

RICHLAND COUNTY

DEVELOPMENT & SERVICES COMMITTEE AGENDA



Tuesday, DECEMBER 18, 2018

5:00 PM

The Honorable Greg Pearce, Chair

County Council District 6

The Honorable Gwen Kennedy

County Council District 7

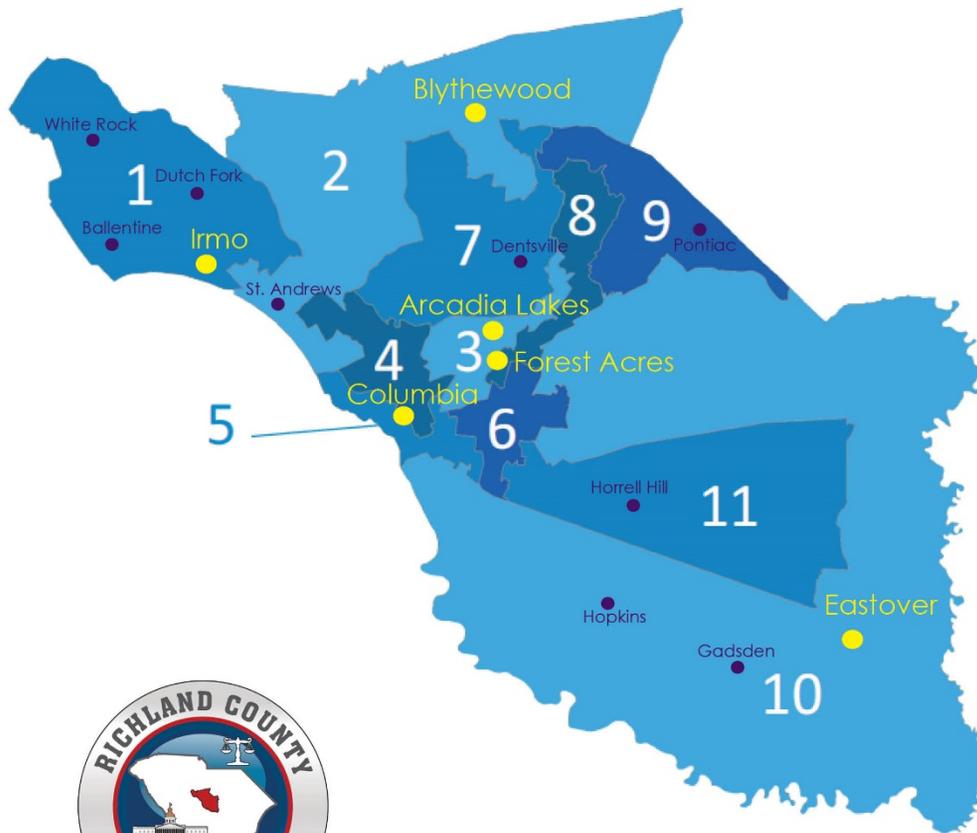
The Honorable Jim Manning

County Council District 8

The Honorable Chip Jackson

County Council District 9

RICHLAND COUNTY COUNCIL 2017-2018



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Bill Malinowski
District 1



CHAIR
Joyce Dickerson
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District 9



Dalhi Myers
District 10



Norman Jackson
District 11



Richland County Development & Services Committee

December 18, 2018 - 5:00 PM

2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER** The Honorable Greg Pearce
2. **APPROVAL OF MINUTES** The Honorable Greg Pearce
 - a. Regular Session: November 15, 2018 [PAGES 6-8]
3. **ADOPTION OF AGENDA** The Honorable Greg Pearce
4. **ITEMS FOR ACTION**
 - a. Develop Old Bluff Road as a true scenic boulevard for the Congaree National Park; 5-lane divided, lighted median and improved intersection on Bluff Road [N. JACKSON] [PAGE 9]
 - b. Review impacts fees for the development community on projects that will cause additional infrastructure which should not be paid by public dollars [N. JACKSON] [PAGES 10-25]
5. **ITEMS PENDING ANALYSIS: NO ACTION REQUIRED**
 - a. I move to amend 022-18HR "An Ordinance Amending the Richland County Code of Ordinances, Chapter 5, Animals and Fowl; Section 5-4, Community Cat Diversion Program; so as to amend the language therein" [KENNEDY]
 - b. Rural Zoning vs. Open Space Provision – Rural minimum lot size is 0.76 acre lots. Open space provision will allow high density lots with green space set aside. The uses for housing are similar but the capacity is different; therefore, there should be a zoning change from

any current zoning to another defined use. [N.
JACKSON]

6. ADJOURNMENT



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.



Richland County Council

DEVELOPMENT AND SERVICES COMMITTEE

November 15, 2018 – 5:00 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29204

COMMITTEE MEMBERS PRESENT: Greg Pearce, Chair; Calvin “Chip” Jackson, and Jim Manning

OTHER COUNCIL MEMBERS PRESENT: Norman Jackson and Bill Malinowski

OTHERS PRESENT: Michelle Onley, Kim Williams-Roberts, Trena Bowers, Sandra Yudice, Larry Smith, and Pam Davis

1. **CALL TO ORDER** – Mr. Pearce called the meeting to order at approximately 5:00 PM.
2. **APPROVAL OF MINUTES**
 - a. October 23, 2018 – Mr. Manning moved, seconded by Mr. C. Jackson, to approve the minutes as distributed.

In Favor: C. Jackson, Pearce, and Manning

The vote in favor was unanimous.
3. **ADOPTION OF AGENDA** – Mr. Manning moved, seconded by Mr. C. Jackson, to adopt the agenda as published.

In Favor: C. Jackson and Pearce

The vote in favor was unanimous.
4. **ITEMS FOR ACTION**
 - a. An Ordinance authorizing deed to the City of Columbia water lines for Richland Library Southeast, 7421 Garners Ferry Road, Richland County TMS # 16409-04-02 (Portion); CF # 191-10A – Dr. Yudice stated the library did some renovations to this branch. Before issuing a certificate of occupancy we need to deed those waterlines to the City of Columbia.

Mr. Manning moved, seconded by Mr. C. Jackson, to forward to Council with a recommendation to approve staff’s recommendation to approve the ordinance.

In Favor: C. Jackson, Pearce, and Manning

The vote in favor was unanimous.

5. **ADJOURNMENT** – The meeting adjourned at approximately 5:03 PM.

**RICHLAND COUNTY GOVERNMENT
DEPARTMENT OF TRANSPORTATION**

2000 Hampton Street, Suite 3014, Columbia, SC 29204
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**Development & Services Committee Meeting
Briefing Document**

Agenda Item

The Department of Transportation received a request regarding the development of Old Bluff Road as a true scenic boulevard for the Congaree National Park: 5-lane divided, lighted median and improved intersection on Bluff Road.

Background

Ordinance No. 039-12HR established the levy and imposition of a one percent sales and use tax for financing the costs of highways, roads, streets, bridges, greenways, pedestrian sidewalks, and bike paths and lanes and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Richland County or (jointly) operated by the County, other governmental entities and transportation authorities. Section 2(c) of the ordinance references Appendix A, which is a list of the roadway projects and the pedestrian/bike/greenway projects to be funded by the proceeds of the one percent sales and use tax.

Issue

Appendix A of Ordinance No. 039-12HR does not include projects for the development of Old Bluff Road or the intersection improvement on Bluff Road in the vicinity of the Congaree National Park. Therefore, the use of proceeds from the one percent sales and use tax on these two projects is prohibited and could result in an audit finding by the South Carolina Department of Revenue. Furthermore, as Old Bluff Road is a SCDOT State Maintained road, the Public Works Department has no jurisdiction nor any funding for this project.

Alternatives

1. Add this project to a future construction list when special revenues could be secured (e.g., subsequent to the current penny sales tax program).
2. Defer to the South Carolina Department of Transportation to finance the road widening and intersection improvement in the vicinity of the Congaree National Park and assist with identifying other legally available sources of funding (i.e., H-tax funds, request federal funds (TIGER), "C" funds).

Staff Recommendation

The intent of staff is to institute County Council's directive. Staff does not have a recommendation regarding this matter.

Submitted by: Dr. John Thompson, Transportation

Date Submitted: December 07, 2018



**Development and Services Committee Meeting
Briefing Document**

Agenda Item

During its December 4, 2018 County Council meeting, Councilman Norman Jackson brought forth the following motion:

“Review impact fees for the development community on projects that will cause additional infrastructure which should not be paid by public dollars.”

Background

Impact fees are those assessed by local governments in which new development occurs for the purpose of providing new and/or expanded public, capital facilities required to serve the aforementioned development(s). Impact fees typically require payment in advance of the completion of new development and are calculated based on a methodology derived from the cost of the facility and the scope and size of the development(s). These fees are utilized to finance proximate improvements that are offsite of, but offer direct benefit to the development(s).

Title 6 – Chapter 1, Article 9 of the South Carolina Code of Laws, entitled *South Carolina Development Fee Act*, sets forth the methodology for establishing impact fees at the level of local government as outlined below:

Developmental impact fee.

- Only a government entity that has a Comprehensive Plan, as provided in Chapter 29 of the SC Code of Laws, and which complies with requirements of said Article may impose a development impact fee.
- A governmental entity may not impose an impact fee, regardless of how it is designated, except as provided in Article 9 of the SC Code of Laws.
 - Before 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.
 - An impact fee may be imposed and collected by the governmental entity only upon the passage of an ordinance approved by a positive majority, as defined in Article 3 of Chapter 29 of the SC Code of Laws.
 - The amount of the development impact fee must be based on actual improvement costs or reasonable estimates thereof, supported by sound engineering studies.
 - An ordinance authorizing the imposition of a development impact fee must:
 - Establish a procedure for timely processing of applications for determinations by the governmental entity of development impact fees applicable to all property subject to impact fees, and for the timely

- processing of applications for individual assessment of development impact fees, credits or reimbursements allowed or paid under Article 9;
 - Include a description of acceptable levels of service for system improvements; and
 - Provide for termination of the impact fee.
- A governmental entity shall prepare and publish an annual report describing the amount of all impact fees collected, appropriated or spent during the preceding year by category of public facility and service area.

Amount of impact fee.

- A government entity imposing an impact fee must provide in the impact fee ordinance the amount of impact fee due for each unit of development in a project for which an individual building permit or certificate of occupancy is issued.
- The impact fee ordinance must:
 - Include an explanation of the calculation of the impact fee;
 - Specify the facility improvements for which the impact fee is intended to be used;
 - Inform the developer that he may pay a project's proportionate share of the improvement costs via impact fees according to the fee schedule;
 - Inform the payer that:
 - He may negotiate a contract for facilities or services with the governmental entity in lieu of the development impact fee;
 - He has the right of appeal; and
 - The impact fee must be paid no earlier than the time of issuance of the building permit or issuance of a development permit if no building permit is required.

Procedure for adoption of ordinance imposing impact fees.

- The governing body of a governmental entity begins the process for adoption of an ordinance imposing an impact fee by enacting a resolution directing the Planning Commission (PC) to conduct the required studies and recommend an impact fee ordinance developed in accordance with the requirements of Article 9 of the SC Code of Laws.
- Upon receipt of the resolution, the PC shall develop, within the timeframe designated in the resolution, and make recommendations to the governmental entity for a capital improvements plan and impact fees by service unit.
 - PC shall prepare and adopt its recommendations via the same procedures and processes as those used for developing recommendations for a Comprehensive Plan as provided in Article 3, Chapter 29, Title 6 of the SC Code of Laws, except as otherwise provided in Article 9.

Further detail about the process of establishing impact fees can be found in Attachment A; Article 9 of the South Carolina Code of Laws, *South Carolina Development Impact Fees Act*.

Issues

The American Planning Association [APA] found that impact fees have been criticized as being an inequitable means to finance public facilities as they require developers to, at the time of new development, fund new and/or improved facilities without allowing that they benefit from existing facility capacity. However, the APA offers that to the extent that when fees are paid by those who are most likely to benefit from the enhanced public facilities, impact fees are equitable.

Nonetheless, the establishment of impact fees may be controversial where the development community is concerned.

Additionally, enactment of impact fees, depending on the timeline thereof, stands to have significant impact(s) on several ongoing projects and initiatives inclusive of but not limited to:

- The Land Development Code [LDC] Rewrite
- The completion of the Land Development Manual [LDM]
- Capital Improvements Plan [CIP] development efforts

Fiscal Impact

The financial impact of impact fees remains to be determined by the studies necessary for the establishment thereof.

Past Legislative Actions

Though there have been Council conversations about impact fees, there is no known past legislative action relative thereto.

Alternatives

1. Enact a resolution directing the Planning Commission (PC) to conduct the required studies and recommend an impact fee ordinance developed in accordance with the requirements of Article 9 of the SC Code of Laws.
2. Hold a Council work session to review and discuss further.
3. Do not give further consideration to the establishment of impact fees at this time.

Staff Recommendation

Staff recommends enacting a resolution directing the Planning Commission (PC) to conduct the required studies as well as holding a Council work session to review.

Submitted by: Ashley Powell, Interim Director, Divisions of Planning, Zoning and Conservation
Date: December 11, 2018

Attachments: See also Attachment A: Title 6 – Chapter 1, Article 9 of the SC Code of Laws; Attachment B: Title 6 – Chapter 29, Article 3 of the SC Code of Laws

ATTACHMENT A

ARTICLE 9

Development Impact Fees

SECTION 6-1-910. Short title.

This article may be cited as the "South Carolina Development Impact Fee Act".

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-920. Definitions.

As used in this article:

- (1) "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.
- (2) "Capital improvements" means 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.
- (3) "Capital improvements plan" means a plan that identifies capital improvements for which development impact fees may be used as a funding source.
- (4) "Connection charges" and "hookup charges" mean charges for the actual cost of connecting a property to a public water or public sewer system, limited to labor and materials involved in making pipe connections, installation of water meters, and other actual costs.
- (5) "Developer" means an individual or corporation, partnership, or other entity undertaking development.
- (6) "Development" means 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. A building or structure shall include, but not be limited to, modular buildings and manufactured housing. "Development" does not include alterations made to existing single-family homes.
- (7) "Development approval" means a document from a governmental entity which authorizes the commencement of a development.
- (8) "Development impact fee" or "impact fee" means 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.
- (9) "Development permit" means a permit issued for construction on or development of land when no subsequent building permit issued pursuant to Chapter 9 of Title 6 is required.
- (10) "Fee payor" means the individual or legal entity that pays or is required to pay a development impact fee.
- (11) "Governmental entity" means a county, as provided in Chapter 9, Title 4, and a municipality, as defined in Section 5-1-20.
- (12) "Incidental benefits" are benefits which accrue to a property as a secondary result or as a minor consequence of the provision of public facilities to another property.
- (13) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a ten-year period.
- (14) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(15) "Local planning commission" means the entity created pursuant to Article 1, Chapter 29, Title 6.

(16) "Project" means a particular development on an identified parcel of land.

(17) "Proportionate share" means that portion of the cost of system improvements determined pursuant to Section 6-1-990 which reasonably relates to the service demands and needs of the project.

(18) "Public facilities" means:

(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.

(19) "Service area" means, based on sound planning or engineering principles, or both, a defined geographic area in which specific public facilities provide service to development within the area defined. Provided, however, that no provision in this article may be interpreted to alter, enlarge, or reduce the service area or boundaries of a political subdivision which is authorized or set by law.

(20) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(21) "System improvements" means capital improvements to public facilities which are designed to provide service to a service area.

(22) "System improvement costs" means costs 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. System improvement costs do not include:

(a) construction, acquisition, or expansion of public facilities other than capital improvements identified in the capital improvements plan;

(b) repair, operation, or maintenance of existing or new capital improvements;

(c) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;

(d) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;

(e) administrative and operating costs of the governmental entity; or

(f) principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

HISTORY: 1999 Act No. 118, Section 1; 2016 Act No. 229 (H.4416), Section 2, eff June 3, 2016.

Effect of Amendment

2016 Act No. 229, Section 2, added (18)(i), relating to certain public education facilities.

SECTION 6-1-930. Developmental impact fee.

(A)(1) Only a governmental entity that has a comprehensive plan, as provided in Chapter 29 of this title, and which complies with the requirements of this article may impose a development impact fee. If a governmental entity has not adopted a comprehensive plan, but has adopted a capital improvements plan which substantially complies with the requirements of Section 6-1-960(B), then it may impose a development impact fee. A governmental entity may not impose an impact fee, regardless of how it is designated, except as provided in this article. However, a special purpose district or public service district which (a) provides fire protection services or recreation services, (b) was created by act of the General Assembly prior to 1973, and (c) had the power to impose development impact fees prior to the effective date of this section is not prohibited from imposing development impact fees.

(2) Before 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.

(B)(1) An impact fee may be imposed and collected by the governmental entity only upon the passage of an ordinance approved by a positive majority, as defined in Article 3 of this chapter.

(2) The amount of the development impact fee must be based on actual improvement costs or reasonable estimates of the costs, supported by sound engineering studies.

(3) An ordinance authorizing the imposition of a development impact fee must:

(a) establish a procedure for timely processing of applications for determinations by the governmental entity of development impact fees applicable to all property subject to impact fees and for the timely processing of applications for individual assessment of development impact fees, credits, or reimbursements allowed or paid under this article;

(b) include a description of acceptable levels of service for system improvements; and

(c) provide for the termination of the impact fee.

(C) A governmental entity shall prepare and publish an annual report describing the amount of all impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area.

(D) Payment of an impact fee may result in an incidental benefit to property owners or developers within the service area other than the fee payor, except that an impact fee that results in benefits to property owners or developers within the service area, other than the fee payor, in an amount which is greater than incidental benefits is prohibited.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-940. Amount of impact fee.

A governmental entity imposing an impact fee must provide in the impact fee ordinance the amount of impact fee due for each unit of development in a project for which an individual building permit or certificate of occupancy is issued. The governmental entity is bound by the amount of impact fee specified in the ordinance and may not charge higher or additional impact fees for the same purpose unless the number of service units increases or the scope of the development changes and the amount of additional impact fees is limited to the amount attributable to the additional service units or change in scope of the development. The impact fee ordinance must:

(1) include an explanation of the calculation of the impact fee, including an explanation of the factors considered pursuant to this article;

(2) specify the system improvements for which the impact fee is intended to be used;

(3) inform the developer that he may pay a project's proportionate share of system improvement costs by payment of impact fees according to the fee schedule as full and complete payment of the developer's proportionate share of system improvements costs;

(4) inform the fee payor that:

(a) he may negotiate and contract for facilities or services with the governmental entity in lieu of the development impact fee as defined in Section 6-1-1050;

(b) he has the right of appeal, as provided in Section 6-1-1030;

(c) the impact fee must be paid no earlier than the time of issuance of the building permit or issuance of a development permit if no building permit is required.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-950. Procedure for adoption of ordinance imposing impact fees.

(A) The governing body of a governmental entity begins the process for adoption of an ordinance imposing an impact fee by enacting a resolution directing the local planning commission to conduct the studies and to recommend an impact fee ordinance, developed in accordance with the requirements of this article. Under no circumstances may the governing body of a governmental entity impose an impact fee for any public facility which has been paid for entirely by the developer.

(B) Upon receipt of the resolution enacted pursuant to subsection (A), the local planning commission shall develop, within the time designated in the resolution, and make recommendations to the governmental entity for a capital improvements plan and impact fees by service unit. The local planning commission shall prepare and adopt its recommendations in the same manner and using the same procedures as those used for developing recommendations for a comprehensive plan as provided in Article 3, Chapter 29, Title 6, except as otherwise provided in this article. The commission shall review and update the capital improvements plan and impact fees in the same manner and on the same review cycle as the governmental entity's comprehensive plan or elements of it.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-960. Recommended capital improvements plan; notice; contents of plan.

(A) The local planning commission shall recommend to the governmental entity a capital improvements plan which may be adopted by the governmental entity by ordinance. The recommendations of the commission are not binding on the governmental entity, which may amend or alter the plan. After reasonable public notice, a public hearing must be held before final action to adopt the ordinance approving the capital improvements plan. The notice must be published not less than thirty days before the time of the hearing in at least one newspaper of general circulation in the county. The notice must advise the public of the time and place of the hearing, that a copy of the capital improvements plan is available for public inspection in the offices of the governmental entity, and that members of the public will be given an opportunity to be heard.

(B) The capital improvements plan must contain:

- (1) a general description of all existing public facilities, and their existing deficiencies, within the service area or areas of the governmental entity, 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 including, but not limited to, the upgrading, updating, improving, expanding, or replacing of these facilities to meet existing needs and usage;
- (2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing public facilities, which must be prepared by a qualified professional using generally accepted principles and professional standards;
- (3) a description of the land use assumptions;
- (4) a definitive table establishing the specific service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural, and industrial, as appropriate;
- (5) a description of all system improvements and their costs necessitated by and attributable to new development in the service area, based on the approved land use assumptions, to provide a level of service not to exceed the level of service currently existing in the community or service area, unless a different or higher level of service is required by law, court order, or safety consideration;
- (6) the total number of service units necessitated by and attributable to new development within the service area based on the land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;
- (7) the projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty years;
- (8) identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements; and
- (9) a schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(C) Changes in the capital improvements plan must be approved in the same manner as approval of the original plan.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-970. Exemptions from impact fees.

The following structures or activities are exempt from impact fees:

- (1) rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe;
- (2) remodeling or repairing a structure that does not result in an increase in the number of service units;
- (3) replacing a residential unit, including a manufactured home, with another residential unit on the same lot, if the number of service units does not increase;
- (4) placing a construction trailer or office on a lot during the period of construction on the lot;
- (5) constructing an addition on a residential structure which does not increase the number of service units;
- (6) adding uses that are typically accessory to residential uses, such as a tennis court or a clubhouse, unless it is demonstrated clearly that the use creates a significant impact on the system's capacity;
- (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;
- (8) constructing a new elementary, middle, or secondary school; and
- (9) constructing a new volunteer fire department.

HISTORY: 1999 Act No. 118, Section 1; 2016 Act No. 229 (H.4416), Section 1, eff June 3, 2016.

Effect of Amendment

2016 Act No. 229, Section 1, added (8) and (9), relating to certain schools and volunteer fire departments.

SECTION 6-1-980. Calculation of impact fees.

(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.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-990. Maximum impact fee; proportionate share of costs of improvements to serve new development.

(A) 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. The proportionate share is the cost attributable to the development after the governmental entity reduces the amount to be imposed by the following factors:

- (1) appropriate credit, offset, or contribution of money, dedication of land, or construction of system improvements; and
- (2) all other sources of funding the system improvements including funds obtained from economic development incentives or grants secured which are not required to be repaid.

(B) In determining the proportionate share of the cost of system improvements to be paid, the governmental entity imposing the impact fee must consider the:

- (1) cost of existing system improvements resulting from new development within the service area or areas;
- (2) means by which existing system improvements have been financed;
- (3) extent to which the new development contributes to the cost of system improvements;
- (4) extent to which the new development is required to contribute to the cost of existing system improvements in the future;
- (5) extent to which the new development is required to provide system improvements, without charge to other properties within the service area or areas;
- (6) time and price differentials inherent in a fair comparison of fees paid at different times; and
- (7) availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1000. Fair compensation or reimbursement of developers for costs, dedication of land or oversize facilities.

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.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1010. Accounting; expenditures.

(A) Revenues from all development impact fees must be maintained in one or more interest-bearing accounts. Accounting records must be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees must be considered funds of the account on which it is earned, and must be subject to all restrictions placed on the use of impact fees pursuant to the provisions of this article.

(B) 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.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1020. Refunds of impact fees.

(A) An impact fee must be refunded to the owner of record of property on which a development impact fee has been paid if:

- (1) the impact fees have not been expended within three years of the date they were scheduled to be expended on a first-in, first-out basis; or
- (2) a building permit or permit for installation of a manufactured home is denied.

(B) When the right to a refund exists, the governmental entity shall send a refund to the owner of record within ninety days after it is determined by the entity that a refund is due.

(C) A refund must include the pro rata portion of interest earned while on deposit in the impact fee account.

(D) A person entitled to a refund has standing to sue for a refund pursuant to this article if there has not been a timely payment of a refund pursuant to subsection (B) of this section.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1030. Appeals.

(A) A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payor.

(B) A fee payor may pay a development impact fee under protest. A fee payor making the payment is not estopped from exercising the right of appeal provided in this article, nor is the fee payor estopped from receiving a refund of an amount considered to have been illegally collected. Instead of making a payment of an impact fee under protest, a fee payor, at his option, may post a bond or submit an irrevocable letter of credit for the amount of impact fees due, pending the outcome of an appeal.

(C) A governmental entity which adopts a development impact fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by both the fee payor and the governmental entity, to address a disagreement related to the impact fee for proposed development. Participation in mediation does not preclude the fee payor from pursuing other remedies provided for in this section or otherwise available by law.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1040. Collection of development impact fees.

A governmental entity may provide in a development impact fee ordinance the method for collection of development impact fees including, but not limited to:

- (1) additions to the fee for reasonable interest and penalties for nonpayment or late payment;
- (2) withholding of the certificate of occupancy, or building permit if no certificate of occupancy is required, until the development impact fee is paid;
- (3) withholding of utility services until the development impact fee is paid; and
- (4) imposing liens for failure to pay timely a development impact fee.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1050. Permissible agreements for payments or construction or installation of improvements by fee payors and developers; credits and reimbursements.

A fee payor and developer may enter into an agreement with a governmental entity, including an agreement entered into pursuant to the South Carolina Local Government Development Agreement Act, providing for payments instead of impact fees for facilities or services. That agreement may provide for the construction or installation of system improvements by the fee payor or developer and for credits or reimbursements for costs incurred by a fee payor or developer including interproject transfers of credits or reimbursement for project improvements which are used or shared by more than one development project. An impact fee may not be imposed on a fee payor or developer who has entered into an agreement as described in this section.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1060. Article shall not affect existing laws.

(A) The 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. A subsequent change or reenactment of the development impact fee must comply with the provisions of this article. Requirements for developers to pay in whole or in part for system improvements may be imposed by governmental entities only by way of impact fees imposed pursuant to the ordinance.

(B) Notwithstanding another provision of this article, property for which a valid building permit or certificate of occupancy has been issued or construction has commenced before the effective date of a development impact fee ordinance is not subject to additional development impact fees.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1070. Shared funding among units of government; agreements.

(A) If the proposed system improvements include the improvement of public facilities under the jurisdiction of another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public service district, an agreement between the governmental entity and other unit of government must specify the reasonable share of funding by each unit. The governmental entity authorized to impose impact fees may not assume more than its reasonable share of funding joint improvements, nor may another unit of government which is not authorized to impose impact fees do so unless the expenditure is pursuant to an agreement under Section 6-1-1050 of this section.

(B) A governmental entity may enter into an agreement with another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public service district, that has the responsibility of providing the service for which an impact fee may be imposed. The determination of the amount of the impact fee for the contracting governmental entity must be made in the same manner and is subject to the same procedures and limitations as provided in this article. The agreement must provide for the collection of the impact fee by the governmental entity and for the expenditure of the impact fee by another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public services district unless otherwise provided by contract.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1080. Exemptions; water or wastewater utilities.

The provisions of this chapter do not apply to a development impact fee for water or wastewater utilities, or both, imposed by a city, county, commissioners of public works, special purpose district, or nonprofit corporation organized pursuant to Chapter 35 or 36 of Title 33, except that in order to impose a development impact fee for water or wastewater utilities, or both, the city, county, commissioners of public works, special purpose district or nonprofit corporation organized pursuant to Chapter 35 or 36 of Title 33 must:

- (1) have a capital improvements plan before imposition of the development impact fee; and
- (2) prepare a report to be made public before imposition of the development impact fee, which shall include, but not be limited to, an explanation of the basis, use, calculation, and method of collection of the development impact fee; and
- (3) enact the fee in accordance with the requirements of Article 3 of this chapter.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-1090. Annexations by municipalities.

A county development impact fee ordinance imposed in an area which is annexed by a municipality is not affected by this article until the development impact fee terminates, unless the municipality assumes any liability which is to be paid with the impact fee revenue.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-2000. Taxation or revenue authority by political subdivisions.

This article shall not create, grant, or confer any new or additional taxing or revenue raising authority to a political subdivision which was not specifically granted to that entity by a previous act of the General Assembly.

HISTORY: 1999 Act No. 118, Section 1.

SECTION 6-1-2010. Compliance with public notice or public hearing requirements.

Compliance with any requirement for public notice or public hearing in this article is considered to be in compliance with any other public notice or public hearing requirement otherwise applicable including, but not limited to, the provisions of Chapter 4, Title 30, and Article 3 of this chapter.

HISTORY: 1999 Act No. 118, Section 1.

ATTACHMENT B

ARTICLE 3

Local Planning - The Comprehensive Planning Process

Editor's Note

2007 Act No. 31, Section 6, provides as follows:

"All local governments that have adopted a local comprehensive plan in compliance with the provisions of Article 3, Chapter 29, Title 6 of the 1976 Code shall revise their local comprehensive plans to comply with the provisions of this act at the local government's next review of its local comprehensive plan as provided in Section 6-29-510(E) following the effective date of this act."

SECTION 6-29-510. Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

- (1) inventory of existing conditions;
- (2) a statement of needs and goals; and
- (3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

- (1) a population element which considers historic trends and projections, household numbers and sizes, educational levels, and income characteristics;
- (2) an economic development element which considers labor force and labor force characteristics, employment by place of work and residence, and analysis of the economic base;
- (3) a natural resources element which considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands, and soil types. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;
- (4) a cultural resources element which considers historic buildings and structures, commercial districts, residential districts, unique, natural, or scenic resources, archaeological, and other cultural resources. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;
- (5) a community facilities element which considers water supply, treatment, and distribution; sewage system and wastewater treatment; solid waste collection and disposal, fire protection, emergency medical services, and general government facilities; education facilities; and libraries and other cultural facilities;
- (6) a housing element which considers location, types, age, and condition of housing, owner and renter occupancy, and affordability of housing. This element includes an analysis to ascertain nonessential housing regulatory requirements, as defined in this chapter, that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare and an analysis of market-based incentives that may be made available to encourage development of affordable housing, which incentives may include density bonuses, design flexibility, and streamlined permitting processes;
- (7) a land use element which considers existing and future land use by categories, including residential, commercial, industrial, agricultural, forestry, mining, public and quasi-public, recreation, parks, open space, and vacant or undeveloped;
- (8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;
- (9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities

during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. For the purposes of this item, "adjacent and relevant jurisdictions and agencies" means those counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. For the purposes of this item, "coordination" means written notification by the local planning commission or its staff to adjacent and relevant jurisdictions and agencies of the proposed projects and the opportunity for adjacent and relevant jurisdictions and agencies to provide comment to the planning commission or its staff concerning the proposed projects. Failure of the planning commission or its staff to identify or notify an adjacent or relevant jurisdiction or agency does not invalidate the local comprehensive plan and does not give rise to a civil cause of action.

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 2, eff May 23, 2007.

Effect of Amendment

The 2007 amendment, in subsection (D), in paragraph (5) deleted "transportation network;" following "considers", in paragraph (6) added the second sentence, added paragraph (8) pertaining to transportation elements, and added paragraph (9) pertaining to priority investment elements analyzing likely federal, state, and local funds available.

SECTION 6-29-520. Advisory committees; notice of meetings; recommendations by resolution; transmittal of recommended plan.

(A) In the preparation or periodic updating of any or all planning elements for the jurisdiction, the planning commission may use advisory committees with membership from both the planning commission or other public involvement mechanisms and other resource people not members of the planning commission. If the local government maintains a list of groups that have registered an interest in being informed of proceedings related to planning, notice of meetings must be mailed to these groups.

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.

(C) In satisfying the preparation and periodic updating of the required planning elements, the planning commission shall review and consider, and may recommend by reference, plans prepared by other agencies which the planning commission considers to meet the requirements of this article.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-530. Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.

HISTORY: 1994 Act No. 355, Section 1.

SECTION 6-29-540. Review of proposals following adoption of plan; projects in conflict with plan; exemption for utilities.

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community. In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity

shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. Telephone, sewer and gas utilities, or electric suppliers, utilities and providers, whether publicly or privately owned, whose plans have been approved by the local governing body or a state or federal regulatory agency, or electric suppliers, utilities and providers who are acting in accordance with a legislatively delegated right pursuant to Chapter 27 or 31 of Title 58 or Chapter 49 of Title 33 are exempt from this provision. These utilities must submit construction information to the appropriate local planning commission.

HISTORY: 1994 Act No. 355, Section 1.