

Copy Book

Effective Date 12/1/93

ORDINANCE
NUMBER 93-54

AN ORDINANCE CREATING THE NEAL ROAD STREET AND DRAINAGE UNIT; DESCRIBING THE GEOGRAPHIC AREA INCLUDED IN THE UNIT; PROVIDING FOR A GOVERNING BODY; PROVIDING THE PURPOSE OF THE UNIT; PROVIDING FOR THE POWERS OF THE UNIT, INCLUDING THE ADOPTION OF A BUDGET, THE LEVY OF ASSESSMENTS, AND THE COLLECTION OF ASSESSMENTS; PROVIDING FOR INCLUSION IN THE CHARLOTTE COUNTY CODE; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED by the Board of County Commissioners of Charlotte County, Florida.

Section 1. Unit Established. There is hereby created, pursuant to the authority contained in Section 125.01(1)(g), Florida Statutes, a municipal service benefit unit to be known as the Neal Road Street and Drainage Unit.

Section 2. Legal Description. The territory included within the Unit shall include the following portions of the unincorporated area of Charlotte County:

1. Portions of unplatted land lying in the North 1/2 of Section 13, Township 40 South, Range 26 East, in Charlotte County, Florida. Said portions being:

Parcels 1, 1-3, and 1-1-1.

2. All unplatted land lying in the South 1/2 of Section 13, Township 40 South, Range 26 East, in Charlotte County, Florida.

3. Portions of unplatted land lying in the North 1/2 of Section 14, Township 40 South, Range 26 East, in Charlotte County, Florida. Said portions being:

Parcels 2, 17ABCD, 18ABCD, and 19CD.

FILED IN...
File Number: 264256
Recorded: 12/03/93 08:34 A.M.
OR BOOK 1312
PAGE 1667
Recorded in the Office of the Clerk of the Board of County Commissioners, Charlotte County, Florida.

4/12/95
4/12/95

4. All unplatted land lying in the South 1/2 of Section 14, Township 40 South, Range 26 East, in Charlotte County, Florida.

5. All unplatted land lying in Section 15, Township 40 South, Range 26 East, in Charlotte County, Florida.

6. All unplatted land lying in Section 16, Township 40 South, Range 26 East, in Charlotte County, Florida.

7. All unplatted land lying in Section 17, Township 40 South, Range 26 East, in Charlotte County, Florida.

8. Portions of unplatted land lying in the North 1/2 of Section 18, Township 40 South, Range 26 East, in Charlotte County, Florida. Said portions being:

Parcels 1, 2, 3, and 4.

9. All unplatted land lying in the South 1/2 of Section 18, Township 40 South, Range 26 East, in Charlotte County, Florida.

10. All unplatted land lying in the North 1/2 of Section 19, Township 40 South, Range 26 East, in Charlotte County, Florida.

11. All unplatted land lying in Section 20, Township 40 South, Range 26 East, in Charlotte County, Florida.

12. All unplatted land lying in Section 21, Township 40 South, Range 26 East, in Charlotte County, Florida.

13. All unplatted land lying in Section 22, Township 40 South, Range 26 East, in Charlotte County, Florida.

14. All unplatted land lying in Section 23, Township 40 South, Range 26 East, in Charlotte County, Florida.

15. A portion of unplatted land lying in the North 1/2 of Section 24, Township 40 South, Range 26 East, in Charlotte County, Florida. Said portion being:

Parcel 3.

16. A portion of unplatted land lying in the North 1/2 of Section 26, Township 40 South, Range 26 East, in Charlotte County, Florida. Said portion being:

Parcel 4.

17. All unplatted land lying in Section 27, Township 40 South, Range 26 East, in Charlotte County, Florida.

18. All unplatted land lying in Section 34, Township 40 South, Range 26 East, in Charlotte County, Florida.

Section 3. Governing Body. The Board of County Commissioners of Charlotte County, Florida, (hereinafter, the "Board") shall be the governing body of the Unit.

Section 4. Purpose. The purpose of the Unit is to maintain constructed roadways, which have been dedicated for public use, in the condition existing for such roadways on the effective date of this ordinance.

Section 5. Powers of the Governing Body. Within the geographic area for which the Unit has jurisdiction, the Unit may finance activities in furtherance of the foregoing purpose from funds derived from non-ad valorem assessments within such unit only. In furtherance thereof, the governing body of the Unit shall have the following powers, which powers are deemed to be representative and not by way of limitation:

(1) to impose and collect maintenance assessments in the manner provided herein;

(2) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this ordinance, and to employ such consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other employees, contractors and agents as may, in the judgment of the Board, be deemed necessary or convenient and to fix their compensation; and

(3) to exercise any and all of the powers of the County not enumerated above necessary or incidental for the purpose of providing the services and benefits described herein.

Section 6. Annual Budget. The governing body shall annually adopt a work program for the Unit and budget necessary to fund such program. The budget shall be funded through imposition of non-ad valorem maintenance assessments levied within the Unit as follows:

(1) On or before the 10th. day of May of each year, the Board shall make appointments of not-to-exceed seven resident property owners within the Unit to a Resident Committee. Upon designation of the Committee, the Public Works Director shall meet with the Resident Committee to discuss plans and cost estimates for projects for the Unit. After the meeting, the Committee shall prepare written recommendations to be an appendix to the report of the Public Works Director provided below.

(2) On or before the first day of June of each year, the Public Works Director shall cause to be prepared, for the ensuing fiscal year for the Unit, a report to the Board which shall include: 1. a Maintenance Work Program with plans and cost estimates therefor; 2. identification of the area subject to the assessment (benefit area(s)) if less than the entire unit; and 3. an Initial Assessment Roll. The Initial Assessment Roll shall contain the following:

i. A summary description of all parcels of real property within the applicable Unit or benefit area, conforming to the description contained on the Tax Roll;

ii. The name of the owner(s) of each such parcel as shown on the Tax Roll;

iii. The amount of the Initial Maintenance Assessment to be imposed against each such lot or parcel.

(3) Upon receipt of the report of the Public Works Director, the initial Board action for imposition of a Maintenance Assessment is the adoption by the Board of a Preliminary Maintenance Resolution. The Preliminary Maintenance Resolution shall: 1. identify the area to be subject to the Maintenance Assessment; 2. generally describe the maintenance services to be provided; 3. state the Maximum Maintenance Assessment Rate; and 4. describe the method of computation of assessment, which may be by frontage, acreage, square footage, parcel or any other combination thereof or any other method deemed equitable by the Board. The resolution may provide for a contingency amount to offset errors in

the Maintenance Assessment Roll. A contingency provision shall state 1. characteristics of parcels of property which may be entitled to relief from the total assessment; 2. the period in which the owners of such property may petition for relief; and 3. any other provisions reasonably related to such contingency amount.

(4) (a) Upon adoption of the Preliminary Maintenance Resolution, the County Administrator shall: 1. file the Preliminary Maintenance Assessment Roll with the Clerk, which roll shall be open to the public for inspection. The Public Works Department shall also retain a copy of the roll for public inspection; 2. publish a notice one time in a newspaper of general circulation, published and circulated in the County, stating that at a meeting of the Board of County Commissioners on a certain day and hour, not earlier than 20 calendar days from such publication, which meeting shall be a regular or special meeting, the Board will consider adoption of a Final Maintenance Resolution. The public hearing shall be held on or before July 1st. of each year. The Final Maintenance Resolution shall be based on the Preliminary Maintenance Resolution, and will reflect modifications thereto made by the Board as a result of the public hearing. The notice shall specify that interested persons may file written objections regarding any aspect of the Maintenance Assessment Resolution, including the amount, and whether a particular parcel of real property has been properly included or excluded from the Assessment Roll. The published notice shall conform to the requirements of Sections 197.3632 and 197.3635, Fla. Stat., or any successor

statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes. Such notice shall include (i) a geographical depiction of the property subject to the Maintenance Assessment; (ii) a brief and general description of the maintenance to be provided; (iii) the Maximum Maintenance Assessment Rate, (iv) a statement advising that the Preliminary Maintenance Assessment Roll can be inspected at the offices of the Clerk and the Public Works Department and all interested persons may ascertain the amount to be assessed against a lot or parcel of property.

(b) In addition to the published notice provided for above, but only for the first year in which a maintenance assessment is imposed pursuant to this ordinance, the County Administrator shall provide notice by first class mail to each property owner proposed to be assessed. The mailed notice shall conform to the requirements of Sections 197.3632 and 197.3635, Fla. Stat., or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes. Notice shall be mailed at least 20 calendar days prior to the public hearing to each property owner as shown on the Tax Rolls. Notice shall be deemed mailed upon delivery thereof to the possession of the U.S. Postal Service. The County Administrator may provide proof of such notice by affidavit.

(c) At the public hearing, the Board will receive testimony and written objections not previously received regarding any matter relevant to the adoption of the Final Maintenance

Resolution. At the close of the public hearing, the Board shall make modifications or corrections deemed necessary or equitable regarding the assessment or the assessment roll or other matter germane to the Final Maintenance Resolution. The Board shall then adopt the Final Maintenance Resolution reflecting all modifications or corrections previously made. The Final Maintenance Resolution shall establish a Maximum Maintenance Assessment Rate, approve the Final Assessment Roll, and the Annual Maintenance Assessment for the initial year of the assessment. If applicable, the resolution shall provide for the treatment of contingencies as described in Section 6.

(d) Once adopted, the Final Maintenance Resolution shall establish the maximum rate of maintenance assessments for the Unit. In subsequent years, the Board may approve Annual Maintenance Assessment Resolutions without a public hearing if the assessment does not exceed the Maximum Maintenance Assessment Rate provided in the Final Maintenance Resolution, and if the requirements of Chapter 197, Fla. Stat., are satisfied. The adoption of the Final Maintenance Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the method of assessment, the Maximum Maintenance Assessment Rate, the initial Maintenance Assessment Roll and the levy and lien of the Maintenance Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Board action on the Final Maintenance Assessment Resolution. The Final Maintenance Assess-

ment Resolution shall be delivered to the Tax Collector, or such other official as the Board, by resolution, deems appropriate. Notwithstanding the foregoing, if the Board has elected to include as an additional element of Maintenance Cost a contingency amount to offset any errors in the Maintenance Assessment Roll, the owners of property having the characteristics described in the Final Maintenance Assessment Resolution may petition for relief within one year of the date such Final Maintenance Assessment Resolution is adopted.

(5) The Board shall adopt an Annual Maintenance Rate Resolution during its budget adoption process for each fiscal year following the initial fiscal year for which Maintenance Assessments are imposed hereunder. The Annual Maintenance Rate Resolution shall approve the Maintenance Assessment Roll for such fiscal year. The Maintenance Assessment Roll shall be prepared in accordance with the method of assessment set forth in the Final Maintenance Assessment Resolution and shall be based upon a rate not in excess of the Maximum Maintenance Assessment Rate. The Maintenance Assessment Roll, as approved by the Annual Maintenance Rate Resolution, shall be delivered to the Tax Collector, or such other official as the Board, by resolution, deems appropriate. If the Maintenance Assessment against any property shall be sustained or reduced or abated by the court, that fact shall be noted on the Maintenance Assessment Roll opposite the description of the property affected thereby.

(6) Unless specifically authorized and approved by the Tax Collector, no prepayments of Maintenance Assessment shall be accepted. Maintenance Assessments shall be collected in the manner set forth in Section 7 hereof.

(7) All Maintenance Assessments shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district or municipal taxes and special assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles, claims, until paid.

(8) Any informality or irregularity in the proceedings in connection with the levy of any Maintenance Assessment under the provisions of this ordinance shall not affect the validity of the same after the approval thereof, and any Maintenance Assessment as finally approved shall be competent and sufficient evidence that such Maintenance Assessment was duly levied, that the Maintenance Assessment was duly made and adopted, and that all other proceedings adequate to such Maintenance Assessment were duly had, taken and performed as required by this ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this Section 6(8), any party objecting to a Maintenance Assessment imposed pursuant to this ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

(9) (a) No act of error or omission on the part of the Property Appraiser, Tax Collector, County Administrator, Clerk,

Public Works Director, Board or their deputies or employees, shall operate to release or discharge any obligation for payment of a Maintenance Assessment imposed by the Board under the provision of this ordinance. Any errors or omissions may be corrected at any time by the Board, or its designee, and when so corrected shall be considered valid ab initio and shall in no way affect the enforcement of the Maintenance Assessment imposed under the provisions of this ordinance.

(b) When it shall appear that any Maintenance Assessment should have been imposed under this ordinance against a lot or parcel of property specially benefited by the maintenance of roads or drainage facilities within the Benefit Unit, but that such property was omitted from the Maintenance Assessment Roll, the Board may, upon provision of appropriate notice as set forth in this Section 6, impose the applicable Maintenance Assessment for the fiscal year in which such error is discovered, in addition to the applicable Maintenance Assessment due for the prior two fiscal years. Such total Maintenance Assessments shall become delinquent if not fully paid upon the expiration of 90 days from the date of the adoption of said resolution. The Maintenance Assessment so imposed shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property involved and may be recorded and collected as provided in Section 7 hereof.

(c) The Board shall have the authority at any time, upon its own initiative or in response to a timely filed petition from the owner of any property subject to a Maintenance Assessment, to correct any error or omission in the adoption of any Maintenance Assessment Roll, or in the implementation of this ordinance, including, but not limited to, an error in inclusion or exclusion of any property.

Section 7. (1) Method of Collection. The Capital Project Assessments and the Maintenance Assessments shall be collected pursuant to the uniform method provided in Sections 197.3632 and 197.3635, Fla. Stat., or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes.

(2) Compliance with Applicable Law. The Board shall comply with all applicable provisions of law relating to such uniform method, including Sections 197.363, 197.3631 and 197.3632, Fla. Stat., and any successor provisions thereto. Any hearing or notice required by this ordinance may be combined with any other hearing or notice required to collect the Capital Project Assessments or the Maintenance Assessments on the same bill as ad valorem taxes.

Section 8. Severability. In the event this ordinance conflicts with any other Charlotte County Code or other applicable law (in particular, Chapter 197, Fla. Stat.), the more restrictive shall apply. If any subsection, sentence, clause, phrase, or portion of these sections is for any reason held invalid or

unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remainder of the chapter.

Section 9. Inclusion in the Charlotte County Code. It is the intention of the Board of County Commissioners and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Laws and Ordinances, Charlotte County, Florida, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 10. Effective Date. This ordinance shall take effect upon receipt of the acknowledgment of its filing in the Office of the Secretary of State, State of Florida.

PASSED AND DULY ADOPTED this 16th day of November, 1993.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By [Signature]
Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-officio
Clerk to the Board of County
Commissioners

By [Signature]
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

For WCL Jamison
Matthew G. Minter, County Attorney