

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet 20020230

1. REQUESTED MOTION:

ACTION REQUESTED: Schedule a Public Hearing date for April 23, 2002 at 5:00 p.m. to consider the creation of the Dewberry Lane Special Improvement Unit Operations and Maintenance MSBU.

WHY ACTION IS NECESSARY: Board of County Commissioners schedules Public Hearings.

WHAT ACTION ACCOMPLISHES: Allows staff to prepare for and advertise Public Hearing

2. DEPARTMENTAL CATEGORY: 06
COMMISSION DISTRICT # 01

C6B

3. MEETING DATE:

03-26-2002

4. AGENDA:

- CONSENT ADMINISTRATIVE APPEALS**
- PUBLIC WALK ON**
- TIME REQUIRED:**

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE** 125.q
- ORDINANCE** _____
- ADMIN. CODE** 3-15
- OTHER** _____

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER** _____
- B. DEPARTMENT** _____
- C. DIVISION** Public Resources/MSTBU

BY: Denise Sabatini

DS 3/12/02

7. BACKGROUND: Dewberry Lane is located in the Cherry Estates Subdivision of Lee County. Property Owners have submitted the required petitions requesting the Board of County Commissioners to create an Operations and Management Municipal Services Benefit Unit (MSBU) for streetlighting and road maintenance. The estimate assessment for the first year is \$38,335.00 and the estimate for the second year is \$8,335.00 and consists of 66 parcels. The assessment methodology will be per parcel. Scheduling this Public Hearing for April 23, 2002, will allow staff to prepare the necessary documents and provide for the required advertisement.

8. MANAGEMENT RECOMMENDATIONS: Approve

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i> 3-12-02	N/A	N/A	N/A	<i>[Signature]</i> 3-12-02	OA <i>[Signature]</i> 3/12/02	OM <i>[Signature]</i> 3/12/02	Risk <i>[Signature]</i> 3/13	GC <i>[Signature]</i> 3/13	<i>[Signature]</i> 3-14-02

10. COMMISSION ACTION:

- _____ **APPROVED**
- _____ **DENIED**
- _____ **DEFERRED**
- _____ **OTHER**

Rec. by CoAtty
Date: <u>3/12/02</u>
Time: <u>9:40 am</u>
Forwarded To:
<u>PRM in</u>
<u>3/12/02 9:55</u>

MW

RECEIVED BY COUNTY ADMIN.
<u>3-12-10-04</u>
COUNTY ADMIN. FORWARDED TO:
<u>3/14 2:00</u>

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE CREATING THE DEWBERRY LANE SPECIAL IMPROVEMENT OPERATION AND MAINTENANCE MUNICIPAL SERVICE BENEFIT UNIT; DEFINING THE TERRITORY TO BE INCLUDED; ESTABLISHING THE BOARD OF COUNTY COMMISSIONERS AS THE GOVERNING BODY OF THE UNIT; PROVIDING FOR THE TYPE(S) OF SERVICE THAT MAY BE RENDERED; PROVIDING FOR THE RATES AND FEES AND CHARGES, SPECIAL ASSESSMENTS AND CHARGES TO BE COLLECTED FOR THE UNIT; PROVIDING FOR A FUND; PROVIDING FOR THE SEVERABILITY; AND PROVIDING

WHEREAS, residents within the territory to be included in the Board of County Commissioners of Lee County, Florida, have petitioned for the creation of a municipal service taxing or benefit unit;

WHEREAS, the Board of County Commissioners of Lee County, Florida, has held a public hearing to establish this municipal service taxing or benefit unit;

WHEREAS, all persons having property within the territory to be included in the benefit unit and the public at large were given an opportunity to be heard at the public hearing;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

RECEIVED BY
LEE CO. ATTORNEY
02 MAR 12 AM 9:30

Rush

SECTION 1.

CREATION OF THE UNIT, PURPOSE AND BOUNDARIES

Pursuant to the powers granted to the Board of County Commissioners of Lee County, Florida, hereinafter referred to as the "Board", by the Constitution of the State of Florida and the Florida Statutes, in particular, Section 125.01, Florida Statute, the Board hereby creates a municipal service taxing or benefit unit to be known as Dewberry Lane Special Improvement Operation and Maintenance Municipal Service Benefit Unit. Unless expressly mandated by State Statute, any and all procedures, administrative or otherwise, which were required to be followed prior to the enactment of this ordinance shall be waived or considered directory in nature and noncompliance with the procedure shall have no effect upon the validity of this ordinance, constitutional or otherwise.

The purpose of the Dewberry Lane Special Improvement Operation and Maintenance Municipal Service Benefit Unit shall be to provide road maintainance and streetlighting located within the boundaries of the Unit as provided by funding from the annual budget of the MSTBU, which shall be determined in Public Meetings.

The boundaries of the Unit shall be as follows:

SEE ATTACHED LEGAL DESCRIPTION WHICH IS LABELED
"EXHIBIT "A" HEREBY INCORPORATED BY REFERENCE.

SECTION 2.

THE GOVERNING BODY

The Board of County Commissioners shall be the governing body of Dewberry Lane Special Improvement Operation and Maintenance Municipal Service Benefit Unit created pursuant to this Ordinance. The Board of County Commissioners may appoint an Advisory Committee, composed of five (5) property owners within the boundaries of the Municipal Service Taxing and Benefit Unit. The method of appointment and term of office shall be set by the Board of County Commissioners.

SECTION 3.

THE GENERAL POWERS

The governing body shall have all the powers necessary or convenient to carry out the purpose of this ordinance and such additional rights and powers as are provided by the Constitution of the State of Florida and the laws of the State of Florida as granted to counties. The governing body shall also have all powers not otherwise prohibited by law and these powers shall include but are not limited to the power to:

1. Sue or be sued, complain or defend in the name of the County.
In any and all courts or administrative agencies;
2. Acquire by grant, purchase, gift, devise, exchange or in any other lawful manner any property, real or personal, or any estate or interest therein upon such terms and conditions as the governing body shall determine;
3. Enter into contracts with any public, private or municipal firm, person or corporation for the furnishing of the improvements,

within the boundaries of this Unit;

4. Levy and collect special charges, special assessments, or taxes within the Unit;
5. Borrow and expend money and issue bonds, revenue certificates, and other obligations of indebtedness in such manner and subject to such limitations as may be provided by law;
6. Levy and collect without referendum ad valorem taxes for the providing of municipal services within the Unit; and
7. Adopt rules and regulations governing the Unit.

SECTION 4.

There is hereby created a fund to be known as “Dewberry Lane Special Improvement Operation and Maintenance Municipal Service Benefit Unit” from which the costs of any municipal service may be paid, either in whole or in part. This fund shall contain all special charges, special assessments, taxes, interest, and other monies collected or otherwise obtained pursuant to this ordinance or any subsequent resolution thereto.

SECTION 5.

LEVYING SPECIAL ASSESSMENTS; LIENS; ENFORCEABILITY

A) Any special assessment levied pursuant to this ordinance shall be levied only after a Notice of Intent to Adopt a proposed Resolution to Assess shall be published in a newspaper of general circulation within Lee County at least twenty (20) days prior to the public hearing on the proposed resolution.

The method of apportioning the special assessment among the parcels of land within the unit shall be based upon a finding by the Board that the chosen method of apportionment is a fair and reasonable distribution of the cost of the municipal service improvement in proportion the special benefit which each parcel of land will receive.

B) The special assessment shall be due and payable and interest and penalties for late payment shall accrue thereon from such date as the Board shall provide. The special assessments may be collected pursuant to the Uniform Collection and Enforcement of Non-Ad Valorum assessment methodology in accordance with Florida Statute 197.3632.

C) An assessment roll shall be prepared and shall be attached to the proposed resolution. This assessment roll shall consist of all record legal titleholders of parcels of land within the boundaries of the unit and shall state the apportioned assessment for that parcel of land.

D) Should the uniform assessment collection method not be used, the assessment made by the Board as provided for herein shall constitute a lien against all parcels of land so assessed. Upon failure of any property owner to pay any apportioned assessment when due and payable, the Board shall cause to be brought the necessary legal proceedings to enforce payment thereof with all accrued interest and penalties, together with all legal costs incurred including reasonable attorney's fees, to be assessed as part of the cost. In that event of a default on payment of any assessment when due and payable or any accrued interest on the assessment, the entire assessment with interest and penalties shall immediately become due and payable and subject to foreclosure. The foreclosure proceedings may be prosecuted to a sale and conveyance of the property involved in said proceedings as now provided by law and suits to foreclose mortgages; or, in the alternative, said proceedings may be instituted and prosecuted by any other

lawful process or procedure then available for the enforcement of the lien pursuant to any general law of the State relative to the enforcement of the municipal lien. Enforcement of this lien through foreclosure proceedings or otherwise shall not be construed as the Board's exclusive remedy.

The Board may prosecute any claim, legal or equitable, which it may have against the owner of the special assessed parcel of land who has defaulted on his payment of the assessment.

(E) The property owner, whose property has been assessed, shall have the right to petition the Board for correction of any inaccuracy in the assessment or its apportionment within ten (10) days of the adoption of the Resolution to Assess. After the lapse of 10 (ten) days from the date of the adoption of the Resolution to Assess, including amendments thereto, all assessments made shall be deemed conclusive unless the property owner has filed the petition for administrative review. Failure to exercise this right for an administrative remedy within the time permitted shall be deemed a waiver of the property owner's right to object to the assessment or its apportionment.

SECTION 6

REVERTER

By the creation of this MSBU, Dewberry Lane Special Improvement Operation and Maintenance Municipal Service Benefit Unit consisting of the effected properties within the Unit, shall be the responsible entity for the providing road maintenance and streetlighting within the boundaries of the Unit.

If the MSBU or MSTU created under the provisions of this Ordinance is ever terminated or ceased for any reason, the responsibility for the providing of road maintenance and streetlighting within the Unit shall revert automatically to the individual

property owners within the Dewberry Lane Special Improvement Operation and Maintenance Municipal Service Benefit Unit in the same form and manner as existed prior to the creation of the MSBU or MSTU pursuant to this Ordinance.

SECTION 7

SEVERABILITY

The provisions of this ordinance are severable and it is the intention to confer the whole or any part of the powers herein provided for. If any of the provisions of this ordinance shall be held unconstitutional by any court or competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted had such unconstitutional provision not been included therein.

SECTION 8.

ALTERNATIVE OR SUPPLEMENTAL AUTHORITY

This ordinance shall not be construed as repealing or superseding any other ordinance or law and is to be construed as alternative or supplemental authority for the exercise of powers provided for herein.

SECTION 9.

EFFECTIVE DATE

This Ordinance shall take effect upon filing in the Office of the Secretary of State, State of Florida.

THE FOREGOING ORDINANCE was offered by Commissioner _____ who moved it to adoption. The motion was seconded by Commissioner _____ and, upon being put to a vote, the vote was as follows:

ROBERT JANES	_____
DOUGLAS R. ST. CERNY	_____
RAY JUDAH	_____
ANDREW COY	_____
JOHN ALBION	_____

DONE AND ADOPTED THIS _____ DAY OF _____, 2002.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____

By: _____

Robert Janes, Chairman

APPROVED AS TO FORM:

By: _____

Office of the County Attorney