



Angelina “Angel” Colonnese

CLERK OF THE CIRCUIT COURT AND COMPTROLLER OF MANATEE COUNTY

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MEMORANDUM

To: John Osborne, Infrastructure & Strategic Planning Official
Jan Brewer, Financial Management Department Director

From: Angelina “Angel” Colonnese, Clerk of the Circuit Court and Comptroller

Date: March 31, 2017

Subject: Impact Fee Revenues Follow-up Audit

The Internal Audit Department has completed a follow-up audit of Impact Fee Revenues based on the Clerk of the Circuit Court’s Audit Report issued February 8, 2013. This follow-up audit consisted of reviewing and testing the management action plans included in the original audit report to ensure that corrective actions have been implemented. The scope of the follow-up audit included the five-year period ending October 31, 2016.

Impact fees are one-time charges that are collected when new homes or businesses are built, or when existing homes or businesses are expanded, in the unincorporated areas of Manatee County. Under the provision of Chapter 11 of the County’s Land Development Code (LDC), five types of impact fees are assessed: Parks, Libraries, Law Enforcement, Public Safety, and Roads. Impact fees are assessed and monitored by the Impact Fee Administration Division. The Division had been under the Financial Management Department during most of our follow-up audit, but now reports to the County’s Infrastructure & Strategic Planning Official, who reports directly to the County Administrator. During the original audit, and for most of the testing period for this follow-up audit, the Impact Fee Division has been staffed by only one employee, the Impact Fee Administrator.

The majority of impact fees are automatically calculated and assessed through the Building and Development Services Department’s permitting software. When impact fees cannot be automatically assessed, Impact Fee Administration is responsible for assessing them through manual calculations. The Division is also responsible for coordinating impact fee credits, which are given in exchange for the donation of capital assets to benefit the County’s infrastructure network. Total impact fees collected by the County for the five-year period ending October 31, 2016, were approximately \$76.8 million.

Our prior audit confirmed that the computer-generated impact fees were being properly calculated; however, several exceptions were identified regarding the manually calculated impact fees. We also found that controls could be strengthened over the processes for tracking impact fee credits, issuing temporary use permits, and ensuring Road impact fees are assigned to the proper benefit district.

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We are pleased with the corrective actions taken by Impact Fee Administration to ensure that impact fee credits are being properly documented and accounted for, and the list of outstanding impact fee credits is valid and current. In addition, procedures have been implemented by the Building and Development Services Department to ensure that Road impact fees are assigned to the proper benefit districts. However, our follow-up audit testing has identified areas which still require management's attention. During several meetings between April 2016 and February 2017, your management staff, together with the Internal Audit Department and the impact fee consultant from TischlerBise, Inc. (TischlerBise), discussed areas where further improvements are needed, and agreed on the following corrective action plans:

MANUAL ASSESSMENTS - COMMERCIAL/NONRESIDENTIAL

Impact fees for new commercial developments and commercial renovations cannot be assessed automatically through the County's permitting system; they require some manual calculation by Impact Fee Administration. In order to calculate the assessments, the permit paperwork and plans, which detail the layout, square footage, and use of the structures, are reviewed by Impact Fee Administration to determine which impact fee to apply and the appropriate square footage on which to apply it. The County's Impact Fee Schedule (effective October 1, 2011) identified 13 categories of nonresidential impact fees. In 2015, TischlerBise performed an Impact Fee study which resulted in a new Impact Fee Schedule. This new schedule, which became effective April 18, 2016, has reduced the number of nonresidential impact fee categories to 10.

Based on the follow-up testing performed, it appears that the manually assessed impact fees for commercial permits are still not being consistently and properly assessed in accordance with the provisions of the LDC and the Impact Fee Schedules. We tested a sample of 269 commercial permits from a total population of 2,192 commercial permits applied for during the period October 1, 2011, through October 31, 2016. (This sample was obtained using both statistical and judgmental sampling methods.) We found exceptions with the impact fee assessments in 33 (12.27%) of the permits tested. The exceptions identified included instances where structures were not assessed any impact fees, square footage was excluded from the impact fee assessment calculations, building renovations resulting in a change of use were not assessed impact fees, and/or the correct impact fee rates were not consistently applied. Some of the permits tested had more than one exception identified. Details regarding these findings are as follows:

Inconsistency in Applying Impact Fees - Mix of Use

According to the LDC §1102.3.C, if a development "includes a mix of uses..., then the Impact Fees shall be determined by adding up the Impact Fees that would be payable for each use as if it were a freestanding use." Based on discussions with the TischlerBise impact fee consultant, mix of use typically does not apply to space within individual, standalone buildings/structures; however, it would apply in situations where there is vertical development within a commercial building, such as that seen in an urban setting.

While there is no language included in the LDC or Impact Fee Schedule, and no policies or procedures, which clarify the process of how to apply “mix of use,” based on the interpretation from the TischlerBise impact fee consultant, it appears that commercial structures should be assessed at the rate associated with the primary use of the buildings. Therefore, “mix of use,” as referenced in the LDC, should not apply to space within a structure, such as an office located within a warehouse, or to an individual unit within a commercial building, such as a dental office in a shopping center complex.

Our testing identified 11 permits where the impact fees were inconsistently assessed when there was a mix of use within a building/structure. We found that in some instances, when commercial buildings had multiple uses (ex. office space within a warehouse), the Impact Fee Administrator portioned out those spaces and applied separate impact fees, according to square footage; while in other instances, all of the square footage was assessed at the rate associated with the primary use of the building. We also found instances where space used for similar purposes was assessed differently for different businesses. Examples of the inconsistencies noted included the following:

- Impact fees on a new warehouse were calculated by applying the office rate to the square footage of office space within the building, and applying the warehouse rate to the rest of the space; while on another similar building (new mini warehouse), which also contained office space, none of the square footage was portioned out, and the entire building was assessed at the mini warehouse rate.
- The square footage of space used for the laundry area of a nursing home was portioned out and assessed impact fees at the warehouse rate; however, for permits on a dental office and a hotel, the laundry areas were assessed at the same rates as the other space within those facilities (office rate and lodging rate, respectively).

These inconsistencies relating to “mix of use” are not deemed to have resulted in any monetary loss; however, further attention is required to ensure that impact fees are consistently assessed to all construction and development.

No Impact Fee Assessed/Square Footage Excluded

For 19 of the permits tested, we found that either entire structures, or significant portions (square footage) of structures, were not assessed any impact fees. Based upon documentation reviewed and inquiries with staff, it appears that in these instances, the Impact Fee Administrator deemed these structures/areas to be accessory to the primary use of the buildings/developments, and therefore, not subject to impact fee assessments. However, there is currently no provision within the LDC to exclude any commercial structures, or square footage within a structure, from impact fees.

The LDC does include a provision (§1102.3.E.) which allows for a Feepayer, in lieu of having impact fees calculated in accordance with the Impact Fee Schedule, to request that impact fees be determined based upon an Independent Impact Analysis. Under this provision, the burden is on the Feepayer to demonstrate by “competent substantial evidence” that the data, assumptions, and service units used in the Impact Fee Study and reflected in the Impact Fee Schedule are less accurate than the results of the Independent Impact Analysis. The Impact Fee Administrator is responsible for rendering a decision, in writing, to accept, accept with modifications, or reject the results of the analysis. An Independent Impact Analysis was not provided in order to justify any deviation from the Impact Fee Schedule for any of the 19 permits noted above.

Examples of the exceptions identified included the following:

- Impact fees were not assessed on a new 64,000 sq. ft. dormitory constructed at a mixed use sports complex.
- Impact fees were not assessed on 75,000 sq. ft. (41.8%) of a newly constructed nursing home. The excluded spaces included, but were not limited to, hallways, common areas, and a dining room.

Exclusions identified for these 19 permits resulted in under-assessments of impact fees of approximately \$1,550,000.

Incorrect Impact Fee Rate Applied

Our testing identified 5 permits where it appears that the appropriate impact fee rate was not used. For 2 nursing home permits, the warehouse rate, rather than the nursing home rate, was applied to certain portions of the facilities (kitchen and laundry areas). We also identified 3 permits for the construction of fitness centers in which the church rate, rather than the commercial rate, was used.

The use of incorrect impact fee rates for these 5 permits resulted in under-assessments of impact fees of almost \$528,000.

Change in Use

According to the LDC §1102.1.E, if the development is for a “change in use ...of an existing development, the Impact Fees required to be paid shall be based on the net increase in the Impact Fees for the new use as compared to the previous use.” In some instances, the change in use can result in total impact fees which are less than the existing use; however, the individual impact fee components, such as Law Enforcement and Public Safety, may be higher. In those instances, additional impact fees should be collected on the individual components where there is an increase.

Our testing identified 2 permits where impact fees were not assessed when the use of the entire building changed from commercial to office. While in total, the impact fee rate for office is lower than the commercial rate, the impact fee components for Law Enforcement and Public Safety are higher for offices, and as such, should have been collected.

The exceptions noted for these 2 permits in which impact fees were not assessed for a change in use resulted in under-assessments of impact fees of approximately \$700.

In total, as detailed above, our testing identified approximately \$2,080,000 in potential loss of revenue for under-assessed manual impact fees due to excluding buildings, or portions of buildings, from impact fees; applying the incorrect impact fee rates when calculating assessments; and/or failing to assess impact fees for changes in use to existing buildings.

Management Action Plan

Management recently hired an additional employee for Impact Fee Administration and has moved the function, organizationally within the County, to allow for direct reporting to the Infrastructure & Strategic Planning Official. The Financial Management Department will now be responsible for conducting independent quarterly reviews of the manual impact fee assessments.

Management has also contracted with the impact fee consultant to revise and update portions of the LDC, including Chapter 11 - Impact Fees, and create an updated impact fee policies and procedures manual. This should provide additional guidance and clarification to ensure impact fees are consistently assessed as intended by the impact fee study approved by the Board of County Commissioners.

Implementation is expected to be completed by August 31, 2017.

Management does not intend to pursue the collection of any under-assessed impact fees. It is their belief that once permits have been approved and issued, the County is obligated to honor the impact fee assessments at those amounts. Management may want to consider obtaining a legal opinion from the County Attorney's Office to provide further guidance and clarification regarding this issue.

TEMPORARY USE PERMITS

The LDC has not yet been updated to reflect the County's practice of not assessing impact fees on temporary use permits. As noted in the original audit, and according to the Impact Fee Administrator, there has been an unwritten policy that temporary structures are not assessed impact fees, as they are not permanent, and therefore, are not considered to be impact-generating land development. However, according to the LDC, the only uses exempt from impact fees are those listed in §1102.2; temporary use is not one of the uses listed in this section.

Management Action Plan

Management has already drafted proposed changes to the LDC that will specifically exempt temporary use permits from impact fees. These changes are expected to be completed and presented to the Board of County Commissioners for approval by August 31, 2017.

We would like to thank you and your staff for the attention given to the audit findings and the assistance given to the Internal Audit staff. Another follow-up audit will be scheduled after implementation of the management action plans.

AMC/LJS/MEG

cc: Board of County Commissioners
Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Karen Windon, Deputy County Administrator
Mitchell Palmer, County Attorney
Dan Wolfson, Finance Director, Clerk of the Circuit Court