

**SEMINOLE COUNTY**

**AUDIT OF THE ASSESSMENT OF TRANSPORTATION IMPACT  
FEES**

**REPORT NO. 012208**

**JANUARY 2008**

Prepared by:  
Internal Audit Division  
Clerk of the Circuit Court



**MARYANNE MORSE**  
Clerk of the Circuit Court  
Seminole County

January 22, 2008

The Honorable Brenda Carey  
Chairman  
The Board of County Commissioners  
Seminole County, Florida  
1101 East First Street  
Sanford, FL 32771

Dear Madam Chairman:

I am very pleased to present you with the attached audit of the assessment of Transportation Impact Fees.

The audit found conditions that warrant management's attention. These conditions and management's corrective action plans are included in the report that follows.

I would like to personally thank the men and women of the Planning and Development Department for their assistance throughout the course of this review. Their assistance was deeply appreciated. With warmest personal regards, I am

Most cordially,

Maryanne Morse  
Clerk of the Circuit Court  
Seminole County

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## **Planning and Development Department**

### **Audit of the Assessment of Transportation Impact Fees**

Internal Audit has conducted an audit of the Transportation Impact Fee assessments.

#### **Purpose**

The purpose of this audit was: (1) to evaluate the effectiveness of the internal controls, records, and procedures with respect to transportation impact fees; 2) evaluate compliance with county ordinances, Florida Statutes, Florida Building Code and Seminole County Land Development Code; and (3) verify that fee collections are in accordance with the approved fee schedule.

#### **Background**

Chapter 120 of Seminole County's Land Development Code states in part, "All road impact construction occurring within the county, both within the unincorporated areas and within the boundaries of all municipalities, shall pay the arterial and collector road impact fees established in this chapter." The current transportation impact fees became effective with Seminole County Ordinance 90-10, and are calculated by the Planning and Development review staff.

The Board of County Commissioners established four separate trust accounts for the Collector Road Impact Fees, the North Collector Road District Impact Fee Trust Account, the East Collector Road District Impact Fee Trust Account, the South Collector Road District Impact Fee Trust Account and the West Collector Road District Impact Fee Trust Account. Each district has its own fee schedule.

A taxpayer can opt to pay the impact fee per the fee schedule. Or, if the applicant believes that a certain development would have a lower "impact" on the road network, the developer, at his own expense, is entitled to submit to the county engineer an Alternative Road Impact Fee calculation, prior to issuance of a building permit. The county engineer has the sole responsibility of determining the propriety of these calculations. Impact fees are assessed for:

- Any new construction;
- Mobile homes, unless a mobile home was on the site previously;

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- Any addition or expansion which will result in new units: for example, additional residential dwelling units, additional square footage for offices, or additional pumps at a gas station; and,
- Remodeling or alteration, to increase the number of units with no increase in the size of the building (i.e., converting a duplex to triplex); or to allow a change in use of the building (i.e. single family residence to an office).

The results of the audit are included in the report that follows.

### **Scope**

The audit was limited to the calculation and payment of transportation impact fees for the four collector areas in accordance with Chapter 120 of the Seminole County Land Development Code. We evaluated the system of internal controls, reviewed management's written procedures, evaluated compliance with those procedures, and verified that statutory and county codes are being met. We examined transportation impact fees assessed for all four collectors for the period January 1, 2005 through June 30, 2007.

The audit included:

- Review of the procedures for processing applications for new building and review of the applicable fees assessed;
- Review of the Seminole County Land Development Code, Florida Building Code, Florida Statutes, and Seminole County ordinances and resolutions; and,
- Interviews with county personnel.

The audit was performed by Gail Joubran and Bill Carroll.

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## Overall Evaluation

The system of internal controls over the assessment and collection of impact fees needs strengthening. The following conditions require management's attention:

- The Seminole County Land Development Code needs to be up-dated;
- Some road impact fees are not being paid timely;
- Many impact fee statements have expired and should be voided; and,
- Some impact fees have been incorrectly assessed.

Our findings and recommendations are included in the report that follows.

### FINDING NO. 1

*The Seminole County Land Development Code needs to be up-dated.*

There are two sections of the Seminole County Land Development Code that are not up-to-date. The two are impact fee rate schedules and time of payment.

#### Impact Fee Rate Schedules

Seminole County policy allows developers to submit an alternative fee calculation to the county engineer for approval. The county engineer has the sole authority for such changes pursuant to Section 120.13 of the Seminole County Land Development Code.

Once submitted and approved, others are allowed to use these same alternative rates. There have been a total of thirty (30) categories of alternative rate changes since 2003. These changes are not yet reflected in the current code. According to staff, these changes occurred in 2003 and or 2004.

By not up-dating the fee schedules in the Land Development Code, developers are unable to budget and or forecast impact fees due.

#### Time of Payment

Resolution No. 2003-R-142 does not agree with Section 120.34(f) of the Land Development Code. Resolution No. 2003-R-142 paragraph 3 states, "As provided in the Seminole County Land Development Code section 120.34 payment of the county's arterial road impact fee and collector road impact fee **must be received as follows:**"

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- (3)(A) “As to construction located in the unincorporated area, by the County **before** the Building Department may authorize a pre-power electrical inspection or approve final electrical power (whichever comes first); or”
- (3)(B) “As to construction located in a municipality, by the City **before** issuance of a building permit.”

Section 120.34 (f) of the LDC states:

*“In the event that the board determines that there is a valid public purpose to **allow deferral** of the payment of arterial road and collector road impact fees related to a development located within a municipality that requires payment of impact fees before issuance of a building permit such as, by way of example and not limitation, economic development or job growth, the county and the developer **may** enter into an agreement that provides for the **deferred payment** of impact fees required under this chapter that would otherwise be due and payable; provided, however that the maximum period of deferment shall be for a period of one hundred eighty (180) days from the date that the city issues a building permit for the project; provided, further, however, that in no event shall the payment of fees and other assessments be paid later than the issuance of a certificate of occupancy for the development for which the building permit was issued.”*

Currently, with respect to developments in a municipality, the Seminole County Land Development Code provides for a deferment of impact fees. However, Resolution 2003-R-142 removes that deferment and states payment **must** be received before issuance of a building permit.

Therefore, it is our opinion, that either the Seminole County Land Development Code be updated to reflect the change in deferment or rescind the resolution.

Likewise, for developments in the unincorporated areas, the LDC is silent as to payment. It is our opinion that Resolution 3(A) pertaining to these fees be incorporated into the LDC.

By not having the two documents in unison, the County does not have a uniform, clear, and concise policy to adhere to.

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**Audit Recommendation**

Up-date the Seminole County Land Development Code to reflect the above changes.

**Management Response**

Management does not concur with this finding. The Land Development Code provides for Alternate Impact fees to be established by the county engineer and also provides for resolutions to be adopted by the Board of County Commissioners for the point or points of timing for when such payments are made as stated in the two items below:

**Transportation Impact Fees**

Since the adoption of Ordinance in 90-10 in 1990, and as allowed by the adopting Ordinance, the county engineer has the sole authority to establish alternate transportation impact fee rates pursuant to Section 120.13 of the Seminole County Land Development Code.

As stated in Sec. 120.13. Item (e) if the county engineer determines that the data, information and assumptions utilized by the applicant to calculate the alternative transportation road impact fee comply with the requirements of this section, the alternative transportation impact fee shall be paid "in lieu of" the fee set forth in section 120.11.

Sec. 130.13 of the Land Development Code is clear as to the delegation of authority and is specific concerning the procedures and method of calculating the alternative impact fee.

In 2003 and 2004 the county engineer after reviewing the 6<sup>th</sup> Edition of the Institute of Transportation Engineer Manual (ITE) established alternate rates for 16 existing categories. Since 1993 Fourteen (14) new categories, (i.e. Funeral Homes, Mini-warehouses, etc.) were established by the county engineer utilizing the ITE Trip Generation Manual or studies provided by the applicant.

**Resolution #2003-R-142**

A resolution is an instrument of the Seminole County Administrative Code which sets policy and timing. As stated in Sec 120.34(a) The Board of County Commissioners (BCC) shall, by resolution adopted after a duly noticed public hearing, determine the point in the development process when such payments must be made. The BCC may establish different times for payment for developments occurring in the unincorporated area and those occurring within incorporated areas.

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**Auditor's Comment**

We do not disagree with management's contention that the BCC may establish the timing for payment of impact fees; however, once that determination has been made, the LDC should be updated to reflect such. Having an up-to-date LDC ensures a uniform, clear, and concise policy to adhere to.

**FINDING NO. 2**

*Some road impact fees are not being paid timely.*

Resolution No. 2003R-142 (3) dated September 9, 2003 states, "...the county's arterial road impact fee and collector road impact fee must be received as follows:"

- (3)(A) "**As to construction located in the unincorporated area**, by the county **before** the Building Department may authorize a pre-power electrical inspection or approve final electrical power (whichever comes first); or"
- (3)(B) "As to construction **located in a municipality**, the City **before** issuance of a building permit."

Section 3, (A) requires a developer to pay the county before a pre-power electrical inspection or before a final electrical power inspection has been approved by the Building Department, whichever comes first.

Section, 3(B) relates to building within a municipality, and requires the developer to pay impact fees before receiving a building permit.

Road impact fees owed the county as well as fees owed the municipalities were often late.

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Eight impact fee statements had not been paid to Seminole County in accordance with 3(A) noted above. The eight are as follows:

<u>Impact Fee Number</u>	<u>Status</u>	<u>Total Due</u>
05-4512	Final Electrical completed on 7/20/05	\$9,352.67
06-11563	Final Electrical completed on 8/20/07	\$940.00
06-4289	Final Electrical completed on 8/10/06	\$5,554.08
06-5297	Final Electrical completed on 3/08/07	\$8,833.20
06-5298	Final Electrical completed on 3/08/07	\$8,833.20
06-5299	Final Electrical completed on 3/08/07	\$8,833.20
06-5300	Final Electrical completed on 3/08/07	\$8,833.20
06-5301	Final Electrical completed on 3/09/07	<u>\$8,833.20</u>
		<u>\$60,012.75</u>

### **Current Status**

Subsequent to audit fieldwork, six of the properties noted above have been paid. One Impact fee #06-4512 was paid on 11/13/07 in the amount of \$9,352.67. The final electrical was completed on 7/20/05, with no additional electrical inspections. Impact fee #06-4289 was paid on 11/13/07 in the amount of \$5,554.00; outstanding since the final electrical was completed on 8/10/06. We continue to encourage Planning and Development to monitor the payment due status to ensure that no fees go overlooked and are made timely.

Four individual properties have not had their impact fees paid in accordance with requirement 3(B) noted above.

Two properties located within the City of Lake Mary have been built, yet the developer never applied with the County for an impact fee statement. Construction within a municipality requires payment of impact fees before any construction on a project begins. The City of Lake Mary granted the developer permits without having first verified that the developer paid the applicable impact fees pursuant to Resolution No. 2003-R-142 3(B). Seminole County is therefore due \$30,127.50 from either the City of Lake Mary or the developer for the following two properties:

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<b>1. Stirling Center, 701 Platinum Point</b>	<b>\$22,557.00</b>
<b>2. Stirling Center, 737 Stirling Center Place</b>	<b><u>7,570.50</u></b>
	<b><u>\$30,127.50</u></b>

In addition, two other municipal properties with impact fee statements issued in 2006 and permit activity, remain unpaid. These two are as follows:

<b>1. 06-10000268</b>	<b>City of Lake Mary</b>	<b>\$13,138.16</b>
<b>2. 06-10000909</b>	<b>City of Sanford</b>	<b>\$1,058.81</b>

Of these two fees, Seminole County is due \$13,186.16 from either the City of Lake Mary or the developer and \$1,058.81 from either the City of Sanford or the developer. Internal Audit was informed that the latter was sending payment and the former was sent a letter requesting payment.

### **Current Status**

The Seminole County Impact Fee Coordinator is in the process of reviewing the status of the two Stirling properties and issuing the appropriate impact fee statements to the developer.

### **Audit Recommendation**

1. The county should collect the \$60,012.75 that is past due.
2. The county should collect \$30,127.50 from either the developer of the Stirling Center or the City of Lake Mary.
3. Seminole County should request from each municipality a listing of all building permits issued, so that the Seminole County Impact Fee Coordinator can monitor impact fees due.
4. Update procedures with respect to delinquent payments pursuant to Seminole County Ordinance Section 120.35.

### **Management Response**

**Response to recommendation #1** – Management does not concur with this recommendation. Resolution #2003-R-142 does not require collection of deferred impact fees at final electric inspection, but approval of final electric power.

The 8 permits listed, four (4) of the 8 permits have been paid. The remaining four (4) have not had a pre-power inspection, approval of final power or Certificate of Occupancy issued; therefore deferred fees are not required to be collected until such time.

Resolution #2003-R-142 **(3)(A)** states that impact fees must be received before the Building Department may authorize a pre-power electrical inspection or approve final electrical power (whichever comes first).

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When a pre-power electrical inspection is authorized an inspection “**task**” is assigned to an electrical inspector of the Building Division. The approval of a final electrical power is a “**process**” where a staff member of the Building Division calls or faxes a release of power by Seminole County to the appropriate power company, after the Certificate of Occupancy is issued.

The Building Division’s policy in accordance with Resolution #2003-R-142(3)(A) is that deferred impact fees will be collected before a pre-power inspection is scheduled or approval of final electrical power is released.

### **Auditor’s Comment**

Resolution 2003-R-142 states that the fees for unincorporated Seminole County **must** be collected “...before the Building Department may **authorize** a pre-power electrical inspection or **approve final electrical power** (whichever comes first).” With respect to all eight above properties, they had a final electrical approval, as of the dates listed.

The dates the payments are due should be in agreement with the Seminole County Land Development Code and the BCC adopted Resolutions to prevent any misunderstanding or misinterpretation of county policy.

**Response to Recommendation #2** – Management concurs with the need to collect the impact fees, but disagrees with the amount to be collected from the applicant for the City of Lake Mary.

Resolution #2003-R-142 **(3)(B)** states as to construction located in a municipality, the City before issuance of a building permit. Staff is currently working with the City of Lake Mary to ensure collection of these and all future impact fees in a timely manner.

### Stirling Center Project Issues

We disagree with the amount to be collected based on the following rationale. The Stirling Center buildings were assessed correctly at the alternate rate for Office 100K-200K at \$1,206 per 1,000 square feet.

The applicant submitted six (6) initial impact fee statement applications for the Stirling Center as individual buildings. The Seminole County Impact Fee Statements were generated using the adopted ordinance rate of \$1,545 per 1,000 square fee for office <100K square feet.

The change of rate occurred after the overall site plan was submitted and reviewed showing the combined buildings total square footage was 125K. Therefore, the remaining buildings were assessed the alternate rate of \$1,206 per 1,000 square feet.

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The Institute of Transportation Engineers manual states “if the buildings are interrelated (defined by shared parking facilities or the ability to easily walk between buildings) or house one tenant, it is suggested that the total area or employment of all buildings be used for calculating the trip generation.”

The applicant was assessed \$17,607.60 for Impact Fees instead of the \$22,577.00 for 701 Platinum Point. The City of Lake Mary has sent certified letters to the owner of the Stirling Center requesting payment of this amount.

Impact fees of \$5,246.10 for 737 Stirling Center Place have been paid utilizing the alternate rate as stated above.

A certified letter is being generated by Seminole County for 701 Platinum Point since no response has been received from the applicant regarding the impact fees.

Section 120.35 of the Land Development Code will be followed to ensure proper handling of the collection of impact fees or a lien will be placed on the property.

#### **Auditor’s Comment**

Management is allowing the applicant to use a lower tier rate based on **suggested** language in a manual printed by the “Institute of Transportation Engineers”; instead of applying for an alternative road impact fee study as **required** by Section 120.13 of the Land Development Code. This manual states “if the buildings are interrelated (**defined by shared parking facilities or the ability to easily walk between buildings**) or house one tenant, it is suggested that the total area ...of all the buildings be used for calculating the trip generation.”

Sixteen (16) buildings (one is not being built) are on three separate streets, not all the buildings share the same parking, and not all are within easy walking distance from each other. Of the 16 buildings, four separate groups of buildings could be said to share parking. However, each group’s total square footage is well under the 100K square footage necessary to generate a lower tier rate.

If management chooses to stand by use of the lower rates, the applicant then is due a refund for the six initial properties calculated with the higher tier rates.

**Response to recommendation #3** – Management concurs with this recommendation. All municipalities have been contacted and a listing of permits will be provided on a monthly basis to Seminole County for monitoring purposes.

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**Response to recommendation #4** – Management concurs with this recommendation. An update to the procedures will be done to ensure the proper handling of delinquent payments pursuant to Seminole County Adopted Ordinance Section 120.35.

**FINDING NO. 3**

*Many impact fee statements have expired and should be voided.*

Pursuant to Florida Building Code 105.3.2:

“An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued, except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.”

Thirty impact fee statements had no permits issued, 180 days from the date of filing.

**Corrective Action Taken**

We were notified by Planning and Development that the thirty impact fee statements will be voided.

**Audit Recommendation**

1. The department needs to more closely monitor impact fee statements issued and outstanding over 180 days with no activity.
2. Seminole County should request from each municipality a listing of all building permits issued, so that the Seminole County Impact Fee Coordinator can monitor impact fees due.

**Management Response**

**Response to recommendation #1** – Management concurs with this recommendation. The outstanding impact fees will be monitored monthly. A report will be generated for both the county and the municipalities to ensure that all impact fees over 180 days are addressed in a timely manner.

**Response to recommendation #2** – Management concurs with this recommendation. Municipalities have been contacted and a monthly listing of all building permits will be provided for monitoring purposes.

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**FINDING NO. 4**

*Some impact fees have been incorrectly assessed.*

We found two examples of developers not being charged the right amount of road impact fees. In the first example, a developer (impact fee statement No.07-10000305) was undercharged \$1,741.50. The “50 %” under affordable housing reduction was inadvertently checked on the impact fee statement. Thus, the developer was undercharged. The applicant has since been notified of the additional amount owed.

The 2<sup>nd</sup> example, relates to the Stirling Center development located within the City of Lake Mary. A project comprised of 17 separately addressed buildings. The following was noted:

The first six impact fee applications (buildings 12 – 17) were calculated correctly, using a rate tier for office square footage less than 100,000 square feet. For the next ten, staff used the tier rate assigned 100,000 square feet to 200,000 square feet, a lower rate. The change in tier rates was based on calculating impact fees based on the combined square footage of all 17 buildings. The combined square footage of all 17 buildings is over 100,000 square feet, hence generating the second tier lower rate.

Each building has its own separate address, its own separate impact fee statement, and its own separate building permit. Combining square footage for rate purposes is not permitted per the Seminole County Land Development Code or Ordinances. If the developer believes that the impact of his construction is less than the established fees, per Section 120.13 of the Land Development Code, such applicant (**prior to issuance of a building permit**) may submit a calculation of an alternative road impact fee study to the county engineer for approval. Not having done this, the developer was undercharged \$28,788.78. On the surface, having rates change halfway through a project with no justification has the appearance of favoritism.

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**Stirling Center**

<b><u>Bldg.</u></b>	<b><u>Address</u></b>	<b><u>Square Footage</u></b>	<b><u>Rates Used (per 1000)</u></b>	<b><u>Correct Rates (per 1,000)</u></b>	<b><u>Differential</u></b>
1	701 Platinum Point	14,600	\$1,206	\$1,545	\$4,949.40
2	707 Platinum Point	14,600	\$1,206	\$1,545	\$4,949.40
3	719 Rodel Cove	14,600	\$1,206	\$1,545	\$4,949.40
3		14,600	\$244	\$312	\$992.80
5	731 Stirling Center Place	10,894	\$1,206	\$1,545	\$3,693.07
6	737 Stirling Center Place	4,350	\$1,206	\$1,545	\$1,474.65
7	743 Stirling Center Place	4,900	\$1,206	\$1,545	\$1,661.10
8	749 Stirling Center Place	4,125	\$1,206	\$1,545	\$1,398.38
9	755 Stirling Center Place	4,900	\$1,206	\$1,545	\$1,661.10
10	761 Stirling Center Place	4,125	\$1,206	\$1,545	\$1,398.38
11	767 Stirling Center Place	4,900	\$1,206	\$1,545	<u>\$1,661.10</u>
					<b><u>\$28,788.78</u></b>

**Audit Recommendation**

1. The county should proceed to collect the \$28,788.78 that is undercharged.
2. Seminole County should request from each municipality a listing of all building permits issued, so that the Seminole County Impact Fee Coordinator can monitor impact fees due.

**Management Response**

**Response to recommendation #1** – Management does not concur with this recommendation. Explanation of rationale for the Stirling Center Projects is detailed under Finding #2, Response#2.

**Auditor's Comment**

Auditor's response is detailed under Finding #2, Response #2, Auditor's comment.

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**Response to recommendation #2** – Management concurs with this recommendation. Municipalities have been contacted and a monthly listing of all building permits will be provided for monitoring purposes.

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