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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable William A. McKinnon

Case No. 2018-CP-46-02684

Home Builders Association of South Carolina, Home Builders Association of York County, Soni Construction, Inc., Shea Investment Fund 2, LLC, and Shea Investment Fund 3, LLC ..... Appellants,

v.

State of South Carolina and York County ..... Respondents.

BRIEF OF RESPONDENT YORK COUNTY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

Other Authorities

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court correctly determine that the South Carolina Development Impact Fee Act ("Act") and two York County ordinances implementing an impact fee to be imposed on new homes constructed in the Fort Mill School District No. 4 of York County were not unconstitutionally vague and did not impose a taking or an exaction?

2. Did the trial court correctly find based on his review of the evidence that the York County ordinances implementing an impact fee and incorporated TischlerBise School Impact Fee Study and Capital Improvement Plan substantially complied with the Act?

STATEMENT OF THE CASE

Home Builders Association of South Carolina, Home Builders Association of York County, Soni Homes, Inc., Shea Investment Fund 2, LLC, and Shea Investment Fund 3, LLC are the final list of plaintiffs (collectively, "Home Builders") in this action filed on September 11, 2018 against the State of South Carolina (the "State") and York County (the "County") seeking declaratory judgment and damages stemming from an impact fee implemented to support new school construction in Fort Mill School District No. 4 of York County (the "District").[1] (R. at 25-34). The County answered the complaint and the amended complaint on January 7, 2019 and September 26, 2019 respectively, asserting among other defenses a general denial, failure to state a claim, exhaustion, and standing. (R. at 47-76, 83-88).

Given the issues, all parties agreed to an expedited scheduling order and procedure in this case that provided in part as follows:

> 1. Pursuant to Rule 42(b), SCRCP, the parties agree to and the Court hereby bifurcates the declaratory judgment claim (First Cause of Action) from the remaining claim (Second Cause of Action). The Court finds that this procedure will be conducive to expedition and economy in resolving this matter.
>
> 2. The Court shall conduct a non-jury trial as to the declaratory judgment claim. ...
>
> 3. The non-jury trial shall be conducted subject to the following terms and conditions: ...
>
> > (b) The parties will submit a set of stipulated facts and exhibits that will comprise the primary evidentiary basis for the Court's determination.

[1] Home Builders have amended their complaint twice to correct the parties in this action. On September 18, 2019 and with the consent of the parties, the complaint was amended to correct the Shea entities. (R. at 35-46). Home Builders again moved to amend their complaint on December 5, 2019 to correct the Soni entity. (R. at 2093-2116). The County opposed the motion on the grounds that the proposed amendment was futile because none of the proposed plaintiffs had paid the impact fee in question at the time the original complaint was filed. (R. at 2117-18). The trial court granted the motion at trial. (R. at 104:5-12).

> (c) Prior to the non-jury trial, the parties will submit memoranda to the Court setting forth their respective legal and factual arguments. ...
>
> 4. All further proceedings in this litigation, including any discovery or trial on the issue of possible damages, are reserved until after a final ruling on the declaratory judgment claim, including any appeal. If this Court rules against Plaintiffs on the declaratory judgment claim (First Cause of Action), there would be no need for a trial on the remaining claim (Second Cause of Action).

(R. at 17-20). Consistent with that order, the parties filed a set of stipulated facts and exhibits and trial briefs setting forth their arguments for trial. (R. at 332-797, 1924-2090).

The declaratory judgment claim was tried without a jury on December 9-10, 2019. The trial court ruled in favor of the State and the County by order filed January 30, 2020, finding that the South Carolina Development Impact Fee Act ("Act") and the ordinances setting an impact fee for school construction in the District are valid and do not impose an exaction or a taking on parties required to pay the impact fee and that the ordinances substantially complied with the Act. (R. at 4-16). Home Builders moved to alter or amend on February 10, 2020. (R. at 2119-22). After a hearing, the trial court denied the motion by order filed April 6, 2020. (R. at 1-3).

FACTS

The District, one of four school districts located within the County, is small geographically, comprised of roughly fifty square miles. (R. at 332(¶1), 340). The District includes the municipalities of Fort Mill and Tega Cay as well as unincorporated areas.

The County imposed an impact fee of $2,500 for the benefit of the District in 1996 (the "1996 fee"). (R. at 332(¶2), 341-50). There has not been any litigation surrounding the 1996 fee. Since the passage of the 1996 fee, the District has experienced tremendous growth, resulting in a more than 300% increase in the student population within the District. (R. at 333(¶3)).

I. The 2018 fee

School district funding for capital projects, including new schools, is distinct from funding for operations. Historically, school districts have had very limited means of securing capital funding, which became even more restricted after the passage of Act 388 in 2006. *See* Act No. 388, Part V, § 4, 2006 S.C. Acts 3166 (amending S.C. Code Ann. § 11-27-110 to prevent future installment contract purchases by school districts); *see also Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 232–36, 638 S.E.2d 685, 689–91 (2006) (outlining history of lease-purchase and installment-purchase funding by school districts and discussing change with new language in Act 388).

On June 3, 2016, the Act was amended to add "public education facilities for grades K-12 including, but not limited to, schools, offices, classrooms, parking areas, playgrounds, libraries, cafeterias, gymnasiums, health and music rooms, computer and science laboratories, and other facilities considered necessary for the proper public education of the state's children" to the definition of "public facilities" under the Act. S.C. Code Ann. § 6-1-920. This amendment made it possible for the County to impose an impact fee under the Act to fund new school construction within the District.

The District approached the County about implementing an increased impact fee pursuant to the Act in October 2017.[2] (R. at 334(¶6), 395-96). At that time, the District presented projections showing the potential for an increased impact fee to reduce debt millage within the District assuming a hypothetical $10,000 fee. (R. at 1834-55). This analysis included debt from a then-proposed 2018 referendum. (R. at 1852). As further shown in that presentation, the total

[2] There is no evidence that the District's decision to approach the County about an increase to the 1996 impact fee was in any way "a pretext for a moratorium on building" as suggested in the appellants' Statement of Facts. The trial court found no evidence that the impact fee in question was motivated by bad faith. (R. at 14).

1996 impact fee collections at that time were $46,605,000 over twenty years. (R. at 1854). This amount was roughly equal to the cost of one elementary school and is less than half of the amount needed to build a new high school. (R. at 509). By way of reference, the District opened nine schools between 2006 and 2017: five elementary, three middle, and one high school. (R. at 1840). Thus, the funds generated by the 1996 fee were grossly insufficient to cover the cost of new schools within the rapidly growing District.

As required by S.C. Code Ann. § 6-1-950, York County Council ("Council") referred the matter to the York County Planning Commission ("Planning Commission") to conduct studies and to recommend an impact fee ordinance. (R. at 334(¶7), 402-03). The Planning Commission received information on March 29 and April 9, 2018 from TischlerBise, a consultant retained to provide a study and Capital Improvements Plan. (R. at 334(¶8), 414, 419-20). On May 14, 2018, the Planning Commission passed two resolutions in connection with its recommendations for an impact fee ordinance. (R. at 334(¶9), 426-30). At that time, the Planning Commission considered the TischlerBise School Impact Fee Study and Capital Improvement Plan ("Study") dated April 18, 2018[3] and recommended that the fee be set at $5,038 per new single family detached dwelling and $2,500 per new multifamily dwelling unit. The $5,038 figure was the amount originally recommended in 1996. (*See* R. at 562).

Pursuant to S.C. Code Ann. § 6-1-960, Council considered the recommendations of the Planning Commission over the course of three readings and a duly noticed public hearing. (R. at 334-37 (¶¶10-13), 431-785). At first reading on May 21, 2018, Council considered the $5,038/ $2,500 fee proposed by the Planning Commission. Council was further provided with the

[3] The April 18 Study provided for a maximum fee of $18,958 for single family homes and $12,535 per multi-family unit. (R. at 497).

resolutions of the Planning Commission, draft ordinances recommended by the Planning Commission (the "Procedures Ordinance" relating to impact fees generally within the County and the "2018 Fee Ordinance" creating a new impact fee for schools within the District), the April 18 Study, and a summary draft of the Study dated April 9, 2018. (R. at 480-82 (resolutions); 466-79, 483-90 (draft ordinances); 491-521 (April 18 Study); 522-45 (April 9 summary draft)). Among other things, the summary includes a discussion of the potential new revenue at various increased fee levels ($10,000, $15,000, and $18,958) and how that revenue could be used to reduce the District's debt millage after the 2018 referendum. (R. at 543-45).

Second reading and the public hearing occurred on the same night, June 27, 2018. Council considered a packet of written information, together with the presentations and comments from the public as reflected in the minutes. (R. at 336-37 (¶12), 546-670). The opponents of the fee presented the concerns raised by the Home Builders here, and County Staff, the District, and TischlerBise each provided information to Council addressing those concerns. TischlerBise amended its study to better address those concerns and provided a point-by-point response. (R. at 647-51, 613-44). County Staff did not take a position on the amount of the fee, but simply pointed out that the values presented in the Study were the "maximum allowed amounts." (R. at 602). Numerous residents of the District spoke in favor of the proposed impact fee. (R. at 550-52). At second reading, Council approved several changes to the proposed ordinances and increased the level of the impact fee from $5,038/ $2,500 to $18,158/ $12,020 (the maximum amount indicated by the Study). (R. at 553).

On July 16, 2018, Council took third reading and passed the Procedures Ordinance and 2018 Fee Ordinance. (R. at 337 (¶13), 671-785). As passed, the 2018 Fee Ordinance sets an impact fee within the District of $18,158 for each new single family detached dwelling unit and

$12,020 for each new multifamily unit, subject to exceptions provided in the Procedures Ordinance. The 2018 Fee Ordinance incorporates by reference the final Study by TischlerBise dated June 14, 2018.

II. The Study

The County and TischlerBise made every effort to address the concerns raised by the Home Builders and other stakeholders with respect to the Study, including revising the Study and the maximum amount in response to certain criticisms. (*See* R. at 603, 647-51, 613-44). The Study opens with an Executive Summary that walks the reader through the Act, the methodology used to calculate a maximum allowable fee, and a proposed impact fee schedule for the District. (R. at 724-27). The Executive Summary explicitly notes that the County can adopt "amounts that are lower than the maximum amounts shown; however, a reduction in fee revenue will necessitate an increase in other revenues, a decrease in planned capital expenditures, and/or a decrease in the School District's level of service." (R. at 727). From there, the Study (1) analyzes student generation rates and projected enrollment; (2) provides a capital improvement plan; and (3) makes an impact fee calculation, which includes an analysis of costs and credits. (R. at 728-45).

With respect to the cost analysis, the Study provides:

> The Fort Mill School District is responsible for 100 percent of new school construction costs in the District. For elementary and middle schools, the construction cost assumption is based on estimates developed by the District's construction management firm, Cumming Corporation, an industry-leading, multi-faceted project management and cost consulting firm. The firm employs registered architects, professional engineers, certified professional cost estimators, among other professionals involved in large-scale construction projects. The cost assumption at the high school level is based on actual costs incurred for the high school currently under construction, which is managed by the Cumming Corporation. As shown in Figure 12, the construction cost assumptions are $348 per square foot for elementary schools, $346 per square foot for middle schools, and $305 per square foot for high schools. Given the discussion above, and comparable school construction costs in the region, these construction cost assumptions are the most accurate and reasonable available at the time of this study.

(R. at 739). The Study further provides that the land cost calculations are based on actual purchases by the District. (R. at 740). In making the cost calculations, the Study provides that level of service standards are "based on current costs per student for school buildings and land[.]" (R. at 743).

The Study also includes a housing affordability analysis. (R. at 746-52). This analysis was revised to address the concerns raised at the public hearing and in the written materials presented to Council at that time. The final analysis treats the District as a whole and makes conservative assumptions as to household costs by using the highest cost between the three jurisdictions (Fort Mill, Tega Cay, and unincorporated areas) for purposes of the calculations. As explained in the Study, this approach captures an above average monthly expense for the average home within the District. In addition, the Procedures Ordinance excludes affordable and retiree housing from impact fees. (R. at 789-90 (§ 153.57(F)-(G)).

STANDARD OF REVIEW

"[C]ourts have no legislative powers." *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964). As recently stated by this Court,

> "This Court has a very limited scope of review in cases involving a constitutional challenge to a statute." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). "All statutes are presumed constitutional and will, if possible, be construed so as to render them valid." *Id.* "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Id.* (citing *Westvaco Corp. v. S.C. Dep't. of Rev.*, 321 S.C. 59, 467 S.E.2d 739 (1995)). "A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." *Id.* "A possible constitutional construction must prevail over an unconstitutional interpretation." *State v. Neuman*, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009) (citation omitted).

S.C Human Affairs Comm'n v. Chen, 430 S.C. 509, 528-29, 846 S.E.2d 861, 871 (2020).

With respect to the County ordinances at issue, "all laws concerning local government shall be liberally construed" in the local government's favor. S.C. Const., art. VIII, § 17; *see also* S.C. Code Ann. § 4-9-25 ("The powers of a county must be liberally construed in favor of the county"). The reason for this deference to local government is the legislature's "realization that different local governments have different problems that require different solutions.... By enacting statutes like § 4-9-25 . . . the General Assembly gave local governments the power to deal with these problems at the local level rather than at the State Capitol." *Hospitality Ass'n of S.C. v. Cnty. of Charleston*, 320 S.C. 219, 230, 464 S.E.2d 113, 120 (1995). To that end, "[t]he party attacking an ordinance bears the burden of proving its unconstitutionality beyond reasonable doubt." *Skyscraper Corp. v. Cnty. of Newberry*, 323 S.C. 412, 417, 475 S.E.2d 764, 766 (1996).

In addition, "[w]hen an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). In such cases, the appellate court is

not required to defer to the trial court's legal conclusions. *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

ARGUMENTS

There is no dispute that the number of students enrolled within the District has grown rapidly (a 300+ percentage increase since the 1995-1996 school year) and that the quality of the schools within the District is a driver for that growth. In addition, there is no dispute that the ordinances at issue followed the correct procedural path for passage under the Act. Nor is there any attack on the language of the Procedures Ordinance or the 2018 Fee Ordinance. The Home Builders instead challenge the Act itself, the amount of the 2018 fee, and portions of the Study.[4]

I. The Act is not vague. It provides clear guidance for the calculation of maximum fee amounts and the consideration of affordable housing.[5]

Home Builders argue in section I of their brief that the Act is vague and therefore violates due process because it (1) "requires that the effect on the affordability of housing must be considered, but fails to define what affordability means," (2) "fails to provide any consequence for a negative effect on housing affordability," and (3) "fails to provide a cap as to the amount of a fee that can be imposed by an ordinance."[6]

"The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." *City of Beaufort v. Baker,* 315 S.C. 146, 152, 432 S.E.2d 470, 473 (1993). "A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must

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[4] Although not a basis for the trial court's order, the County argued that the Home Builders failed to present a justiciable case or controversy. These arguments were presented in the County's trial brief at section A (pages 10-13). (R. at 2013-16). In the event the Court is not inclined to affirm on the merits, the County urges affirmance on these grounds pursuant to Rule 220, SCACR.

[5] The County joins in and incorporates by reference the arguments presented by the State of South Carolina with respect to the Act.

[6] Of these arguments, only (3) was presented in Home Builders' trial brief. (R. at 1935).

necessarily guess as to its meaning and differ as to its application." *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 598 (2001). The established test for vagueness is whether the statute provides "fair notice to those to whom the law applies." *Id.* at 571-72, 549 S.E.2d at 598.

> The void-for-vagueness doctrine is primarily a criminal doctrine. As generally stated, the void for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. . . .
>
> The Supreme Court has held the void-for-vagueness doctrine is also applicable to civil matters where the rule or standard is so vague and indefinite as to really be no rule or standard at all. . . .
>
> A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application. . . . The requirement that statutory language must be reasonably certain is satisfied by the use of ordinary terms which find adequate interpretation in common usage and understanding, or if the term can be given meaning by reference to other definable sources.
>
> The [United States] Supreme Court has observed that [t]he precise point of differentiation in some instances is not easy of statement, but as a general rule, decisions upholding statutes as having sufficient certainty have rested upon the conclusion that they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them, or a well-settled common-law meaning, notwithstanding an element of degree in the definition as to which estimates might differ, or, . . . that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded.

Chen, 430 S.C. at 529, 846 S.E.2d at 871 (internal quotation marks and citations omitted).

Although the Act does not put a dollar ceiling on the amount of any particular impact fee, it is not true that the Act does not set a limit to what can be charged. As set forth in the Act, an impact fee may only be implemented by an entity with a comprehensive plan (S.C. Code Ann. § 6-1-930) after reference to the planning commission for a study and recommended ordinance (S.C. Code Ann. § 6-1-950) and then only after three readings and a duly advertised public hearing (S.C. Code Ann. § 6-1-960).

"The Act provides for the calculation of impact fees in several provisions." *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 369 S.C. 498, 507, 632 S.E.2d 864, 869 (2006) (interpreting the Act to uphold an impact fee). The amount of an impact fee must be based "on actual improvement costs or reasonable estimates of the costs, supported by sound engineering studies." S.C. Code Ann. § 6-1-930(B)(2). Moreover, an impact fee ordinance must include "an explanation of the calculation of the impact fee." S.C. Code Ann. § 6-1-940(1). The Act goes on to detail the maximum level at which an impact fee can be set, as follows:

> A) The impact fee for each service unit **may not exceed** the amount determined by dividing the costs of the capital improvements by the total number of projected service units that potentially could use the capital improvement. If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee for each service unit must be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units by the total projected new service units.
>
> (B) An impact fee must be calculated in accordance with generally accepted accounting principles.

S.C. Code Ann. § 6-1-980 (emphasis added). The Act provides additional limits and considerations for impact fees in S.C. Code Ann. § 6-1-990, which limits fees to the proportionate share of the costs of the project attributable to new development. The Act's requirements are not unlike those established by the General Assembly for a uniform service charge in S.C. Code Ann. § 4-9-30(5)(a) and § 6-1-330, which similarly do not place a dollar cap on the charges to be implemented.

Home Builders have not alleged that the Act is confusing or that a reasonable person must guess as to the legislative intent. Instead, they contend that the Act fails because it lacks a ceiling. The County contends this was by design. The Act includes the following "public facilities" within its scope:

(a) water supply production, treatment, laboratory, engineering, administration, storage, and transmission facilities;
(b) wastewater collection, treatment, laboratory, engineering, administration, and disposal facilities;
(c) solid waste and recycling collection, treatment, and disposal facilities;
(d) roads, streets, and bridges including, but not limited to, rights-of-way and traffic signals;
(e) storm water transmission, retention, detention, treatment, and disposal facilities and flood control facilities;
(f) public safety facilities, including law enforcement, fire, emergency medical and rescue, and street lighting facilities;
(g) capital equipment and vehicles, with an individual unit purchase price of not less than one hundred thousand dollars including, but not limited to, equipment and vehicles used in the delivery of public safety services, emergency preparedness services, collection and disposal of solid waste, and storm water management and control;
(h) parks, libraries, and recreational facilities;
(i) public education facilities for grades K-12 including, but not limited to, schools, offices, classrooms, parking areas, playgrounds, libraries, cafeterias, gymnasiums, health and music rooms, computer and science laboratories, and other facilities considered necessary for the proper public education of the state's children.

S.C. Code Ann. § 6-1-920(18). These types of projects vary widely in terms of their system improvement costs, the service area involved, and the type of development that might be subject to an impact fee. Given these variables, the legislature chose to provide a formula rather than a dollar cap, subject to all of the factors and safeguards referenced above. It simply means that a local government has the flexibility to charge a higher fee for higher cost projects, such as new school construction.

With respect to the arguments relating to the Act's requirement that the effect on affordable housing be considered, S.C. Code Ann. § 6-1-930(A)(2) provides "[b]efore imposing a development impact fee on residential units, a governmental entity shall prepare a report which estimates the effect of recovering capital costs through impact fees on the availability of affordable housing within the political jurisdiction of the governmental entity." According to the Act, affordable housing "means housing affordable to families whose incomes do not exceed eighty

percent of the median income for the service area or areas within the jurisdiction of the governmental entity." S.C. Code Ann. § 6-1-920(1). This definition is consistent with federal law. *See* 42 U.S.C. § 12704(10).

By all accounts, the Study here included that analysis, which is all that is required under the Act. (R. at 746-52, 234:21-25). The Study applied federal Department of Housing and Urban Development ("HUD") criteria "that housing should be 30 percent or less of a household's income. The cost of housing is 'moderately burdensome' if its cost burden is over 30 percent and 'severely burdensome' if its cost burden is over 50 percent."[7] (R. at 747). Home Builders' witness Dr. Joseph Von Nessen agreed with that definition as follows "the thirty percent threshold is the one established by [HUD] which is a fairly standard threshold looking at housing affordability[.]" (R. at 224:20-24, 232:22-33:3 ("That's the HUD formula. That's the standard formula that they use and that they state when they're trying to evaluate housing cost burden and housing affordability."), 233:6-10). This reliance on a HUD standard does not render the Act vague. *See Chen*, 430 S.C. at 531, 846 S.E.2d at 872 ("Moreover, the constitutional challenge to the conciliation statute fails under any circumstances in light of federal authority and HUD guidelines on conciliation that assist in constructing its meaning and application.").

Given the above, the Home Builders did not meet their heavy burden of proving the Act is unconstitutionally vague. The directive of the Act is simply that a "governmental entity shall prepare a report which estimates the effect of recovering capital costs through impact fees on the

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[7] The HUD thirty percent rule is reflected across various regulations. *See* 24 C.F.R. 791.402 (listing "[d]ata indicating potential need for rental housing assistance, such as the number of renter households with incomes below specified levels and paying a gross rent of more than 30 percent of household income" as a factor in determining need for federal housing assistance); *Affordable Housing*, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (August 5, 2020), https://www.hud.gov/program_offices/comm_planning/affordablehousing/ ("If a family pays more than 30% of their income for housing, it is considered a cost burden.").

availability of affordable housing within the political jurisdiction of the governmental entity." From this instruction, it is clear that the General Assembly intended that the local government consider the effect of any proposed impact fee on the availability of affordable housing in the area. That was done here. If a local government then makes the political decision to proceed with an impact fee even if there will be an adverse effect on affordable housing, the General Assembly has provided that flexibility. There is nothing vague about what the Act requires.

II. Neither the Act nor the ordinances at issue effect a taking.

Home Builders do not allege their property has been physically taken or that the underlying real estate has lost all value or that its use has been changed. Instead, they complain that it will be more expensive to develop their lots as a result of a generally applicable impact fee. In support of this argument, the Home Builders cite to only one unpublished case from the Western District of Washington, *Beechwood Dev., LLC v. Olympus Terrace Sewer Dist*, No. C05-0745-MJP, 2005 WL 1950255 (W.D. Wash. Aug. 15, 2005), for the proposition that an unreasonably excessive fee may constitute an exaction.[8] Home Builders do not undertake any takings analysis under South Carolina law. As such, they fail to meet their burden in challenging the Act and the ordinances.

As a prerequisite to any due process claim, Home Builders must show a deprivation of a cognizable property interest. *See Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 302, 737 S.E.2d 601, 613 (2013). Contemplated future development does not meet this test. *Id.*; *Friarsgate, Inc. v. Town of Irmo,* 290 S.C. 266, 269–70, 349 S.E.2d 891, 893 (Ct. App. 1986) ("[A] contemplated use of property by a landowner on the date a zoning ordinance becomes effective . . . is not protected"). In this case, previously permitted homes or homes for which an

[8] The *Beechwood* court found there was no taking in that case and acknowledged that "fees collected for this government service generally do not constitute a taking of property." *Beechwood Dev., LLC*, 2005 WL 1950255, at *3.

impact fee had already been paid are excluded from the reach of the ordinances. (R. at 789 (§ 153.57(E))). With respect to future development, Home Builders have not articulated any cognizable property interest of which they have been deprived. Therefore, any due process claims must fail.

As set forth by the United States Supreme Court,

> **It is beyond dispute that "[t]axes and user fees ... are not 'takings.'"** *Brown, supra,* at 243, n. 2, 123 S.Ct. 1406 (SCALIA, J., dissenting). We said as much in *County of Mobile v. Kimball,* 102 U.S. 691, 703, 26 L.Ed. 238 (1881), and our cases have been clear on that point ever since. *United States v. Sperry Corp.*, 493 U.S. 52, 62, n. 9, 110 S.Ct. 387, 107 L.Ed.2d 290 (1989); see *A. Magnano Co. v. Hamilton,* 292 U.S. 40, 44, 54 S.Ct. 599, 78 L.Ed. 1109 (1934); *Dane v. Jackson,* 256 U.S. 589, 599, 41 S.Ct. 566, 65 L.Ed. 1107 (1921); *Henderson Bridge Co. v. Henderson City,* 173 U.S. 592, 614–615, 19 S.Ct. 553, 43 L.Ed. 823 (1899). **This case therefore does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners.**

Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 615 (2013) (emphasis added). The trial court did not categorically find that a generally applicable impact fee cannot be a taking, but found that there is an essential nexus between the fee and the legitimate state interest in public schools and that there is not a claim that "there is a denial of any economically viable use of the land" and, as such, the fee was appropriate under the holding in *Dolan v. City of Tigard*, 512 U.S. 374 (1994). (R. at 12).

A. The 2018 Fee Ordinance does not impose a taking or an exaction.

By its nature, an impact fee shifts the cost of additional infrastructure on new development rather than spreading it across all property owners. The General Assembly has determined that local governments can impose these fees if they comply with the Act. The Act by its terms requires that the fee be proportionate to the impact of the new development. S.C. Code Ann. § 6-1-990.

The ordinances at issue here implement a legislatively imposed, generally applicable impact fee. As such, they do not trigger the takings clause. *See Koontz*, 570 U.S. at 615; *Dabbs*

v. Anne Arundel Cnty., 458 Md. 331 (Md. Ct. App. 2018) (finding that legislatively imposed impact fees are not takings and providing lengthy discussion of *Koontz*). Plaintiff has not cited any South Carolina cases finding that an impact fee can constitute a taking under the circumstances alleged here. Moreover, for the reasons given by the trial court, even if this fee is subjected to an analysis under *Dolan*, it does not constitute a taking because there is a nexus between the impact fee for new home construction within the District and the governmental interest in funding new schools to keep up with the growth in student population attributable to those homes. *See Columbia Venture, LLC v. Richland Cnty.*, 413 S.C. 423, 446 n.19, 776 S.E.2d 900, 912 n.19 (2015).

Should the Court determine that a regulatory takings analysis is appropriate; the 2018 fee does not meet the standards for a regulatory taking. "A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property." *Harbit v. City of Charleston,* 382 S.C. 383, 394, 675 S.E.2d 776, 782 (Ct. App. 2009). "'Not all damages suffered by a private property owner at the hands of [a] governmental agency are compensable.'" *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 170, 714 S.E.2d 869, 877 (2011) (quoting *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 14, 675 S.E.2d 439, 442 (2009)). In such a case, the question then becomes whether the ordinances deprived a plaintiff of "all economically beneficial use" or whether the ordinances are "the functional equivalent of a classic taking." *Dunes W. Golf Club, LLC*, 401 S.C. at 314-15, 401 S.E.2d at 619.

There is no evidence in the record that properties within the District have lost "all economically beneficial use." The use has not changed, and the value of the Home Builders' unimproved lots has not changed. Here, the principals of the individual Home Builder plaintiffs (Mukash Patel and John Shea) testified that the properties their companies own in the District have

retained value and that the use of those properties was not changed by the 2018 fee. (R. at 175:18-24, 186:14-87:9). Neither Shea nor Patel builds or has ever built affordable housing in the District. (R. at 176:20-12, 188:3-5). In fact, the evidence showed that the average home price in the District is $420,000 (R. at 214:10-14), and that Shea builds homes in the $400,000 plus price range (R. at 187:25-88:2).[9] Therefore, there has not been a categorical taking under *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992).

In determining whether there has been a regulatory taking as described in *Penn Cent. Transp. Co. v. City of N.Y.*, 438 U.S. 104 (1978), South Carolina courts consider, on a case by case basis, "the character of the government action, the economic impact of the regulation on the claimant, and the extent to which the regulation has interfered with distinct investment-backed expectations." *Dunes W. Golf Club, LLC*, 401 S.C. at 315, 737 S.E.2d at 619. Here, Home Builders have asked for an across the board determination rather than a case by case assessment. In any event, they fail to meet their burden.

The County has determined that new residential growth should fund the additional schools necessitated by that growth as permitted by the Act. The 2018 Fee Ordinance applies broadly across all new residential construction within the District. This factor alone should be outcome determinative. As set forth in *Columbia Venture, LLC v. Richland Cnty.*, 413 S.C. 423, 451–52, 776 S.E.2d 900, 915 (2015),

> In evaluating the benefits and burdens of a government regulation, "**a taking does not take place if the prohibition applies over a broad cross section of land and thereby 'secure[s] an average reciprocity of advantage.**' " *Penn Central,* 438 U.S. at 147, 98 S.Ct. 2646 (noting that the concept of "reciprocity of advantage" is the reason zoning does not constitute a taking and stating "[w]hile zoning at times reduces individual property values, the burden is shared relatively evenly and it is reasonable to conclude that on the whole an individual who is harmed by one aspect

[9] The quality of the District's schools is featured prominently in Shea's marketing materials (R. at 187:16-24) and has been a driver of the residential growth within the District (*Id.*).

> of the zoning will be benefitted by another"). Indeed, the Fifth Amendment "'prevents the public from loading upon one individual more than his just share of the burdens of government'" and provides that only when an individual " 'surrenders to the public something more and different from that which is exacted from other members of the public, [shall] a full and just equivalent [ ] be returned to him.' " *Id.* at 147–48, 98 S.Ct. 2646 (quoting *Monongahela Navigation Co. v. United States,* 148 U.S. 312, 325, 13 S.Ct. 622, 37 L.Ed. 463 (1893)).

(citation omitted and emphasis added).

Nothing about the ordinances changes the use of any property within the District. They simply make it more expensive to build new residential construction across the District as a whole in order to fund new school construction resulting from residential growth. That the fees may have had some effect on the market and/ or two individual builders is not enough to signal a taking or exaction.[10] The Act and the ordinances provide numerous checks and balances to prevent the impact fee from exceeding the impact of the average new home within the District. Thus, the character of the action weighs strongly in favor of the County.

In assessing investment backed expectations, "[t]he subjective expectations of the [claimant] are irrelevant. The critical question is what a reasonable owner in the [claimant's]

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[10] To the extent Home Builders rely on the testimony of Jennifer Gooch, their brief omits several important details: (1) Gooch did not consider the entire new home market in the District (R. at 211:21-12:3), (2) Gooch testified that during the period in question the entire Charlotte area market was down in the $400,000+ range (which would include the District with an average new home price of $420,000) and that the District was consistent with that trend (R. at 213:16-14:19); and (3) Gooch testified that she did not have an opinion about "how much of the softening [she had] seen in the [District] was attributable to the impact fee versus various other factors[.]" (R. at 215:23-16:5). When asked "[s]o all you have testified to is a general correlation between the imposition of the impact fee and softening in starts in the [District] rather than causation for that softening?", Gooch responded "I would say yes to that. Yes." (R. at 216:6-10).

With respect to the individual builders, Patel testified that his construction costs had gone up $50,000 and part of that was the impact fee (R. at 176:11-17) and Shea testified that his companies would build through their inventory of lots owned at the time the fee was implemented and that they would absorb that cost into building homes on those lots (R. at 182:5-25). Shea further testified that he would factor the amount of the impact fee into his decision when buying additional property within the District. (R. at 187:10-15).

position should have anticipated." *Columbia Venture, LLC*, 413 S.C. at 449, 776 S.E.2d at 914 (citations omitted). Here, an impact fee to fund new schools within the District had been in place since 1996. The Act had been in place since 1999 and was amended to include schools within its list of "public facilities" in 2016. Therefore, there was no reasonable basis for assuming at the time property was purchased that the amount of the impact fee would not be changed at some point in the future.

B. The Act expressly contemplates that an impact fee could result in a taking where the fee is an amount exceeding the payer's proportionate share of the costs of the project.

The Act in and of itself does not trigger the takings clause. It merely provides the framework for local governments to enact generally applicable impact fees.

Moreover, the Act addresses the issue of possible takings in the event the fee is not proportionate to the impact of the proposed development.

> A developer required to pay a development impact fee may not be required to pay more than his proportionate share of the costs of the project, including the payment of money or contribution or dedication of land, or to oversize his facilities for use of others outside of the project without fair compensation or reimbursement.

S.C. Code Ann. § 6-1-1000. In addition, the Act provides that any fee ordinance must include a means of appeal. S.C. Code Ann. § 6-1-1030. Thus, the Act contemplates scenarios where an impact fee as enacted might result in a taking and provides a remedy in that case. Home Builders, however, have not asserted this as a basis for their takings claim in this case.

III. The ordinances are a valid exercise of the County's power under Home Rule.

Since the passage of Home Rule in 1973,

> All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and

> good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-9-25. "A local government ordinance conflicts with a State law when its conditions, express or implied, are inconsistent and irreconcilable with the State law." *Hospitality Ass'n of S.C.*, 320 S.C. at 228, 464 S.E.2d at 119.

Implicit in Home Rule is the realization "that different local governments have different problems that require different solutions." *Id.* at 230, 464 S.E.2d at 120; *see Robinson v. Richland Cnty. Council*, 293 S.C. 27, 31, 358 S.E.2d 392, 395 ("Implicit in the Act is the realization that different counties will have different problems which will require different solutions. To require all counties to use the same means of financing for local improvements would defeat the objective of achieving complete local autonomy."); *Brown v. Cnty. of Horry*, 308 S.C. 180, 184, 417 S.E.2d 565, 567 (1992) (quoting *Robinson* in affirming county road maintenance fee and ruling "[u]nder Home Rule, a county can impose a service charge, as in the situation here, where it is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided.").

Here, the ordinances in question are specifically authorized by the Act and are therefore valid. Given the general Home Rule principles referenced above, it is not relevant to this analysis what effect the ordinances in question might have had on the number of building permits issued within the District. There is no law preventing a local government from enacting ordinances that impact growth. Local governments routinely address matters that relate to land use and building costs. Just by way of example, zoning, permit fees, inspections, and building codes can all impact local growth and construction costs, but all are within the purview of local governments. The same is true for impact fees.

If the ordinances comply with the Act, it is not relevant that this fee might be higher than other impact fees in other jurisdictions. Home Rule expressly contemplates that different local governments will have different problems that call for different solutions. In this case, this is the solution the County has chosen in compliance with state law.

A. The 2018 Fee Ordinance is consistent with the Act.

The 2018 Fee Ordinance was passed after three readings and a public hearing and is authorized by the Act. As required by the Act, Council referred the matter to the Planning Commission and a study was commissioned. The Study was ultimately incorporated by reference into the 2018 Fee Ordinance. There is no evidence that TischlerBise was given any direction that the maximum fee should be any particular amount or that any particular affordability threshold be met. As referenced by Home Builders, the Study went through multiple drafts and assessed the maximum fee amount at different levels in different drafts.

Council considered different possible fee levels and that it knew it could select a fee amount less than the maximum amount shown by the Study. (*See, e.g.*, R. at 602-04, 727). In fact, the amount of the fee changed over the course of the three readings. (*Compare* R. at 438 *with* R. at 553). Council was also presented with information regarding the 2018 referendum. (*See* R. at 543-45).

Lastly, the amount of the 2018 fee is consistent with the Act. New schools are expensive. Land in the District is expensive. As a result, the impact of new residential development is high, which means the fee calculated under the Act is high. That the maximum amount of an impact fee has increased since 1996 is not a surprise and does not shock the conscience. For all of these reasons, Home Builders have not shown there was a substantive due process violation in this case.

Nor is the timing of the implementation of the fee a basis for invalidating the 2018 Fee Ordinance. This Court has previously addressed this issue in upholding a pre-Act impact fee as follows:

> Anything new—whether it is a fee, a tax, or any of a thousand other things imposed by government—must take effect on some date. **The fact some individuals may have avoided the new account fee due to astute planning or serendipity is no reason to invalidate an otherwise legitimate fee.** *Cf. State v. Rush,* 305 S.C. 113, 406 S.E.2d 355 (1991) (explaining the logical conclusion of arguing that a change in a criminal statute creates two classes of offenders in violation of equal protection would be that, once Legislature had enacted a statute, it could never amend or repeal it without running afoul of the equal protection clauses).

J.K. Constr., Inc., 336 S.C. at 171–72, 519 S.E.2d at 566 (emphasis added).

B. The Study substantially complies with the requirements of the Act.

The analysis of the Study is guided by the Act and *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 369 S.C. 498, 632 S.E.2d 864 (2006). Under *Charleston Trident Home Builders, Inc.*, the Study must substantially comply with the Act; however, strict compliance is not required. *Id.* at 507, 632 S.E.2d at 869.

Home Builders have identified three areas of concern with the Study: the affordability analysis, the treatment of a 2018 bond referendum, and the cost assumptions. Home Builders have not alleged or argued, much less produced evidence or analysis, showing "the various factors challenged would actually result in different fees" as required by *Charleston Trident Home Builders, Inc.*, 369 S.C. at 511, 632 S.E.2d at 871.

With respect to affordability, the Act merely requires that there be a report "which estimates the effect of recovering capital costs through impact fees on the availability of affordable housing within the political jurisdiction of the governmental entity." S.C. Code Ann. § 6-1-930(A)(2). This analysis is not part of the maximum fee calculation.

The Act defines "affordable housing" as "housing affordable to families whose incomes do not exceed eighty percent of the median income for the service area or areas within the jurisdiction of the governmental entity." S.C. Code Ann. § 6-1-920(1). Home Builders concede that this analysis was included in the Study, which was incorporated into the 2018 Fee Ordinance.[11]

Here, each draft of the Study includes an affordability analysis. Among other changes, the affordability analysis was revised in direct response to the concerns raised at the public hearing stage. (R. at 650, 746-52). As found by the trial court, TischlerBise amended the Study to treat the District as a whole in response to criticisms that the analysis was skewed because it only considered the incorporated areas and did not adjust for the population differences between the towns of Tega Cay and Fort Mill. (R. at 13, 650). In doing so, TischlerBise took a "conservative approach when calculating monthly expenditures. For each of the eight expenditure categories, the highest cost between the three jurisdictions [was] applied. As a result, a higher than average monthly cost [was] included in the analysis." (R. at 650).

These changes to this analysis over time were not improper manipulation, but rather an effort to comply with the statutory directive that Council consider the "availability of affordable housing within the political jurisdiction." S.C. Code Ann. § 6-1-930(A)(2). Here, the fee applied to the District as a whole, so the final Study considers the effect of the fee on affordable housing across the District as a whole.

The author of the Study, Carson Bise, testified at trial that it is normal for a study like this one to go through multiple drafts. (R. at 242:18-43:10). He also testified that he amended the Study to address the Home Builders' concerns as presented at the public hearing. (R. at 243:6-

[11] Affordable housing is excluded from the 2018 fee. Thus, affordable housing as defined in the Procedures Ordinance will not be impacted by the 2018 fee.

10). In addition, he testified he was not given any direction as to the maximum level for the cost burden analysis in his affordability analysis. (R. at 294:2-95:11). With respect to the affordability analysis, Bise testified as follows:

> Q How did that analysis evolve?
>
> A Yeah, because obviously we're not dealing with a city or county, we're dealing with a school district that overlaps into different jurisdiction; Tega Cay, Fort Mill as well as unincorporated county. Previous drafts had affordability analysis for each of those affected entities. Then as through the process we decided to make it simpler and easier to read and do it as the district as a whole and we took a conservative approach and from a cost prospective used the cost from the highest jurisdiction.
>
> Q Okay. And was there a criticism of one the earlier drafts that Fort Mill and Tega Cay were treated equally even though they're not the same size?
>
> A There was.
>
> Q Did your final analysis address that concern?
>
> A It did.

(R. at 261:9-24). In addition to the final Study, Council saw several drafts of the Study, the Home Builders' criticism of the Study as presented at First Reading, and the TischlerBise response to that criticism.

The purpose of the affordability analysis is to ensure that Council considers affordability in the course of evaluating impact fees. The Act does not prohibit impact fees that have a negative effect on housing affordability; it merely requires that Council consider that effect in assessing a new fee. To the extent Home Builders disagree with the assumptions applied in the affordability analysis relating to the cost of homeownership, those assumptions are limited to the affordability analysis and do not factor into the calculation of the impact fee.

With respect to the cost assumptions that are a component of the maximum fee calculation in the Study, the Act requires that "[t]he amount of the development impact fee must be based on

actual improvement costs or reasonable estimates of the costs, supported by sound engineering studies." S.C. Code Ann. § 6-1-930(B)(2). *Charleston Trident Home Builders, Inc.* includes the following helpful discussion:

> *a. Actual costs or reasonable estimates*
>
> Trident claims the incremental expansion method does not use "actual costs or reasonable estimates supported by sound engineering studies" as required by § 6–1–930(B)(2). As noted above, the method used here is basically a current replacement cost approach. In determining cost, the Tischler Report refers to cost information from "Town staff" and the Marshall & Swift Valuation Service. References to Town staff refer to the Town engineer, Matt Halter, who is a "public engineer." Halter testified his cost estimates were "based on similar projects [Town] had done in the past or similar equipment [Town] had bought in the past, historic numbers typically." Halter stated he gave "engineering estimates" for items in the capital improvements plan. We find the calculation of fees was based on reasonable estimates as indicated by Town's engineer.
>
> *b. Sound engineering studies*
>
> Trident complains Town's cost estimates were not based on sound engineering studies as required under § 6–1–930(B)(2). As noted above, Town's public engineer, Matt Halter, stated he gave "engineering estimates" for the projected costs of capital improvements. The Tischler Report also references the Marshall & Swift Valuation Service, a national provider of real estate costs.
>
> The Act does not specify what constitutes an "engineering study." Since Town used its current facilities upon which to base estimated costs, engineering estimates are adequate. Further, Trident has provided no evidence indicating cost estimates would have been different had specific engineering studies been conducted. We find the use of "engineering estimates" and a widely accepted valuation service was adequate to meet the requirement of "sound engineering studies."

369 S.C. at 509–10, 632 S.E.2d at 870 (footnotes omitted).

The Study was prepared by the same firm as the study in *Charleston Trident Home Builders, Inc.* Here, the Study states:

> The Fort Mill School District is responsible for 100 percent of new school construction costs in the District. For elementary and middle schools, the construction cost assumption is based on estimates developed by the District's construction management firm, Cumming Corporation, an industry-leading, multi-faceted project management and cost consulting firm. The firm employs registered architects, professional engineers, certified professional cost estimators, among

> other professionals involved in large-scale construction projects. The cost assumption at the high school level is based on actual costs incurred for the high school currently under construction, which is managed by the Cumming Corporation. As shown in Figure 12, the construction cost assumptions are $348 per square foot for elementary schools, $346 per square foot for middle schools, and $305 per square foot for high schools. Given the discussion above, and comparable school construction costs in the region, these construction cost assumptions are the most accurate and reasonable available at the time of this study.

(R. at 739; *see also* R. at 648 (discussion by TischlerBise responding to criticism relating to engineering studies)). The Study further provides that the land cost calculations are based on actual purchases by the District. (R. at 740). In making the cost calculations, the Study provides that level of service standards are "based on current costs per student for school buildings and land[.]" (R. at 744). Here, TischlerBise relied on the District's actual cost information where available and estimates provided by the Cumming Corporation. (R. at 249:3-58:19, 1834-1902). As testified by Bise, the Cumming Corporation performed both cost estimations and construction management for the District and includes engineers, architects, and other design professionals on staff. (R. at 250:1-10). The trial court accepted that testimony in finding that the cost information in the study was supported by sound engineering studies as explained in *Charleston Trident Home Builders, Inc.* (R. at 13).

Since the Study "used [the District's] current facilities upon which to base estimated costs, engineering estimates are adequate" to satisfy the sound engineering study requirement under the rule set forth in *Charleston Trident Home Builders, Inc.* Thus, the Study and the 2018 Fee Ordinance are based on "actual improvement costs or reasonable estimates of the costs, supported by sound engineering studies" as required by S.C. Code Ann. § 6-1-930.

Home Builders' argument with respect to consideration of the District's bond referendum in 2018 has been a moving target. In their trial brief, the contention was that Council had failed to consider the referendum. That argument was not supported by the evidence as found by the trial

court. (R. at 1-3). Council considered the debt contemplated by the referendum. (R. at 1834-55, 543-45).

After the trial, Home Builders began to refine that argument in their motion to alter or amend. (R. at 2119-22). There, the complaint was that the Study somehow allowed "double dipping" in its treatment of the referendum. Again, this argument proved to be unsupported by the evidence. The Study includes an analysis that includes a credit for debt attributable to prior referenda as follows:

> Because the Fort Mill School District debt-financed recent school capacity expansions, a credit is included for future principal payments on outstanding debt. A credit is necessary since new residential units that will pay the impact fee will also contribute to future principal payments on this remaining debt through property taxes. A credit is not necessary for interest payments because interest costs are not included in the impact fee. This credit for outstanding debt is credited to residential development at a rate of 64.7%, which is the residential percentage of the overall taxable value of real property within the Fort Mill School District.

(R. at 740-41) (emphasis added). In addition, Bise testified:

> Yes, we gave -- the idea behind credits we wanted to make sure new development doesn't pay twice once through the impact fee and again through a future stream of revenue. Since the school district had existing debt not only for the planned high school that opened in 2020, as part of the 2015 referendum but other projects as well. There's a debt service credit that takes into account the future value of those principal payments and then because the school district was going to issue a bond for the next referendum there is a projection of what those principal payments would be and a credit given for that as well.

(R. at 263:13-23).

This treatment is consistent with the Act, which provides in S.C. Code Ann. § 6-1-990 that in determining the proportionate share of the cost of system improvements to be paid, Council must consider "availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation" and in S.C. Code Ann. § 6-1-960 that a Capital Improvement Plan ("CIP", such as that included in the

Study) must identify "all sources and levels of funding available" for the same system improvements.[12] For these reasons, the consideration of bond debt does not invalidate the Study or the ordinances.

CONCLUSION

For all of these reasons, this Court should affirm the trial court's ruling in favor of the County.

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[12] S.C. Code Ann. § 6-1-960 is focused on the system improvement to be funded all or in part by an impact fee. For that reason, other types of impact fees would not be included in the CIP. Thus, a CIP relating to the funding of new schools would not consider impact fees for other projects such as parks and recreation, fire protection, and a municipal fee.

With respect to the affordability analysis, Home Builders inaccurately state in the last sentence of their argument that Bise "admitted" his final version of the study did not include certain impact fees. In fact, on redirect, Bise clarified that the affordability analysis was based on an average homeowner within the District's monthly costs and that an impact fee was a one-time cost. (R. at 196:7-12). Bise further clarified that the impact fees were a component in the purchase price piece of his analysis as follows:

> Q Is there a treatment of the Fort Mill impact fees in your final study?
> A You are correct.
> Q And what is that treatment?
> A Because the Fort Mill School District and the town accessed the impact fees on residential development and there has been -- has been tied for the existing impact fees in the district to effect the local housing market and increase home prices. So there's assumed within the medium home value of ACS data, of the American Community Survey data, as captured those fees in the house markets.

(R. at 291:20-92:8, 749).

Respectfully submitted,

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