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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 17, 2003

The Honorable Greg Gregory
Senator, District No. 16
P. O. Box 700
Lancaster, South Carolina 29721

Dear Senator Gregory:

In a letter to this office it was indicated that Fort Mill Housing Services, a nonprofit entity whose purpose is to provide affordable housing to the low-income population, those whose income does not exceed 80% of the area median income, has been awarded a grant to build fourteen units to provide housing for persons with disabilities. It was indicated that the targeted population will be those persons who are assisted through Mental Health due to a mental illness. The fourteen units are to be built on property within the city limits of Rock Hill, on land donated to Fort Mill Housing Services for the purpose of building affordable housing. It was further indicated that the City of Rock Hill has informed you that there will be an assessment of impact fees appropriate for this type of construction.

Reference was made reference to the provisions of S.C. Code Ann. Sections 6-1-910 et seq. (Supp. 2003), the "South Carolina Development Impact Fee Act". Such Act provides for the assessment of impact fees for certain developments and capital improvements. The term "impact fee" is defined by Section 6-1-920(8) as

...a payment of money imposed as a condition of development approval to pay a proportionate share of the cost of system improvements needed to serve the people utilizing the improvements. The term does not include:

- (a) a charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;
- (b) connection or hookup charges;
- (c) amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements;
- (d) fees authorized by Article 3 of this chapter.

R. Dennis

Exemptions from impact fees are provided by Section 6-1-970 in stating that

The following structures or activities are exempt from impact fees:

- ...(7) all or part of a particular development project if:
- (a) the project is determined to create affordable housing; and
 - (b) the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.

The term "affordable housing" is defined by Section 6-1-920(1) 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.

The primary goal of statutory construction is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979). A statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). When the terms of a particular statute are plain and unambiguous, the literal meaning should be applied. Duke Power Co. v. S.C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987).

As set forth, a particular development project is exempt from impact fees if the project is to create "affordable housing" as defined. The project outlined, a project to provide housing for the low-income population, those whose income does not exceed 80% of the area median income, would come within the definition of "affordable housing" so as to exempt the project from impact fees. However, Section 6-1-970 also provides that a particular project is exempt from impact fees if "the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees." The term "system improvements" is defined by Section 6-1-920 (21) as "capital improvements to public facilities which are designed to provide service to a service area.". Also, other provisions of Sections 6-1-910 et seq. must be considered in determining whether any other fees are appropriate. For instance, Section 6-1-1060 provides that "(t)he provisions of this article do not repeal existing laws authorizing a governmental entity to impose fees or require contributions or property dedications for capital improvements. A development impact fee adopted in accordance with existing laws before the enactment of this article is not affected until termination of the development impact fee." Also, Section 6-1-1080 provides other exemptions for development impact fees for certain water or wastewater utilities.

The Honorable Greg Gregory
Page 3
December 17, 2003

Referencing such, it is our opinion that Fort Mill Housing Services should be exempt from impact fees as defined above. However, other fees may be applicable depending on the circumstances even if an impact fee is not.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Richardson", followed by a horizontal flourish line.

Charles H. Richardson
Senior Assistant Attorney General