ALAN WILSON
ATTORNEY GENERAL

May 21, 2026

Ms. Donna Rainey
Easley City Council
205 North First Street
Easley, SC 29640

Dear Councilwoman Rainey:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. While the Office does not normally answer questions from a single member of council, your request is on behalf of City Council as a whole and includes signatures from a majority of the council. You seek an opinion regarding whether expenditures of transportation impact fees must be tied to the capital improvements identified in the impact fee study and whether transportation impact fee revenues may be used for the construction of parking facilities. You then seek specific guidance regarding the use of transportation impact fees to fund the construction of two parking lots in Easley.

Law/Analysis

It appears you are referring to development impact fees, which are governed by the South Carolina Development Impact Fee Act. S.C. Code Ann. § 6-1-910, *et seq.* (2004 & Supp. 2025) (the "Act"). The Office previously summarized the purpose of the Act saying:

> The Act allows local governmental entities meeting certain requirements to impose an impact fee on new development. In reading the Act, we believe the Legislature intended for the Act to provide a mechanism by which local governing bodies could impose a fee on new development in order to offset the additional demand for public facilities created by new development. Section 6-1-920(6) of the South Carolina Code (2004) defines "development" as "construction or installation of a new building or structure, or a change in use of a building or structure, any of which creates additional demand and need for public facilities."

Op. S.C. Att'y Gen., 2010 WL 4391638 (Oct. 18, 2010).

To answer your questions, we begin by reviewing the structure of the Act. When imposing a development impact fee, the governing body begins by adopting a resolution directing the local planning commission to conduct studies and recommend an impact fee ordinance. S.C. Code Ann.

§ 6-1-950(A) (2004). In order to impose a development impact fee, the governmental entity must adopt either a comprehensive plan, as described in Chapter 29 of Tile 6, or a capital improvements plan which substantially complies with the requirements of Section 6-1-960(B). S.C. Code Ann. § 6-1-930(A)(1) (2004). The local planning commission recommends a capital improvements plan to the governing body, which may adopt or amend the plan. S.C. Code Ann. § 6-1-960(A) (2004). The capital improvements plan must contain:

> (1) a general description of all existing public facilities, and their existing deficiencies within the service area . . . , a reasonable estimate of all costs, and a plan to develop the funding resources, including existing sources of revenues, related to curing the existing deficiencies . . . ;
> . . .
> (5) a description of all system improvements and their costs necessitated by and attributable to new development in the service area . . . ;

S.C. Code Ann. § 6-1-960(B) (2004). The impact fee ordinance adopted by the governing body must "specify the system improvements for which the impact fee is intended to be used." S.C. Code Ann. § 6-1-940(2) (2004). System improvements are "capital improvements to public facilities which are designed to provide service to a service area." S.C. Code Ann. § 6-1-920(21) (2004). Public facilities are defined, in part, as "roads, streets, and bridges including, but not limited to, rights-of-way and traffic signals," S.C. Code Ann. § 6-1-920(18)(d) (2004), and capital improvements are "improvements with a useful life of five years or more, by new construction or other action, which increase or increased the service capacity of a public facility," S.C. Code Ann. § 6-1-920(2) (2004). Finally, "System improvement costs" are defined as:

> [C]osts incurred for construction or reconstruction of system improvements, including design, acquisition, engineering, and other costs attributable to the improvements, and also including the costs of providing additional public facilities needed to serve new growth and development.

S.C. Code Ann. § 6-1-920(22) (2004). Notably, the Act explicitly excludes from system improvement costs "construction, acquisition, or expansion of public facilities other than capital improvements identified in the capital improvements plan." S.C. Code Ann. § 6-1-920(22)(a) (2004).

Once collected, Section 6-1-1010 governs the expenditure of development impact fees. It provides:

> Expenditures of development impact fees must be made only for the category of system improvements and within or for the benefit of the service area for which the impact fee was imposed as shown by the capital improvements plan and as authorized in this article. Impact fees may not be used for:

> (1) a purpose other than system improvement costs to create additional improvements to serve new growth;
> (2) a category of system improvements other than that for which they were collected; or
> (3) the benefit of service areas other than the area for which they were imposed.

S.C. Code Ann. § 6-1-1010(B) (2004).

Your first question regards whether the expenditure of development impact fees must be tied to a city's capital improvements plan. Yes, fees must be spent according to the capital improvements plan. Even prior to enactment, Section 6-1-940(2) requires the impact fee ordinance to "specify the system improvements for which the impact fee is intended to be used." S.C. Code Ann. § 6-1-940(2) (2004). When allocating fees, Section 6-1-920(22)(a) specifically excludes from allowable system improvement costs "construction, acquisition, or expansion of public facilities other than capital improvements identified in the capital improvements plan." S.C. Code Ann. § 6-1-920(22)(a) (2004). And, Section 6-1-1010 requires expenditures to be "only for the category of system improvements and within or for the benefit of the service area for which the impact fee was imposed as shown by the capital improvements plan." S.C. Code Ann. § 6-1-1010(B) (2004). These sections make clear that development impact fees may only be expended for uses identified in the capital improvements plan adopted by city council. Section 6-1-1010(B) appears to provide some margin for alterations in the plan as long as the final expenditure is in the same "category" as the original capital improvements plan, but none of these sections allow for expenditures wholly outside of those designated in the capital improvements plan. *See e.g.*, Op. S.C. Att'y Gen., 2006 WL 148716 (Jan. 11, 2006) ("The statute cited above does not include a provision for the supply of affordable housing for low-income individuals. Thus, in order for a local housing trust fund to be funded with proceeds from a development impact fee, the General Assembly would need to amend the South Carolina Development Impact Fee Act to include affordable housing as a public facility."). In the event a governing body wishes to amend their capital improvements plan, they must follow the procedure provided in Section 6-1-960(B).

Second, you ask whether development impact fees may be expended to construct or renovate a parking lot for an existing building, generally. Assuming it is adequately described in the capital improvements plan, development impact fees may be used on "capital improvements to public facilities which are designed to provide service to a service area." S.C. Code Ann. § 6-1-920(21) (2004). Capital improvements must have a useful life of five years or more and increase the service capacity of a public facility. Assuming the construction of a parking lot has a useful life of more than five years, which seems likely, then the question becomes a) whether a parking lot is a public facility and b) whether constructing or renovating a parking lot for use by an existing building is a permissible use of development impact fees, even though they are reserved for capital improvements made necessary by new development.

Public facilities are defined, in part, as "roads, streets, and bridges including, but not limited to, rights-of-way and traffic signals." S.C. Code Ann. § 6-1-920(18)(d) (2004). A parking lot is not a road, street, or bridge; however, the General Assembly's inclusion of the phrase "including, but not limited to, rights-of-way and traffic signals" indicates that the General Assembly did not intend to strictly limit the expenditure of development impact fees relating to transportation to the construction of pavement on which vehicles travel. Instead, the inclusion of "including, but not limited to" and "traffic signals" indicates that the General Assembly meant for public facilities to include a broader category of transportation related needs. Parking lots provide places for vehicles to be stored while they are not being driven. This is a critical piece of a functioning road system. A system which consists purely of roads, with nowhere for vehicles to park, would undermine the very purpose of the roads because no one would be able to park their vehicle and visit their destination. Thus, we think it likely that parking lots, as a general category, would be considered public facilities under the Act.

Both of the parking lots you describe in your letter would provide parking for existing buildings. Development impact fees must be used to serve new development. *See* S.C. Code Ann. § 6-1-960(5) (2004) ("a description of all system improvements and their costs necessitated by and attributable to **new** development in the service area,") (emphasis added); § 6-1-990 (2004) ("The impact fee imposed upon a fee payor may not exceed a proportionate share of the costs incurred by the governmental entity in providing system improvements to serve the **new** development.") (emphasis added); § 6-1-1010(B)(1) (2004) ("Impact fees may not be used for a purpose other than system improvement costs to create additional improvements to serve **new** growth") (emphasis added); *see also* S.C. Code Ann. § 9-1-920(22)(c) & (d) (2004) (System improvement costs do not include "upgrading, updating, expanding, or replacing existing capital improvements **to serve existing development** in order to meet stricter safety, efficiency, environmental, or regulatory standards [or] upgrading, updating, expanding, or replacing existing capital improvements **to provide better service to existing development.**") (emphasis added). This, however, does not require the construction of new public facilities. The Act specifically recognizes that capital improvements may be made "by new construction or other action." S.C. Code Ann. § 6-1- 920(22) (2004). "Other action" would include the renovation or modification of an existing facility; thus, the use of development impact fees is not limited to constructing new facilities. In both instances though, the Act does tie the work to needs created by the new development. As a result, the operative question is whether the construction or renovation will only benefit existing development or if it will meet needs created by the new development.

For example, if an existing building needs a parking lot with a 50-vehicle capacity but it needs a 100-vehicle capacity, development impact fees may not be used to increase the capacity of the parking lot because the additional need is not the result of new development. However, if the capital improvements plan identifies that a given area currently has a 250-vehicle parking capacity and new development will cause that area to need 300 vehicles of capacity, the city council may elect to achieve the increased capacity by upgrading or expanding an existing parking lot to add 50 vehicles of capacity. We believe development impact fees could properly be used in

the latter case but not the former because the latter improvements are used to meet the increased need created by new development, even though it is achieved through modifications to existing facilities.

You ask about the legality of money expended in the construction of a parking lot for West End Hall. It has long been the policy of this Office "not to issue an opinion on any question which has or will become moot." Op. S.C. Att'y Gen., 1999 WL 1425994 (Oct. 27, 1999). Because the money to build this parking lot has already been spent, the question of law regarding its expenditure is moot, and the Office will not opine on the legality of this expenditure.

Finally, you also ask about an allocation of $130,000 in development impact fee revenues for the construction of a parking lot behind the City's Law Enforcement Center. The Office can render an opinion on general questions of law but cannot make factual determinations. Op. S.C. Att'y Gen., 2003 WL 21040130 at *1 (Feb. 19, 2003) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions." (quoting Op. S.C. Att'y Gen., Oct. 10, 1985, at *2 and Sept. 3, 1999, at *2)). Therefore, the Office can offer a general opinion on the use of funds to construct a parking lot but cannot determine whether the expenditure of development impact fees to build this parking lot is in fact lawful. As discussed above, the Act requires expenditures to be described in the capital improvements plan adopted by the City and related to needs created by new development. Assuming the parking lot's renovation meets those requirements, the expenditure of development impact fee revenues for the renovation of parking lots is generally permissible, as long as the changes are made because of new development not to meet prior needs.

Conclusion

By requiring the adoption of a capital improvements plan, *see* S.C. Code Ann. § 6-1-960(B) (2004), and tying the expenditure of funds to the plan, *see* S.C. Code Ann. § 6-1-940(2) (2004), § 6-1-920(22)(a) (2004), § 6-1-1010(B) (2004), the General Assembly made clear its intent to restrict the expenditure of development impact fees to new developments identified in the capital improvements plan. As a general matter it would appear that the use of funds to construct or renovate a parking lot is permissible because a parking lot is likely a public facility.

Regarding the parking lot behind the City's Law Enforcement Center, this may be permissible, but the office has not reviewed the City's capital improvements plan to evaluate whether this parking lot falls within the scope of the City's capital improvements plan. Additionally, we note that just as City Council has the authority to allocate and appropriate money, City Council also has the authority to revoke or modify its allocations. If the City Council does not wish to expend development impact fees, or any other public monies, on the construction of this parking lot, then City Council may be able to revoke or modify the allocation you reference.

Sincerely,

David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General Emeritus