supreme Court concluded

A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III § 34(IX). *Hay v Leonard*, 212 S C 81, 46 S E 2d 653 (1948). Individual districts may impose a legal tax limited in application and incidence to persons or property within the prescribed area. *Shillito v Spartanburg* 214 S C 11, 51 S E 2d 95 (1948).

In the present case the Act authorizes the Board to impose an impact fee on any developer for each new residential dwelling unit constructed by the developer within the school district. The funds may only be used for the benefit of public education facilities within the district, i.e., (1) for the construction of public education facilities for grades K-12 within the district, and (2) for the payment of principal and interest on existing or new bonds issued by the

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district In *Cherokee School District No One*, the General Assembly authorized imposition of a sales tax In the present case, the General Assembly authorized imposition of an impact fee The substitution of the sales tax in the *Cherokee School District No One* case with the impact fee here provides a fact situation identical to that approved by the South Carolina Supreme Court in its 1996 decision quoted above The controlling legal principle is equally applicable in that the impact fee is limited to persons or property within the School District for the benefit of all persons residing within the School District just as the sales tax was so prescribed in the *Cherokee School District No One* case

The decision in that case clarifies the holding of the South Carolina Supreme Court in *Horry County v Horry County Higher Educ Comm n*, 306 S C 416 412 S E 2d 431 (1991) In *Horry County*, the Court addressed the constitutionality of an act allowing the Horry County Higher Education Commission to levy an *ad valorem* tax which benefited only one institution of higher learning Coastal Carolina University The Court determined that because the legislation in question applied to only one county and benefited only one institution, the legislation violated Article III, § 34(IX) The *Cherokee School District No One* decision explained that in the *Horry County* case "the funds collected from the tax were not used for the benefit of all persons residing within the area " *Cherokee School District No One*, 470 S E 2d at 572 Applying that explanation to the holding in *Horry County* demonstrates the Court's concern that Coastal Carolina University, an institution of higher learning was singled out for "special treatment "

Similar facts are not present here The proceeds of the impact fee are used exclusively for the School District just as the proceeds of the sales tax are used exclusively for Cherokee School District No One What distinguishes the *Horry County* decision is the fact that Coastal Carolina University, an institution of higher learning was the beneficiary of the *ad valorem* tax

levied there. The facts presented in this case are on point with those in *Cherokee School District No. One* in which the Court cited with approval the language in *Horry County* that 'Article III § 34 (IX) does not prohibit all special legislation. *Cherokee School District No. One*, 470 S E 2d at 572. The distinguishing characteristics of the present Act with the one considered by the Court in the *Horry County* case informs that the present Act passes constitutional muster and the one in Horry County could not.

Unlike the legislation in the *Horry County* case and consistent with that approved by the Court in *Cherokee School District No. One* the Act in the present case is tailored to benefit the entire School District and all its schools as opposed to one particular educational institution. Moreover, the sales tax in *Cherokee School District No. One* and the impact fee here is limited - in this instance to residential dwellings within the School District for the benefit of the residents of the School District. Unlike the *Horry County* case, the sales tax in *Cherokee School District No. One* and the impact fee at issue here are imposed exclusively for their respective school districts and not for a singular institution of higher education.

The public education improvements necessitated by rapid population growth which the impact fee is designed to facilitate necessarily benefit those who are obliged to pay because the proceeds are for the benefit of the entire School District. For the reasons stated above, the Act is constitutional under South Carolina Supreme Court precedent regardless of the outcome of any disputed facts.

II THE ACT DOES NOT VIOLATE ART VIII, § 14(6)

Article VIII of the South Carolina Constitution deals generally with the creation of local government. *Davis v. County of Greenville*, 322 S C 73 470 S E 2d 94 (1996). Article VIII Section 14 limits the powers local governments may be granted by State law by providing that

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among other things, that local governments may not set aside the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity ’ Art III, § 14(6)

Article VIII, Section 6 does not withdraw administration of public education from the field of local concern. Public education has generally been deemed a State function and the South Carolina Supreme Court has held the legislature has wide discretion in determining how to go about accomplishing its duty to ‘provide for the maintenance and support of a system of free public schools.’ *Horry County School District v Horry County*, 346 S C 621, 552 S E 2d 737 (2001) (finding no violation of Article VIII, § 14 in noting the constitutionality of shared funding of public schools by local and state revenues). South Carolina Supreme Court precedent instructs that Article VIII, § 14 does not require uniformity in the funding of public education by foreclosing local revenue streams. *See Horry County School District*, 522 S E 2d at 743 citing *Richland County v Campbell*, 294 S C 346, 349, 364 S E 2d 470, 471-72 (1988) (upholding constitutionality of shared funding of public schools by local and state revenues as set forth in the Education Finance Act). As noted above, the Supreme Court has recognized the authority of the Legislature to enact legislation that allows local governing bodies, including school districts to impose fees for the benefit of public education. *See Cherokee School District No One*, 470 S E 2d at 570. As also noted above, the Supreme Court has long recognized the authority of the Legislature to enact special legislation for school districts in areas beyond finance. Article VIII § 14 does not foreclose the funding of public education from local concern and any such construction of this constitutional provision as advocated by Plaintiffs would contravene the longstanding law of this State. *See Horry County School District*, 552 S E 2d at 737 (2001)

Plaintiffs have failed to allege facts sufficient to show any constitutional infirmity of the present Act under Article VIII, § 14 'A legislative enactment will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt" *University of South Carolina v Mehlman*, 245 S C 180, 139 S E 2d 771 (1964) Plaintiffs cannot meet this stringent standard under any construction of the facts presented

CONCLUSION

Based on the foregoing, Defendants Motion for Judgment on the Pleadings is **GRANTED** and Plaintiffs Complaint is **DISMISSED IT IS SO ORDERED**



The Honorable Edgar W Dickson

March 11, 2011



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STATE OF SOUTH CAROLINA
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COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2009-CP-18-2674

The Home Builders Association of South
Carolina and the Charleston-Trident Home
Builders Association, Inc ,

Plaintiffs,

v

School District No 2 of Dorchester County
and the Board of Trustees for Dorchester
School District No 2,

Defendants

**ORDER DENYING PLAINTIFFS'
MOTION TO AMEND OR RECONSIDER**

This matter came before the court initially by way of Defendants' Motion for Judgment on the Pleadings. The Court held a hearing on Defendants' Motion on September 9, 2010. Charlton deSaussure appeared for Defendants, and Frederick A. Gertz appeared for Plaintiffs.

Following review of the memoranda submitted by both parties, case law, exhibits and arguments of counsel, the Court issued an Order granting Defendants' Motion for Judgment on the Pleadings dated March 11, 2011. Subsequently, Plaintiffs filed a Motion to Amend or Reconsider Judgment pursuant to Rule 59(e), SCRPC. Plaintiffs state in their motion that the Court's March 11, 2011, Order granting the Defendants' Motion "fails to address the numerous distinguishing legal and factual issues enumerated in Plaintiffs' Memorandum in Opposition to Motion for Judgment on the Pleadings." See Plaintiffs' Motion, pp 1-2. Plaintiffs then quote several pages from their previous Memorandum and ask this Court to "rule upon the distinguishing issues" specifically related to the *Bradley v Cherokee School District No. One of*

pg 1 of 2

Cherokee County, 322 S C 181, 470 S E 2d 570 (1996) case, which were raised in Plaintiffs Memorandum

This Court has reviewed Plaintiffs' Motion to Alter or Reconsider its Judgment as well as Defendants opposing memorandum and has considered each of the points raised in Plaintiffs Motion. The points raised by Plaintiffs were presented to the Court previously in the Plaintiffs' original memorandum in opposition to the Defendants Motion. The Court does not find any of these points persuasive and declines to modify its Order dated March 11, 2011, in which it granted Defendants' Motion for Judgment on the Pleadings.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion to Amend or Reconsider is **DENIED**, and the Court's March 11, 2011 Order **GRANTING** the Defendants Motion for Judgment on the Pleadings stands. Accordingly, Plaintiffs Complaint is **DISMISSED with prejudice**. **IT IS SO ORDERED**.



The Honorable Edgar W. Dickson

June 9, 2011

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Carolina with its principal office in the City and County of Charleston and State of South Carolina

3 School District No 2 of Dorchester County (the “School District”) is a body politic and political subdivision of the State of South Carolina, with its principal office in the County of Dorchester and State of South Carolina

4 The Board of Trustees for Dorchester School District No 2 (the “Trustees”) is the governing body of the School District

Jurisdiction and Venue

5 This Court has jurisdiction over the matters alleged herein pursuant to the laws and constitutions of the United States and the State of South Carolina, including, without limitation, S C Code Ann §§ 15-53-10, *et seq* and Rule 57 of the South Carolina Rules of Civil Procedure

6 Venue is proper in Dorchester County based on the domicile of the Defendants

Facts

7 On or about February 11, 2009, the General Assembly of the State of South Carolina passed and enrolled Senate Bill 235 which became law without the Governor’s signature February 26, 2009 as 2009 S C Acts 99 (the “Act”), as follows

SYNOPSIS AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES FOR DORCHESTER SCHOOL DISTRICT NO 2 TO IMPOSE AN IMPACT FEE ON ANY DEVELOPER FOR EACH NEW RESIDENTIAL DWELLING UNIT CONSTRUCTED BY THE DEVELOPER WITHIN THE SCHOOL DISTRICT TO PROVIDE THAT THE FUNDS ONLY MAY BE USED FOR THE CONSTRUCTION OF PUBLIC EDUCATION FACILITIES FOR GRADES K-12 WITHIN THE DISTRICT AND FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON EXISTING OR NEW BONDS ISSUED BY THE DISTRICT AND TO PROVIDE THAT THE IMPACT FEE SHALL BE SET AT AN AMOUNT NOT TO EXCEED THE COST THAT EACH

*ADDITIONAL DWELLING UNIT IMPOSES ON THE SCHOOL DISTRICT
FOR PUBLIC EDUCATION FACILITIES*

*Be it enacted by the General Assembly of the State of South Carolina
Impact fee authorized*

SECTION 1 (A) The Board of Trustees for Dorchester School District No 2 may impose an impact fee on any developer for each new residential dwelling unit constructed by the developer within the school district. The fees must be paid to Dorchester School District No 2 or, pursuant to an agreement, to a county or municipality that pays the fees to Dorchester School District No 2, prior to or at the issuance of a certificate of occupancy for a dwelling unit.

(B) Dorchester School District No 2 must maintain the impact fee funds in a separate interest bearing account. All interest earned and accruing to the account shall become funds of the account and must be subject to all restrictions placed on the use of impact fees pursuant to the provisions of this article. Accounting records must be maintained for each category of system improvements for which the fee is collected.

(C) The Board of Trustees for Dorchester School District No 2 only may appropriate funds from the account for

(1) the construction, including preparation costs, of new public education facilities for grades K-12 within Dorchester School District No 2, and

(2) the payment of principal and interest on existing or new bonds issued by Dorchester School District No 2 for the construction of public education facilities for grades K-12.

(D) The impact fee may be offset by any other cash payment paid by the developer and obtained by Dorchester School District No 2 as a result of an agreement between the developer and another governmental entity.

(E) The Board of Trustees of Dorchester School District No 2 will reexamine the amount of an impact fee being charged a developer upon receipt of a notice of appeal from the developer. If the notice of appeal is accompanied by a letter of credit in a form satisfactory to the board of trustees in an amount equal to the amount of impact fees owed, the new residential development may receive its certificate of occupancy while the appeal is pending.

(F) For purposes of this section, 'dwelling unit' means all residential units including, but not limited to single family attached single family detached

duplex, condominium, townhouse multifamily apartment and mobile home, but excluding hotels and motels

(G) The district's board of trustees shall set the impact fee at an amount not to exceed two thousand five hundred dollars per dwelling unit

Time effective

SECTION 2 This act takes effect upon approval by the Governor and applies to any new residential construction which has not been issued a certificate of occupancy

8 Thereafter, the Trustees adopted the following resolution on behalf of the School District having an effective date of June 23, 2009 (the "Resolution")

A RESOLUTION ESTABLISHING AND ADOPTING A PUBLIC FACILITIES IMPACT FEE TO BE IMPOSED ON ALL NEW RESIDENTIAL DWELLING UNITS AND PROCEDURES FOR THE IMPOSITION, CALCULATION, COLLECTION EXPENDITURE AND ADMINISTRATION OF SUCH IMPACT FEES

WHEREAS School District No 2 of Dorchester County (the "School District") South Carolina is authorized, under Act bearing Ratification Number 2 of the Acts and Joint Resolutions of the General Assembly of South Carolina enacted February 26 2009 (the "Act"), to establish and impose impact fees on new Dwelling Units to finance new Public Education Facilities for grades K- 12 within the School District necessitated by such development and for the payment of principal and interest on existing or new bonds issued by the School District for the construction of Public Education Facilities for grades K-12, and

WHEREAS, the School District has experienced rapid population growth and development during the past decade and it is expected that growth will continue and

WHEREAS, the School District has recently experienced the impacts on Public Education Facilities resulting from such growth and development, and

WHEREAS, the School District has certain standards by grade level such as these relating to school site sizes, school population instructional classroom size and teacher-student ratio and

WHEREAS, these standards and the projected residential development effect future school needs and

WHEREAS the cost of land acquisition and construction and equipping of new schools occasioned in part by growth and development is significant and

WHEREAS it is appropriate that bonds used to finance new schools needed to meet the demand generated by new residential development be backed not only by property taxes but also by the impact fee permitted by the Act in order that the bonds be paid by taxpayers who have paid for the School District's current facilities but also by those who contribute to the demand for the new schools because of such growth and development, and

WHEREAS, the School District therefore finds that it is fair and equitable for new Dwelling Units to fund, in whole or in part, the cost of new school facilities whose need will result from such new residential development, and

WHEREAS a 2005 study by In Re Financial LLC indicates that new residential development on average (Dwelling Units) generates a demand for Public Education Facilities of 5 students per Dwelling Unit, be it for elementary, middle or high school, as a result of which the Public Education Facilities Impact Fee (as defined herein, the "Impact Fee") shall be imposed uniformly on all new Dwelling Units, regardless of size, type or density, and

WHEREAS the Impact Fee as authorized by the Act shall be imposed uniformly on all new Dwelling Units within the School District regardless of the location of the residential development within the School District, and

WHEREAS, the use of uniform procedures for the imposition, calculation collection, expenditure and administration of the Impact Fee will best ensure that the Impact Fee is collected solely for and expended for the Public Education Facilities for which it was imposed and collected, and

WHEREAS any moneys collected from the Impact Fee shall be deposited in an interest-bearing account which clearly identifies the category account, fund and Public Education Facility for which such fee was imposed and

WHEREAS, the fund or account and each category of system improvements shall be accounted for separately provided however that the determination as to whether the accounting requirement shall be by category, account or fund and whether by aggregate or individual

residential development shall be within the discretion of the School District and

WHEREAS any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account, and

WHEREAS, the Board has found and determined that the Impact Fee is appropriate for funding Public Education Facilities within the School District and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of School District No 2 of Dorchester County, South Carolina that the following Impact Fee and Impact Fee procedures and requirements are set forth and are applicable to all new Dwelling Units

SECTION I

ADOPTION AND IMPOSITION OF THE IMPACT FEE AND PURPOSE AND INTENT OF IMPACT FEE PROCEDURES

A Pursuant to the Impact Fee Procedures this Resolution, and the Act the Impact Fee shall be adopted and imposed on all new Dwelling Units in the School District

B The purposes and intent of the Impact Fee Procedures are

1 To establish uniform procedures for the imposition, calculation collection expenditure and administration of the Impact Fee imposed on new residential development,

2 To implement the goals, objectives and policies of the School District relating to assuring that new residential development contributes towards the costs of Public Education Facilities reasonably necessitated by such new residential development

3 To ensure that new residential development is reasonably benefited by the provision of the Public Education Facilities provided with the proceeds of the Impact Fee

4 To ensure that all applicable legal standards and criteria are properly incorporated in these procedures

*SECTION II
DEFINITIONS*

A Adopted Level of Service (LOS) Standard - the adequacy of Public Education Facilities to accommodate the students from new residential development at the School District's level of service standards

B Applicant - any person who files an application for a certificate of occupancy

C Appropriation or to appropriate - an action by the Board to identify specific Public Education Facilities for which Impact Fee funds may be utilized Appropriation shall include, but shall not necessarily be limited to inclusion of a Public Education Facility in the adopted School District budget or capital improvements program, execution of a contract or other legal encumbrance for construction of a Public Education Facility using Impact Fee funds in whole or in part and actual expenditure of Impact Fee funds through payments made from an Impact Fee account

D Board - the Board of Trustees of School District No 2 of Dorchester County

E Demand - the increment of Public Education Facilities that a new Dwelling Unit requires and utilizes measured by the applicable student generation rate

F Director - the Director of Finance for the School District or her designee

G Dwelling Unit — all residential units, including, but not limited to, single family attached single family detached, duplex, condominium townhouse multifamily, apartment and mobile home but excluding hotels and motels, pursuant to the Act

H Impact Fee - a fee related to a Public Education Facility which is imposed on new Dwelling Units in connection with and as a condition of the issuance of a certificate of occupancy and which is calculated to defray all or a portion of the costs of the Public Education Facilities required to accommodate new Dwelling Units and which reasonably benefit the new Dwelling Units

I Intergovernmental Agreement — an agreement executed by the School District and other Local Government responsible for the issuance of a certificate of occupancy for the collection of the Impact Fee by the School District or such other Local Government for the transfer of all

Impact Fee revenues to the School District and for the expenditure of said revenues by the School District for Public Education Facilities as herein defined, to accommodate new residential development at the School District's level of service standards

J Local Government - a county city municipality, town township authority, school district improvement district, or other special district any other kind of municipal quasi-municipal or public corporation, or any agency or instrumentality of the State of South Carolina properly organized pursuant to applicable law

K Low Income Housing - a Dwelling Unit with deed restrictions which require that it be sold exclusively to owners or rented exclusively to lessees earning not more than 50% of the median household income in Dorchester County Median household income shall be based upon the most recent data available from the United States Bureau of the Census as of the date of the application for a certificate of occupancy

L Multiple Uses - a new development consisting of both residential and nonresidential uses or one or more different types of non-residential uses on the same site or part of the same new development

M Non-Residential Development means and refers to all development other than Dwelling Units

N Public Education Facilities - elementary middle high schools and special schools and/or classrooms designed to provide capacity for students generated by new residential development in the School District including but not necessarily limited to the following the planning, design, engineering and construction of the school buildings and associated playgrounds and recreation areas, parking, lighting, landscaping, sidewalks, internal streets access roads and driveways, legal appraisal and all other costs associated with the acquisition of land, financing and development costs site preparation costs and costs associated with the construction of new or additions to or expansions of existing school facilities including elementary, middle and high schools, special schools and special classrooms which add capacity to the school system

O Residential Development - the development of one or more Dwelling Units

P Retiree Housing - a Dwelling Unit with deed restrictions which require that it constitutes 'housing for older persons' as defined in the Fair Housing Act (42 USC § 3607(b)(1) and 24 CFR § 100.304 as such may be amended from time to time), or a home which pursuant to

such deed restrictions or which is otherwise restricted for occupancy through codes, covenants or binding restrictions by persons of at least 62 years of age provided however, that 'Retiree Housing does not include any Dwelling Unit for which said codes covenants or restrictions have been invalidated by any court of competent jurisdiction

Q Student Generation Rate (SGR) - the number of elementary, middle and high school students generated by a typical Dwelling Unit in the School District and used for planning and capital improvements programming purposes

SECTION III GENERAL PROVISIONS APPLICABILITY

A Term These Procedures shall remain in effect unless and until repealed, amended or modified by the Board

B Annual Review

1 At least once every year not later than January 1st of each year, beginning January 1, 2010 and prior to Board adoption of the Annual Budget and capital improvements program, the Director or her designee shall coordinate the preparation and submission of a report on the subject of the Impact Fee

2 The report shall include the following

a recommendations on amendments, if appropriate, to these procedures or to this Resolution adopting the Impact Fee,

b proposed changes to an applicable capital improvements program, including the identification of Public Education Facility projects anticipated to be funded wholly or partially with the Impact Fee,

c proposed changes to Impact Fee schedules as set forth in this Resolution imposing and setting the Impact Fee,

d proposed changes to level of service standards,

e proposed changes in the Impact Fee calculation methodology,

f other data analysis or recommendations as the Director or her designee may deem appropriate, or as may be requested by the Board

3 Submission of Impact Fee Annual Report and Board Action The Director or her designee shall submit the Impact Fee Annual Report to the

Board which shall receive the Report and take such actions as it deems appropriate including but not limited to requesting additional data or analyses and holding public workshops and/or public hearings

C Affected Area

1 Geographic Area The Impact Fee shall be imposed on new Dwelling Units within the School District

2 Local Government The Impact Fee adopted by the School District shall, if necessary and appropriate be collected by the Local Government on new Dwelling Units within the Local Government pursuant to an Intergovernmental Agreement with the School District which provides that the Impact Fee collected by the Local Government be transferred to the School District for expenditure in accordance with the terms of these Procedures

D Type of Development Affected These Procedures shall apply to all new Dwelling Units as herein defined

E Type of Development Not Affected These Procedures shall not apply to

1 Certificates of Occupancy No Impact Fee shall be imposed on any new Dwelling Unit for which a certificate of occupancy has been issued prior to the effective date of these Procedures

2 Previous Payment of Impact Fees Subject to the requirements of Section WD 2 of this Resolution, no Impact Fee shall be due at a later stage of the certificate of occupancy or approval process if such Impact Fee has been paid for Public Education Facilities at an earlier stage in the certificate of occupancy or approval process

3 Public Education Facilities Provided By the State of South Carolina or the Federal Government No Impact Fee shall be imposed on the development of Public Education Facilities by the State of South Carolina or the Federal government

4 Other Uses Regarding structures other than Dwelling Units, no Impact Fee shall be imposed on a use, development, project, structure, building fence, sign or other activity which does not result in an increase in the demand for Public Education Facilities

5 Waivers for Low Income Housing and Retiree Housing In order to further the established policy of Dorchester County to promote developments for affordable housing and retirees no Impact Fee shall be

imposed on Low Income Housing or Retiree Housing as defined in Section II of this Resolution unless or until the deed or other restriction related to such use is ever changed at that time, the Impact Fee shall be imposed

F Amendments This Resolution may be amended from time to time by the Board provided, however that no resolution shall be approved which raises any impact fee to an amount that exceeds \$2 500 per Dwelling Unit

SECTION IV PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF THE IMPACT FEE

A In General Pursuant to any Intergovernmental Agreement, an Applicant shall be notified of the Impact Fee requirements at the time of application for a certificate of occupancy The Impact Fee shall be calculated by the School District and shall be paid by the Applicant prior to the issuance of a certificate of occupancy

B Calculation

1 An Impact Fee of \$2 500 per Dwelling Unit shall be imposed which sum is the maximum sum permitted by the Act and which sum is supported by the following methodology As mentioned on page 1 herein new residential development generates an average demand for Public Education Facilities of 5 students per Dwelling Unit Thus a residential development of 1 600 Dwelling Units is expected to result in 800 students At the \$2,500 Impact Fee per Dwelling Unit, a total of 1,600 Dwelling Units would produce total Impact Fees of \$4,000,000 The cost of a single Public Education Facility for 800 students is estimated to be \$22,870 000 which is the product of the 90,000 square feet required for such a facility multiplied by the now prevailing construction/equipping cost per square foot Thus the amount of the Impact Fee authorized herein is significantly less than the cost of the Public Education Facilities the School District might be expected to provide by virtue of new residential development

C Offsets

1 According to the Act offsets against the amount of the Impact Fee due from a new Dwelling Unit shall be provided by any other cash payment paid by the Applicant and obtained by the School District as a result of an agreement between the Applicant and another Local Government Such cash payment is determined by the Director to be a reasonable substitute for the cost of Public Education Facilities which are included in the Impact Fee calculation methodology

2 Applications for offsets shall be made on forms provided by the School District and shall be submitted at or before the time of filing the certificate of occupancy application. The application for an offset shall be accompanied by relevant documentary evidence establishing the eligibility of the Applicant for the offset. When an application for an offset accompanies an application for a certificate of occupancy or approval, the Director shall calculate the Impact Fee without the offset and shall then determine whether an offset is due and if so, the amount of the offset. The offset shall be applied against the Impact Fee calculated to be due, provided, however that in no event shall an offset be granted in an amount exceeding the Impact Fee due.

D Collection

1 The Director or other Local Government shall collect the Impact Fee at the time of issuance of a certificate of occupancy unless

a the Applicant is determined to be entitled to a full offset or

b the Applicant has been determined to be not subject to the payment of the Impact Fee or

c the Applicant has taken an appeal and a letter of credit in a form satisfactory to the Board in the amount of the Impact Fee as calculated by the Director, has been posted with the School District

2 The Director or other Local Government shall collect the Impact Fee at the time of issuance of a certificate of occupancy even if the Impact Fee was paid by the Applicant at an earlier time in the certificate of occupancy or approval process if the amount of the Impact Fee has increased since such prior approval. The Applicant shall only be liable for the difference between the Impact Fee paid earlier and the Impact Fee in effect at the time of issuance of a certificate of occupancy.

SECTION V ESTABLISHMENT OF AN IMPACT FEE ACCOUNT, APPROPRIATION OF IMPACT FEE FUNDS, AND REFUNDS

A Impact Fee Account An Impact Fee account shall be established by the School District for the Public Education Facilities for which the Impact Fee is imposed. Such account shall clearly identify the category account or fund for which the Impact Fee has been imposed. The Impact Fee collected by the School District shall be deposited into the Impact Fee account which shall be interest bearing. All interest earned or monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of such account shall not be commingled.

with other funds or revenues of the School District The Director shall establish and implement necessary accounting controls to ensure that the Impact Fee funds are properly deposited accounted for and appropriated in accordance with these Procedures, the Act and any other applicable legal requirements

B Appropriation of Impact Fee Funds

1 In General Impact Fee funds may be appropriated for Public Education Facilities and for the payment of principal, interest and other financing costs on new or existing bonds notes or other obligations issued by or on behalf of the School District to finance such Public Education Facilities

2 Restrictions on Appropriations The Impact Fee shall be appropriated only (a) for Public Education Facility for which it was imposed, calculated and collected, (b) within the School District where collected unless the Impact Fee funds will be appropriated for a Public Education Facility necessitated by or serving the new Dwelling Unit as provided herein, and (c) within six years of the beginning of the Fiscal Year immediately succeeding the date of collection unless such time period is extended as provided herein The Impact Fee shall not be appropriated for funding maintenance or repair of Public Education Facilities nor for operational or personnel expenses associated with the provision of the Public Education Facility

3 Appropriation of Impact Fee Funds Beyond Six Years of Collection Notwithstanding Section V D l b , infra, Impact Fee funds may be appropriated beyond six years from the beginning of the Fiscal Year immediately succeeding the date of collection if the appropriation is for a Public Education Facility which requires more than six years to plan, design and construct and the demand for the Public Education Facility is generated in whole or in part by the new development, or if the Public Education Facility will serve the new Dwelling Unit

C Procedure for Appropriation of Impact Fee Funds

1 The School District shall each year identify Public Education Facility projects anticipated to be funded in whole or in part with the Impact Fee The Public Education Facility recommendations shall be based upon the Impact Fee annual review set forth in Section III B and such other information as may be relevant, but shall not be part of the annual budget and capital improvements programming process

2 *The recommendations shall be consistent with the provisions of these Procedures this Resolution applicable legal requirements and any guidelines adopted by the Board*

3 *The Board may include Impact Fee-funded Public Education Facilities in the School District's annual budget and capital improvements program If included the description of the Public Education Facility shall specify the nature of the facility, the location of the Public Education Facility the capacity to be added by the Public Education Facility the service area of the Public Education Facility, the need/demand for the Public Education Facility and the anticipated timing of completion of the Public Education Facility*

4 *The Board shall verify that adequate Impact Fee funds are or will be available from the Impact Fee account for the specified Public Education Facility*

D Refunds

1 Eligibility for Refund

a Expiration or Revocation of Certificate of Occupancy or Approval An Applicant who has paid the Impact Fee for a new Dwelling Unit for which the necessary certificate of occupancy approval has expired or for which the certificate of occupancy approval has been revoked shall be eligible to apply for a refund of the Impact Fee paid

b Failure of School District to appropriate Impact Fee Funds Within Time Limit The current property owner may apply for a refund of the Impact Fee paid by an Applicant if the School District has failed to appropriate the Impact Fee collected from the Applicant within the time limits established in Sections V B 2 and V B 3

c Decrease in Applicable Impact Fee The current property owner may apply for a partial refund of the Impact Fee paid by an Applicant if the School District reduces the amount of the Impact Fee for a Public Education Facility within 120 days of the effective date of this Resolution The amount of the refund shall be the difference between the original fee and the reduced fee

2 *Except as provided in Sections V D 1 a and V D 5 , refunds shall be made only to the current owner of property on which the new Dwelling Unit was proposed or occurred*

3 *Processing of Applications for a Refund Applications for a refund shall include all information required in Sections V D 4 or 5 as*

appropriate Upon receipt of a complete application for a refund the Director shall review the application and documentary evidence submitted by the Applicant as well as such other information and evidence as may be deemed relevant and make a determination of whether a refund is due Refunds by direct payment shall be made following an affirmative determination by the Director

4 Applications for refunds due to the failure of the School District to appropriate the Impact Fee collected from the Applicant within the time limits established in Section V B 2 shall be made on forms provided by the School District and shall be made within one year following the expiration of such time limit The Applicant shall submit (a) evidence that the Applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the Impact Fee paid by the Applicant and receipt evidencing such payment, and (c) description and documentation of the School District's failure to appropriate Impact Fee funds for relevant Public Education Facilities Refunds shall include a pro rata share of interest earned by the Impact Fee account calculated at the average annual rate of interest for each of the years during which the Applicant's Impact Fee was in the account divided by the number of years in which the Impact Fee was in the account

SECTION VI APPEALS

A An appeal from any decision of the Director pursuant to these Procedures shall be made to the Board provided, however, that if the notice of appeal is accompanied by a letter of credit in a form satisfactory to the Board in an amount equal to the Impact Fee calculated by the Director to be due, the new Dwelling Unit may be permitted or approved

B The burden of proof shall be on the appellant to demonstrate that the decision of the Director is erroneous

SECTION VII EXEMPTIONS/WAIVERS

A Filing of Application Petitions for exemptions to the application of these Procedures or waivers from the Impact Fee shall be filed with the Board

B Effect of Grant of Exemption/Waiver If the Board grants an exemption or waiver in whole or in part of the Impact Fee otherwise due the amount of the Impact Fee exempted or waived shall be provided by the School District or other appropriate body as may be provided in this Resolution

C Timing of Provision of Waived/Exempted Impact Fees The provision of the amount of exempted or waived Impact Fee by the School District or other appropriate body to the Impact Fee account shall be made within a reasonable period of time consistent with the School District s capital improvements program

**SECTION VIII
CONFLICT**

To the extent of any conflict between other School District resolutions and these Procedures, these Procedures shall be deemed to be controlling, provided, however, that these Procedures are not intended to amend or repeal any existing School District resolution or regulation

**SECTION IX
SEVERABILITY**

A If any section subsection, sentence, clause, phrase or portion of these Procedures is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction such section, subsection, sentence clause phrase or portion of these Procedures shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of these Procedures nor impair or nullify the remainder of such Procedures which shall continue in full force and effect

B If the application of any provision of these Procedures to any new Dwelling Unit is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the Board is that such decision shall be limited to the specific new Dwelling Unit immediately involved in the controversy, action or proceeding in which such decision of invalidity was rendered Such decision shall not affect, impair, or nullify these Procedures as a whole or the application of any provision of these Procedures to any other new Dwelling Unit

9 Plaintiffs CTHBA and SCHBA are associations of residential homebuilders whose members are actively engaged in the development of residential subdivisions and the construction of single and multi-family residential buildings within the geographic boundaries of School District No 2 of Dorchester County

10 All residential homebuilder members of the CTHBA are also members of the SCHBA

11 Since June 23, 2009, residential homebuilder members of CTHBA and SCHBA constructing homes within the geographic boundaries of School District No 2 of Dorchester County have been charged the impact fee imposed pursuant to the Resolution (“School District Impact Fees”) as a condition precedent to being issued a Certificate of Occupancy for newly constructed residential dwellings. At least one (1) member of both the TCHBA and the SCHBA have been charged a School District Impact Fee

12 School District Impact Fees imposed upon the members of the TCHBA and SCHBA have been paid under protest reserving all rights and remedies to contest the validity of the Resolution and the power of the School District to impose an impact fee and to seek a refund in the event it is determined that the School District Impact Fees are invalid or improper

FOR A CAUSE OF ACTION

19 The foregoing allegations are incorporated herein as if set forth verbatim herein

20 The Act applies only to the School District and not to other school districts within the State of South Carolina

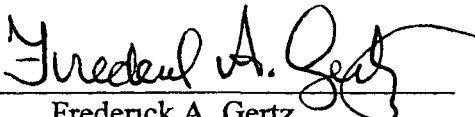
21 The needs for funding of the School District apply equally to many, if not all, other school districts within the State of South Carolina. The School District does not have unique funding requirements. Other school districts within the State are similarly situated in that they are required to construct or expand facilities in order to meet the demands of a growing population within the district

22 The purpose sought to be served by the Act can be equally fulfilled by general legislation applicable to all school districts within the State of South Carolina

23 The Act's application to a single school district without any peculiar or unique conditions, resulting in special treatment, violates the provisions of the South Carolina Constitution, in particular Art III, § 34 (limiting "special legislation") and Art VIII, § 14(6) (requiring statewide uniformity)

WHEREFORE, Plaintiff prays that this Court (1) inquire fully into the matters alleged herein, (2) issue its temporary injunction during the pendency of this action enjoining the Defendants from collecting or imposing the School District Impact Fee, (3) declare the School District Impact Fee invalid and unenforceable, (4) permanently enjoining the Defendants from collecting or imposing the School District Impact Fee, and (5) grant such other and further relief as be just, equitable, lawful and proper

Columbia, South Carolina
September 28, 2009


Frederick A Gertz
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Gertz & Moore
1416 Laurel Street
Post Office Box 456
Columbia, South Carolina 29202
(803) 252-1524
Attorneys for Plaintiffs

9/28/09

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2009-CP-18-2764

The Home Builders Association of South
Carolina and the Charleston-Trident Home
Builders Association, Inc ,

Plaintiffs,

**DEFENDANTS'
ANSWER**

v

School District No 2 of Dorchester County
and the Board of Trustees for Dorchester
School District No 2,

Defendants

TO FREDERICK A GERTZ, ATTORNEY FOR THE PLAINTIFFS

Answering the Complaint, Defendants School District No 2 of Dorchester County and the Board of Trustees for Dorchester School District No 2, herein allege and state as follows

1 The allegations of Plaintiffs' Complaint, unless specifically admitted or qualified herein, are denied and strict proof thereof is demanded

2 Defendants admit, upon information and belief, the allegations of Paragraphs 1 and 2

3 Defendants admit the allegations of Paragraphs 3 through 6

4 Answering the allegations of Paragraph 7, Defendants admit the General Assembly of the State of South Carolina passes and enrolled Senate Bill 235 and submit the referenced Act speaks for itself

5 Answering the allegations of Paragraph 8, Defendants admit the Trustees adopted a Resolution effective June 23 2009 and that Paragraph 8 putatively quotes the Resolution

Defendants deny the allegations of Paragraph 8 to the extent inaccuracies in the quotation of the Resolution exist Defendants attach hereto as Exhibit 1 a true and correct copy of said Resolution and crave reference to the same

6 Paragraph 9 is admitted, upon information and belief

7 Defendants lack sufficient information to either admit or deny the allegations of Paragraph 10

8 Answering the allegations of Paragraph No 11, Defendants state that the Resolution was adopted on June 22, 2009 and, upon information and belief, admit certain developers of new residential dwelling units constructed within the school district have been charged the impact fee Defendants lack sufficient information to either admit or deny the remaining allegations of Paragraph 11

9 Defendants lack sufficient information to either admit or deny the allegations of Paragraph No 12

10 No response is required to Paragraph 19 (misnumbered)

11 Paragraph 20 (misnumbered) is admitted

12 Paragraph 21 (misnumbered) is denied

13 The allegations of Paragraph 22 (misnumbered) contain conclusions of law to which no response is required

14 Paragraph 23 (misnumbered) is denied

WHEREFORE, having answered Plaintiffs Complaint, Defendants pray for an Order dismissing the Complaint and for such other and further relief as the Court deems just and proper

By Charlton deSaussure Jr.

Charlton deSaussure, Jr

Marvin D Infinger

Anne R Rosen

HAYNSWORTH SINKLER BOYD, P A

134 Meeting Street, Third Floor

Charleston, SC 29401-2240

Telephone 843-722-3366

Facsimile 843-722-2266

Counsel for Defendants

October 27, 2009
Charleston, South Carolina

A RESOLUTION ESTABLISHING AND ADOPTING A PUBLIC FACILITIES IMPACT FEE TO BE IMPOSED ON NEW RESIDENTIAL DWELLING UNITS AND PROCEDURES FOR THE IMPOSITION, CALCULATION, COLLECTION, EXPENDITURE AND ADMINISTRATION OF SUCH IMPACT FEES

WHEREAS, School District No 2 of Dorchester County (the "School District"), South Carolina is authorized, under Act bearing Ratification Number 2 of the Acts and Joint Resolutions of the General Assembly of South Carolina enacted February 26, 2009 (the 'Act'), to establish and impose impact fees on new Dwelling Units to finance new Public Education Facilities for grades 4K through 12 within the School District necessitated by such development and for the payment of principal and interest on existing or new bonds issued by the School District for the construction of Public Education Facilities for grades 4K through 12, and

WHEREAS, the School District has experienced rapid population growth and development during the past decade and it is expected that growth will continue, and

WHEREAS, the School District has recently experienced the impacts on Public Education Facilities resulting from such growth and development, and

WHEREAS, the School District has certain standards by grade level such as these relating to school site sizes, school population, instructional classroom size and teacher student ratio, and

WHEREAS, these standards and the projected residential development effect future school needs, and

WHEREAS, the cost of land acquisition and construction and equipping of new schools occasioned in part by growth and development is significant, and

WHEREAS, it is appropriate that bonds used to finance new schools needed to meet the demand generated by new residential development be backed not only by property taxes but also by the impact fee permitted by the Act in order that the bonds be paid by taxpayers who have paid for the School District's current facilities but also by those who contribute to the demand for the new schools because of such growth and development, and

WHEREAS, the School District therefore finds that it is fair and equitable for new Dwelling Units to fund, in whole or in part, the cost of new school facilities whose need will result from such new residential development, and

WHEREAS, a 2005 study by InRe Financial, LLC indicates that new residential development on average (Dwelling Units) generates a demand for Public Education Facilities of 5 students per Dwelling Unit, be it for elementary, middle or high school as a result of which the Public Education Facilities Impact Fee (as defined herein, the "Impact Fee") shall be imposed uniformly on all new Dwelling Units, regardless of size, type or density; and



WHEREAS, the Impact Fee as authorized by the Act shall be imposed uniformly on all new Dwelling Units within the School District, regardless of the location of the residential development within the School District, and

WHEREAS, the use of uniform procedures for the imposition, calculation, collection, expenditure and administration of the Impact Fee will best ensure that the Impact Fee is collected solely for and expended for the Public Education Facilities for which it was imposed and collected, and

WHEREAS, any moneys collected from the Impact Fee shall be deposited in an interest-bearing account which clearly identifies the category, account, fund and Public Education Facility for which such fee was imposed, and

WHEREAS, the fund or account and each category of system improvements shall be accounted for separately, provided, however, that the determination as to whether the accounting requirement shall be by category, account or fund and whether by aggregate or individual residential development shall be within the discretion of the School District, and

WHEREAS, any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account, and

WHEREAS, the Board has found and determined that the Impact Fee is appropriate for funding Public Education Facilities within the School District, and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of School District No 2 of Dorchester County, South Carolina that the following Impact Fee and Impact Fee Procedures and requirements are set forth and are applicable to all new Dwelling Units

**SECTION I ADOPTION AND IMPOSITION OF THE IMPACT FEE AND
PURPOSE AND INTENT OF IMPACT FEE PROCEDURES**

- A Pursuant to the Impact Fee Procedures, this Resolution, and the Act, the Impact Fee shall be adopted and imposed on all new Dwelling Units in the School District

- B The purposes and intent of the Impact Fee Procedures are
 - 1 To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of the Impact Fee imposed on new residential development,

 - 2 To implement the goals, objectives and policies of the School District relating to assuring that new residential development contributes towards the costs of Public Education Facilities reasonably necessitated by such new residential development,

- 3 To ensure that new residential development is reasonably benefitted by the provision of the Public Education Facilities provided with the proceeds of the Impact Fee,
- 4 To ensure that all applicable legal standards and criteria are properly incorporated in these procedures

SECTION II DEFINITIONS

- A Adopted Level of Service (LOS) Standard the adequacy of Public Education Facilities to accommodate the students from new residential development at the School District's level of service standards
- B Applicant - any person who files an application for a certificate of occupancy
- C Appropriation or to appropriate - an action by the Board to identify specific Public Education Facilities for which Impact Fee funds may be utilized. Appropriation shall include, but shall not necessarily be limited to inclusion of a Public Education Facility in the adopted School District budget or capital improvements program, execution of a contract or other legal encumbrance for construction of a Public Education Facility using Impact Fee funds in whole or in part, and actual expenditure of Impact Fee funds through payments made from an Impact Fee account
- D Board - the Board of Trustees of School District No 2 of Dorchester County
- E Demand - the increment of Public Education Facilities that a new Dwelling Unit requires and utilizes, measured by the applicable Student Generation Rate
- F Director - the Director of Finance for the School District or her designee
- G Dwelling Unit - all residential units, including, but not limited to, single family attached, single family detached, duplex, condominium, townhouse, multifamily, apartment, and mobile home, but excluding hotels and motels, pursuant to the Act
- H Impact Fee - a fee related to a Public Education Facility which is imposed on new Dwelling Units in connection with and as a condition of the issuance of a certificate of occupancy and which is calculated to defray all or a portion of the costs of the Public Education Facilities required to accommodate new Dwelling Units and which reasonably benefit the new Dwelling Units
- I Intergovernmental Agreement - an agreement executed by the School District and other Local Government responsible for the issuance of a certificate of occupancy for the collection of the Impact Fee by the School District or such other Local Government, for the transfer of all Impact Fee revenues to the School District

and for the expenditure of said revenues by the School District for Public Education Facilities, as herein defined, to accommodate new residential development at the School District's level of service standards. The form of Intergovernmental Agreement is attached hereto as Exhibit A which may be entered into by the Director with such changes as he shall approve.

- J Local Government - a county, city, municipality, town, township, authority, school district, improvement district, or other special district, any other kind of municipal, quasi-municipal, or public corporation, or any agency or instrumentality of the State of South Carolina properly organized pursuant to applicable law.
- K Low Income Housing - a Dwelling Unit with deed restrictions which require that it be sold exclusively to owners or rented exclusively to lessees earning not more than 50% of the median household income in Dorchester County. Median household income shall be based upon the most recent data available from the United States Bureau of the Census as of the date of the application for a certificate of occupancy.
- L Multiple Uses - a new development consisting of both residential and non-residential uses or one or more different types of non-residential uses on the same site or part of the same new development.
- M Non Residential Development means and refers to all development other than Dwelling Units.
- N Public Education Facilities - elementary, middle, high schools and special schools and/or classrooms designed to provide capacity for students generated by new residential development in the School District including, but not necessarily limited to, the following: the planning, design, engineering and construction of the school buildings and associated playgrounds and recreation areas, parking, lighting, landscaping, sidewalks, internal streets, access roads and driveways, legal appraisal and all other costs associated with the acquisition of land, financing and development costs, site preparation costs, and costs associated with the construction of new, or additions to or expansions of existing school facilities including elementary, middle and high schools, special schools and special classrooms which add capacity to the school system.
- O Residential Development - the development of one or more Dwelling Units.
- P Retiree Housing - a Dwelling Unit with deed restrictions which require that it constitutes "housing for older persons" as defined in the Fair Housing Act (42 U.S.C. § 3607(b)(1) and 24 C.F.R. § 100.304, as such may be amended from time to time), or a home which pursuant to such deed restrictions or which is otherwise restricted for occupancy through codes, covenants, or binding restrictions by persons of at least 62 years of age provided, however, that "Retiree Housing" does

not include any Dwelling Unit for which said codes, covenants or restrictions have been invalidated by any court of competent jurisdiction

- Q Student Generation Rate (SGR) - the number of elementary, middle and high school students generated by a typical Dwelling Unit in the School District, and used for planning and capital improvements programming purposes

SECTION III GENERAL PROVISIONS, APPLICABILITY

- A Term This Resolution shall remain in effect unless and until repealed amended or modified by the Board

B Annual Review

- 1 At least once every year not later than January 1st of each year, beginning January 1, 2010 and prior to Board adoption of the Annual Budget and capital improvements program, the Director or her designee shall coordinate the preparation and submission of a report on the subject of the Impact Fee

- 2 The report shall include the following

- a recommendations on amendments, if appropriate, to these procedures or to this Resolution adopting the Impact Fee,
- b proposed changes to an applicable capital improvements program, including the identification of Public Education Facility projects anticipated to be funded wholly or partially with the Impact Fee,
- c proposed changes to level of service standards,
- d proposed changes in the Impact Fee calculation methodology, and
- e other data, analysis or recommendations as the Director or her designee may deem appropriate, or as may be requested by the Board

- 3 Submission of Impact Fee Annual Report and Board Action The Director or her designee shall submit the Impact Fee Annual Report to the Board, which shall receive the Report and take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings

C Affected Area

- 1 Geographic Area The Impact Fee shall be imposed on new Dwelling Units within the School District

- 2 Local Government The Impact Fee adopted by the School District shall, if necessary and appropriate, be collected by the Local Government on new Dwelling Units within the Local Government pursuant to an Intergovernmental Agreement with the School District which provides that the Impact Fee collected by the Local Government be transferred to the School District for expenditure in accordance with the terms of this Resolution
- D Type of Development Affected This Resolution shall apply to all new Dwelling Units as herein defined
- E Type of Development Not Affected This Resolution shall not apply to
- 1 Certificates of Occupancy No Impact Fee shall be imposed on any new Dwelling Unit for which a certificate of occupancy has been issued prior to the effective date of this Resolution
 - 2 Previous Payment of Impact Fees Subject to the requirements of Section IV D 2 of this Resolution, no Impact Fee shall be due at a later stage of the certificate of occupancy or approval process if such Impact Fee has been paid for Public Education Facilities at an earlier stage in the certificate of occupancy or approval process
 - 3 Public Education Facilities Provided By the State of South Carolina or the Federal Government No Impact Fee shall be imposed on the development of Public Education Facilities by the State of South Carolina or the Federal Government
 - 4 Other Uses Regarding structures other than Dwelling Units, no Impact Fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity which does not result in an increase in the Demand for Public Education Facilities
 - 5 Waivers for Low Income Housing and Retiree Housing In order to further the established policy of Dorchester County to promote developments for affordable housing and retirees, no Impact Fee shall be imposed on Low Income Housing or Retiree Housing as defined in Section II of this Resolution, unless or until the deed or other restriction related to such use is ever changed, at that time, the Impact Fee shall be imposed
 - 6 Certain Replacement Dwelling Units Consistent with § 6-1-970(3), Code of Laws of South Carolina, 1976, as amended, which addresses impact fees imposed by counties and municipalities, replacing a Dwelling Unit, including a manufactured home, with another Dwelling Unit on the same

lot, is exempt from the Impact Fee, if the number of service units does not increase

7 Building Permits Obtained Prior to Effective Date No Impact Fee shall be imposed on new Dwelling Units for which a building permit has been issued prior to the effective date of this Resolution

F Amendments This Resolution may be amended from time to time by the Board provided, however, that no resolution shall be approved which raises any impact fee to an amount that exceeds \$2,500 per Dwelling Unit

SECTION IV PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF THE IMPACT FEE

A. In General Pursuant to any Intergovernmental Agreement, an Applicant shall be notified of the Impact Fee requirements at the time of application for a certificate of occupancy The Impact Fee shall be calculated by the School District and shall be paid by the Applicant prior to the issuance of a certificate of occupancy

B Calculation

1 An Impact Fee of \$2,500 per Dwelling Unit shall be imposed which sum is the maximum sum permitted by the Act and which sum is supported by the following methodology As mentioned on page 1 herein, new residential development generates an average Demand for Public Education Facilities of 5 students per Dwelling Unit. Thus, a residential development of 1,600 Dwelling Units is expected to result in 800 students At the \$2,500 Impact Fee per Dwelling Unit, a total of 1,600 Dwelling Units would produce total Impact Fees of \$4,000,000 The cost of a single Public Education Facility for 800 students is estimated to be \$22,870,000 which is the product of the 90,000 square feet required for such a facility multiplied by the now prevailing construction/equipping cost per square foot Thus, the amount of the Impact Fee authorized herein is significantly less than the cost of the Public Education Facilities the School District might be expected to provide by virtue of new residential development

C Offsets

1 According to the Act, offsets against the amount of the Impact Fee due from a new Dwelling Unit shall be provided by any other cash payment paid by the Applicant and obtained by the School District as a result of an agreement between the Applicant and another Local Government Such cash payment is determined by the Director to be a reasonable substitute for the cost of Public Education Facilities which are included in the Impact Fee calculation methodology

- 2 Applications for offsets shall be made on forms provided by the School District and shall be submitted at or before the time of filing the certificate of occupancy application. The application for an offset shall be accompanied by relevant documentary evidence establishing the eligibility of the Applicant for the offset. When an application for an offset accompanies an application for a certificate of occupancy or approval, the Director shall calculate the Impact Fee without the offset and shall then determine whether an offset is due and, if so, the amount of the offset. The offset shall be applied against the Impact Fee calculated to be due, provided, however, that in no event shall an offset be granted in an amount exceeding the Impact Fee due.

D Collection

- 1 The Director or other Local Government shall collect the Impact Fee at the time of issuance of a certificate of occupancy unless
 - a. the Applicant is determined to be entitled to a full offset, or
 - b. the Applicant has been determined to be not subject to the payment of the Impact Fee, or
 - c. the Applicant has taken an appeal and a letter of credit in a form satisfactory to the Board in the amount of the Impact Fee, as calculated by the Director, has been posted with the School District.
- 2 The Director or other Local Government shall collect the Impact Fee at the time of issuance of a certificate of occupancy even if the Impact Fee was paid by the Applicant at an earlier time in the certificate of occupancy or approval process if the amount of the Impact Fee has increased since such prior approval. The Applicant shall only be liable for the difference between the Impact Fee paid earlier and the Impact Fee in effect at the time of issuance of a certificate of occupancy.

SECTION V ESTABLISHMENT OF AN IMPACT FEE ACCOUNT, APPROPRIATION OF IMPACT FEE FUNDS, AND REFUNDS

- A Impact Fee Account. An Impact Fee account shall be established by the School District for the Public Education Facilities for which the Impact Fee is imposed. Such account shall clearly identify the category, account, or fund for which the Impact Fee has been imposed. The Impact Fee collected by the School District shall be deposited into the Impact Fee account which shall be interest bearing. All interest earned or monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of such account shall not be commingled with other funds or revenues of the School District. The Director

shall establish and implement necessary accounting controls to ensure that the Impact Fee funds are properly deposited, accounted for and appropriated in accordance with this Resolution, the Act and any other applicable legal requirements

B Appropriation of Impact Fee Funds

- 1 In General Impact Fee funds may be appropriated for Public Education Facilities and for the payment of principal, interest and other financing costs on new or existing bonds, notes or other obligations issued by or on behalf of the School District to finance such Public Education Facilities
- 2 Restrictions on Appropriations The Impact Fee shall be appropriated only (a) for Public Education Facility for which it was imposed calculated and collected, (b) within the School District where collected unless the Impact Fee funds will be appropriated for a Public Education Facility necessitated by or serving the new Dwelling Unit as provided herein, and (c) within six years of the beginning of the Fiscal Year immediately succeeding the date of collection, unless such time period is extended as provided herein The Impact Fee shall not be appropriated for funding maintenance or repair of Public Education Facilities nor for operational or personnel expenses associated with the provision of the Public Education Facility
- 3 Appropriation of Impact Fee Funds Beyond Six Years of Collection Notwithstanding Section V D 1 b, *infra*, Impact Fee funds may be appropriated beyond six years from the beginning of the Fiscal Year immediately succeeding the date of collection if the appropriation is for a Public Education Facility which requires more than six years to plan, design and construct and the Demand for the Public Education Facility is generated in whole or in part by the new development, or if the Public Education Facility will serve the new Dwelling Unit

C Procedure for Appropriation of Impact Fee Funds

- 1 The School District shall each year identify Public Education Facility projects anticipated to be funded in whole or in part with the Impact Fee The Public Education Facility recommendations shall be based upon the Impact Fee annual review set forth in Section III B and such other information as may be relevant, but shall not be part of the annual budget and capital improvements programming process
- 2 The recommendations shall be consistent with the provisions of these procedures, this Resolution, applicable legal requirements and any guidelines adopted by the Board

- 3 The Board may include Impact Fee funded Public Education Facilities in the School District's annual budget and capital improvements program. If included, the description of the Public Education Facility shall specify the nature of the Public Education Facility, the location of the Public Education Facility, the capacity to be added by the Public Education Facility, the service area of the Public Education Facility, the Demand for the Public Education Facility and the anticipated timing of completion of the Public Education Facility.
- 4 The Board shall verify that adequate Impact Fee funds are or will be available from the Impact Fee account for the specified Public Education Facility.

D Refunds

- 1 Eligibility for Refund
 - a. Expiration or Revocation of Certificate of Occupancy or Approval. An Applicant who has paid the Impact Fee for a new Dwelling Unit for which the necessary certificate of occupancy approval has expired or for which the certificate of occupancy approval has been revoked shall be eligible to apply for a refund of the Impact Fee paid.
 - b. Failure of School District to Appropriate Impact Fee Funds Within Time Limit. The current property owner may apply for a refund of the Impact Fee paid by an Applicant if the School District has failed to appropriate the Impact Fee collected from the Applicant within the time limits established in Sections V B 2 and V B 3.
 - c. Decrease in Applicable Impact Fee. The current property owner may apply for a partial refund of the Impact Fee paid by an Applicant if the School District reduces the amount of the Impact Fee for a Public Education Facility within 120 days of the effective date of this Resolution. The amount of the refund shall be the difference between the original fee and the reduced fee.
- 2 Except as provided in Section V D 1 a, refunds shall be made only to the current owner of property on which the new Dwelling Unit was proposed or occurred.
- 3 Processing of Applications for a Refund. Applications for a refund shall include all information required in Section V D 4. Upon receipt of a complete application for a refund, the Director shall review the application and documentary evidence submitted by the Applicant as well as such other information and evidence as may be deemed relevant, and make a

determination of whether a refund is due Refunds by direct payment shall be made following an affirmative determination by the Director

- 4 Applications for refunds due to the failure of the School District to appropriate the Impact Fee collected from the Applicant within the time limits established in Section V B 2 shall be made on forms provided by the School District and shall be made within one year following the expiration of such time limit The Applicant shall submit (a) evidence that the Applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the Impact Fee paid by the Applicant and receipt evidencing such payment, and (c) description and documentation of the School District's failure to appropriate Impact Fee funds for relevant Public Education Facilities Refunds shall include a pro rata share of interest earned by the Impact Fee account calculated at the average annual rate of interest for each of the years during which the Applicant's Impact Fee was in the account divided by the number of years in which the Impact Fee was in the account

SECTION VI APPEALS

- A An appeal from any decision of the Director pursuant to this Resolution shall be made to the Board provided, however, that if the notice of appeal is accompanied by a letter of credit in a form satisfactory to the Board in an amount equal to the Impact Fee calculated by the Director to be due, the new Dwelling Unit may be permitted or approved
- B The burden of proof shall be on the appellant to demonstrate that the decision of the Director is erroneous

SECTION VII EXEMPTIONS/WAIVERS

- A Filing of Application Petitions for exemptions to the application of these procedures or waivers from the Impact Fee shall be filed with the Board
- B Effect of Grant of Exemption/Waiver If the Board grants an exemption or waiver in whole or in part of the Impact Fee otherwise due, the amount of the Impact Fee exempted or waived shall be provided by the School District or other appropriate body as may be provided in this Resolution
- C Timing of Provision of Waived/Exempted Impact Fees The provision of the amount of exempted or waived Impact Fee by the School District or other appropriate body to the Impact Fee account shall be made within a reasonable period of time consistent with the School District's capital improvements program

SECTION VIII CONFLICT

To the extent of any conflict between other School District resolutions and this Resolution, this Resolution shall be deemed to be controlling, provided, however, that this Resolution is not intended to amend or repeal any existing School District resolution or regulation

SECTION IX SEVERABILITY

- A If any section, subsection, sentence, clause, phrase or portion of this Resolution is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction such section, subsection, sentence, clause, phrase or portion of this Resolution shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of this Resolution nor impair or nullify the remainder of such Resolution which shall continue in full force and effect

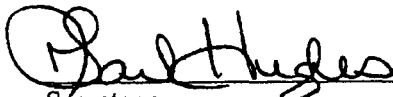
- B If the application of any provision of this Resolution to any new Dwelling Unit is declared to be invalid by a decision of any court of competent jurisdiction the intent of the Board is that such decision shall be limited to the specific new Dwelling Unit immediately involved in the controversy, action, or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Resolution as a whole or the application of any provision of this Resolution to any other new Dwelling Unit.

ADOPTED this 22nd day of June 2009

SCHOOL DISTRICT NO 2 OF DORCHESTER COUNTY

By 
Chair

ATTEST


Secretary

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2009-CP-18-2764

The Home Builders Association of South
Carolina and the Charleston-Trident Home
Builders Association, Inc ,

Plaintiffs,

v

School District No 2 of Dorchester County
and the Board of Trustees for Dorchester
School District No 2,

Defendants

**DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS AND
MEMORANDUM IN SUPPORT**

TO PLAINTIFFS AND PLAINTIFFS' ATTORNEYS

PLEASE TAKE NOTICE that School District No 2 of Dorchester County and the Board of Trustees for Dorchester School District No 2 ("Defendants") hereby move pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure for judgment on the pleadings on the grounds that 2009 S C Acts 99 violates neither South Carolina Constitution, Art III, § 34 (IX) nor Art VIII, § 14 (6)

PROCEDURAL/FACTUAL BACKGROUND

On February 26, 2009, the South Carolina General Assembly passed Senate Bill 235 which became 2009 S C Acts 99 (the "Act") The Act, which is quoted in its entirety in Plaintiffs' Complaint, provides the following synopsis

SYNOPSIS AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES FOR DORCHESTER SCHOOL DISTRICT NO 2 TO IMPOSE AN IMPACT FEE ON ANY DEVELOPER FOR EACH NEW RESIDENTIAL DWELLING UNIT CONSTRUCTED BY THE DEVELOPER WITHIN THE SCHOOL DISTRICT TO PROVIDE THAT THE FUNDS ONLY MAY BE USED FOR

THE CONSTRUCTION OF PUBLIC EDUCATION FACILITIES FOR GRADES K-12 WITHIN THE DISTRICT AND FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON EXISTING OR NEW BONDS ISSUED BY THE DISTRICT, AND TO PROVIDE THAT THE IMPACT FEE SHALL BE SET AT AN AMOUNT NOT TO EXCEED THE COST THAT EACH ADDITIONAL DWELLING UNIT IMPOSES ON THE SCHOOL DISTRICT FOR PUBLIC EDUCATION FACILITIES

(Plaintiffs' Complaint, ¶ 7)

As indicated in the synopsis, the Act authorizes the Board of Trustees for Dorchester School District No 2 (the "Board") to impose an impact fee on developers of new residential dwelling units within Dorchester County School District No 2 (the "School District") for residential construction. The Act provides that funds so collected must be held in a separate interest bearing account and must be appropriated only for (1) the construction, including preparation costs, of new public education facilities for grades K-12 within the School District, and (2) the payment of principal and interest on existing or new bonds issued by Dorchester School District No 2 for the construction of public education facilities for grades K-12. Section I, Paragraph G of the Act limits the impact fee to an amount not to exceed \$2,500 per dwelling unit.

On June 23, 2009, the Board enacted a resolution on behalf of the School District establishing and adopting a public facilities impact fee of \$2,500 per dwelling unit. Thus, the Resolution is consistent with the Act which, as stated above, limits the impact fee to an amount "not to exceed the cost that each additional dwelling unit imposes on the school district for public education" and specifically imposes a \$2,500 limit per dwelling unit. As stated in the Resolution, a study by In Re Financial, LLC determined that new residential development on average (Dwelling Units) generates a demand for Public Education Facilities of 5 students per Dwelling unit. The Resolution explains as follows

Thus, a residential development of 1,600 Dwelling Units is expected to result in 800 students. At the \$2,500 Impact Fee per Dwelling Unit, a total of 1,600 Dwelling Units would produce total Impact Fees of \$4,000,000. The cost of a single Public Education Facility for 800 students is estimated to be \$22,870,000 which is the product of the 90,000 square feet required for such a facility multiplied by the now prevailing construction/equipping cost per square foot. Thus, the amount of the Impact Fee authorized herein is significantly less than the cost of the Public Education Facilities the School District might be expected to provide by virtue of new residential development.

Resolution, Section IV, B 1

In addition to limiting the fee imposed on developers of new residential construction in the School District, the Act provides for an appeal process and limits the Act's application to new residential construction which has not been issued a certificate of occupancy.

On September 29, 2009 by The Home Builders Association of South Carolina and the Charleston-Trident Home Builders Association, Inc ("Plaintiffs") filed a Complaint in which they contend that the Act's application "to a single school district without any peculiar or unique conditions, resulting in special treatment, violates Article III, § 34 (limiting "special legislation") and Article VIII, § 14(6) (requiring statewide uniformity)." (Complaint, ¶ 23). Contrary to Plaintiffs' allegations, the Act and its application are clearly authorized by South Carolina Supreme Court precedent leaving no legally viable claim which could entitle Plaintiffs to the relief requested.

STANDARD OF REVIEW

Pursuant to South Carolina Civil Procedure Rule 12(c), SCRPC, "any party may move for judgment on the pleadings." A motion for judgment on the pleadings tests not whether Plaintiffs will prevail on the merits, but whether Plaintiffs have stated a legally viable claim. Where the pleadings are fatally deficient in substance or fail to state a cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. *Rosenthal v Unarco*

Industries Inc , 278 S C 420, 297 S E 2d 638 (1982) (judgment on the pleadings was proper in dismissing plaintiff's challenge to constitutionality of state door closing statute) The allegations of the pleadings establish that the statute is constitutional under South Carolina Supreme Court precedent and the defendants are entitled to judgment regardless of the outcome of any disputed facts

In construing an act of the General Assembly 'all reasonable doubt must be resolved in favor of the constitutionality of the act If a constitutional construction of a statute is possible, that construction should be followed in lieu of an unconstitutional construction ' *Crow v McAlphine* 277 S C 240 242 285 S E 2d 355 (1981) (quoting *Bauer v South Carolina State Housing Authority* 271 S C 219 226 246, 246 S E 2d 869 (1978)) The Constitution and all laws concerning local governments are to be liberally construed in the local entity's favor S C Constitution, Article VIII, § 17 In addition the Court must give great deference to the legislatively created classifications in the statute and must sustain them if they are not plainly arbitrary or if any reasonable hypothesis can be found to support them *Foster v S C D H P T* 306 S C 519 413 S E 2d 31 (1992) Indeed "[t]hose attacking the validity of the legislation have the burden to negate every conceivable basis which might support it not just those believed to be in the minds of the General Assembly at the time of its passage *Lee v Dept of Natural Resources*, 339 S C 463, 530 S E 2d 112 note4(2000)(citing *Federal Communications Comm'n v Beach Communications Inc* 508 U S 307 (1993))

[The Court] will not declare a statute unconstitutional as a special law unless its repugnance to the Constitutional is clear beyond a reasonable doubt *Medical Society of South Carolina v Medical University of South Carolina* 334 S C 270, 279 513 S E 2d 352, 357 (1999) (emphasis added) [The Court] will not overrule the legislature s judgment that a special

law is necessary unless there has been a clear and palpable abuse of legislative discretion " *Id.*, 513 S E 2d at 357 (emphasis added)

ARGUMENT

I THE ACT DOES NOT VIOLATE ARTICLE III, § 34(LX)

Article III, § 34(LX) of the South Carolina Constitution prohibits the South Carolina General Assembly from passing a special law where a general law can be made applicable. The Supreme Court of South Carolina has explained that Article III, § 34(LX) does not prohibit all special legislation. In *Bradley v Cherokee School District No. One of Cherokee County*, 322 S C 181, 470 S E 2d 570 (1996), the South Carolina Supreme Court considered whether an act allowing a particular school district to impose a sales tax was unconstitutional special legislation pursuant to Article III, § 34(LX). The Supreme Court concluded

A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, § 34(LX). *Hay v Leonard*, 212 S C 81, 46 S E 2d 653 (1948). Individual districts may impose a legal tax limited in application and incidence to persons or property within the prescribed area. *Shillito v Spartanburg*, 214 S C 11, 51 S E 2d 95 (1948).

In the present case, the Act authorizes the Board to impose an impact fee on any developer for each new residential dwelling unit constructed by the developer within the school district. The funds may only be used for the benefit of public education facilities within the district, i.e., (1) for the construction of public education facilities for grades K-12 within the district, and (2) for the payment of principal and interest on existing or new bonds issued by the district. Substitution of the sales tax in the *Cherokee School District No. One* case with the impact fee here provides a fact situation identical to that approved by the South Carolina Supreme Court in its 1996 decision quoted above. The controlling legal principle is equally applicable in that the impact fee is limited to persons or property within the school district for the

benefit of all persons residing within the school district just as the sales tax was in the *Cherokee School District No One* case

The decision in that case clarifies the holding of the South Carolina Supreme Court in *Horry County v Horry County Higher Educ Comm n*, 306 S C 416, 412 S E 2d 431 (1991) In *Horry County*, the Court addressed the constitutionality of an act allowing the Horry County Higher Education Commission to levy an ad valorem tax which benefited only one institution of higher learning Coastal Carolina University The Court determined that because the legislation in question applied to only one county and benefited only one institution, the legislation violated Article III, § 34(IX) The *Cherokee School District No One* decision explained that in the *Horry County* case "the funds collected from the tax were not used for the benefit of all persons residing within the area " *Cherokee School District No One*, 470 S E 2d at 572 Applying that explanation to the holding in *Horry County* demonstrates the Court's concern that Coastal Carolina University, an institution of higher learning, was singled out for "special treatment "

Similar facts are not present here The proceeds of the impact fee are used exclusively for the School District just as the proceeds of the sales tax are used exclusively for Cherokee School District No One What distinguishes the Horry County decision is the fact that Coastal Carolina University, an institution of higher learning, was the beneficiary of the ad valorem tax levied there The facts presented in this case are on point with those in *Cherokee School District No One* In *Cherokee School District No One*, the Court cited with approval the language in *Horry County* that "Article III, § 34 (IX) does not prohibit all special legislation " *Cherokee School District No One*, 470 S E 2d at 572 The distinguishing characteristics of the present Act with the one considered by the Court in the *Horry County* case informs that the present Act passes constitutional muster and the one in Horry County could not

Unlike the Act in the *Horry County* case and like the Act approved by the Court in *Cherokee School District No One* the Act in the present case is tailored to benefit the entire school district and all of the public schools within the district, as opposed to one particular educational institution. Moreover, the sales tax in *Cherokee School District No One* and the impact fee here is limited in this instance to residential dwellings within the school district for the benefit of the residents within the school district. Unlike the *Horry County* case, the sales tax in *Cherokee School District No One* and the impact fee at issue are imposed exclusively for their respective school districts and not for a singular institution of higher education.

The public education improvements necessitated by rapid population growth which the impact fee is designed to facilitate necessarily benefit those who are obliged to pay because the proceeds are for the benefit of the entire district. For the reasons stated above, the Act is constitutional under South Carolina Supreme Court precedent regardless of the outcome of any disputed facts.

II THE ACT DOES NOT VIOLATE ART VIII, § 14(6)

Article VIII of the South Carolina Constitution deals generally with the creation of local government. *Davis v County of Greenville*, 322 S C 73, 470 S E 2d 94 (1996). Article VIII, Section 14 limits the powers local governments may be granted by state law by providing that among other things, that local governments may not set aside “the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity” Art III, § 14(6).

Article VIII, Section 6 does not withdraw administration of public education from the field of local concern. Public education has generally been deemed a state function and the South Carolina Supreme Court has held “the legislature has wide discretion in determining how

to go about accomplishing its duty to 'provide for the maintenance and support of a system of free public schools " *Horry County School District v Horry County*, 346 S C 621, 552 S E 2d 737 (2001) (finding no violation of Article VIII, § 14 in noting the constitutionality of shared funding of public schools by local and state revenues) South Carolina Supreme Court precedent instructs that Article VIII, § 14 does not require uniformity in the funding of public education by foreclosing local revenue streams *See Horry County School District*, 522 S E 2d at 743 citing *Richland County v Campbell*, 294 S C 346, 349, 364 S E 2d 470, 471-72 (1988) (upholding constitutionality of shared funding of public schools by local and state revenues as set forth in the Education Finance Act) As noted above, the Supreme Court has recognized the authority of the Legislature to enact legislation that allows local governing bodies, including school districts to impose fees for the benefit of public education *See Cherokee School District No One*, 470 S E 2d at 570 As also noted above, the Supreme Court has long recognized the authority of the Legislature to enact special legislation for school districts in areas beyond finance Article VIII, § 14 does not foreclose the funding of public education from local concern and any such construction of this Constitutional provision as advocated by Plaintiffs would contravene the longstanding law of this State *See Horry County School District*, 552 S E 2d at 737 (2001)

Plaintiffs have failed to allege facts sufficient to show any constitutional infirmity of the present Act under Article VIII, § 14 "A legislative enactment will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt " *University of South Carolina v Mehlman*, 245 S C 180, 139 S E 2d 771 (1964)

CONCLUSION

Based on the foregoing, Defendants respectfully request that this Court grant this Motion for Judgment on the Pleadings and dismiss Plaintiffs' Complaint.

Respectfully submitted,



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Attorneys for Defendants

January 28, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
_____)

IN THE COURT OF COMMON PLEAS

The Home Builders Association of)
South Carolina and the)
Charleston-Trident Home Builders)
Association, Inc ,)

Civil Action No 2009-CP-18-2674

Plaintiffs,)

Memorandum

vs)

in

Opposition to Motion for Judgment
On the Pleadings
SCRCP Rule 12(c)

School District No 2 of Dorchester)
County and the Board of)
Trustees for Dorchester School)
District No 2,)

Defendants)
_____)

This Memorandum

This Memorandum is respectfully submitted on behalf of the Plaintiffs, The Home Builders Association of South Carolina and the Charleston-Trident Home Builders Association, Inc , in opposition the motion of the Defendants School District No 2 of Dorchester County and the Board of Trustees for Dorchester School District No 2, for judgment on the pleadings pursuant to SCRCP Rule 12(c)

Prior Pleadings

The pleadings before the Court and on which the Defendants' motion must be decided are the Complaint of the Plaintiffs, dated September 28th and filed September 29, 2009, and the Answer of the Defendants, dated October 27, 2009. Other than the motion presently before the Court, no other pleadings have been filed in this action.

The Complaint

This is an action for a declaratory judgment and injunctive relief seeking to prohibit the Defendants from imposing and collecting a school impact fee on new residential construction on the grounds that the Act of the General Assembly which became law without the Governor's signature, 2009 S C Acts 99 (the "Act"), authorizing such fees is unconstitutional because it is limited to a single school district in violation of the South Carolina Constitution, in particular Art III, § 34 (limiting "special legislation") and Art VIII, § 14(6) (requiring statewide uniformity).

The Complaint alleges the Defendants do not have unique funding requirements. Other school districts within the State are similarly situated in that they are required to construct or expand facilities in order to meet the demands of a growing population within their districts. It is further alleged that the purpose sought to be served by the Act can be equally fulfilled by general legislation allowing all school districts within the State of South Carolina to impose school impact fees.

Judgment on the Pleadings

Judgment on the pleadings against the plaintiff is “a drastic procedure,” *Falk v Sadler* 341 S C 281, 533 S E 2d 350 (S C App 2000), which is only appropriate under very limited circumstances. The principles governing judgments on the pleadings were stated by the Supreme Court in *Russell v Columbia*, 305 S C 86, 406 S E 2d 338 (1991), as follows

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. *Brown v United Insurance Company of America* 268 S C 254, 233 S E 2d 298 (1977). A judgment on the pleadings is in the nature of a demurrer. *Brown, supra*. All properly pleaded factual allegations are deemed admitted for purposes of the consideration of a demurrer. *Crowe v Domestic Loans Inc*, 242 S C 310, 130 S E 2d 845 (1963). When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Crowe, supra*. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. *Baldwin v Sanders*, 266 S C 394, 223 S E 2d 602 (1976). Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Manning v Dial*, 271 S C 79, 245 S E 2d 120 (1978). Further, a judgment on the pleadings is considered to be a drastic procedure by our courts. *U S Casualty Company v Hiers*, 233 S C 333, 104 S E 2d 561 (1958).

The Defendants in their motion seek to have the Court erroneously go beyond the clear rule set forth in *Russell* and engage in a premature weighing of the evidence and construction of the statute at issue. The Defendants’ motion (p 4) seeks to distract the Court from the issues at hand and asks it to delve into burden of proof imposed on the Plaintiffs which the Defendants assert is “beyond a reasonable doubt” and the rules of construction to be applied by the Court which the Defendants claim greatly favors the constitutionality of the statutes at issue. It may be at trial that Plaintiffs are unable to sustain their burden of proof as to the facts alleged in the complaint or that after

considering all the properly introduced evidence the trial court construes the statute at issue against the Plaintiffs, however, at this stage these issues are not before the Court as the alleged facts are deemed true. The sole and proper issue presently before the Court is limited to the simple question “Have the Plaintiffs adequately pled any issue of fact which if resolved in their favor would entitle them to a prevailing judgment?”

Argument

Point 1 The Plaintiffs Have Adequately An Issue of Fact Which If Resolved In Their Favor Would Entitle Them To A Prevailing Judgment.

A The South Carolina Constitution Prohibits Special Legislation Where a General Law Can Be Enacted.

The South Carolina Constitution specifically prohibits special legislation applicable only to part of the State in Article III, § 34, which provides in pertinent part

§ 34 Special laws prohibited

The General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit

IX In all other cases, where a general law can be made applicable no special law shall be enacted

It cannot be reasonably disputed that the Act presently before the Court only permitting a single district to impose an impact fee could have easily been enacted as general legislation allowing all school districts impose an impact fee¹. In fact a general law, the Development Impact Fee Act, allowing counties and municipalities to impose

¹ That general legislation was not enacted is a result of the differences in the manner in which the General Assembly enacts “local” and general legislation voting on the former being limited as a practical matter to the local legislators. The Constitutional prohibition against special legislation where general legislation may be made applicable was intended to prevent just this sort of legislation which is not fully considered by the legislature and would result in a patch work of differing legislation across the state.

impact fees has been enacted, *SC Code §§ 6-1-910 et seq* The Development Impact Fee Act is not applicable to school districts. If the Legislature were so inclined, it could easily amend the Development Impact Fee Act to include school districts in addition to counties and municipalities and afford school districts the power to impose impact fees. There is no rational basis to limit school impact fees to a single school district as many districts around the State are faced with the need to expand as the result of development.

B Education is Not Exempt From the Constitutional Prohibition Against Special Legislation

In *Horry County v Horry County Higher Education Commission*, 306 S C 416, 412 S E 2d 421 (1991), the Supreme Court struck down a special tax for the benefit of Coastal Carolina noting that “legislation regarding education is not exempt from the requirements of Article III, §34(IX)” *SC at 419, S E 2d at 423*. This holding was clarified but not abandoned in *Bradley v Cherokee School District No One of Cherokee County*, 322 S C 181 470 S E 2d 570 (1996), discussed *infra*, which confirmed that *Horry* “ concluded that legislation regarding education is not exempt from the requirements of Article III, §34(IX), it also found that it does not prohibit all special legislation,” *SC at 186, S E 2d at 572*. This is in accord with the plain language of the constitutional prohibition which also does not prohibit all special legislation, it merely prohibits special legislation “ where a general law can be made applicable ”

C Bradley v Cherokee School District No One Is Not Controlling

Defendants in their motion to dismiss rely almost entirely on the Supreme Court’s decision in *Bradley v Cherokee School District No One of Cherokee County* 322 S C

181, 470 S E 2d 570 (1996), finding that a sales tax limited to Spartanburg County did not violate the constitutional prohibition against special legislation. The Act of the general Assembly in *Bradley* is distinguishable from the Act before the Court in several aspects, not the least of which is that the *Bradley* Act was not appropriate for general legislation.

In *Bradley* the school district was faced with repaying bonds it was issuing pursuant to the School Bond Act, S C Code §§ 59-71-10, et seq., an act of general legislation applicable to all districts. In order to afford the district some relief, the Legislature enacted Act 588, Acts and Joint Resolutions, 1994, aptly entitled the “Cherokee School District No. One School Bond-Property Tax Relief Act,” which specifically authorized the imposition of a sales tax for a limited purpose and time:

Subject to the requirements of this act, the governing body of Cherokee County School District 1 may by resolution impose a one percent sales and use tax within Cherokee County for a specific purpose and for a specified period of time to collect funds to be used to pay debt service on general obligation bonds issued pursuant to Article 1 of Chapter 71 Title 59 of the 1976 Code (School Bond Act)

Act 588 also imposed other requirements, including that the tax only be imposed after an approving referendum, based upon a resolution specifying “the improvements to be financed through the issuance of” of the bond, “the maximum time for which the tax may be imposed,” and “the maximum principal amount of [the] bonds to be issued and repaid with the proceeds of the tax.”

Based on and in compliance with the terms of Act 588 the Cherokee School District passed the appropriate resolution and the residents of the County approved the tax by referendum. Thereafter the *Bradley* plaintiffs challenged the tax on several grounds, including that it violated Article III, §34(IX) of the S C Constitution.

In addressing the application of Article III, §34(IX) to Act 588 the Supreme Court held that while education is not immune to the constitutional strictures of Article III, §34(IX), *see discussion above*, “[a] law which is special **only** in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, §34(IX)”[emphasis added and citation omitted] *SC at 7, SE 2d at 572* The Act before this Court differs substantially from Act 588 to such a degree that it is constitutionally defective

The Act before the Court is not special **only** because it imposes a lawful tax on persons or property within a single school district, it is special in several other aspects

First, the sales tax under Act 588 was authorized for the purpose of assisting the Cherokee School District in repaying previously issued revenue bonds authorized by the School Bond Act, which grants the power to issue binds to all districts The bonds issued by the Cherokee School District are unique to that district and provisions for their repayment would not lend themselves to statewide legislation

Second, in the Act before the Court, unlike Act 588, there is no limitation on the use the funds and they may be used not only for the payment of principal and interest on past and future bonds, but for un-bonded construction There is no requirement that the fees be limited to any particular project or that they be limited in time

Third, in *Bradley* the Supreme Court found it critical that the tax must be “ applied uniformly to all persons and property within the area affected ” *SC at 8, SE 2d at 572* The impact fee authorized by the Act before the Court fails on both sides of this equation It fails to treat all property within the district equally as it only applies to property subject to new residential construction It does not apply to all persons within

the district, but only to a “developer” constructing “residential dwelling unit[s]”
Alternatively, if the impact fee is viewed as a charge or tax on the new home buyer who will ultimately bear the brunt of the impact fee as it will be passed on to the buyer by the builder as any other fee or expense, it fails to be uniformly applied to all persons within the district as it is only exacted from those moving into new construction from within or without the district

Fourth, the sales tax permitted by Act 588 is a form of taxation common throughout the State. The school impact fee authorized by the Act before the Court is limited to a single school district. Other districts may not benefit from this source of revenue.

Fifth, Act 588 allowed imposition of the tax only after a referendum which afforded all those who might be subject to the tax an opportunity to vote. The Act before the Court, on the other hand, allowed for implementation solely by a resolution of the Trustees, effectively barring any consideration by those most likely to be burdened with the impact fee, those persons moving into the district.

Sixth, on its face, the impact fee is a “fee” and not a tax. The language of Bradley only refers to a tax, there was no determination by the Supreme Court that it holding would apply to fees. Therefore, the present case poses a novel issue as to legislation imposing special fees. Generally, fees are appropriate where the person paying the fee directly benefits, the fee is applied uniformly, the revenue is used for the specific improvement for which the fee is charged and the revenue does not exceed the cost of the improvement. *C.R. Campbell Construction Co., 325 S.C. 235, 481 S.E.2d 437 (1997)*. The impact fee before the Court is not so limited and is only available to a single district. As set forth above, making the fee state wide would have been an easier matter, the

Legislature merely had to amend the Development Impact Fee Act, *supra*, to include school districts, that it has not done so further underscores the special nature of the Act before the Court

The Act before the Court is not special **only** because it imposes a lawful tax on persons or property within a single school district, it is special in several other regards and cannot be construed as falling within the purview of *Bradley*

D The Act Requires a Factual Examination to Determine Whether It Is a Special Law

Since *Bradley* is not controlling, the Act requires a factual examination by the Court as to whether or not it is a special act “ where a general law can be made applicable ” This is the conclusion reached by the Office of the South Carolina Attorney General in considering the very Act presently before the Court prior to the filing of this action *S C A G Op , dated July 7, 2009, Requested by Rep Tracy R. Edge (a copy of which is annexed hereto)* While an Attorney General’s opinion is not binding on the Court, it does represent an unbiased opinion by one experienced in the application of the S C Constitution The Attorney General’s Opinion reasoned

However, we are concerned with the constitutionality of the legislation under article III section 34(LX) Although the Court in Bradley found that article III, section 34(LX) does not prohibit all special legislation pertaining to school districts, it also recognized as the court found in Horry County, that legislation involving education is not exempt from this provision Thus, as you suggest we must consider whether the legislation constitutes as special law "where a general law can be made applicable " S C Const art III, §34(LX)

In order to determine whether a general law may be made applicable, we must gain an understanding of the Legislature's reasoning for specifically allowing Dorchester County School District No 2 to impose an impact fee when to our knowledge the Legislature has not

granted such authority to any other school district in the State The legislation itself is devoid of any findings as to why Dorchester School District No 2 in particular should be granted such authority Thus we would have to gain knowledge of facts surrounding the passage of the legislation to make this determination This Office, unlike a court, does not have the authority to investigate and make factual determinations Op S C Atty Gen , August 13 2008 Therefore, we are not in a position to determine whether a special circumstance exists with regard to Dorchester School District No 2 to make it impossible to create a general law and require the Legislature to enact special legislation This determination must ultimately be made by a court

The Attorney General's Opinion concludes with respect to the constitutionality of the Act pursuant to provisions of Article III, §34(IX)

However, after making factual determinations as to whether a general law can be made applicable to the imposition of impact fees by school districts, we believe a court could find that the legislation violates the prohibition on special legislation pursuant to article III, section 34

F The Complaint Asserts An Issue of Fact Which If Resolved In Plaintiffs Favor Would Entitle Them To A Prevailing Judgment.

The Plaintiffs have pled that the funding requirements of Dorchester School District No 2 apply equally to many, if not all, other school districts within the State of South Carolina, that Dorchester School District No 2 does not have unique funding requirements, that other school districts within the State are similarly situated in that they are required to construct or expand facilities in order to meet the demands of a growing population within their districts, and the purpose sought to be served by the Act can be equally fulfilled by general legislation applicable to all school districts within the State of South Carolina. If these are accepted as true for the purposes of this motion, then Plaintiffs motion must be denied, pending a full examination of the facts by this Court

Point 2 The Act Must Fail As It Violates the Constitutional Requirement of Uniformity

Art VIII, § 14 of the South Carolina Constitution provides

§ 14 General law provisions not to be set aside

In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside

(1) The freedoms guaranteed every person, (2) election and suffrage qualifications (3) bonded indebtedness of governmental units, (4) the structure for and the administration of the State's judicial system, (5) criminal laws and the penalties and sanctions for the transgression thereof, and (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity S C Const Ann. Art VIII, § 14 (2008)[emphasis added]

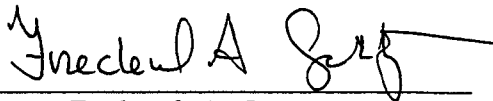
The Defendants in support of their motion to dismiss this action cite several cases for the proposition that “[p]ublic education has generally been deemed a state function ” with “ the legislature having wide discretion ” and that “ Art VIII, §14 does not require uniformity in funding ” *Defendants’ Motion p 8*

This case, however, goes beyond the various streams of funds and funding mechanisms discussed in the cited cases in that it allows an “impact fee’, a funding source wholly unavailable to other school districts, even school districts in the same County as Dorchester School District No 2 The clear policy behind Art VIII, §14(6) mandating uniformity is so that all citizens of the State will be fairly and equally treated without regard to their geographic location within the State While local concerns may require certain variations in public education funding, all schools should be afforded the same sources of funding from which to select The imposition of a fee limited to a single school district flies in the face of this policy and the plain language of Art VIII, §14(6)

Conclusion

The Plaintiffs have demonstrated that there is alleged in the pleadings sufficient issues of fact which if resolved in their favor would entitle them to a prevailing judgment thereby precluding judgment on the pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure requiring a denial of Defendants' motion

Columbia, South Carolina
September 9, 2010



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HENRY McMASTER
ATTORNEY GENERAL

July 7, 2009

The Honorable Tracy R. Edge
Member, House of Representatives
P O Box 2095
North Myrtle Beach, South Carolina 29577

Dear Representative Edge

We received your letter requesting an opinion of this Office as to whether recent legislation allowing a particular school district to levy an impact fee circumvents state law. Specifically, you are concerned with a bill that passed earlier in the 2009 legislative session establishing a school impact fee in Dorchester County School District No. 2. In your letter, you provided the following information:

This new local bill strategy raises the question whether the General Assembly is procedurally correct in allowing local bills to circumvent existing state laws? The current interpretation of the law is resulting in the General Assembly granting the state's 85 school districts the ability to impose school impact fees with not restrictions as to nexus, transparency, equality, accountability, or proportionality. The local bill strategy suggests possible conflicts with the S.C. Constitution. It would appear there are several potential violations of the State Constitution, including [1] improper delegation of taxing authority, [11] the enactment of special legislation where a general law should be or is applicable, and [111] imposition of a tax without the consent of the people or their representatives.

In addition, the local option bill strategy appears to be in conflict with several S.C. statutes. Several statutes that may be applicable, include [1] the Development Impact Fee Act, [11] the Home Rule Act, [111] local taxing authority, [1v] the Development Agreement Act, [v] Residential Improvement District Act, and [vi] the law governing the imposition of user fees and special taxes.

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Law/Analysis

As you described in your letter, in February of this year the Legislature passed a bill authorizing the Board of Trustees for Dorchester School District No 2 to impose impact fees on developers constructing residential dwellings within the school district S 235, 118th Legs (S C 2009) The bill, Senate bill 235 (“Bill 235”), provides, in pertinent part “ The Board of Trustees for Dorchester School District No 2 (the “Board”) may impose an impact fee on any developer for each new residential dwelling unit constructed by the developer within the school district The fees must be paid to Dorchester School District No 2 or, pursuant to an agreement, to a county or municipality that pays the fees to Dorchester School District No 2, prior to or at the issuance of a certificate of occupancy for a dwelling unit.” Id As you explained in your letter, you believe this legislation violates the South Carolina Constitution

As stated by our Supreme Court in State v McGrier, 378 S C 320, 328, 663 S E 2d 15, 19 (2008)‘

“This Court has long recognized that legislative acts are to be construed in favor of constitutionality and will be presumed constitutional absent a showing to the contrary” Bailey v State, 309 S C 455, 464, 424 S E 2d 503, 508 (1992) “ ‘It is always to be presumed that the Legislature acted in good faith and within constitutional limits, and this declaration of the Legislature is a conclusive finding of fact and imports a verity upon its face which cannot be impugned by litigants, counsel, or the courts, but is absolutely binding upon all ’ ” Scroggie v Scarborough, 162 S C 218, 231, 160 S E 596, 601 (1931) (quoting State ex rel Weldon v Thomason, 142 Tenn 527, 221 S W 491, 495 (1920)) “Constitutional constructions of statutes are not only judicially preferred, they are mandated, a possible constitutional construction must prevail over an unconstitutional interpretation ” Henderson v Evans, 268 S C 127, 132, 232 S E 2d 331, 333-34 (1977)

Moreover, only a court, not this Office, may declare a statute unconstitutional Op S C Atty Gen , February 20, 2009 While this Office may comment as to the constitutionality of a statute, it is solely within the province of the courts to proclaim a statute unconstitutional Therefore, unless and until a court finds otherwise, a statute remains valid and enforceable

In your letter, you argue this legislation is an improper delegation of taxing authority and it imposes a tax without the consent of the people or their representatives Both of these arguments are premised on the fact that the legislation imposes a tax rather than a fee In C R Campbell Const Co v City of Charleston, 325 S C 235, 481 S E 2d 437 (1997), our Supreme Court stated that if the following criteria are satisfied, a fee is a valid uniform service charge rather than a tax

- (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits
- (2) the revenue generated is used only for the specific improvement contemplated
- (3) the revenue generated by the fee does not exceed the cost of the improvement and
- (4) the fee is uniformly imposed on all the payers

In a 2006 opinion, this Office considered the validity of a service fee or charge and determined that the resolution of such a question involves a question of fact. *Op. S.C. Atty. Gen.*, August 24, 2006. "As we stated on numerous occasions, only a court, not this Office, may serve as a finder of fact and conclusively determine the outcome of a factual issue." *Id.* Nonetheless, we believe in this instance that a court likely would find the impact fee is a fee rather than a tax.

Bill 235 does not explain who benefits from the revenue generated by the fee. However, we presume that the developer will receive a special benefit from the construction of new schools as they will directly serve the residents of the development and could improve property values. While the construction of new schools may also benefit other residents within the school district, our courts conclude that "[a] charge does not become a tax merely because the general public obtains a benefit." *Brown v. County of Horry*, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992). Thus, we believe a court could find the revenue from the fee is used to benefit the payor.

According to the legislation, the Board may only appropriate funds from the fee for

- (1) the construction, including preparation costs, of new public education facilities for grades K-12 within Dorchester School District No. 2, and
- (2) the payment of principal and interest on existing or new bonds issued by Dorchester School District No. 2 for the construction of public education facilities for grades K-12.

Thus, Bill 235 indicates that the revenue generated may only be used for the construction and preparation of new schools and to pay down the debt issued for the construction of schools.

Bill 235 does not specify that revenue generated by the fee cannot exceed the cost of the improvements. Rather, the legislation provides that "[t]he district's board of trustees shall set the impact fee at an amount not to exceed two thousand five hundred dollars per dwelling unit." Thus, a court would have to ensure that the amount of the fee set by the Board does not exceed the cost of the construction and debt service allowed under its provisions.

Lastly, Bill 235 states that the Board may impose the fee on "any developer for each new residential dwelling unit constructed by the developer within the school district." S. 235, 118th Leg. (S.C. 2009). Therefore, the fee appears to be uniformly imposed on its payors. As many of the criteria for ascertaining that a fee is a valid uniform fee appear to have been satisfied per the terms

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of Bill 235, we believe a court likely will find that the fee is not a tax. However, as we explained above, the determination as to the validity of a fee requires factual determinations. As such, a court would have to ultimately resolve this issue. However, we note that on several occasions, our Supreme Court determined that impact fees imposed by local sewer districts were valid fees rather than a tax. See Ford v. Georgetown County Water & Sewer Dist., 341 S C 10, 532 S E 2d 873 (2000), J.K. Const., Inc v. Western Carolina Reg'l Sewer Auth., 336 S C 162, 519 S E 2d 561(1999)

Although we believe a court is likely to find the impact fee imposed by Bill 235 to be a fee rather than a tax, assuming the impact fee is found to be a tax, we do not believe it would constitute an improper delegation of taxing authority. Our Supreme Court recognizes that article X section 6 of our Constitution "authorizes delegation of the taxing power to political subdivisions of the State." Crow v. McAlpine, 277 S C 240, 243, 285 S E 2d 355, 357 (1981). Moreover, our Supreme Court recognizes that "school districts and their governing boards are generally considered political subdivisions of the State and hence may properly be vested with the State's taxing power." Id. at 243-44, 285 S E 2d at 357 (citing Tucker v. Kershaw County Sch. Dist., et al., 279 S E 2d 378 276 S C 401, 279 S E 2d 378 (1981), Graham v. Charleston County Sch. Bd., 262 S C 314, 204 S E 2d 384 (1974), Easler v. Maybank, 191 S C 511, 5 S E 2d 288 (1939)). Thus, if by Bill 235 the Legislature delegated taxing authority to the Board, we do not believe the legislation constitutes an unlawful delegation of taxing authority.

Article X section 5 of the South Carolina Constitution (Supp. 2007) provides, in pertinent part "No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled." Our Supreme court interprets this provision as follows:

Pursuant to S C Constitution art. X, § 5, the power of taxation rests with the people of South Carolina who have entrusted this power to the General Assembly. While the General Assembly can delegate its taxing authority to a subordinate agency, it can only delegate this power to a body which is either composed of persons assented to by the people or subject to the supervisory control of a body chosen by the people.

Hagley Homeowners Ass'n, Inc v. Hagley Water, Sewer, and Fire Auth., 326 S C 67, 75, 485 S E 2d 92, 96 (1997). Pursuant to act 535 of 1982, members of the Board are elected. 1982 S C acts 3474. Thus, Bill 235 delegates authority to levy the impact fee to a body chosen by the people. As such, assuming that the impact fee is a tax rather than a fee, we do not believe the legislation violates article X section 5.

In addition to your concerns that Bill 235 improperly delegates taxing authority and imposes a tax without the consent of the people or their representatives, you are concerned that Bill 235 constitutes special legislation. Two provisions in the South Carolina Constitution prohibit the

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passage of special legislation Article VIII, section 7 of the South Carolina Constitution (1976), enacted as part of the home rule amendments to the Constitution, prohibits the Legislature from passing laws for a specific county Article III, section 34(IX) of the South Carolina Constitution (1976) provides that no special law shall be enacted where a general law can be made applicable

In Move v. Caughman, 265 S C 140, 217 S E 2d 36 (1975), our Supreme Court considered the constitutionality of a statute changing the method by which the boards of trustees for a particular county school boards are elected The Court determined

Creation of different provisions for school districts does not impinge upon the 'home rule' amendment because public education is not the duty of the counties, but of the General Assembly The General Assembly has not been mandated by any constitutional amendment to enact legislation to confer upon the counties the power to control the public school system To the contrary, the command of new Article XI, Section 3, is 'The General Assembly shall provide for the maintenance and support of a system of free public schools '

Id. at 143, 217 S E 2d at 37 Finding that article VIII, section 7 solely deals with local government, the Court held that it is not applicable school districts Accordingly, the Court upheld the statute as constitutional

Subsequently, the Supreme Court addressed the constitutionality of an act allowing the Horry County Higher Education Commission to levy an ad valorem tax Horry County v Horry County Higher Educ Comm'n, 306 S C 416, 412 S E 2d 421 (1991) The Court acknowledged that in prior opinions it recognized the broad legislative power given to the Legislature with regard to education pursuant to article XI of the Constitution Id. at 419, 412 S E 2d at 423 However, the Court clarified that "legislation regarding education is not exempt from the requirements of Article III, § 34(IX)" Id. Finding the legislation in question applies to only one county and one institution, the Court concluded that it is special legislation Id. The Court explained

The Commission admits that it is unaware of any other institution of higher education which receives funding from ad valorem property taxes imposed on the county in which the institution is located The problem of funding for institutions of higher education is not a problem unique to Coastal Carolina, it is a problem which applies equally to all state funded colleges and universities A general law could be fashioned to provide ad valorem property tax funding for all of these colleges and universities Further, the record is devoid of any peculiar local conditions which require special treatment for Coastal Carolina

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Id. at 420, 412 S E 2d at 423-24 Thus, the Court found the legislation violates article III, section 34(IX) Id. at 420 412 S E 2d at 424

In Bradley v Cherokee School District No. One of Cherokee County, 322 S C 181, 470 S E 2d 570 (1996), the Supreme Court clarified its decisions in Moye and Horry County while considering whether an act allowing a particular school district to impose a sales tax constitutes unconstitutional special legislation pursuant to article III, section 34 The Court explained

Horry County did not overrule Moye and the line of cases upholding legislation relating to school districts In Horry County, the County was authorized to levy a tax sufficient to pay the interest and principal on bonds issued to finance the activities of the Horry County Higher Education Commission The Horry act was found to be special legislation because while the tax was imposed on all taxable property within Horry County, the funds collected from the tax were not used for the benefit of all persons residing within the area. Additionally, the funds in Horry were used solely for the benefit of one institution of higher learning Although the court in Horry concluded that legislation regarding education is not exempt from the requirements of Article III, § 34(IX), it also found that it does not prohibit all special legislation

Id. at 186, 470 S E 2d at 572 The Court held “A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, § 34(IX)” Id. Finding the tax imposed by the act to be “a lawful tax limited in application and incidence to persons or property in Cherokee County,” the Court concluded it was not unconstitutional special legislation Id. at 186,470 S E 2d at 573

The Court in Moye made clear that article VIII, section 7 does not apply to school districts Because the legislation in question deals specifically with Dorchester School District No. 2, we do not believe the legislation violates article VIII, section 7 However, we are concerned with the constitutionality of the legislation under article III, section 34(IX) Although, the Court in Bradley found that article III, section 34(IX) does not prohibit all special legislation pertaining to school districts, it also recognized, as the court found in Horry County, that legislation involving education is not exempt from this provision Thus, as you suggest, we must consider whether the legislation constitutes as special law “where a general law can be made applicable” S C Const art III, § 34(IX)

In order to determine whether a general law may be made applicable, we must gain an understanding of the Legislature’s reasoning for specifically allowing Dorchester County School District No. 2 to impose an impact fee when to our knowledge, the Legislature has not granted such authority to any other school district in the State The legislation itself is devoid of any findings as

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to why Dorchester School District No. 2 in particular should be granted such authority. Thus, we would have to gain knowledge of facts surrounding the passage of the legislation to make this determination. This Office, unlike a court, does not have the authority to investigate and make factual determinations. *Op. S.C. Atty. Gen.*, August 13, 2008. Therefore, we are not in a position to determine whether a special circumstance exists with regard to Dorchester School District No. 2 to make it impossible to create a general law and require the Legislature to enact special legislation. This determination must ultimately be made by a court.

Nonetheless, we understand that Dorchester County has experienced a great deal of growth in recent years and this growth has produced a need to expand and add additional schools. Accordingly, the school districts in Dorchester County are faced with the problem of how to fund the construction and expansion of its schools. While this situation may support the Legislature's passage of the act with regard to Dorchester County School District No. 2, a court could find that other school districts in the State are faced with similar challenges. Accordingly, the reasons for allowing Dorchester County School District No. 2 to impose an impact fee would not be unique to that particular school district. Therefore, a Court may find that a general law could be fashioned to provide all school districts with the ability to impose impact fees in order to fund the construction and expansion of their schools.

In addition, you argue that general law not only could be, but is applicable through the South Carolina Development Impact Fee Act, S.C. Code Ann. §§ 6-1-910 *et seq.* (2004). This act essentially allows counties and municipalities meeting certain criteria to impose an impact fee to fund the construction of specified infrastructure projects. These provisions do not allow school districts to impose impact fees and the infrastructure projects listed do not include construction or expansion of schools. Thus, this act provides evidence that not only is it possible to create general law that is applicable to govern impact fees, but the Legislature has already taken action to provide such legislation with regard to counties and municipalities. Accordingly, based on our limited knowledge of the facts and circumstances surrounding the passage of Bill 235, we believe a court could find that it violates article III, section 34 of the South Carolina Constitution. However, as we explained above, this determination must ultimately be made by a court and the act is valid unless and until a court makes this determination.

In addition to your concerns as to Bill 235's constitutionality, you also expressed your concern that it appears to be in conflict with several South Carolina statutes. You indicate that the legislation conflicts with the Development Impact Fee Act, the Home Rule Act, local taxing authority, the Development Agreement Act, the Residential Improvement District Act, and laws governing the imposition of user fees and special taxes. On numerous occasions, our courts recognized that the Legislature has the authority to enact any law not prohibited, expressly or by clear implication, by the State or Federal Constitutions. *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of General Services*, 346 S.C. 158, 169, 551 S.E.2d 263, 269 (2001). Moreover, the Legislature has the plenary power to amend statutes. *Simmons v. Greenville Hosp. System*, 355 S.C. 581, 586, 586 S.E.2d 569, 571 (2003). Thus, if the legislation in question does not violate the

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Constitution, the Legislature has the authority to adopt it despite the fact that it may conflict with or amend existing law

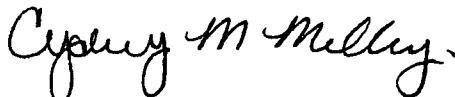
Conclusion

We understand you are concerned that recently passed legislation giving Dorchester County School District No. 2 the authority to impose an impact fee runs afoul of several constitutional provisions. Although we do not believe the impact fee allowed by Bill 235 constitutes a tax rather than a fee, if it were considered a tax, we are of the opinion that it likely does not constitute an improper delegation of taxing authority by the Legislature or an imposition of a tax without the consent of the people or their representatives. Furthermore, because our Supreme Court determined in Moye that article VIII section 7 of the Constitution, prohibiting the enactment of special legislation for counties, does not apply to school districts, we do not believe Bill 235 is unconstitutional special legislation pursuant to this provision. However, after making factual determinations as to whether a general law can be made applicable to the imposition of impact fees by school districts, we believe a court could find that the legislation violates the prohibition on special legislation pursuant to article III, section 34. Nonetheless, this determination must be made by a court and unless or until this determination is made, the legislation remains valid and enforceable.

In addition, to your concerns surrounding the constitutionality of Bill 235, we understand you are also concerned that it conflicts with State law. Because the Legislature has the authority to enact or make amendments to legislation that are not contrary to the Constitution, we do not believe the fact that the legislation conflicts with existing State law impacts its validity.

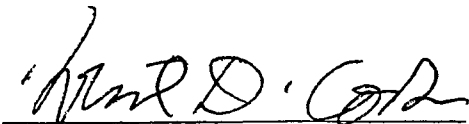
Very truly yours,

Henry McMaster
Attorney General



By Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY



Robert D. Cook
Deputy Attorney General

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

The Home Builders Association of)
South Carolina and the)
Charleston-Trident Home Builders)
Association, Inc ,)

Civil Action No 2009-CP-18-2674

Plaintiffs,)

vs)

Plaintiffs' Motion to Amend
or Reconsider Judgment
SCRCP Rule 59(e)

School District No 2 of Dorchester)
County and the Board of)
Trustees for Dorchester School)
District No 2,)

Defendants)

Handwritten signature
CLERK OF COURT
DORCHESTER COUNTY
2011 APR -8 PM 12:16
CERTIFIED COPY

TO School District No 2 of Dorchester and the Board of Trustees for
Dorchester School District No 2 and their attorney

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs hereby move
the Court pursuant to SCRCP Rule 59(e) to reconsider and amend its
Order Granting Defendants' Motion for Judgment on the Pleadings (the
"Order") upon the following ground

The Order finds that "The substitution of the sales tax in the
Cherokee School District No One case with the impact fee here provides a
fact situation identical to that approved by the South Carolina Supreme
Court in its 1996 decision quoted above"¹ (Order, p 6) This finding
fails to address the numerous distinguishing legal and factual issues

¹ *Bradley v Cherokee School District No One of Cherokee County*, 322
S C 181, 470 S E 2d 570 (1996) ("*Cherokee*")

enumerated in Plaintiffs' Memorandum in Opposition to Motion for
Judgment on the Pleadings

The Act of the general Assembly in *Bradley* is distinguishable from the Act before the Court in several aspects, not the least of which is that the *Bradley* Act was not appropriate for general legislation

In *Bradley* the school district was faced with repaying bonds it was issuing pursuant to the School Bond Act, *S C Code §§ 59-71-10, et seq*, an act of general legislation applicable to all districts. In order to afford the district some relief, the Legislature enacted Act 588, Acts and Joint Resolutions, 1994, aptly entitled the "Cherokee School District No. One School Bond-Property Tax Relief Act," which specifically authorized the imposition of a sales tax for a limited purpose and time

Subject to the requirements of this act, the governing body of Cherokee County School District 1 may by resolution impose a one percent sales and use tax within Cherokee County for a specific purpose and for a specified period of time to collect funds to be used to pay debt service on general obligation bonds issued pursuant to Article 1 of Chapter 71, Title 59 of the 1976 Code (School Bond Act)

Act 588 also imposed other requirements, including that the tax only be imposed after an approving referendum, based upon a resolution specifying "the improvements to be financed through the issuance of" of the bond, "the maximum time for which the tax may be imposed," and "the maximum principal amount of [the] bonds to be issued and repaid with the proceeds of the tax."

Based on and in compliance with the terms of Act 588 the Cherokee School District passed the appropriate resolution and the residents of the County approved the tax by referendum. Thereafter the *Bradley* plaintiffs challenged the tax on several grounds, including that it violated Article III, §34(IX) of the S C Constitution.

In addressing the application of Article III, §34(IX) to Act 588 the Supreme Court held that while education is not immune to the constitutional strictures of Article III, §34(IX), *see discussion above*, "[a] law which is special **only** in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, §34(IX)" [emphasis added and citation omitted] *S C at 7 S E 2d at 572*. The Act before this Court differs substantially from Act 588 to such a degree that it is constitutionally defective.

The Act before the Court is not special **only** because it imposes a lawful tax on persons or property within a single school district, it is special in several other aspects

First, the sales tax under Act 588 was authorized for the purpose of assisting the Cherokee School District in repaying previously issued revenue bonds authorized by the School Bond Act, which grants the power to issue bonds [sic] to all districts. The bonds issued by the Cherokee School District are unique to that district and provisions for their repayment would not lend themselves to statewide legislation

Second, in the Act before the Court, unlike Act 588, there is no limitation on the use of the funds and they may be used not only for the payment of principal and interest on past and future bonds, but for unbonded construction. There is no requirement that the fees be limited to any particular project or that they be limited in time

Third, in *Bradley* the Supreme Court found it critical that the tax must be “applied uniformly to all persons and property within the area affected” *SC at 8, SE 2d at 572*. The impact fee authorized by the Act before the Court fails on both sides of this equation. It fails to treat all property within the district equally as it only applies to property subject to new residential construction. It does not apply to all persons within the district, but only to a “developer” constructing “residential dwelling unit[s]”. Alternatively, if the impact fee is viewed as a charge or tax on the new home buyer who will ultimately bear the brunt of the impact fee as it will be passed on to the buyer by the builder as any other fee or expense, it fails to be uniformly applied to all persons within the district as it is only exacted from those moving into new construction from within or without the district

Fourth, the sales tax permitted by Act 588 is a form of taxation common throughout the State. The school impact fee authorized by the Act before the Court is limited to a single school district. Other districts may not benefit from this source of revenue

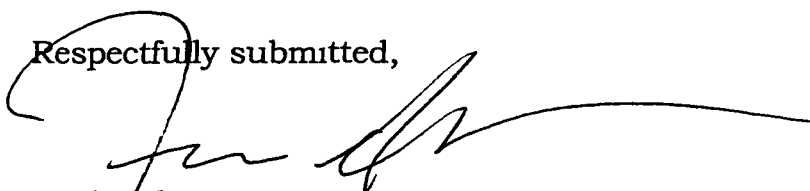
Fifth, Act 588 allowed imposition of the tax only after a referendum which afforded all those who might be subject to the tax an opportunity to vote. The Act before the Court, on the other hand, allowed for implementation solely by a resolution of the Trustees, effectively barring any consideration by those most likely to be burdened with the impact fee, those persons moving into the district

Sixth, on its face, the impact fee is a “fee” and not a tax. The language of *Bradley* only refers to a tax, there was no determination by the

Supreme Court that it [sic] holding would apply to fees (Plaintiffs' Memorandum, pp 5-7)

Plaintiffs respectfully move the Court to reconsider its findings and to rule upon the distinguishing issues between *Cherokee* (a/k/a *Bradley*) and the instant case and to amend its Order accordingly

Respectfully submitted,



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April 6, 2011

ACT 588

AN ACT TO ENACT THE CHEROKEE COUNTY SCHOOL DISTRICT 1 SCHOOL BOND-PROPERTY TAX RELIEF ACT

Be it enacted by the General Assembly of the State of South Carolina

Citation of act

SECTION 1 This act may be cited as the Cherokee County School District 1 School Bond-Property Tax Relief Act

Tax may be levied

SECTION 2 Subject to the requirements of this act, the governing body of Cherokee County School District 1 may by resolution impose a one percent sales and use tax within Cherokee County for a specific purpose and for a specified period of time to collect funds to be used to pay debt service on general obligation bonds issued pursuant to Article 1 of Chapter 71, Title 59 of the 1976 Code (School Bond Act)

Resolution

SECTION 3 (A)(1) The governing body of Cherokee County School District 1 may vote to impose the tax authorized by this act, subject to a referendum, by enacting a resolution. The resolution must specify

- (a) the improvements to be financed through the issuance of general obligation bonds of the school district together with the imposition of the tax,
- (b) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty years, for which the tax may be imposed, and
- (c) the maximum principal amount of general obligation bonds to be issued and repaid with proceeds of the tax

(2) The findings provided in item (1) may be incorporated within a resolution of the governing body of Cherokee County School District 1 calling for a referendum upon the question of the issuance of general obligation bonds pursuant to Article 1 of Chapter 71, Title 59 of the 1976 Code, if the proposed tax will be applied to payment of debt service upon the bonds

(B) Upon receipt of the resolution, the Cherokee County Election Commission shall conduct a referendum on the question of imposing the optional special sales and use tax in the county. Notice of the election must be provided in the manner provided by the general election law and include the question to be voted upon in the referendum. In addition, if the question of the issuance of general obligation bonds is to also be voted upon in the referendum, publication of

notice of the referendum must also be given in compliance with Article 1 of Chapter 71, Title 59 of the 1976 Code Expenses of the referendum must be paid by the school district

(C) The question to be voted upon in the referendum shall read substantially as follows

"Must a special one percent sales and use tax be imposed in Cherokee County for not more than twenty years in order to raise funds which will be applied to pay debt service on general obligation bonds issued to defray the cost of (identify improvements) for Cherokee County School District 1?"

Yes[]

No[]

The ballot may, in the discretion of the governing body of the school district, contain a short explanation of the question to be voted upon in this referendum

(D) All qualified electors desiring to vote in favor of imposing the tax for a particular purpose shall vote "yes" and all qualified electors opposed to levying the tax for the particular purpose shall vote "no" Upon receipt of the returns of the referendum, the election commission shall, by resolution, declare the results of it and shall file the resolution with the Cherokee County Clerk of Court The resolution shall also be filed with the South Carolina Department of Revenue and Taxation The results of the referendum, as declared by resolution of the election commission and as filed with the clerk of court, is not open to question except by a civil action instituted within twenty days of the filing of it If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed as provided in this act, otherwise the tax is not imposed A referendum on imposition of the tax authorized in this act may not be held more than once in a period of twelve consecutive months

Imposition of tax

SECTION 4 (A) If the tax is approved in the referendum, the tax must be imposed beginning upon the first day of the third full month following the filing of the declaration of results of the referendum with the Department of Revenue and Taxation

(B) The tax terminates

(1) on the final day of the maximum time specified for the imposition, or

(2) if earlier, but not if later, upon payment of the final maturing installments of principal of the bonds to which application of the tax is authorized, or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds

(C) When the optional sales and use tax is imposed for more than one purpose, the governing body of the school district authorizing the referendum for the tax shall determine the priority for the expenditure of the net proceeds of the tax for the purposes stated in the referendum

Administration and collection of tax

SECTION 5 (A) The tax levied pursuant to this act must be administered and collected by the Department of Revenue and Taxation in the same manner that other sales and use taxes are collected. The department may prescribe the amounts which may be added to the sales price because of the tax.

(B) The tax authorized by this act is in addition to all other local sales and use taxes and applies to the gross proceeds of the sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36, Title 12 of the 1976 Code and the enforcement provisions of Chapter 54, Title 12 of the 1976 Code. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the 1976 Code are exempt from the tax imposed by this act. The gross proceeds of the sale of food which may lawfully be purchased with United States Department of Agriculture food stamps are exempt from the tax imposed by this act. The tax imposed by this act also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12 of the 1976 Code.

(C) Taxpayers required to remit taxes under Article 13, Chapter 36, Title 12 of the 1976 Code shall identify the county in which the tangible personal property purchased at retail is stored, used, or consumed in this State.

(D) Utilities are required to report sales in the county in which consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12-36-920 of the 1976 Code, who owns or manages rental units in more than one county shall separately report in his sales tax return the total gross proceeds from business done in each school district.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this act in Cherokee County, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the special local sales and use tax provided in this section if a verified copy of the contract is filed with the Department of Revenue and Taxation within six months after the imposition of the special local sales and use tax.

(G) Notwithstanding the imposition date of the special local sales and use tax authorized pursuant to this act, with respect to services that are regularly billed on a monthly basis, the special local sales and use tax is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Bonds

SECTION 6 (A) The revenues of the tax collected in the county under this act must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of refunds made and costs to the Department of Revenue and

Taxation of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer who holds the debt service funds established for payment of principal and interest on the bonds to which the tax is applicable. The State Treasurer may correct misallocation costs or refunds by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocation.

(B) The Cherokee County Treasurer holding taxes collected pursuant to this act must certify to the auditor of the county on July fifteenth of each calendar year as to the amount of taxes held by that county treasurer as of June thirtieth of the calendar year. The Cherokee County Auditor shall reduce the next levy of ad valorem property taxes required to pay debt service on bonds to which the tax is applicable by the amount of tax revenues certified as collected as of June thirtieth by the county treasurer. Taxes collected as of June thirtieth of a calendar year in excess of the amounts required to pay debt service due in the eighteen months following June thirtieth on bonds to which the tax is applicable must be applied to reduce the next levy of ad valorem property taxes required for payment of operational and maintenance expenses of Cherokee County School District 1.

(C) The State Treasurer, in consultation with the Department of Education, shall determine an average per pupil amount by dividing the amount of revenues generated in the county by the imposition of the tax authorized by this act by the total number of students in grades K-12 in Cherokee County. The State Treasurer shall pay any other school district located in Cherokee County an amount equal to the average per pupil amount based on the number of pupils attending schools residing in Cherokee County to be used exclusively for capital projects.

Calculations and distribution

SECTION 7 The Department of Revenue and Taxation shall furnish data to the State Treasurer and to the school districts receiving tax revenues pursuant to this act for the purpose of calculating distributions and estimating revenues. The information which must be supplied to Cherokee County School District 1 upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240 of the 1976 Code. A person violating this section is subject to the penalties provided in Section 12-54-240 of the 1976 Code.

Time effective

SECTION 8 This act takes effect upon approval by the Governor.

Vetoed by the Governor - 5/10/94

Veto overridden by Senate - 5/11/94

Veto overridden by House - 5/11/94

ACT 99

(A99, R2, S235)

AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES FOR DORCHESTER COUNTY SCHOOL DISTRICT NUMBER TWO TO IMPOSE AN IMPACT FEE ON ANY DEVELOPER FOR EACH NEW RESIDENTIAL DWELLING UNIT CONSTRUCTED BY THE DEVELOPER WITHIN THE SCHOOL DISTRICT, TO PROVIDE THAT THE FUNDS ONLY MAY BE USED FOR THE CONSTRUCTION OF PUBLIC EDUCATION FACILITIES FOR GRADES K-12 WITHIN THE DISTRICT AND FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON EXISTING OR NEW BONDS ISSUED BY THE DISTRICT, AND TO PROVIDE THAT THE IMPACT FEE SHALL BE SET AT AN AMOUNT NOT TO EXCEED THE COST THAT EACH ADDITIONAL DWELLING UNIT IMPOSES ON THE SCHOOL DISTRICT FOR PUBLIC EDUCATION FACILITIES

Be it enacted by the General Assembly of the State of South Carolina

Impact fee authorized

SECTION 1 (A) The Board of Trustees for Dorchester County School District Number Two may impose an impact fee on any developer for each new residential dwelling unit constructed by the developer within the school district. The fees must be paid to Dorchester County School District Number Two or, pursuant to an agreement, to a county or municipality that pays the fees to Dorchester County School District Number Two, prior to or at the issuance of a certificate of occupancy for a dwelling unit.

(B) Dorchester County School District Number Two shall maintain the impact fee funds in a separate interest bearing account. All interest earned and accruing to the account must become funds of the account and must be subject to all restrictions placed on the use of impact fees pursuant to the provisions of this article. Accounting records must be maintained for each category of system improvements for which the fee is collected.

(C) The Board of Trustees for Dorchester County School District Number Two only may appropriate funds from the account for

- (1) the construction, including preparation costs, of new public education facilities for grades K-12 within Dorchester County School District Number Two, and
- (2) the payment of principal and interest on existing or new bonds issued by Dorchester County School District Number Two for the construction of public education facilities for grades K-12.

(D) The impact fee may be offset by any other cash payment paid by the developer and obtained by Dorchester County School District Number Two as a result of an agreement between the developer and another governmental entity.

(E) The Board of Trustees of Dorchester County School District Number Two will reexamine the amount of an impact fee being charged a developer upon receipt of a notice of appeal from the developer. If the notice of appeal is accompanied by a letter of credit in a form satisfactory to the board of trustees in an amount equal to the amount of impact fees owed, the new residential development may receive its certificate of occupancy while the appeal is pending.

(F) For purposes of this section, 'dwelling unit' means all residential units, including, but not limited to, single family attached, single family detached, duplex, condominium, townhouse, multifamily, apartment, and mobile home, but excluding hotels and motels.

(G) The district's board of trustees shall set the impact fee at an amount not to exceed two thousand five hundred dollars per dwelling unit.

Time effective

SECTION 2 This act takes effect upon approval by the Governor and applies to any new residential construction which has not been issued a certificate of occupancy.

Ratified the 19th day of February, 2009

Became law without the signature of the Governor -- 2/26/09

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W Dickson, Circuit Court Judge

Case No 2009-CP-18-2674

The Home Builders Association of South Carolina and
the Charleston-Trident Home Builders Association, Inc

Appellants,

v

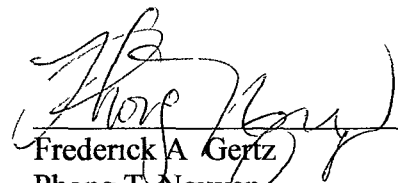
School District No 2 of Dorchester County and
the Board of Trustees for Dorchester School District No 2

Respondents

CERTIFICATE OF COUNSEL

The undersigned counsel certified that the Record on Appeal contains material proposed to be included by any of the parties and not any other material

February 8, 2010



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