

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

Blue Sheet No. 20031443

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt an emergency ordinance establishing a 180 day moratorium on development blasting within the unincorporated areas of Lee County.

WHY ACTION IS NECESSARY: To provide County staff with an opportunity to propose appropriate amendments to the existing blasting regulations.

WHAT ACTION ACCOMPLISHES: Curtails further potential damage caused by blasting activity while staff pursues necessary amendments to the blasting ordinance.

2. DEPARTMENTAL CATEGORY: County Attorney
COMMISSION DISTRICT #CW (County Wide)

10:00 #1

3. MEETING DATE:

12-16-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:
1 hour

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE Blasting
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT County Attorney
- C. DIVISION _____
- BY: _____
Timothy Jones, Esq.
Chief Assistant Co. Attorney

7. BACKGROUND:

In July 2003, after public comments and complaints regarding ongoing blasting activity, the Board adopted a six month moratorium on development blasting on property within the Winkler Extension area. Since the moratorium has been in place violations of the existing regulations have occurred in other parts of the County. These violations are similar in nature and intensity to those that precipitated the moratorium on blasting in the Winkler extension area.

One of the purposes of the moratorium adopted in July 2003 was to provide county staff with the time and opportunity to review, reevaluate and amend the county blasting ordinance (LCO 02-026) to implement safeguards that will afford greater
(Continued on Page 2)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	RISK <i>[Signature]</i>	GR <i>[Signature]</i>	<i>2-0403</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

*Co. Atty.
12-16-03 3:25*

RECEIVED BY
COUNTY ADMIN:
[Signature]
12/16/03
3:35 PM SET
COUNTY ADMIN
FORWARDED TO: *[Signature]*
12/14/03
[Signature]

Subject: Emergency Ordinance Establishing Extension of Moratorium on Blasting within unincorporated areas of Lee County

protection against the ill effects of development blasting on existing residential uses. Staff has been actively working on the drafting of development blasting regulations to achieve the Board's stated objectives. However, additional time is necessary to complete the drafting, review and adoption of appropriate measures to ameliorate the ill effects of this incompatible development blasting activity. Therefore, staff is requesting that the Board implement a 180-day moratorium on development blasting within all incorporated areas of Lee County. Because continued blasting activity under the current regulatory scheme will likely cause irreparable injury to homes and communities within Lee County, adopting a 180-day extension of the moratorium on development blasting within this area is reasonable and appropriate.

The proposed ordinance extends the existing moratorium along the Winkler Extension Area by 180 days and establishes a 180-day moratorium on blasting within the unincorporated areas of Lee County allowing time to draft and adopt amendments to the blasting regulations.

Staff recommends adoption of the proposed ordinance.

Attachment: Proposed ordinance extending the existing moratorium on development blasting in the Winkler Extension Area and establishing a 180-day moratorium on development blasting within the unincorporated areas of Lee County.

ORDINANCE NO. 03-

AN EMERGENCY ORDINANCE ADOPTING A 180-DAY MORATORIUM ON DEVELOPMENT BLASTING WITHIN THE UNINCORPORATED AREAS OF LEE COUNTY AND EXTENDING THE PREVIOUSLY ADOPTED MORATORIUM IN THE WINKLER EXTENSION AREA; PROVIDING FOR LEGISLATIVE FINDINGS; A 180-DAY MORATORIUM; PURPOSE; CONFLICTS OF LAW; 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, Section 125.66(3) provides the County with the authority to adopt an emergency ordinance; 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 demonstrate that there is an immediate potential harm to property and individuals that may occur by allowing continued development blasting under the current regulations; and

WHEREAS, it is necessary to review and re-evaluate the blasting issues to identify changes necessary to preserve and protect the public health, safety, welfare of citizens and their homes in the areas near ongoing development blasting; 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, their neighborhoods, communities and homes;

and

WHEREAS, the moratorium on blasting in a specifically defined area for a period of 180 days that was adopted in July 2003 was appropriate and necessary to allow the County to amend the blasting ordinance to ameliorate the ill effects of development blasting; and

WHEREAS, an additional 180-day extension of the moratorium on development blasting within the Winkler Extension Area is appropriate and necessary in order to allow the County to properly complete the adoption of amendments to the existing development blasting regulations; and

WHEREAS, a moratorium on blasting in the unincorporated areas of Lee County for a period of 180 days is appropriate and necessary to allow the County to amend the blasting ordinance to ameliorate the ill effects of development blasting.

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: MORATORIUM

No blasting activity may occur, even if previously permitted, for a period of 180 days from the date this ordinance is adopted, within the Winkler Extension area described as follows:

That land within the Suburban and Outlying Suburban Land Use Categories as defined in the Lee County Comprehensive Plan, lying south of Summerlin Road within Sections 34 and 35, Township 45 South, Range 24 East and Sections 2, 3, 4, 9, 10 and 11, Township 46 South, Range 24 East and west of Hendry Creek.

Blasting permits issued by Lee County within the Winkler Extension Area are hereby suspended for the duration of the moratorium period.

The County will not accept or approve permits for blasting activity within the area defined above or within any part of the unincorporated area of Lee County during the moratorium period. Applications currently in the county system awaiting approval will be

held in abeyance until the end of the moratorium period.

SECTION THREE: PURPOSE

The purpose of the moratorium is to provide County staff with the time and opportunity to review, re-evaluate and amend the Lee County Blasting Ordinance (LCO 02-26) to implement safeguards that will afford greater protection against the ill effects of development blasting on existing residential uses.

SECTION FOUR: CONFLICTS OF LAW

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

SECTION FIVE: 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 SIX: EFFECTIVE DATE

The ordinance will take effect on December 17, 2003.

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 _____, 2003

ATTEST:
CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Chairman

APPROVED AS TO FORM:

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