

Alternative 2

ORDINANCE NO. 04-

AN ORDINANCE OF LEE COUNTY, FLORIDA, ALLOWING DEVELOPMENT BLASTING ACTIVITY IN LEE COUNTY AFTER SPECIFIC APPROVAL BY THE BOARD AND IN ACCORDANCE WITH THE APPROPRIATE ADMINISTRATIVE CODE; PROVIDING FOR LEGISLATIVE FINDINGS; PURPOSE, INTENT AND APPLICABILITY; DEVELOPMENT BLASTING PERMIT REQUIRED; REPEAL OF LEE COUNTY ORDINANCES 02-26, 3-17, 3-27 AND 4-01; PROVIDING FOR CONFLICTS OF LAW; CODIFICATION AND SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1 of the Florida Constitution and Chapter 125 of the Florida Statutes, Lee County is authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, Florida Statutes Sections 125.01(1)(h) and (t) authorize counties to establish, coordinate, and enforce regulations necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners adopted Lee County Ordinance 02-26, known as the Lee County Blasting ordinance, to protect citizens and property from the ill effects of development blasting; and

WHEREAS, recent violations of the Blasting Ordinance have lead to numerous citizen complaints; and

WHEREAS, the circumstances surrounding the recent violations demonstrates that there is an immediate potential harm to property and individuals that will likely occur by allowing continued development blasting under the current regulations; and

WHEREAS, Lee County Comprehensive Plan Policy 5.1.5 provides protection for future and existing residential uses from the encroachment of uses that are destructive to the character and integrity of the residential environment; and

WHEREAS, the current County Blasting Ordinance is not sufficient to protect the public from the inherently dangerous incompatible blasting activity; and

WHEREAS, continuation of the status quo under the current regulatory scheme will likely cause irreparable injury to citizens, neighborhoods, communities and homes; and

WHEREAS, after extensive review and re-evaluation, the Board has concluded one set of regulations applicable to the entire unincorporated area of Lee County will not effectively preserve or protect the public health, safety, and welfare of citizens and their homes in the areas near ongoing development blasting; and

WHEREAS, the Board has further concluded the issuance of blasting permits on a case by case basis is an appropriate means of addressing and ameliorating the ill effects of development blasting, while allowing blasting to develop land and construct infrastructure improvements in unincorporated Lee County.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lee County, Florida:

SECTION ONE: LEGISLATIVE FINDINGS

The Board hereby adopts the recitals set forth above as the legislative findings and conclusions necessary to support adoption of this ordinance.

SECTION TWO: PURPOSE, INTENT AND APPLICABILITY

The purpose of the ordinance is to allow development blasting within unincorporated Lee County under certain appropriate circumstances. It is the Board's intent to provide protection to surrounding residential uses and existing County infrastructure and facilities to the greatest extent practicable. This ordinance does not apply to bona fide construction materials mining activities, approved by the County and conducted in compliance with the provisions of Florida Statutes Chapter 552.

SECTION THREE: DEVELOPMENT BLASTING PERMIT REQUIRED

No development blasting activity may occur in the unincorporated areas of Lee County without a development blasting permit issued in accordance with the Lee County Administrative Code adopted to supplement this ordinance. Development blasting permits must be specifically approved by action of the Board of County Commissioners during a regularly scheduled commission meeting.

Blasting permits previously issued by Lee County will continue in force and effect for the term of the permit or 6 months, whichever is less, in accordance with Lee County Ordinances 02-26 and 04-01. Permit extensions or renewals must comply with the provisions of this ordinance.

Pending applications for blasting activity currently awaiting approval must be modified to comply with the terms of this ordinance.

SECTION FOUR: REPEALER

Lee County Ordinances 02-26, 03-17, 03-27 and 04-01 are hereby repealed and of no further force or effect, unless otherwise specifically provided in this ordinance.

SECTION FIVE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of other lawfully adopted ordinances or statutes, the most restrictive requirements will apply.

SECTION SIX: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION SEVEN: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION EIGHT: EFFECTIVE DATE

The ordinance will take effect upon filing with the Secretary of State.

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

ROBERT JANES
DOUGLAS ST. CERNY
RAY JUDAH
ANDREW W. COY
JOHN E. ALBION

DULY PASSED AND ADOPTED THIS day of , 2004

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Dawn E. Perry-Lehnert
Office of County Attorney