

ORDINANCE NO. 90- 34

AN ORDINANCE CREATING ARTICLE VII, CHAPTER 23, CODE OF BREVARD COUNTY, FLORIDA, TO BE ENTITLED "STORMWATER UTILITY;" ESTABLISHING A STORMWATER UTILITY FOR BREVARD COUNTY, FLORIDA; PROVIDING FOR FINDINGS AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR STORMWATER MANAGEMENT SYSTEM BENEFIT AREAS; PROVIDING FOR A STORMWATER UTILITY FEE; PROVIDING FOR ADMINISTRATION, COLLECTION, PENALTIES, AND ENFORCEMENT OF THE COLLECTION OF SUCH FEE; PROVIDING FOR ADJUSTMENT OF FEES; PROVIDING FOR STORMWATER UTILITY FUND; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 403.0891, Florida Statutes, mandates that Brevard County develop a stormwater management program which is mutually compatible with those developed by the Florida Department of Environmental Regulation, St. Johns River Water Management District, and other local governmental entities; and

WHEREAS, the State of Florida has adopted stormwater management legislation which encourages proper management of stormwater runoff and water quality; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, desires to develop a Brevard County-wide stormwater management program, to be responsible for the operation, construction, and maintenance of stormwater devices; for stormwater system planning; for review of development plans for compliance with stormwater management codes; and for lake and river quality management; and

WHEREAS, Section 403.0893, Florida Statutes, authorizes the Board of County Commissioners of Brevard County, Florida, to create one or more stormwater utilities and adopt stormwater utility fees or assessments sufficient to plan, construct, operate and maintain stormwater management systems throughout Brevard County, Florida, and to establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems throughout Brevard County, Florida; and

WHEREAS, Section 403.0893(3), Florida Statutes, authorizes the Board of County Commissioners of Brevard County, Florida, to create, alone or in cooperation with other counties,

Officially filed with
The Secretary of State
September 19, 1990

municipalities, and special districts, one or more stormwater management system benefit areas within Brevard County, Florida, and specifically providing that all property owners within said benefit areas may be assessed a stormwater utility fee or assessment to fund the planning, construction, operation, maintenance, and administration of a public stormwater management system for the benefited area, with any benefit area containing different land uses which receive substantially different levels of stormwater benefits being designated stormwater management system benefit sub-areas, which shall be assessed different stormwater utility fees or assessments from sub-area to sub-area, based upon a reasonable relationship to benefits received; and

WHEREAS, Section 403.0893(3), Florida Statutes, further provides that the fees to be assessed within stormwater management system benefit areas and sub-areas shall be calculated to generate sufficient funds to plan, construct, operate, and maintain stormwater management systems, and authorizes Brevard County to utilize the non-ad valorem levy, collection, and enforcement methods provided for in Chapter 197, Florida Statutes; and

WHEREAS, the cost of operating and maintaining all stormwater management systems, and the financing of existing and future necessary repairs, replacements, improvements, and extensions thereof, should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom; and

WHEREAS, on April 3, 1990, the Board of County Commissioners of Brevard County, Florida, entered into a continuing engineering contract with a consulting firm to perform professional services pertinent to the establishment of a Brevard County stormwater utility and management program; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, has determined that implementation of a Brevard County-wide stormwater management program should proceed on a Commission District by Commission District basis, within the unincorporated

areas, dependent upon need and fiscal ability to plan, design, and construct necessary capital improvements therein; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, has determined that stormwater management system benefit areas should be established in the unincorporated areas of Brevard County Commission Districts 3 and 5 during the fiscal year commencing October 1, 1990; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, has determined that the adoption of this Ordinance, and the creation of a stormwater management program, under the terms, conditions, and criteria set forth hereunder, is necessary to protect the health, safety, and welfare of the citizens, residents, and inhabitants of Brevard County, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Chapter 23, Code of Brevard County, Florida, is hereby amended to add new Article VII, to be entitled "Stormwater Utility," and to read as follows:

"ARTICLE VII. STORMWATER UTILITY

Section 23-159. Findings and Purpose.

(1) The Board of County Commissioners of Brevard County, Florida, finds that uncontrolled drainage and development of land has a significant adverse impact upon the health, safety, and welfare of the Brevard County community. Further, the Board finds more specifically as follows:

(a) Stormwater runoff is capable of carrying pollutants into receiving bodies, thereby degrading water quality;

(b) The increase in nutrients, such as phosphorous and nitrogen, accelerates eutrophication of receiving water bodies, thereby adversely affecting flora and fauna;

(c) Improperly channeling water increases the velocity of stormwater runoff, thereby increasing erosion and sedimentation;

(d) Construction requiring the alteration of natural topography and removal of vegetation tends to increase erosion;

(e) Siltation of water bodies resulting from increased erosion decreases the capacity of said water bodies to hold and transport water, interferes with navigation and harms flora and fauna;

(f) Impervious surfaces increase the volume and rate of stormwater runoff, and allow less water to percolate into the soil, thereby decreasing groundwater recharge;

(g) Improperly managed stormwater runoff may increase the incidents of flooding and the level of floods which occur, thereby endangering property and human life;

(h) Improperly managed stormwater runoff may interfere with the maintenance of optimum salinity in estuarine areas, thereby disrupting biological productivity;

(i) Substantial economical losses may result from such adverse impacts upon the waters of the Brevard County ecosystem;

(j) Sound stormwater utility management practices result in the avoidance of future problems concerning the development of land and the maintenance of the quality of the Brevard County environment.

(2) The purpose of this article is to protect, maintain, and enhance both the immediate and the long term health, safety, and general welfare, of the citizens, residents, and inhabitants of Brevard County, Florida. In order to effectuate this stated purpose, this article has the following objectives:

(a) To establish a stormwater management program in Brevard County, Florida, which is mutually compatible with those developed by the Florida Department of Environmental Regulation, the St. Johns River Water Management District, and other local governmental entities;

(b) To develop a Brevard County-wide stormwater management program, in a graduated fashion, upon a Commission District by Commission District basis, within the unincorporated areas, to be responsible for the construction, operation, and maintenance of stormwater devices; for stormwater system planning;

for review of development plans for compliance with stormwater management codes; and for lake and river quality management;

(c) To create one or more stormwater management system benefit areas and adopt stormwater utility fees or assessments sufficient to plan, construct, operate, and maintain stormwater management systems throughout Brevard County, Florida;

(d) To establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain the stormwater management systems throughout Brevard County, Florida;

(e) To encourage productive and enjoyable harmony between humanity and nature;

(f) To protect, restore, and maintain the chemical, physical, and biological integrity of community waters;

(g) To prevent individuals, business organizations, and governments from causing harm to the community, by activities which adversely affect water resources;

(h) To encourage the construction of drainage systems which aesthetically and functionally approximate natural systems;

(i) To encourage the protection of natural systems, and the use of such natural systems in ways which do not impair their beneficial functioning;

(j) To encourage the use of drainage systems which minimize the consumption of electrical energy, or petroleum fuels, in order to move water, remove pollutants, and maintain said systems;

(k) To minimize the transport of pollutants to community waters;

(l) To maintain or restore groundwater levels;

(m) To protect, maintain, or to restore natural salinity levels in estuarine areas;

(n) To minimize erosion and sedimentation;

(o) To prevent damage to wetlands;

(p) To prevent damage from flooding, while recognizing that natural fluctuations in water levels are beneficial;

(q) To protect, restore, and maintain the habitat of fish and wildlife; and

(r) To ensure the attainment of these objectives by requiring the approval and implementation of a stormwater management program for all activities which may have an adverse impact upon community waters.

(s) To seek interlocal agreements with the various municipalities located within Brevard County to ensure cooperative efforts toward joint development of compatible and efficient stormwater management programs.

Section 23-160. Definitions.

For the purposes of this article, the following terms shall have the meaning set forth in this section. When consistent with the context, words used in the present tense shall include the future, words in the future tense shall include the present, words in the plural shall include the singular, words in the singular shall include the plural, words in the male gender shall include the female gender, and the word 'shall' is always mandatory and not merely directive.

(1) **Board** shall mean the Board of County Commissioners of Brevard County, Florida.

(2) **Director** shall mean the Director of the Stormwater Utility Division of Brevard County, Florida, or successor in title.

(3) **Division** shall mean the Stormwater Utility Division of Brevard County, Florida, or its successor in function.

(4) **Equivalent Residential Unit (ERU)** shall mean the statistical average of total impervious area for those lots classified as residential under Appendix C-Zoning, Code of Brevard County, Florida.

(5) **Impervious areas** mean surfaces which have been compacted or covered with a layer of material which is highly resistant to infiltration by water, such as roofed and paved areas, including,

but not limited to, areas covered by roofs, roof extensions, slabs, patios, porches, driveways, sidewalks, parking areas and athletic areas. It shall also include semi-impervious areas, such as compacted clay.

(6) **Lot** shall mean a parcel of land shown on a recorded plat or on the Brevard County Property Appraiser's maps, or any piece of land described by deed and recorded in the Public Records of Brevard County, Florida.

(7) **Person** shall mean any and all persons, natural or artificial, and includes any individual, firm, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(8) **Property owner** shall mean the person in whom is vested the fee ownership, dominion, or title of real property. This term may also include a tenant, if chargeable under tenant's lease for the maintenance of the subject real property, and any agent of the owner or tenant, including the developer.

Section 23-161. Brevard County Stormwater Management Program.

(1) Pursuant to the authority granted under Section 403.0891, et seq., Florida Statutes, the Board of County Commissioners of Brevard County, Florida, hereby directs the Division to develop and implement a Brevard County Stormwater Management Program, for the purposes and objectives set forth hereunder.

(2) The Brevard County Stormwater Management Program shall be instituted in a gradual fashion, through the creation of stormwater management system benefit areas, on a Brevard County Commission District by Commission District basis, within the unincorporated areas, dependent upon need and fiscal ability to plan, design, and construct necessary capital improvements therein.

Section 23-162. District 3 Stormwater Management System Benefit Area.

(1) There is hereby created, pursuant to the provisions of Section 403.0893(3), Florida Statutes, the District 3 Stormwater

Management System Benefit Area.

(2) This stormwater management system benefit area shall encompass all real property located within the unincorporated areas of Brevard County Commission District 3, as those Commission District boundaries may exist from time to time.

(3) All property owners within said District 3 Stormwater Management System Benefit Area shall be assessed an annual stormwater utility fee to fund the planning, construction, operation, maintenance and administration of a public stormwater management system for the benefited area, pursuant to the criteria and standards set forth in this article, and any applicable rate resolution adopted pursuant to Section 23-164 below.

(4) In the event that said District 3 Stormwater Management System Benefit Area contains different land uses which receive substantially different levels of stormwater benefits, stormwater management system benefit sub-areas may be created, which shall be assessed different stormwater utility fees from sub-area to sub-area based upon a reasonable relationship to benefits received.

Section 23-163. District 5 Stormwater Management System Benefit Area.

(1) There is hereby created pursuant to the provisions of Section 403.0893(3), Florida Statutes, the District 5 Stormwater Management System Benefit Area.

(2) This stormwater management system benefit area shall encompass all real property located within the unincorporated areas of Brevard County Commission District 5, as those Commission District boundaries may exist from time to time.

(3) All property owners within said District 5 Stormwater Management System Benefit Area shall be assessed an annual stormwater utility fee to fund the planning, construction, operation, maintenance and administration of a public stormwater management system for the benefited area, pursuant to the criteria and standards set forth in this article, and any applicable rate resolution adopted pursuant to Section 23-164 below.

(4) In the event that said District 5 Stormwater Management System Benefit Area contains different land uses which receive substantially different levels of stormwater benefits, stormwater management system benefit sub-areas may be created, which shall be assessed different stormwater utility fees from sub-area to sub-area based upon a reasonable relationship to benefits received.

Section 23-164. Stormwater Utility Fee; Rate Resolution.

(1) Pursuant to the provisions of Section 403.0893, Florida Statutes, a stormwater utility fee is hereby created and imposed on all real property located within the District 3 Stormwater Management System Benefit Area and District 5 Stormwater Management System Benefit Area, for services and facilities provided by the Brevard County Stormwater Management Program.

(2) Said stormwater utility fee shall constitute a non-ad valorem assessment, pursuant to the provisions of Section 403.0893, Florida Statutes.

(3) On or before the 15th day of September of each year, the Board shall hold a public hearing to adopt a rate resolution for the purposes of imposing the stormwater utility fee or assessment upon the owners of all real property located within the designated stormwater management system benefit areas. Said rate resolution shall incorporate a schedule of rates and classifications of all affected real property in the designated stormwater management system benefit areas.

(4) On or before the 15th day of September of each year, the Board shall adopt a budget for the operation and maintenance of the stormwater management program for the ensuing County fiscal year, including funds for the payment of outstanding and anticipated indebtedness, including all reserves necessary in connection with such financing, for the providing of contributions into such reserves as deemed necessary for future capital and land acquisitions and renewal and replacement of existing facilities, for the enforcement and administration of the billing and collection of the annual stormwater utility fees or assessments

provided for under the provisions of this article, including the necessary reserves for anticipated delinquent or uncollectible annual stormwater utility fees or assessments, and for the payment of the current operation and maintenance of such stormwater management program. The rate resolution adopted by the Board shall provide sufficient revenues to fund the budget adopted for the operation and maintenance of the stormwater management program.

(5) Notice of public hearing concerning the above referenced rate resolution shall be published in a newspaper of general circulation in the County at least twice, with the first publication being at least twenty (20) days prior to the public hearing. Said public hearing may be continued to a date certain without the necessity of further newspaper advertisement or public notice.

Section 23-165. Preparation And Certification Of Annual Stormwater Utility Assessment Roll To Tax Collector.

(1) On or before the 15th day of September of each year, the Director shall cause to be prepared an annual stormwater utility assessment roll based on information provided by the Property Appraiser. Such roll shall contain a summary description of each parcel of real property within the designated stormwater management system benefit areas; the name and address of the owner of each such parcel; the rate classification applicable to each parcel of real property as specified in the rate resolution; and the amount of the annual stormwater utility fee or assessment applicable to each parcel of real property. The summary description of each parcel of real property shall be in such detail as to permit ready identification of each parcel on the real property assessment roll.

(2) The Board shall, at any regular or special meeting held on or before the 15th day of September of each year, review the annual stormwater utility assessment roll prepared by the Director for its conformity with the rate resolution provided for in Section 23-164. The Board shall make such changes or additions as necessary to conform such roll with the rate resolution. Upon the completion of

such review, if the Board shall be satisfied that the annual stormwater utility assessment roll has been prepared in conformity with the rate resolution, it shall ratify and confirm such roll and certify the roll to the Tax Collector for appropriate action.

(3) In the event that any classification of real property designated in the rate resolution requires an individual calculation of the annual stormwater utility assessment, the Director shall calculate and determine such annual stormwater utility assessment.

Section 23-166. Method Of Collection Of Annual Stormwater Utility Assessment.

(1) Annual stormwater utility assessments shall be collected and enforced in the same manner that ad valorem taxes are collected and enforced, including, but not limited to, provisions relating to discount for early payment, prepayment by installment method, penalty for delinquent payment, and issuance of tax certificates and tax deeds for nonpayment, as provided for in Section 197.3631, Florida Statutes, as amended.

(2) Failure to pay the annual stormwater utility assessment in the required manner will result in the issuance of a tax certificate against the subject property, and may result in the loss of title to the subject property.

Section 23-167. Separately Prepared Annual Stormwater Utility Assessment Notice.

(1) Nothing contained in this article shall be construed or interpreted to preclude the Board from submitting, within its discretion, a separately prepared notice of the annual stormwater utility assessment imposed on certain real property within Brevard County, to the owner of such property, if, in the opinion of the Board, such procedure will facilitate the billing and collection of such annual stormwater utility assessment.

Section 23-168. Correction Of Errors And Omissions; Adjustments; Petition To Board.

(1) No act of omission or commission on the part of the Property Appraiser, Tax Collector, Board, Director, or their deputies or employees, shall operate to defeat the payment of the

annual stormwater utility assessment imposed by the Board under the provisions of this article. Provided, however, any acts of omissions or commission may be corrected at any time by the officer or party responsible, and when so corrected they shall be construed to be valid ab initio and shall in no way affect any process by law for the enforcement of the annual stormwater utility assessments imposed under the provisions of this article.

(2) The Board shall have the authority, at any time, upon its own initiative or in response to a petition from any affected owner of real property, to correct any error of omission or commission in the adoption of any annual stormwater utility assessment roll, or in the implementation of this article, and make necessary adjustments thereto.

(3) Any owner of real property may petition the Board to correct any asserted error of omission or commission in relation to their property in the adoption of the annual stormwater utility assessment roll, or any addendum to such roll, or in the implementation of this article, or any asserted exemption or basis for variance or mitigation from the adopted assessment against their property, within thirty (30) days of the date of mailing the final notice of ad valorem taxes and non-ad valorem assessments for the current year. Such petition shall be initiated by filing with the Director a written petition containing the name of owner, a legal description of the real property affected, a summary description of the asserted error, or basis for exemption, variance, or mitigation, and the relief requested of the Board. Such petition may be considered by the Board at any regular or special meeting, with notice being provided to the petitioner; provided, however, that the Board may establish, by resolution, a stormwater utility appeals committee, and delegate to such committee the authority and responsibility to hear such petitions provided for under this section, pursuant to the procedures set forth in the enabling resolution creating such appeals committee.

Section 23-169. Failure To Include Real Property On Annual Stormwater Utility Assessment Roll.

(1) When it shall appear that any annual stormwater utility assessment might have been imposed under the provisions of this article against any parcel of real property, but such parcel of real property was omitted from the appropriate annual stormwater utility assessment roll, the Board may, by resolution, impose the applicable annual stormwater utility assessment for the fiscal year in which such error is discovered, plus the applicable annual stormwater utility assessment for up to the prior two (2) fiscal years if such real property was subject to an annual stormwater utility assessment for such prior two (2) fiscal years. Such total annual stormwater utility assessments shall become delinquent if not fully paid, upon the expiration of sixty (60) days from the date of the adoption of said resolution, and upon becoming delinquent shall be subject to the penalties and interest for delinquent annual stormwater utility assessments, as provided in Chapter 197, Florida Statutes. Such total annual stormwater utility assessments shall be subject to a discount for early payment, as provided in Chapter 197, Florida Statutes.

Section 23-170. Application Of Annual Stormwater Utility Assessment to Governmental Agencies.

(1) All governmental agencies owning real property within designated stormwater management system benefit areas shall pay the annual stormwater utility assessment imposed under the provisions of this article, under the applicable classifications specified in the rate resolution adopted under the provisions of Section 23-164, except as otherwise provided herein, or otherwise provided by law.

(2) The discounts for early payment of annual stormwater utility assessments provided for in Chapter 197, Florida Statutes, shall not be applicable to the annual stormwater utility assessment imposed against governmental agencies owning real property. Such governmental agencies shall pay in the manner provided in this article the full annual stormwater utility assessment imposed.

(3) The annual stormwater utility assessment imposed against local governmental agencies shall become delinquent if not fully paid in accordance with Sections 218.70 through 218.79, Florida Statutes, the Florida Prompt Payment Act.

(4) The Board shall have the authority to enforce the collection of any delinquent annual stormwater utility assessment by the institution of procedures set forth under Sections 218.70 through 218.79, Florida Statutes, the Florida Prompt Payment Act.

(5) All Brevard County agencies are hereby required to pay applicable annual stormwater utility assessments unless specifically exempted by the Board.

Section 23-171. Applicability Of Annual Stormwater Utility Assessment To Leasehold Interests In Real Property Leased By A Governmental Agency.

(1) The provisions of this article, and the annual stormwater utility assessment imposed by the Board, shall be fully applicable to the lessee of any leasehold interest in real property owned by a governmental agency. As to such leasehold interest, the provisions of this article shall apply to such leasehold only and not to the real property.

(2) The provisions of this article, including the annual stormwater utility assessment imposed by the Board, shall be fully applicable to the private owner of any real property leased to a governmental agency.

Section 23-172. Applicability Of Stormwater Utility Assessment To Tax-Exempt Real Property.

(1) The exemption of property from taxation under Florida law shall not relieve the owner of any such real property located within a designated stormwater management system benefit area from the provisions of this article, or from the imposition by the Board of the annual stormwater utility assessment applicable to such real property, as specified in the rate resolution adopted under the provisions of Section 23-164.

Section 23-173. Stormwater Utility Fund.

(1) There shall established a stormwater utility fund for the deposit of all fees collected pursuant to this article, for each designated stormwater management system benefit area.

(2) Each stormwater utility fund for the applicable stormwater management system benefit area shall be used exclusively to provide services and facilities related to the Brevard County Stormwater Management Program. Said funds shall only be utilized for the following expenditures, and shall be held as trust funds of Brevard County:

(a) Operation or maintenance of stormwater management facilities within the jurisdiction of Brevard County;

(b) Costs for the planning, evaluation, design, construction, and management of the stormwater management program;

(c) Administrative costs related to the management of the stormwater management program;

(d) Management services, such as permit review and planning and development review related to the stormwater management program;

(e) Debt service financing of capital improvements related to the stormwater management program."

SECTION 2. SEVERABILITY.


If any provision, section, paragraph, sentence, clause, or portion of this ordinance, or the application thereof to any person or circumstance, is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining provisions or portions thereof.

SECTION 3. EFFECTIVE DATE.

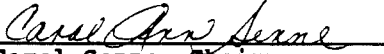
This ordinance shall become effective immediately upon its adoption and filing, pursuant to law.

DONE AND ORDAINED in Regular Session, this 10th day
of September, 1990.

ATTEST:


R. C. Winstead, Jr. Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 
Carol Senne, Chairman

