

ORDINANCE NO. 91-06

AN ORDINANCE AMENDING THE CODE OF BAY COUNTY, FLORIDA, PROVIDING FOR A STORMWATER MANAGEMENT UTILITY SYSTEM, SPECIFYING TERMS AND PROCEDURES FOR SAID SYSTEM, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1, Florida Constitution (1968), and Chapter 125, Fla. Stat., as amended, the Board of County Commissioners of Bay County, Florida, (the "Board") has all powers of local self-government to perform County functions and to render County services in a manner not inconsistent with general or special law, and such power may be exercised by the enactment of County ordinances;

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities such as Bay County, to implement stormwater management programs within prescribed timeframes;

WHEREAS, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq., the United States Environmental Protection Agency has published proposed rules for stormwater outfall permits;

WHEREAS, Bay County is responsible for the ownership, maintenance and expansion of the existing stormwater system which has been developed over a number of years for the purpose of collecting and disposing of stormwater;

WHEREAS, Bay County has developed a county-wide Stormwater Management Financial Plan (the "Plan");

WHEREAS, the Plan indicates that the present drainage system is inadequate to control and manage stormwater runoff within Bay County;

WHEREAS, the Plan has additionally concluded that it will be necessary and essential to construct improvements and extensions to the existing drainage system to ensure that the collection and disposal of stormwater within Bay County adequately protects the health, safety, and welfare of the citizens of Bay County; and

WHEREAS, it is necessary and essential that Bay County address the various environmental issues that will further burden

its infrastructure requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BAY COUNTY:

Section 1. Authority

Bay County is authorized by the Florida Constitution and the provisions of Chapter 125, Fla.Stat., Section 403.0893, Fla.Stat., and Section 197.3632, Fla.Stat. to construct, reconstruct, improve, and extend stormwater utility systems (the "Stormwater Management System") and to issue revenue bonds and other debts if needed to finance in whole or part the cost of the Stormwater Management System and to establish just and equitable rates, fees, and charges for the services and facilities provided by the Storm Water Management System.

Section 2. Findings and Determinations

It is hereby found, determined, and declared as follows:

A. Those elements of the Stormwater Management System which provide for the collection of and disposal of stormwater and regulation of groundwater are of benefit and provide services to all real property within the unincorporated areas of Bay County (the "Service Area"), including property not presently served by certain other elements of the Stormwater Management System.

B. The costs of operating and maintaining the Stormwater Management System and financing necessary repairs, replacement, improvements, and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

Section 3. Definitions

For the purpose of this Ordinance, the following definitions shall apply: words used in the singular shall include the plural, and the plural, the singular; and words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

"Availability Charge" means a charge to a developer or individual resident to recover the Debt Service and Extension and Replacement costs paid on a Stormwater Management System facility that had been previously constructed, but which serves such developer or individual resident.

"Bonds" means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the Costs of Construction.

"Costs of Construction" means costs reasonably incurred in connection with providing capital improvements to the Stormwater Management System or any portion thereof, including but not limited to the costs of (1) acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor, (2) physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith, (3) architectural, engineering, legal and other professional services, (4) insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor, for construction and installation, (5) any taxes or other charges which become due during construction, (6) expenses incurred by Bay County or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction, (7) principal of and interest of any Bonds, and (8) miscellaneous expenses incidental thereto.

"Debt Service" means, with respect to any particular Fiscal Year and any particular series of Bonds, an amount equal to the sum of (1) all interest payable on such Bonds during such Fiscal Year, plus (2) any principal installments of such Bonds during such Fiscal Year.

"Developed Property" means real property which has been altered from "natural" state by the addition of any improvements such as a building, structure, or impervious surface. For new construction, property shall be considered developed pursuant to this Ordinance: (1) upon issuance of a certificate of occupancy,

or upon completion of construction or final inspection if no such certificate is issued; or (2) if construction is at least 50 percent complete and construction is halted for a period of three (3) months.

"Director" means Bay County Manager or his designee.

" Dwelling Unit " means a single unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

"Equivalent Residential Unit" or "ERU" means the average Impervious Area of Residential Developed Property per Dwelling Unit located within Bay County and as established by Board resolution as provided herein.

"ERU Rate" means a Utility Fee charged on each ERU as established by Board resolution as provided herein.

"Extension and Replacement" means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the Stormwater Management System, or land acquisition for the Stormwater Management System and any related costs thereto, or paying extraordinary maintenance and repair, including the Costs of Construction, or any other expenses which are not costs of Operation and Maintenance or Debt Service.

"Fee-in-lieu-of Charge" means a charge to a developer or individual resident to recover (1) the Costs of Construction and Debt Service on a new Stormwater Management System facility which serves such developer or individual resident, or (2) the Extension and Replacement costs necessitated by development undertaken by such developer or individual resident.

"Fiscal Year" means a twelve-month period commencing on the first day of October of any year.

"Impervious Area" means roofed and paved areas, including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, parking areas and athletic courts.

"Non-Residential Developed Property" means Developed Property that is classified by the Property Appraiser as land use types 10 through 99 using the Florida Department of Revenue Land use Codes, as amended or supplemented, excluding land use types 50 through 69.

"Operating Budget" means the annual Utility operating budget adopted by the Board for the succeeding Fiscal Year.

"Operations and Maintenance" means the current expenses, paid or accrued, of operation, maintenance and current repair of the Stormwater Management System, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

"Property Appraiser" means the Office of Bay County Property Appraiser.

"Rate Resolution" means the resolution adopted by the Board establishing the ERU Rate and the VERU Rate.

"Residential Developed Property" means Developed Property that is classified by the Property Appraiser as land use types 00 through 09 using the Florida Department of Revenue Land Use Codes, as amended or supplemented.

"Revenues" mean all rates, fees, assessments, rentals or other charges, income or funds received by the Utility, in connection with the management and operation of the Stormwater Management System, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by Bay County, all as calculated in accordance with sound accounting practice.

"Stormwater Management System" means the existing stormwater management of Bay County and all improvements thereto which by this Ordinance are constituted as the property and responsibility

of the Utility, to be operated from the Revenues received as an enterprise fund to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

"Undeveloped Property" means property which is not Developed Property. For the purposes of this ordinance, Undeveloped Property includes, but is not limited to, parcels identified by the Property Appraiser as agricultural with land use types 50 through 69 using the Florida Department of Revenue Land Use Codes, as amended or supplemented.

"Undisturbed Area" means all or a portion of a parcel which has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils on the property.

"Utility Fee" means a Utility Fee authorized by Florida law and this Ordinance which is established to pay Operations and Maintenance, Extension and Replacement and Debt Service.

"Utility" means the enterprise fund utility created by this Ordinance to operate, maintain and improve the Stormwater Management System.

"Vacant ERU" or "VERU" means the stormwater runoff potential of an Undeveloped Property relative to a single family unit parcel of equal size. For the purposes of this ordinance, there are 0.36 VERU per acre of Undeveloped Property.

"VERU Rate" means the Utility Fee charged to and for each VERU as established by the Board by resolution as provided herein.

Section 4. Establishment of Utility

A. The Utility is hereby established by the Board to provide for the general welfare of Bay County and its residents.

B. The Director shall be the Bay County Manager or his designee.

Section 5. Operating Budget

The Board shall adopt an Operating Budget not later than the first day of each Fiscal Year. The Operating Budget shall set forth for such Fiscal Year the estimated Revenues and the estimated costs for Operation and Maintenance, Extension and Replacement and Debt Service.

Section 6. Required Levels of Rates for Utility Fees

The Board shall require that adequate Revenues are received to provide for a balanced Operating Budget by at least annually setting sufficient levels of Utility Fees.

Section 7. Imposition of Utility Fees and Rate Schedule

The Board hereby authorizes the imposition of Utility Fees by Resolution of the Board on all property within the Service Area.

A. Property Classification. For purposes of determining the Utility Fee, all property within the Service Area shall be classified, into one of the following classes:

1. Residential Developed Property;
2. Non-Residential Developed Property; or,
3. Undeveloped Property.

B. Computation of Utility Fee for Residential Developed Property. The Utility Fee for Residential Developed Property shall be the ERU Rate multiplied by the number of individual Dwelling Units existing on the Property.

C. Computation of Utility Fee for Non-Residential Developed Property. The Utility Fee for Non-Residential Developed Property shall be the ERU Rate multiplied by the numerical factor obtained by dividing the total Impervious Area of a Non-Residential Developed Property by one ERU. The minimum Utility Fee for any Non-Residential Developed Property shall be equal to one ERU Rate.

D. Computation of Utility Fee for Undeveloped Property. The Utility Fee for Undeveloped Property shall be equal to the VERU Rate times the numerical factor determined by multiplying the total acreage of the parcel excluding Undisturbed Areas by 0.36 VERU per acre.

Section 8. Billing and Payment, Penalties

A. The Board held a duly noticed public hearing on December 18, 1990, and adopted Resolution No. 1562 giving notice of its intent to place the Utility Fee on the Tax Bill as a non-ad valorem assessment pursuant to Section 197.3632, Fla. Stat.

B. The Board does hereby determine that the best interests of the citizens of Bay County would be served by placing the Utility Fee on the Tax Bill, and the Board shall hold a public hearing between June 1 and September 15, of each year, to adopt a non-ad valorem assessment roll as provided by Section 197.3632(4), Fla. Stat., and give all statutory notices for the hearing. The Board shall adopt a Rate Resolution prior to adopting the non-ad valorem assessment roll. The Rate Resolution may be considered at the same public hearing set to adopt the roll.

C. The collection of the Utility Fee shall be subject to all collection provisions as a non-advalorem special assessment as set forth in Chapter 197, Fla. Stat., including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment, as provided by law. The Utility Fee is subject to becoming a lien against homestead, as provided in Section 4, Article X, Florida Constitution.

D. In the event the Board determines to no longer place the Utility Fee on the Tax Bill it shall establish an alternative method of collection.

Section 9. Adjustment of Fees

A. Requests by owners of real property for adjustment of the Utility Fee shall be submitted to the Director, who is hereby given the authority to develop and administer the procedures and standards for the adjustment of fees as established herein. All requests shall be judged on the basis of the amount of impervious area on the site. No credit shall be given for the installation of facilities required by Bay County development codes or State Stormwater Rules. The following procedures shall apply to all

adjustment requests of the Utility Fee:

1. Any owner who has paid his Utility Fee and who believes his Utility Fee to be incorrect may, subject to the limitations set forth in this article, submit an adjustment request to the Director.

2. Adjustment requests for Utility Fees paid by an owner must be in writing and shall set forth, in detail, the grounds upon which relief is sought.

3. Adjustment requests must be made within sixty (60) days after opening of the Tax Roll for collection and each request shall be initially be reviewed by the Director within a four (4) month period from the date of filing of the adjustment request. Adjustments resulting from such request shall be retroactive to the beginning of the Fiscal Year in which the owner is requesting an adjustment.

4. The owner requesting the adjustment may be required, at his own cost, to provide supplemental information to the Director including, but not limited to, survey data approved by either a registered professional land surveyor (R.P.L.S.) and engineering reports approved by a professional engineer (P.E.). Failure to provide such information may result in the denial of the adjustment request.

5. Adjustments to the Utility Fee will be made upon the granting of the adjustment request, in writing, by the Director. Denials of adjustment requests shall be made, in writing, by the Director.

B. Consideration by the Director of the owner's request for adjustment shall not relieve the owner of the obligation to make timely payment of the Utility Fee. In the event an adjustment is granted by the Director which decreased the Utility Fee, the owner shall be entitled to a refund of excess Utility Fees paid.

C. Upon receipt of the written denial of the adjustment request, the owner who initially requested the adjustment may, within thirty (30) days of receipt of such denial, appeal to the Board for review of the denial.

1. The Board shall complete their review within forty-five (45) days of receipt of said request for review. The Board's determination on the review shall be in writing and set forth in detail, the reasons for their decision.

2. In reviewing denials of adjustment requests, the Board shall apply the standards and review criteria contained in this Ordinance.

D. Any errors in the Utility Fee or failure to charge an Utility Fee may be corrected by the Director within sixty (60) days after opening of the Tax Roll for collection. Corrections which result in an increase in the Utility Fee cannot be imposed until the owner has consented in writing to the increase or has been given at least ten (10) days notice by certified mail and an opportunity to be heard by the Board. Once the Utility Fee is finalized, the Director shall send documentation reflecting the adjustment to the owner and the documentation will also be sent to the Tax Collector.

Section 10. Capital Contributions

A. Where Bay County has constructed or plans to construct stormwater facilities which are proposed to be used by a developer in lieu of a facility usually required to be constructed by him, Bay County may accept a capital contribution from the developer and waive certain construction requirements.

B. Procedures and standards developed by Bay County shall define appropriate means by which to optimize the developers capital contributions in the construction or refunding of stormwater systems. These capital contributions shall take the form of a Fee-in-lieu-of Charge or an Availability Charges. Each situation will be analyzed by Bay County and a specific written decision will be developed. The application of each is defined as follows:

1. The Fee-in-lieu-of Charge is applied to a site specific negotiated procedure wherein a development's stormwater contribution (quantity and quality) is assessed its share of the capital needs of the facilities required to serve the development in question. This capital contribution would be used for the

construction or refunding of County-owned stormwater facilities. The process does not apply wherein the stormwater facilities are privately held. Each application is evaluated against Bay County's Master Plan, or where the Master Plan is incomplete, against the cumulative impacts from the development.

2. The Availability Charge is administered on a site specific basis identical to the Fee-in-lieu-of Charge procedure noted above. The only difference is that the capital investment advanced by Bay County in implementing a stormwater facility is now recovered through an Availability Charge. The capital charge is determined on a pro-rate share of the capacity used by the new applicant as measured by the cumulative impact from the development upon all impacted facilities applied to the present worth of the original capital expenditure. In the case of a developer constructing stormwater management facilities in excess of the site needs, Bay County may enter into an agreement with that developer to rebate the Fee-in-lieu-of Charges paid to Bay County by other developers utilizing those facilities over a period of time not exceeding seven (7) years from the date of the agreement.

Section 11. Program Responsibility

It shall be the duty of the Bay County Manager or his designee to administer the Utility. The Bay County Manager or his designee shall keep an accurate record of all persons using the services and facilities of said Stormwater Management System and to make changes in accordance with the rates and changes established in this ordinance.

Section 12. Stormwater Management Utility Funds

There shall be established a Utility fund for the deposit of all fees and charges collected by the Utility. These funds shall be for the exclusive use of the Utility, including but not limited to the following:

- A. Administrative costs associated with the management of the Utility.
- B. Planning and Engineering.
- C. Operation and Maintenance of the Stormwater Management

System.

D. Funding of pollution abatement devices constructed on stormwater systems discharging to the surface water of Bay County.

E. Debt Service financing.

F. Extension and Replacement costs.

Section 13. Conflicts

All ordinances or parts of other ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of any conflict.

Section 14. Severability

In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 15. Effective Date

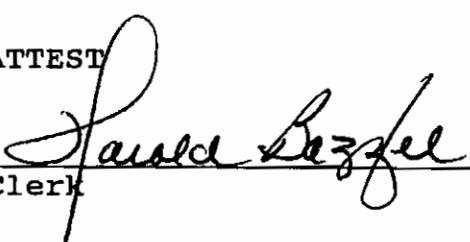
This ordinance shall take effect as provided by law.

PASSED AND ADOPTED this 2nd day of July, 1991.



MIKE NELSON, CHAIRMAN

ATTEST



Clerk