



ALAN WILSON
ATTORNEY GENERAL

December 16, 2021

Gene M. Connell, Jr.
Murrells Inlet-Garden City Fire District
PO Box 648
Murrells Inlet, SC 29576

Dear Mr. Connell:

As chairman of the Murrells Inlet-Garden City Fire District ("Fire District"), you are requesting an opinion of this Office regarding the charging of a fire impact fee. The Fire District is authorized to impose a fire impact fee on all new construction and additions. The fee is 1% of the cost of construction of single-family residences and 2% of the cost of construction of condominiums and townhouses, high rise buildings and all commercial construction.

According to the information you provided, the Swells Cottages neighborhood is being built by a corporation and will consist of 221 detached single-family houses. Each house will be one or two stories and have its own separate means of egress.

The houses will not be sold to the public. Instead, they will be managed professionally and rented. You are seeking an opinion as to whether Swells Cottages should be charged the 2% fire impact fee because the buildings "appear to be commercial construction, i.e., they are being rented as if they were apartments."

LAW/ANALYSIS

Although this Office is not authorized to make factual findings,¹ we can provide you with the applicable law. To provide some background, the Fire District has been empowered by the Legislature to impose impact fees:

In addition to the powers and duties provided for the governing body of the Murrells Inlet-Garden City Fire District in Georgetown and Horry Counties by Act 876 of 1966, the Board may impose, one time only, an impact fee on all buildings under construction on

¹ See *Op. S.C. Atty. Gen.*, 1989 WL 406130 (April 3, 1989) ("[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.")

the effective date of this act and all new construction and all new additions. The fee is one percent of the cost of construction of single family residences and two percent of the cost of construction of condominiums and townhouses, high rise buildings, and all commercial construction. The fees must be used to purchase and maintain fire fighting equipment.

1985 S.C. Acts 272. Neither “single family residences” nor “commercial construction” is defined by Act 272.

To provide “guidance for the consistent and equitable collection of Fire Impact Fees,” the Fire District established the Murrells Inlet – Garden City Fire District Fire Impact Fee Administration Manual (“Manual”) (Jan. 1, 2020), §1.0. In its Definitions section, the Manual states:

Definitions for terms found in this manual relative to occupancy or construction practices shall be consistent with the definitions found in the edition of the International Building and Fire Code in use by either the Georgetown County Building Department, Georgetown County, SC, or the Horry County Code Enforcement Department, Conway, SC, within their respective jurisdictions except where said definitions may conflict with the definition herein contained. Where said definitions do conflict with the definitions herein contained, then the definition herein contained will control.

Id., §5.0.

The Manual provides that “Residential Structures shall be single or multi-family structures not constructed for commercial use . . . Id., §6.1. It also provides the meaning of “Commercial Structures:”

A new building or structure, as defined by the currently adopted edition of the International Building Code as an assembly, Business, Educational, Factory and Industrial, High Hazard, Institutional, Commercial Use Residential, Storage, or Utility and Miscellaneous or other uses not specifically listed as Residential ...

Id., §6.2.

We will examine the International Building Code (“IBC”), because the Manual relies on its definitions regarding occupancy and use. The IBC “is a model code that provides minimum requirements to safeguard the public health, safety and general welfare of the occupants of new and existing buildings and structures.” Preface, International Building Code (2021). It “applies to all occupancies, including one- and two-family dwellings and townhouses that are not within

the scope of the IRC [International Residential Code].” Id. According to the IBC, a “dwelling” is “a building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.” Id., §202. A “dwelling unit” is “a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.” Id.

In the IBC, buildings and structures are classified by occupancy and use. See Id., §301.1. “Occupancy classification is the formal designation of the primary purpose of the building, structure or portion thereof.” Id., §302.1. “Structures shall be classified into one or more of the occupancy groups specified in this section based on the nature of the hazards and risks to building occupants generally associated with the intended purpose of the building or structure.” Id. The occupancy groups are Assembly, Business, Educational, Factory and Industrial, High Hazard, Institutional, Mercantile, Residential, Storage, and Utility and Miscellaneous. Id., §302.1.

Because only the Business and Residential occupancy groups could potentially apply to your question, we will limit our discussion to them. “Business Group B occupancy includes, among others, the use of a building or structure, or a portion thereof, for office, professional or service-type transactions, including storage of records and accounts.” Id., §304.1. “Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code.” Id., §310.1.

Residential Group R contains four classifications. Residential Group R-1 is comprised of “occupancies containing sleeping units where the occupants are primarily transient in nature,” such as hotels and motels. Id., §310.2. Residential Group R-2 contains “sleeping units or more than two dwelling units where the occupants are primarily permanent in nature,” including apartment houses and dormitories. Id., §310.3. Residential Group R-3 is “where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I,” such as buildings that do not contain more than two dwelling units and care facilities providing accommodations for five or fewer persons receiving care. Id., §310.4. Residential Group R-4 is comprised of “buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive custodial care,” including alcohol and drug centers and assisted living facilities. Id., §310.5.

We will also review the International Residential Code (“IRC”), because the IBC, in particular its Residential Group, is not applicable to buildings and structures that are within the IRC’s scope. The IRC applies to the construction of “detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress . . .” International Residential Code (2018), §101.2. A “dwelling” is defined as “any

building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.” Id., §202. “Dwelling unit” means “a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.” Id.

In order to answer your question, we must consider the meaning of “single family residence” in Act 272. A detached one-family dwelling not more than three stories with a separate means of egress is considered residential and is regulated by the International Residential Code. Although the definitions are slightly different, both the IRC and the IBC agree that a dwelling can be used, rented, leased, let or hired out to be occupied for living purposes. Furthermore, a house meeting this description does not fit within any of the IBC’s occupancy groups and therefore does not appear to be a “commercial structure” as defined by the Manual. Accordingly, it is our opinion that a detached single-family house not more than three stories with a separate means of egress can be rented or leased to be occupied for living purposes, without it constituting commercial use. We believe that it should be charged the one percent impact fee as a single family residence.

CONCLUSION

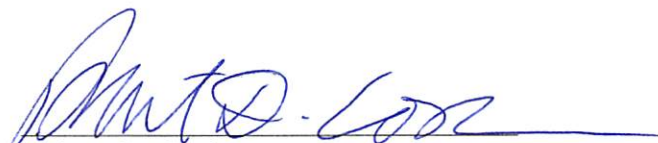
Based on 1985 S.C. Acts 272, the Murrells Inlet – Garden City Fire District Fire Impact Fee Administration Manual (Jan. 1, 2020), the International Business Code (2021), and the International Residential Code (2018), it is our opinion that a detached single-family house not more than three stories with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

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General