

Audit of the Calculation and Assessment of Transportation Impact Fees



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Orange County, Florida**

www.occompt.com



**Report 472
October 2018**

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Orange County Comptroller's Office

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The vision of the Orange County Comptroller's Office is to be recognized as a highly competent, cohesive team leading the quest for continuing excellence in the effective safeguarding and ethical management of public funds, assets, and documents.



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October 23, 2018

Teresa Jacobs, County Mayor
And
Board of County Commissioners

We have conducted an audit of the calculation and assessment of transportation impact fees. The audit was limited to transportation impact fees for commercial structures. The period audited was October 2015 through June 2017.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Responses to our Recommendations for Improvement were received from the Assistant Manager of Fiscal and Operational Support and are included herein.

We appreciate the cooperation of the personnel of the Community, Environmental and Development Services and Public Works Departments during the course of the audit.


Phil Diamond, CPA
County Comptroller

c: Ajit Lalchandani, County Administrator
Jon Weiss, P.E., Director, CEDS Department
Mark Massaro, Director, Public Works Department

Why This Audit Is Important

Transportation impact fees are assessed on new construction to help pay for the traffic impacts of that new construction on the County's road system. The County has collected over \$27 million in transportation impact fees over the past five years. Fees on commercial construction are calculated based on the assigned land use category and square footage. Accurate assessments are necessary to help ensure that new development is paying for its fair share of improvements to the road system.

The Objective of Our Audit

The objective of this audit was to ensure that transportation impact fees for commercial structures were assessed in accordance with the Orange County Code.

What We Found

Building System Records Contained Inaccurate or Insufficient Data (Page 8).

Inaccurate square footage or land use classification data was entered in the computer system for eight assessments. One assessment contained both square footage and land use data errors. In total, insufficient or inaccurate data input into the system resulted in over \$132,000 in errors.

Fees Were Not Always Calculated Accurately (Page 10).

Square footage and land use classification rates are entered manually on an excel spreadsheet to calculate the total impact fees. These spreadsheets are not subsequently reviewed. Calculation errors totaled \$92,135.

Alternative Mobility Area (AMA) Rates Were Inaccurately Applied (Page 11).

Four projects were assessed the lower AMA rate even though they were not located within the boundaries of the AMA. One project located in the AMA did

not receive the lower AMA rate. Errors totaling \$7,824 resulted from the inaccurate application of the AMA rate.

Board Approved Land Use Classifications for Retail Centers Were Not Consistently Applied (Page 12).

Fees for restaurants in or near retail centers were incorrectly assessed fees using a land use classification that differed from approved Board policy. The incorrect assessments resulted in \$116,585 in errors.

The Code Was Not Accurately Applied for Water Treatment Facilities (Page 16).

Nine water treatment facility projects were assessed at the lowest available land use classification rather than the rate for unmanned structures and sewage treatment facilities. As a result of the incorrect classification, \$34,000 in transportation impact fees were not collected.

Overall Evaluation (Page 7)

Based on the results of our testing, we found that the assessment of transportation impact fees for commercial structures materially complied with the Code.

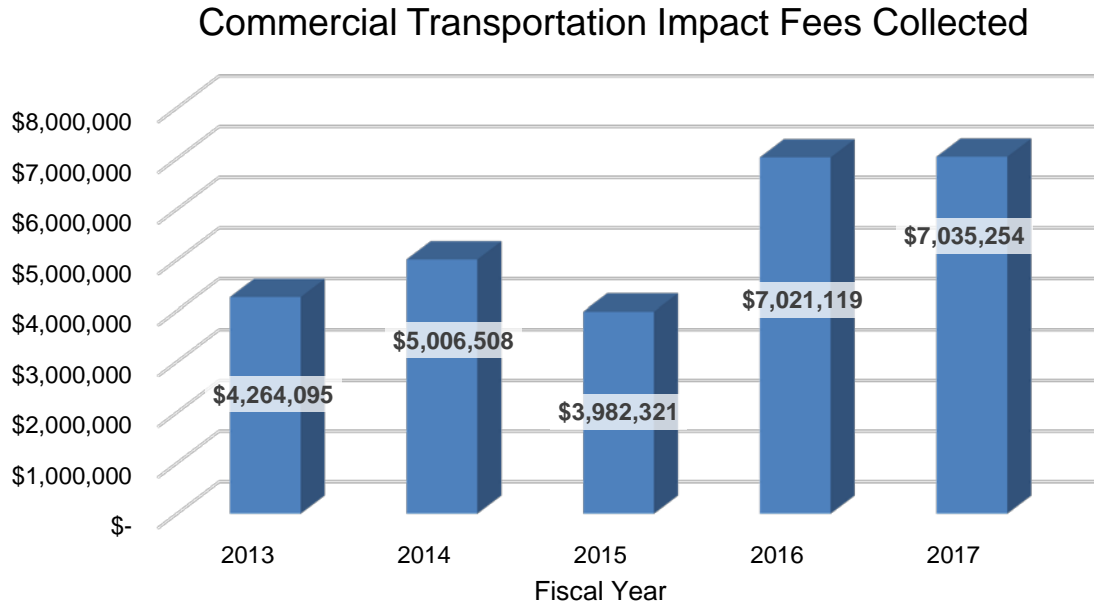


Background

The Community, Environmental and Development Services Department (Department) has nine divisions including Building Safety, Fiscal and Operational Support, and Planning¹. The Fiscal and Operational Support Division is responsible for impact fee calculation and assessment.

Impact fees are one-time fees imposed on new construction to help pay for the increased demand from the new development on public infrastructure, such as schools, parks, law enforcement, fire, and roads. This report focuses on the calculation and assessment of transportation impact fees on commercial development in Orange County.

The County collected over \$27 million in transportation impact fees over the past five years. Yearly collections are shown below:

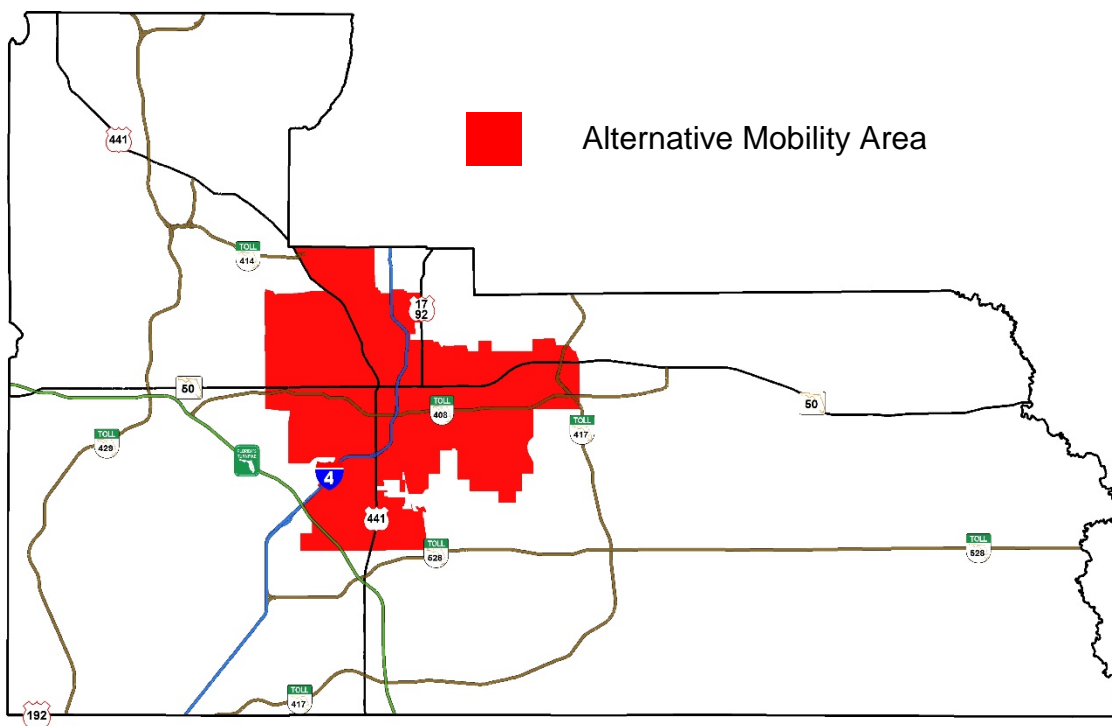


¹ The remaining six divisions within the Department are Code Enforcement, Environmental Protection, Housing and Community Development, Parks and Recreation, Transportation Planning, and Zoning.

INTRODUCTION

The County adopted a standard transportation impact fee schedule, listing the required impact fees based on the land use category of the development. The impact fee schedule is based on extensive research, including both national and local traffic studies. The impact fee schedule is detailed in Chapter 23, Article IV of the Orange County Code (Code) and attached as an [Appendix](#) to this report.

The County's impact fee rates also vary depending on whether the new construction is located within an Alternative Mobility Area (AMA). Development in the AMA is assessed lower impact fees to encourage developers to locate projects within the AMA; thereby, maximizing the use of existing public infrastructure. The map below shows the location of Orange County's AMA.

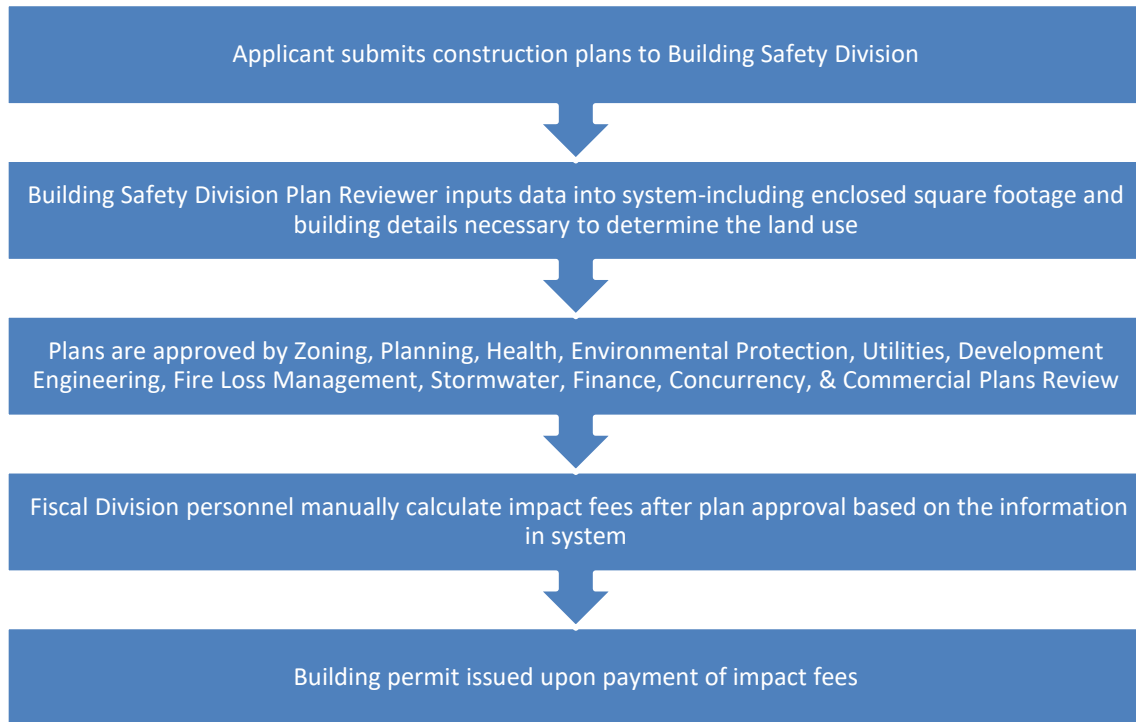


After the Building Safety Division approves a building plan, Fiscal and Operational Support Division staff determine the required transportation impact fee. The project's applicable land use category is determined according to the current impact fee rate schedule. The fee is then calculated by multiplying the land use rate from the schedule by the total enclosed square footage. Typically, impact fees must be paid before a building permit is issued. However, projects with a permit valuation of one million dollars or more can defer payment until the issuance of the certificate of occupancy.



INTRODUCTION

The process is illustrated below:



According to the Code, if an applicant disagrees with the staff's land use determination, the applicant may appeal to the County's Impact Fee Committee. If the applicant disagrees with the Committee's decision, the applicant may appeal to the Development Review Committee. The applicant may appeal that Committee's decision to the Board of County Commissioners. Additionally, the Code allows an alternative impact fee if the applicant demonstrates that the actual impact on road capacity is less than the impact fee calculated².

Audit Scope

The scope of the audit was limited to commercial transportation impact fees paid during the audit period. The audit period was from October 2015 through June 2017.

² During the audit period, no alternate impact fee applications were approved by the County.



Audit Objective

The objective of this audit was to ensure that transportation impact fees for commercial structures were assessed in accordance with the Code.

Audit Methodology

To determine whether commercial transportation impact fees were assessed accurately, we performed the following:

- Obtained a report of all 411 commercial transportation impact fee payments made during the audit period;
- Researched each permit's square footage and land use designation to identify and select a focused sample of payments that appeared to be inconsistent with our calculated fees. For each sample item, we:
 - Examined the approved architectural plan to ensure the correct enclosed square footage measurement was used;
 - Reviewed each land use classification for reasonableness, based on the project description, Code classifications, and architectural plans;
 - Recalculated the transportation impact fees assessed;
 - Verified that projects assessed the lower AMA rate were located within the AMA; and,
 - Reviewed the appeals and alternative impact fee applications noted in the Impact Fee Committee's 2015 and 2016 Annual Activity Reports.

Overall Evaluation

Based on the results of our testing, we found that the assessment of transportation impact fees for commercial structures materially complied with the Code.

1. The Department Should Ensure Transportation Impact Fees Are Accurately Calculated and Assessed

Transportation impact fees are assessed to help pay for the cost of improvements to the transportation network system required by new development. Our review focused on transportation impact fees paid for commercial building projects. During the audit period, 411 commercial transportation impact fee assessments were paid. The fees paid during the audit period totaled almost 13 million dollars. As part of our review, we noted the following areas of concern:

A) *Accuracy of System Data*

We reviewed the approved architectural plans for the focused sample of 65 transportation impact fee assessments. We then compared the square footage and land use classifications shown in those plans to the data used in the County's transportation impact fee calculations.

In eight of the 65 assessments, the square footage or land use entered in the system differed from what was used in the impact fee calculation. This was due to inaccurate or insufficient information in the building system records maintained by the Building Safety Division. Specifically, the nine³ errors occurred because of the following:

- The incorrect square footage was entered into the system in four instances;
- The correct land use category was not used as a result of insufficient building details being entered in the system for three applications; and,
- In two cases, personnel calculating the impact fees were not provided updated plans.

Without full and accurate details regarding a project, the personnel calculating the impact fees may not be able to calculate the fees accurately. For example, two projects, a Popeyes Restaurant and a Dunkin Donuts pictured below, were

³ One of the assessments contained errors in both the square footage and land use, resulting in nine total errors.

classified as “Restaurant, High Turnover” projects and not “Restaurant, Fast Food w/Drive-Thru.”



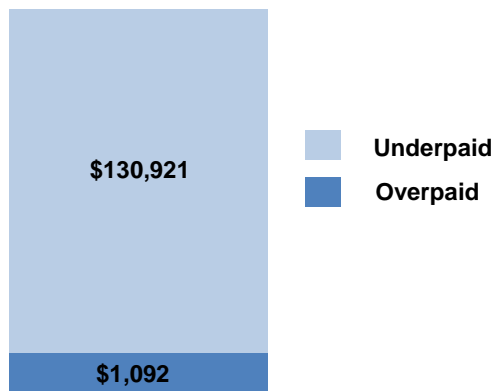
Under assessed \$50,155 by not using the Restaurant, Fast Food with Drive-Thru rate



Under assessed \$45,986 by not using the Restaurant, Fast Food with Drive-Thru rate

According to Chapter 23, Article IV of the Orange County Code (Code), the impact fee rate for a “Restaurant, High Turnover” project is \$16,974 per 1,000 square feet, while the rate for a “Restaurant, Fast Food w/Drive-Thru” is \$38,463 per 1,000 square feet. In both cases, the information recorded in the building system records did not note the restaurants were drive-thru restaurants—even though project building plans showed each building had a drive-thru.

Analysis of System Data Errors

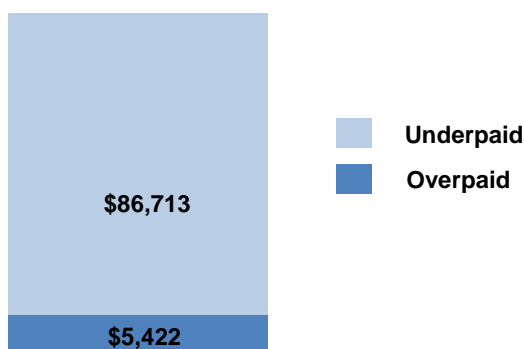


In total, insufficient or inaccurate data input into the system resulted in over \$132,000 in errors. Approximately \$96,000 resulted from two restaurants assessed as Restaurant, High Turnover instead of Restaurant, Fast Food w/Drive-Thru. Correct land use and square footage information must be recorded in the system to ensure transportation impact fees are calculated according to the Code.

B) Accuracy of Calculations

Fiscal Division personnel calculate transportation impact fees by entering system data into Excel spreadsheets. We recalculated transportation impact fees for the sample of 65 assessments.

Analysis of Calculation Errors



Another eight of the 65 fees reviewed contained calculation errors. These errors included incorrect rates, square footage, or land use classifications. The errors totaled \$92,135, of which, the Division collected \$20,394 after the auditor brought it to their attention. Nearly \$63,000 of this amount resulted from one underpayment for a Zaxby's which was calculated using the Restaurant, High Turnover rate rather than the Restaurant, Fast Food w/Drive-Thru rate.

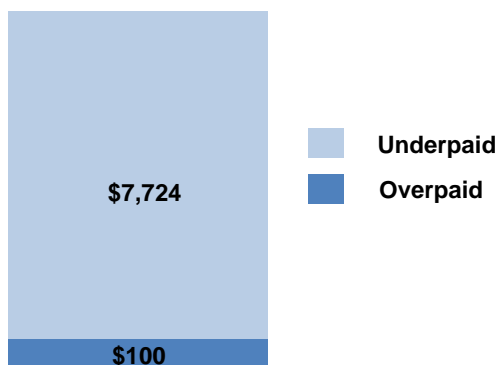
To ensure transportation impact fees are assessed according to the Code, fees should be calculated accurately. To assist in the calculation, an automated

process or a secondary review should be implemented to ensure the correct amounts are included and the fee is calculated correctly.

C) *Alternative Mobility Area (AMA) Rates*

We reviewed all 411 impact fee assessments to determine which projects appeared to be located within the AMA area and which projects received the lower AMA rate in assessing the transportation impact fee. We mapped each of the 94 property addresses that met either of these criteria in the Orange County GIS mapping system using the AMA transportation overlay.

Analysis of AMA Errors



We found that four of the 94 projects that were assessed the lower AMA rate were not located within the boundaries of the AMA. In addition, we noted one of the 94 projects was located (and noted in the file) in the AMA area but did not receive the lower AMA rate. Errors totaling \$7,824 resulted from the inaccurate application of the AMA rate. The correct AMA rate should be used to ensure transportation impact fee are assessed according to the Code.

Recommendation No 1:

The Community, Environmental and Development Services Department should:

- A) Ensure sufficient data is timely and accurately recorded into the system;
- B) Automate the calculations of transportation impact fees to ensure accuracy, or implement a secondary level of review to minimize errors;
- C) Implement additional procedures to ensure the AMA rate is correctly applied to development within AMA boundaries; and,
- D) Collect any identified impact fee underpayments and refund any identified impact fee overpayments.

Management's Response:

- A) *Concur. Training sessions will be held with staff from the Fiscal and Operational Support division and the Division of Building Safety to ensure accurate data is entered into the system and that any changes that are identified as part of a plans revision or plan update are communicated to the Fiscal and Operational Support division.*
- B) *Concur. An upgrade to LDMS is already underway which will automate the calculations of impact fees to ensure accuracy.*
- C) *Concur. The upgrade to LDMS will automatically verify if properties are located within AMA boundaries and assess fees accordingly.*
- D) *Partially Concur. Management will seek direction from the Board to determine how to handle incorrect fee assessments on permits that have already been issued.*

2. The Department Should Review the Procedures for Land Use Classifications Associated with Retail Centers

We reviewed transportation impact fees paid by restaurants that appeared to be located in or near a retail center. Our testing noted inconsistencies in the land use classification used in calculating impact fees charged for restaurants located in or near retail centers.

Transportation impact fee calculation procedures for retail centers and peripheral and freestanding buildings are based on the adopted Board policy from June 18, 1991 that approved assessing all “businesses within retail centers transportation impact fees at the retail rate. Peripheral and freestanding buildings are not included [emphasis added].”

We identified eight projects during the audit period that included peripheral and freestanding restaurants located near retail centers. Seven were assessed at higher restaurant land use rates as specified in the Board policy for peripheral and freestanding buildings. However, an IHOP restaurant was assessed at a lower rate—Tourist Retail rate. According to the Board policy, this restaurant should only

have been entitled to the lower rate if the building had been attached to the retail center.

This retail classification resulted from the applicant's appeal to the Impact Fee Committee (Committee). The applicant contended that the IHOP restaurant was part of an overall retail center project and should be classified at the lower Tourist Retail rate. The Committee approved the appeal even though the Committee's decision conflicted with the Board policy and the Department's past practices. In addition to being physically separate from the retail center, the IHOP restaurant has a separate entrance and its parking area is clearly separated from parking areas used by other businesses in the retail center. The IHOP restaurant's entrance and parking area are shown in the following photographs.





By classifying the restaurant at the lower Tourist Retail rate instead of the higher Restaurant, High-Turnover rate; the applicant paid \$50,605 less in transportation impact fees.

In our review, we also noted three restaurants directly connected to other businesses within retail centers that were assessed at the higher Restaurant, High-Turnover rate. Those assessments are also contrary to the Board policy.

The following chart illustrates the impact fees that were not assessed in accordance with the Board policy:

Building Location	Impact Fees Assessed	Fees Based on Board Policy	Difference
Restaurants directly connected to other businesses within a retail center	\$95,343	\$28,815	\$65,980
Peripheral and freestanding IHOP restaurant	\$26,457	\$77,062	(\$50,605)

The Board policy was adopted over 25 years ago and may not adequately account for the changing nature of retail centers and other mixed-use developments. In addition, a fast food restaurant with a drive-thru that is physically attached to a

retail center could generate more trips than other businesses located within the same retail center.

Impact fees for restaurants located in or near a retail center should be assessed consistently. The Board policy adopted in 1991 used to assess impact fees in a retail center should be reviewed, updated, and approved by the Board.

Recommendation No 2:

The Community, Environmental and Development Services Department should assess impact fees in accordance with Board policy. In addition, the current practice of assessing impact fees at the retail rate for all businesses located within retail centers should be reviewed. The results of this review should be presented to the Board during the next scheduled Transportation Impact Fee Review. Further, the Committee should not approve impact fee appeals that are contrary to written Board policy.

Management's Response:

Partially Concur. The Community, Environmental and Development Services Department has procedures in place which require adherence to Board policy with regards to impact fee assessment; unfortunately they do not prevent human error.

Staff agrees that the assessment of restaurants that are located in a retail center should be consistent and follow Board direction. The current practice of assessing impact fees at the "Retail" rate for all businesses within multi-tenant shopping centers is supported by the technical study and its supporting data, including information from the Institute of Transportation Engineers (ITE) Trip Generation Manual. Multi-tenant retail buildings are categorized as "Retail," which are based on data and definitions found in ITE Land Use: 820 Shopping Center. Staff will discuss this practice with the County's consultant currently engaged in the update to the transportation impact study.

Regarding the appeal to the Impact Fee Committee, the Department agrees that the Code should be reviewed to ensure the definitions, studies, and

resultant fee are consistent and follow Board direction with respect to tourist commercial retail centers.

3. The Department Should Ensure the Code Is Applied Consistently When Determining Land Use Classifications

When reviewing the land use categories used in impact fee calculations, we noted that nine⁴ of the 65 projects selected for our sample were described as water treatment facilities. The impact fee was calculated using the Warehousing rate or the Mini-Warehouse rate for those nine projects. These rates were used based on a 1996 memo from the County's Planning Division specifying that unmanned structures should be assessed at the lowest possible rate. However, the Code states that unmanned structures and sewage treatment facilities should be classified at the General Light Industrial rate. An additional \$34,000 in transportation impact fees would have been collected for these nine projects using the General Light Industrial rate. The Code should be followed when determining appropriate land use classifications, or the Code should be revised.

Recommendation No 3:

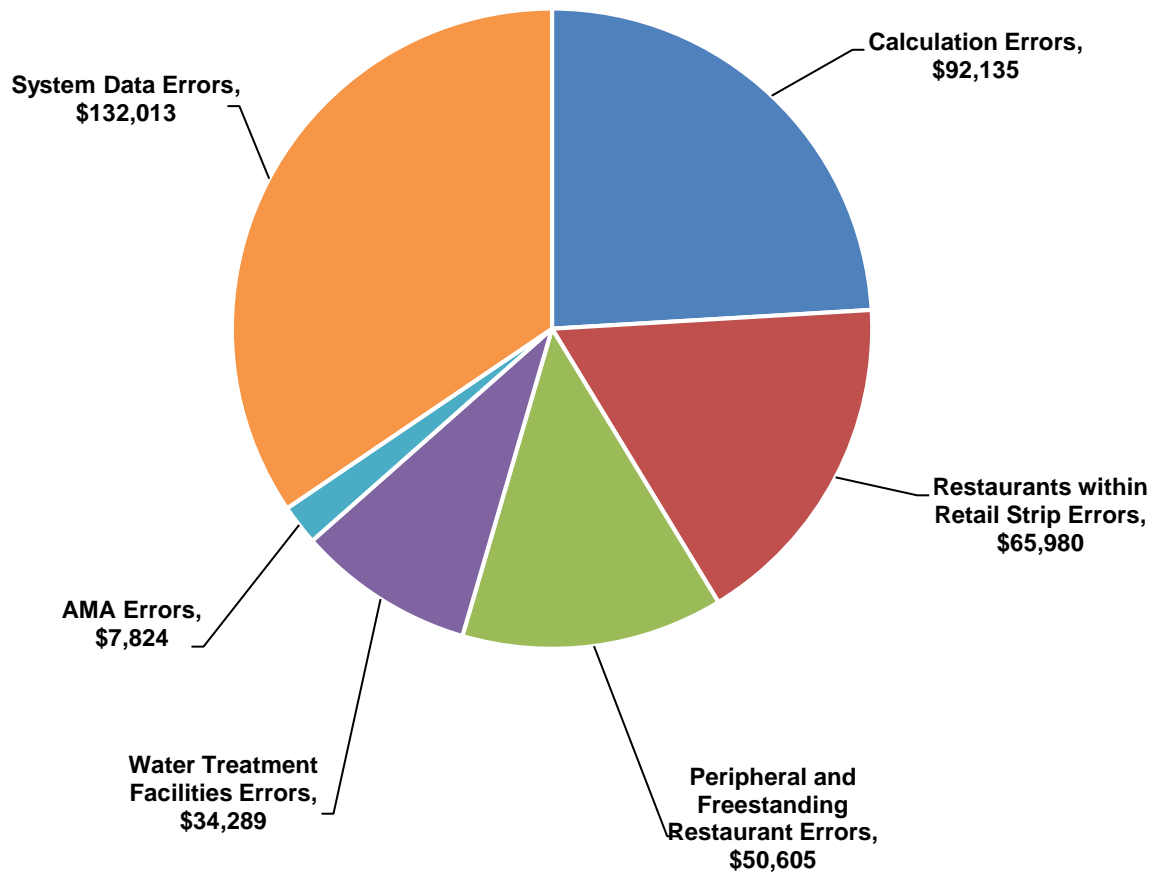
The Community, Environmental and Development Services Department should follow the Code's impact fee classifications or work with the Board to update the Code to better reflect the County's intent.

Management's Response:

Concur. The Department agrees that fees assessed on unmanned facilities should follow the Code. All but one of the facilities is owned by Orange County. All Orange County facilities will be reassessed with any difference paid by the appropriate Department. The underassessment of the facility owned by the City of Cocoa will be addressed as part of the direction requested from the Board regarding incorrect fee assessments.

⁴ Eight of the nine projects were owned by the County.

Summary of Total Errors



Total Transportation Impact Fee Errors: \$382,846



ACTION PLAN

NO.	RECOMMENDATIONS	MANAGEMENT'S RESPONSE		
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR
1.	The Community, Environmental and Development Services Department should:			
A)	Ensure sufficient data is timely and accurately recorded into the system;	✓		
B)	Automate the calculations of transportation impact fees to ensure accuracy, or implement a secondary level of review to minimize errors; and,	✓		
C)	Implement additional procedures to ensure the AMA rate is correctly applied to development within AMA boundaries; and,	✓		
D)	Collect any identified impact fee underpayments and refund any identified impact fee overpayments.		✓	
2.	The Community, Environmental and Development Services Department should assess impact fees in accordance with Board Policy. In addition, the current practice of assessing impact fees at the retail rate for all businesses located within retail centers should be reviewed. The results of this review should be presented to the Board during the next scheduled Transportation Impact Fee Review. Further, the Committee should not approve impact fee appeals that are contrary to written Board policy.		✓	
3.	The Community, Environmental and Development Services Department should follow the Code's impact fee classifications or work with the Board to update the Code to better reflect the County's intent.	✓		

Appendix – Impact Fee Rate Schedule



Audit of the Calculation and Assessment of Transportation Impact Fees

Land Use Type	Unit	Non-AMA Rate	AMA ⁵ Rate
<i>Residential:</i>			
Single-Family Detached	Dwelling	\$3,898	\$3,761
Multifamily (Apartments)	Dwelling	\$2,524	\$2,435
Condominium/Townhouse	Dwelling	\$2,208	\$2,124
High-Rise Condo/Townhouse †	Dwelling	\$1,598	\$1,543
Mobile Home Park	Dwelling	\$1,436	\$1,389
Retirement Housing/Age Restricted	Dwelling	\$1,274	\$1,234
Student Housing	Dwelling	\$1,079	\$1,045
<i>Lodging:</i>			
Hotel	Room	\$1,978	\$1,910
Motel	Room	\$1,411	\$1,355
Tourist Hotel	Room	\$1,796	—
Time Share	Dwelling	\$2,076	\$1,999
<i>Recreation:</i>			
Golf Course	Acre	\$2,267	\$2,185
Bowling Alley	1,000 sq. ft.	\$11,604	\$11,191
Movie Theater without Matinee	1,000 sq. ft.	\$11,151	\$10,698
Racquet Club	1,000 sq. ft.	\$5,106	\$4,918
Health/Fitness Club	1,000 sq. ft.	\$11,974	\$11,547
<i>Institutions:</i>			
Day Care Center	1,000 sq. ft.	\$7,043	\$6,741
Library	1,000 sq. ft.	\$12,015	\$11,589
Hospital	Bed	\$3,968	\$3,823
Nursing Home	1,000 sq. ft.	\$369	\$355
Animal Hospital/Vet Clinic	1,000 sq. ft.	\$8,921	\$8,597
School	1,000 sq. ft.	\$6,974	\$6,734
Public Assembly	1,000 sq. ft.	\$4,614	\$4,448
<i>Office:</i>			
Office, 50,000 sf or less	1,000 sq. ft.	\$5,574	\$5,374
Office, 50,001—100,000 sf	1,000 sq. ft.	\$4,748	\$4,575
Office, 100,001—200,000 sf	1,000 sq. ft.	\$4,050	\$3,905
Office, more than 200,000 sf	1,000 sq. ft.	\$3,455	\$3,330
Office, Medical/Dental	1,000 sq. ft.	\$12,900	\$12,446
Post Office	1,000 sq. ft.	\$20,508	\$19,778
<i>Retail:</i>			
Freestanding Discount Store	1,000 sq. ft.	\$5,884	\$5,639
Hardware/Paint Store	1,000 sq. ft.	\$3,378	\$3,231
Retail, 50,000 sf or Less	1,000 sq. ft.*	\$5,700	\$5,455
Retail, 50,001—100,000 sf	1,000 sq. ft.*	\$6,135	\$5,876
Retail, 100,001—200,000 sf	1,000 sq. ft.*	\$5,477	\$5,246
Retail, 200,001—300,000 sf	1,000 sq. ft.*	\$5,307	\$5,090
Retail, 300,001—400,000 sf	1,000 sq. ft.*	\$5,169	\$4,960

⁵ - The County established the Alternative Mobility Area (AMA) to promote urban development and redevelopment.

Appendix – Impact Fee Rate Schedule



Audit of the Calculation and Assessment of Transportation Impact Fees

Land Use Type	Unit	Non-AMA Rate	AMA ⁵ Rate
Retail, 400,001—500,000 sf	1,000 sq. ft.*	\$5,135	\$4,926
Retail, 500,001—1,000,000 sf	1,000 sq. ft.*	\$5,319	\$5,118
Retail, 1,000,001—1,200,000 sf	1,000 sq. ft.*	\$5,412	\$5,204
Retail, more than 1,200,000 sf	1,000 sq. ft.*	\$5,534	\$5,319
New/Used Auto Sales	1,000 sq. ft.	\$6,276	\$6,040
Supermarket	1,000 sq. ft.	\$7,621	\$7,299
Convenience Market w/Gas Pumps	1,000 sq. ft.	\$20,411	\$19,451
Home Improvement Superstore	1,000 sq. ft.	\$3,059	\$2,933
Electronics Superstore	1,000 sq. ft.	\$1,502	\$1,424
Bank/Drive-In	1,000 sq. ft.	\$11,525	\$11,050
Drinking Place	1,000 sq. ft.	\$3,774	\$3,590
Restaurant, Quality	1,000 sq. ft.	\$14,253	\$13,690
Restaurant, High-Turnover	1,000 sq. ft.	\$16,974	\$16,314
Restaurant, Fast Food w/Drive-Thru	1,000 sq. ft.	\$38,463	\$36,809
Service Station	Fuel Position	\$4,660	\$4,456
Self-Service Car Wash	Wash Station	\$10,190	\$9,756
Tourist Retail	1,000 sq. ft.*	\$6,475	—
Auto Service	1,000 sq. ft.	\$6,891	\$6,651
Drug Store	1,000 sq. ft.	\$11,160	\$10,737
<i>Industrial:</i>			
General Light Industrial	1,000 sq. ft.	\$2,163	\$2,088
Manufacturing	1,000 sq. ft.	\$1,185	\$1,144
Warehousing	1,000 sq. ft.	\$1,107	\$1,066
Mini-Warehouse	1,000 sq. ft.	\$396	\$382