



# **Report # 2019-12**

## **Audit of Impact Fee Waivers**

**Department of Inspector General**  
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Inspector General



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Polk County Clerk and Comptroller  
Polk County, Florida

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## **INSPECTOR GENERAL AUDIT REPORT 2019-12 Audit of Impact Fee Waivers**

The Honorable Board of County Commissioners

We have conducted an audit of Impact Fee Waivers for fiscal years 2013-14 and 2017-18.

Our audit objectives were to determine compliance with the County's policies over affordable and workforce housing impact fee waivers. We appreciate the cooperation and assistance provided by Planning and Development and Housing and Neighborhood Development during the course of our audit. Recommendations are included in our report.

We hope you find this report useful in ensuring Polk County government provides the best possible services to our residents.

Respectfully submitted,

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Lita McHugh, CPA, CIG, CIGI  
Inspector General

Approved:

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Stacy M. Butterfield, CPA  
Polk County Clerk and Comptroller

# BACKGROUND

As an incentive to increase homeownership opportunities for moderate<sup>1</sup> and low-income<sup>2</sup> individuals and families, the County implemented impact fee waivers for affordable and workforce housing. For purposes of this report, the terms exemption and waiver are used interchangeably and both are in reference to impact fees. These waivers are described in Ordinance No. 18-048.

The Office of Planning and Development (OPD) coordinates with Housing and Neighborhood Development (HND) to facilitate impact fee waivers. Any person seeking an affordable or workforce housing exemption files an application for exemption with the OPD. To be eligible for affordable or workforce housing impact fee waivers, the following requirements must be satisfied:

| <b>Affordable Housing Requirements</b>   | <b>Workforce Housing Requirements</b>   |
|--|---|
| Evidence that the residential construction shall be occupied by low income persons or very low income persons        | A notarized affidavit affirming that the residential construction qualifies as affordable or workforce housing and shall be occupied by moderate income persons |
| Mitigation will be 100% of Impact Fees due.  | Mitigation will be 50% of Impact Fees due.  |
| Applicant must occupy the residence for a period of at least 7 years or else impact fees will become due immediately | Applicant must occupy the residence for a period of at least 7 years or else impact fees will become due immediately  |

After an applicant completes the application, provides supporting documentation as required by the application, and receives approval from the County Manager, a lien is placed on the property for the amount of the waived fees. If for some reason the property no longer qualifies for the affordable or workforce housing exemption during the 7-year period, such as when the home is sold, impact fees in the amount previously exempted are immediately due.

<sup>1</sup> Moderate income persons means one or more natural persons whose total adjusted gross household income does not exceed 120 percent of the median adjusted gross income for households within the Lakeland-Winter Haven metropolitan area as reported by the U.S. Department of Housing and Urban Development.

<sup>2</sup> Low-income persons means one or more natural persons whose total adjusted gross income does not exceed 80 percent of the median adjusted income for households within the Lakeland-Winter Haven metropolitan area.

## SCOPE AND METHODOLOGY

The scope of our audit included:

- Review of Ordinance No. 18-048 related to impact fee waivers.
- Interviews with personnel of OPD and HND.
- Evaluation of the procedures and controls over impact fee waivers.
- Testing impact fee waivers for fiscal years 2013-14 and 2017-18.

Our audit objectives were to:

- Determine compliance with County policies over impact fee exemptions for affordable and workforce housing.
- Determine if the original applicant still resides in the home.
- Determine if adequate controls are in place and functioning to prevent and detect errors, fraud and abuse.

Our testing was performed on impact fee waivers for the 2013-14 fiscal year with the logic that these particular waivers are set to expire soon and any controls and procedures deemed necessary can be implemented before the expiration date. We also tested impact fee waivers for fiscal year 2017-18 to get an up-to-date evaluation of current procedures. Overall, we tested multiple years to assure that our audit results will be helpful to management.

We conducted this audit in accordance with the *International Standards for the Professional Practice of Internal Auditing* and with *Principles and Standards for Offices of Inspector General*. 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.

# RESULTS

During the audit, our main priority was to determine if waiver recipients still resided at the address in their application, in accordance with exemption requirements. We determined the applicants' residency based on their original application, the Polk County Property Appraiser's records and the Clerk's official records.

Through our discussion with OPD, we learned that there are 3 types of candidates who apply for impact fee waivers:

- Habitat for Humanity applicants
- Keystone Challenge applicants
- Individual applicants not associated with another program

Habitat for Humanity and Keystone Challenge identify applicants within their programs who may qualify for impact fee waivers. Individual applicants generally apply for the program after construction is completed when they are applying for their Certificate of Occupancy. Applicants apply for waivers through OPD. HND performs income verification and determines if each applicant qualifies for a waiver. Once approved, all documentation is sent back to OPD, who notifies the applicant of either approval or rejection of their application. When the waiver is processed, then a lien is obtained on the property for the amount of the waived impact fees. The County has relied upon Habitat for Humanity to file the liens for their clients. In the past, individual applicants were required to file the liens themselves.

During our testing we noted some liens could not be located in official records. We believe this policy of allowing a third party to file a lien on behalf of the County has resulted in some liens not being properly processed.

## **Results:**

We tested 62 impact fee waivers issued in fiscal year 2013-14. Of the waivers tested, 7 waiver recipients either sold or underwent foreclosure and no lien had been filed on the homes. The dollar amount of waivers with no lien was \$24,960. One home was sold and the buyer assumed the waiver, but the amount of the waiver was slightly miscalculated.

We also tested 16 impact fee waivers granted in fiscal year 2017-18. Of the waivers tested, 8 waiver recipients did not have a lien filed in official records. The dollar amount of waived impact fees with no liens was \$46,806.

# RECOMMENDATIONS

## **Finding #1 – The County should file all original liens for impact fee waiver applicants.**

After the application is approved for impact fee waivers, a claim of lien is to be placed on the applicant's home for the amount of impact fees that would have been due sans waiver. If the property is transferred to another owner who does not qualify for the affordable or workforce housing waiver within seven years, the full amount of impact fees would be due to the County. If the original applicant still resides in the home at the end of the seven year period, the lien expires.

During our testing, we noted that the County relies on third parties such as attorneys for Habitat for Humanity, or the individual applicants, to file the liens. As a result, there were several instances where liens were not filed in official County records. Without liens filed, the County may not be able to recover waived impact fees if the applicant no longer qualifies. We recommend that the County obtain and file all original liens for impact fee waiver applicants to ensure that waived impact fees can be recovered if circumstances change and impact fees become payable.

### **MANAGEMENT RESPONSE:**

Management agrees.

Prior to the outcome of the audit, staff has already implemented a new process for filing the claims of lien. In this process, once an applicant has been approved for a waiver of impact fees, a hold is placed on their ability to receive their Certificate of Occupancy for their permit. When the applicant is eligible to receive their Certificate of Occupancy, staff records the claim of lien on that date (the lien commencement date).

**Finding #2 – The County should establish and implement procedures to address situations that may arise during the impact fee waiver process.** We also noted a variety of unique situations and make the following recommendations to address these findings.

#### **2a) Establish consistent procedures to identify when the waiver clock begins for all liens.**

This issue can be resolved by completing finding #1 above. OPD personnel state that the waiver clock begins when the Certificate of Occupancy (CO) is issued. We recommend that OPD document the date the CO is issued in their database.

#### **2b) Perform periodic updates to determine if home sales or foreclosures have occurred.**

We recommend that OPD confirm the current address of past waiver recipients. It may be time-

prohibitive to update the address of each recipient every year. We recommend that OPD's database be updated for all the years that we did not test, and file liens for those grantees where no lien has been filed. Thereafter OPD should develop a schedule to review past waivers in an efficient manner.

**2c) Update records to reflect the disposition of all impact fee waiver applications.** In some instances there was an application on file, but county records did not show the applicant as owning the property. OPD personnel explained that the application may have been subsequently denied by HND because income could not be verified or did not meet threshold requirements. We recommend that OPD personnel document the disposition of all impact fee waiver applications.

**2d) Establish procedures to ensure that proper fees are assessed if a lien is assumed by a successor party.** We noted an instance where a lien was assumed by a successor party, but the amount of the lien transferred was incorrectly calculated. The calculation of the transferred waiver was not documented, so we were unable to determine how the amount was arrived at. We recommend that OPD document the calculation of a waiver transfer if a lien is assumed by a successor party.

#### **MANAGEMENT RESPONSE:**

Management agrees.

2a. As part of the new claim of lien process, staff will also include the lien commencement date on its internal database.

2b. Staff will do an annual determination of home sales and foreclosures, however, the County is currently notified of these instances. As part of its closing protocol, the title company will contact the County regarding a payoff of the lien prior to completion of a home sale. The foreclosure process begins, for the County, when the County is served with the Plaintiff's Complaint. Upon review of the Complaint staff determines if the County's lien(s) is superior to that of the Plaintiff or if it is inferior to the Plaintiff's interests. Superior liens are defended by the County and those interests are generally dropped from the foreclosure process while inferior liens are generally not defended by the County and are included in the foreclosure process. As an inferior lienholder the County then has the right, if any surplus exists from the sale of the property, to request that those monies be distributed to the County to satisfy the County's inferior lien(s). However, regardless of whether the County receives any surplus funds to satisfy its foreclosed lien(s) those liens are no longer a lien against the property that was the subject of the foreclosure.

2c. In addition to including the lien commencement date to its internal database, staff will identify applicants who may have not been approved for an impact fee waiver. Also, staff will do an annual permit status update for claims of lien that have not yet been filed. Pursuant to

County ordinance, a permit has a period of two years to be completed from the time it has been issued. A claim of lien will not have been filed for an applicant who has not yet received their Certificate of Occupancy.

2d. Current procedure is to determine the eligibility of the successor party. If the successor party is deemed eligible for the impact fee waiver, a new lien is filed with the modified period of effectiveness. Also, it is important to note that the successor party may not be eligible for the same level of mitigation (Affordable Housing vs. Workforce Housing) as the previous lienholder, therefore the amount of mitigation could vary.

# MANAGEMENT ACTION PLAN

| Recommendation   | Responsible Employee                                 | Target Date |
|--|--|-------------|
| <b>Finding #1 – The County should file all original liens for impact fee waiver applicants.</b>  |  |             |
| Prior to the outcome of the audit, staff has already implemented a new process for the County to file the claims of lien.  | Fiscal Manager<br>Building Division                  | Immediately |
| <b>Finding #2 – The County should establish and implement procedures to address unique situations that may arise during the impact fee waiver process.</b>   |  |             |
| 2a) Establish consistent procedures to identify when the waiver clock begins for all liens.  |  |             |
| As part of the new claim of lien process, staff will include the lien commencement date in its internal database.  | Fiscal Manager                                       | Immediately |
| 2b) Perform annual updates, starting with the current year, to determine if home sales or foreclosures have occurred.  |  |             |
| Staff agrees to do an annual determination of home sales and foreclosures; however, the County is currently notified of these instances.   | Fiscal Manager<br>County Attorney's Office           | Immediately |
| 2c) Update records to reflect the disposition of all impact fee waiver applications.   |  |             |
| Staff will identify applicants who may have not been approved for an impact fee waiver in its internal database. Also, staff will do an annual permit status update for applicants with no claims of lien on file. | Fiscal Manager                                       | Immediately |
| 2d) Establish procedures to ensure that proper fees are assessed if a lien is assumed by a successor party.  |  |             |
| Current procedure is to determine the eligibility of the successor party. If the successor party is deemed eligible for the impact fee waiver, a new lien is filed with the modified period of effectiveness.      | Fiscal Manager<br>Housing & Neighborhood Development | Immediately |