



# Clerk of the Circuit Court Board of County Commissioners

Marion County



## Internal Audit Division

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### MEMORANDUM

TO: Edwin L. Smith, Assistant County Administrator  
Janet Y. Tutt, Assistant County Administrator

FROM: David R. Ellspermann, Clerk of the Circuit Court

DATE: April 2, 2002

RE: ANNUAL AUDIT AND REVIEW OF COUNTY AGREEMENT WITH THE VILLAGES FOR IMPACT FEE CREDITS

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Marion County and The Villages of Lake-Sumter, Inc. entered into an Impact Fee Credit Agreement for Development of County Road 42, dated November 7, 2000. The Internal Auditor, Wallace Watford, has completed the first "annual review and audit" as required by Section 3.5 of the Agreement. This section states that "the County shall conduct an annual review and audit of performance under this agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this agreement and to report the credit applied toward payment of transportation impact fees and the balance of available and unused credit."

This review was conducted during March 2002 and was structured to review the financial records and supporting documentation of The Villages of Lake-Sumter, Inc. (The Villages) to determine compliance with the Agreement. We believe the procedures and activities were sufficient to make such a determination. We reviewed The Villages accounting system, vendor and contractor invoices, checks and other supporting documentation to the expenditures for this project. Much of our work was accomplished at The Villages' finance department and included discussions with its Vice President of Finance, Mr. John F. Wise.

### Background

Ordinance 94-33 requires an "...Impact Generating Land Development Activity within the County to provide for capital improvements and additions to the Major Road Network System...through the payment of transportation impact fees." This ordinance allows that "a credit shall be granted against the Road Impact Fee for certain donations of land or for the contribution of Off-Site Improvements to the Major Road Network System..." under certain conditions. As provided in Resolution 00-R-192, the Board of County Commissioners approved an amendment to the development order for the Villages of Marion County. The Developer, The Villages of Lake-Sumter, Inc., agreed, without cost to the County, to construct two

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additional lanes on a portion of County Road 42 and to donate appropriate rights of way that it owned, for which it would receive impact fee credits. These conditions were incorporated into the above referenced Impact Fee Credit Agreement, dated November 7, 2000, which was subsequently amended on April 3, 2001. The agreed upon construction project was divided into three distinct phases.

In addition to the required "annual review and audit", the County has other rights to audit under this Agreement. Under Section 3.E: "The County shall have the right to audit or verify the amount and accuracy of Project costs and Project documentation throughout the term of this Agreement and for five years subsequent." This is further clarified in Section 3.C which states: "This information will be available to the County, or its duly authorized agent or representative, for audit, inspection or copying, for a minimum of five years from the termination of this agreement."

In a letter dated March 4, 2002, The Villages stated that the current impact fee credit entitlement is \$3,559,492.80, and requested that all impact fees paid by them be released. This request is presently being processed by County Administration.

### **Findings**

The letter from The Villages included an attachment which presented the required certification of costs by a professional engineer. The costs certified (\$3,559,492.80) were as of January 31, 2002 and almost all pertained to the first two phases of the project. The final costs for these phases will be greater and should be determined within two months. These final costs must be received in order to establish the correct impact fee entitlement. The costs for the third phase will not be included in the entitlement until that phase is completed and accepted.

Phase I of the construction project, per the first amendment to the Agreement, is required to be completed by May 1, 2002. Both Phase I and Phase II appear to have been substantially completed.

As of February 28, 2002, the total impact fees paid by The Villages was \$1,459,065.76, which is considerably less than the total entitlement requested.

In accordance with Section 3.C of the Agreement, the impact fees paid prior to the establishment of the impact fee credit "...shall be rebated...to the extent of the Developer's impact fee entitlement on a quarterly basis upon written request by the Developer". The Villages has not previously made such a written request. Instead, The Villages requests this rebate at this time, which is upon the substantial completion of the first two phases of the construction project. It therefore seems appropriate for the County to rebate the impact fees previously paid by The Villages.

The formal establishment of the impact fee credit entitlement, however, can only occur upon the County officially accepting Phases I and II, as provided in Section 3.B of the Agreement. County Administration will have to make that determination and acceptance.

After the impact fee credit entitlement is established, The Villages will retain all further impact fees until the total amount retained equals the approved credit entitlement balance. This balance will be computed as: total project costs of each completed and accepted phase, less the amount of rebated

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impact fees. Thereafter, in accordance with Section 3.C of the Agreement, the County is required to “...deliver to the Developer monthly reports indicating all activity on the account during the month, and the month end credit balance”.

**Conclusion**

Based on the review performed, we have concluded that The Villages has demonstrated good faith compliance with the terms of this Agreement, is entitled to the requested fee rebate and, upon acceptance by the County of the completed project phases, is entitled to the establishment of the impact fee credit.

c:           L. Robert Titterington, County Engineer  
              Dwight D. Ganoe, Planning Director  
              John W. Garri, Finance Director  
              John F. Wise, Vice President Finance, The Villages of Lake-Sumter, Inc.