

Lee County Board of County Commissioners
Agenda Item Summary

DATE CRITICAL
Blue Sheet No. 20040287

1. **REQUESTED MOTION:**

ACTION REQUESTED: Direct three proposed alternative blasting ordinances to public hearings, in the Board Chambers, as follows:

- BOCC: April 13, 2004 at 5:05 p.m.
- BOCC: April 27, 2004 at 5:05 p.m.

WHY ACTION IS NECESSARY: Board direction is necessary to schedule the public hearing.

WHAT ACTION ACCOMPLISHES: Establishes public hearing dates and times for consideration of the proposed amendments to the development blasting regulations.

2. **DEPARTMENTAL CATEGORY:**
COMMISSION DISTRICT

C12C

3. **MEETING DATE:**

03-23-2004

4. **AGENDA:**

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

5. **REQUIREMENT/PURPOSE:**
(Specify)

- STATUTE 125.66
- ORDINANCE
- ADMIN. CODE
- OTHER

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT
- C. DIVISION

BY: *Dawn E. Perry-Lehnert*
Dawn E. Perry-Lehnert
Assistant County Attorney

7. **BACKGROUND:**

In July 2003, the Board adopted a six month moratorium on development blasting on property within the Winkler Extension area. This moratorium was subsequently extended an additional six months. The purpose of the moratorium was to provide the County staff with the time and opportunity to review, re-evaluate, and amend Lee County Blasting Ordinance (LDC 02-26) to implement safeguards that will afford protection against the ill effects of development blasting on existing residential uses.

(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>Leah Smith</i>	OA	OM	RISK	GC	<i>3-11-04</i>
				<i>pk</i>	<i>3/10</i>	<i>3/11/04</i>	<i>3/11/04</i>	<i>3/10/04</i>	

10. **COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY:
COUNTY ADMIN
3/10/04

RECEIVED BY
COUNTY ADMIN
03/10/04
1:50 PM SGT
COUNTY ADMIN
FORWARDED TO:
3-11-04
9017

PS

Subject: Direct three proposed alternative blasting ordinances to public hearings.

In December 2003, staff requested Board direction with respect to drafting the development blasting legislation. At that time, the Board directed staff to draft regulations for consideration by the Board in April 2004 to accomplish the following:

1. Establish a prohibition on development blasting in unincorporated Lee County (Alternative 1).
2. Provide an opportunity to prohibit blasting in unincorporated Lee County, except for certain limited circumstances, particularly those pertaining to public projects (Alternative 2). An Administrative Code will be adopted to govern procedures for the review and approval of permits.
3. Amend the existing regulations (Alternative 3) to provide:
 - a. blasting limit lowered to 0.3PPV;
 - b. increased notice provisions;
 - c. increased opportunity for pre-and post-blast inspections;
 - d. prohibit blasting within 600 feet of any structure (i.e. building or infrastructure); and
 - e. establish a one-strike rule that prohibits further blasting on the project after violation.

Subsequent to obtaining Board direction, County staff drafted three alternative ordinances based upon previous comments received from the development and residential communities, as well as research conducted by staff. Copies of these drafts were provided to members of the residential and development community for review and comment. Staff participated in a number of meetings concerning the drafts in order to answer questions and obtain additional input from the community.

These drafts were also scheduled for review by the following committees:

EROC March 10; LDCAC March 12; LPA March 22

Attachments:

Three proposed alternative draft ordinances.

- Alternative 1 - Development Blasting Prohibition
- Alternative 2 - Development Blasting Allowed by Board Approved Permit Only
- Alternative 3 - Amend Existing Development Blasting Regulations

Alternative 1

ORDINANCE NO. 04-

AN ORDINANCE OF LEE COUNTY, FLORIDA, ESTABLISHING A PROHIBITION ON DEVELOPMENT BLASTING ACTIVITY IN THE UNINCORPORATED AREA OF LEE COUNTY; PROVIDING FOR LEGISLATIVE FINDINGS; PURPOSE AND INTENT; DEVELOPMENT BLASTING PROHIBITION; 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 existing 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, 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 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 in all instances; and

WHEREAS, the Board further concluded that total prohibition of blasting in the unincorporated areas of Lee County is the most effective means 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.

Additionally, the Board recognizes that the status of development in unincorporated Lee County indicates it is not possible to establish a viable distance separation between existing residential development and proposed development blasting sites that will accomplish the Board's desire to protect existing residential property from the ill effects of development blasting.

SECTION TWO: PURPOSE AND INTENT

The purpose of this prohibition is to protect existing infrastructure, utilities and residential uses against the ill effects associated with development blasting. The provisions of this ordinance are not intended to 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: PROHIBITION

No blasting activity may occur, even if previously permitted, within the unincorporated areas of Lee County.

The County will not accept or approve permits for blasting activity within the unincorporated areas of Lee County. Pending applications currently awaiting approval will be returned with a refund of the application fees paid.

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. The blasting activity must comply with the provisions of Lee County Ordinances 02-26 and 04-01, specifically including the intensity limitations defined in Lee County Ordinance 04-01. No existing permit may be renewed or extended.

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, except as specifically provided in section three of 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 Andrew W. Coy 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

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. The blasting activity must comply with the provisions of Lee County Ordinances 02-26 and 04-01, specifically including the intensity limitations defined in Lee County Ordinance 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

Alternative 3

ORDINANCE NO. 04-

AN ORDINANCE AMENDING THE LEE COUNTY, FLORIDA, LAND DEVELOPMENT CODE TO CREATE CHAPTER 3 AND ESTABLISHING DEVELOPMENT BLASTING REGULATIONS APPLICABLE TO THE UNINCORPORATED AREAS OF LEE COUNTY; PROVIDING FOR PURPOSE AND INTENT (§3-1); APPLICABILITY (§3-2); DEFINITIONS (§3-3); LOCAL USER AND BLASTER REGISTRATION (§3-4); BLASTING PERMIT APPLICATION REQUIREMENTS (§3-5); INSPECTION FEE ACCOUNTS (§3-6); BONDS (§3-7); LIMITATIONS ON BLASTING INTENSITY, INCLUDING A PPV, AIRBLAST OVERPRESSURE AND FREQUENCY LIMITATION, AND THE 80% RULE (§3-8); LIMITATION ON BLASTING ACTIVITY (§3-9); BLASTING PERMIT ISSUANCE AND STANDARD PERMIT CONDITIONS (§3-10); DURATION OF PERMIT APPROVAL (§3-11); PERMIT EXTENSION (§3-12); RECORD KEEPING (§3-13); NOTICE TO COUNTY STAFF PRIOR TO BLAST (§3-14); BLAST VIBRATION MONITORING (§3-15); PRE- AND POST-BLAST CONDITION SURVEYS (§3-16); MEASUREMENT (§3-17); NOTICE OF BLASTING ACTIVITY (§3-18); COMPLAINTS ABOUT BLASTING ACTIVITY (§3-19); VIOLATIONS AND PENALTIES (§3-20); DEVIATIONS AND VARIANCES (§3-21); APPEAL (§3-22); AND PROVIDING FOR REPEAL OF LEE COUNTY ORDINANCES 02-26, 03-17, 03-27 AND 04-01; CONFLICTS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVENER'S ERRORS; 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 02-26, as amended, 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, it is necessary to amend the blasting regulations in order to preserve and protect the public health, safety, welfare of citizens and their homes in the areas near ongoing development blasting; and

WHEREAS, the provisions of Blasting Ordinance 02-26 are not sufficient to protect the public from inherently dangerous and incompatible blasting activity; 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, continuation of the status quo under the current regulatory scheme will likely cause irreparable injury to citizens, neighborhoods, communities and homes; and

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the county maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code, which contains a comprehensive compilation of regulations applicable to the development of land in Lee County; and

WHEREAS, the Land Development Code Advisory Committee was created by the Board of County Commissioners to explore amendments to the Land Development Code; and

WHEREAS, the Land Development Code Advisory Committee has reviewed the proposed blasting regulations to be incorporated into the LDC and recommends adoption; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code and recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on ,2004 and found them consistent with the Lee Plan; and

WHEREAS, the provisions and regulations hereinafter contained and enacted are for the purpose of securing and promoting the public health, safety and welfare of the inhabitants and property of Lee County.

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

SECTION ONE: CREATION OF LAND DEVELOPMENT CODE CHAPTER 3

Lee County Land Development Code Chapter 3, is hereby created to read as follows:

Chapter 3

EXPLOSIVES AND BLASTING REGULATIONS

ARTICLE I

DEVELOPMENT BLASTING

Sec. 3-1. Purpose and intent.

The Board of County Commissioners has determined that it is in the best interest of the public health, safety and welfare to enact regulations governing explosives used in the development of property in unincorporated Lee County. The purpose of this article is to set forth the provisions, conditions and requirements applicable to development blasting activity within the County.

Sec. 3-2. Applicability.

(a) The provisions of the article apply to existing and future development blasting activity within the unincorporated areas of Lee County. Bona fide construction materials mining activities, approved by the County and conducted in compliance with the provisions of Florida Statutes Chapter 552, are not required to comply with the regulations set forth in this article.

(b) A permit is required prior to initiating development blasting activity. This includes test blasting.

Sec. 3-3. Definitions.

The following words, terms and phrases will have the meanings stated in this section.

Airblast overpressure means the impulsive sound or blast amplitude as measured in decibels.

Blaster means an individual that holds a valid state permit allowing the loading and detonation of explosives. A blaster must be employed by a user.

Blast site means the area identified in the blasting plan that will encompass the blasting activity. It may include the entire project site where appropriate.

Development blasting activity means the detonation of explosives for the purpose of demolishing a structure or fragmenting rock, gravel, earth or trees for excavation or construction; and blasting not otherwise regulated by F.S. Chapter 552.

Director means the Director of the Department of Community Development or designee.

Frequency means the blast energy over time measured in hertz.

Peak particle velocity (PPV) means a measurement of ground vibration velocity in inches per second.

Structure means a building or facility that is existing or under construction. It includes, but is not limited to, homes, mobile homes, buildings, roadways, utilities, foundations, pools, wells, drainage facilities, water management facilities, seawalls, docks, driveways, concrete slabs and similar improvements.

User means an individual that holds a valid state license allowing the purchase and detonation of explosives.

Sec. 3-4. Local user and blaster registration.

(a) *Registration required.* Users and blasters seeking to conduct development blasting activity must be locally registered. All blasting activity must be conducted by a blaster holding a valid state permit. A blaster must be employed by a user holding a valid state license. This provision allows the user and blaster to be the same person, as long as this person holds both the state user license and blaster permit.

(b) *Application requirements for registration.* In order to obtain a local registration, each user and blaster must file a separate application on the form prescribed by the Director. This application must include the following information:

- (1) Name, address and contact number for the applicant (ie. user or blaster applying for registration).

- (2) A physical description of the applicant, accompanied by valid photo identification. Acceptable forms of photo identification include a driver's license, state identification card or valid passport.
- (3) A copy of the valid State user's license or blaster's permit, as appropriate.
- (4) If the application is for a blaster's registration, the name, address and contact number for the user employing the blaster. The user employing the blaster must also hold a valid local registration.
- (5) If the application is for a user's registration, the Florida company associated with and/or qualified by the user, along with the mailing address of the company, the address for the principal place of business, and a contact name and number.
- (6) An original completed fingerprint information card for the applicant.
- (7) Copy of declaration page identifying the applicant's insurance coverage for workers' compensation, and comprehensive general liability and property damage insurance in the amount of \$1,000,000 per occurrence and aggregate.
- (8) The application must be signed by the applicant and include a sworn, notarized statement that the information is true and correct.
- (9) The application fee.

(c) *Criteria for review and approval.* Applications for a local user or blaster registration will be reviewed by the Director once the application is found complete. Registrations are issued at the discretion of the Director based upon the application and whether the applicant has violated any provisions of this article within the preceding five years.

(d) *Renewal.* The registration must be updated annually by providing:

- (1) a copy of the state license or permit renewal, as appropriate;
- (2) a copy of the insurance renewal information; and
- (3) the renewal fee.

(e) *Registration fees.* The registration fees are set forth in the Lee County Administrative Code.

Sec. 3-5. Blasting permit application requirements.

(a) *Application.* Only a locally registered user may apply for a blasting permit. The application must include the following:

- (1) Name, address and contact information for the following individuals:
 - a. User (the permit applicant);
 - b. Blaster;
 - c. Developer;
 - d. Property owner;
 - e. Engineer creating or corroborating on blasting plan;
 - f. Seismograph operator; and
 - g. person to conduct pre- and post-blast surveys.
- (2) Local registrations for the user and blaster responsible for proposed activity.
- (3) Location of proposed blasting activity. (Include Strap number, physical address and aerial depicting project site.)
- (4) A description of the project to be benefitted by the blasting activity and an explanation of why the blasting is necessary.
- (5) A sketch of the proposed blasting site/project superimposed over an aerial, showing measured distances from all structures, buildings, streets, above and below ground utilities, wells and other facilities within 1,500 feet of the blasting site.
- (6) A list of all property not under the ownership or control of the user, blaster or developer within 3,000 feet of the blast site. This list must include the name and address of the property owner, whether the property is improved, and the type of structure and occupancy.
- (7) A proposed blasting plan that includes:
 - a. description of proposed blasting procedure;
 - b. an estimate of the total number of cubic yards to be removed as a result of the blasting;
 - c. an estimate of the number of blasts to be detonated;
 - d. the quantity and type of explosives to be used;
 - e. maximum amount of explosives per delay;
 - f. maximum number of holes per delay;
 - g. proposed delay between holes and rows; and
 - g. proposed placement of seismographic machines.

- (8) Estimated starting date and completion date for blasting operations.
- (9) Hours of intended blasting operations.
- (10) Traffic control, barricading and sign plan.
- (11) Warning notification plan.
- (12) Letter of permission and authorization, signed by the property owner and acknowledged before a notary, allowing the proposed blasting activity.
- (13) Written approval, or letters of no objection, from the Lee County Department of Transportation and the utility entities holding franchise rights within the area of the proposed blasting activity. The approval letter may impose conditions on the blasting activity that are intended to preserve and protect structures for which the entity is responsible.
- (14) Other information deemed necessary or appropriate by the Director, which may include, but is not limited to:
 - a. pre-blast assessment, prepared by a geotechnical engineer or other blasting professional, which assesses the potential for damage to nearby structures and facilities;
 - b. pre-blast inspection of structures and facilities located near the proposed blast location. (Including video taping of structures);
 - c. bond to protect county facilities;
 - d. hydrological study;
 - e. geological study; and
 - f. test wells.

(b) *Fees.* The established fee for blasting permit applications and blasting inspections are set forth in the Lee County Administrative Code.

Sec. 3-6. Inspection fee accounts.

The permit applicant may create a blast inspection account with the County to cover the costs associated with the proposed number of blast inspections necessary to complete the permitted blast activity. This account may include authorization for the County to charge a credit account in the name of the user. The account will be adjusted or charged after each inspection. If additional inspections are required that are not funded by the account, the inspections will be delayed until sufficient funds are provided to the County.

Sec. 3-7. Bonds.

Bonds required as a condition of permit approval must be in a form prescribed by the County and found legally sufficient by the County Attorney's office.

Sec. 3-8. Limitations on blasting intensity.

(a) Blast intensity will be measured at the boundary of the overall development project. However, the Director has the discretion to require monitoring of intensity levels at alternate locations not under the ownership or control of the developer, user or blaster. These alternate locations may be inside or outside the overall development project boundary.

(b) Blast intensity may not exceed any of the following limits:

Peak Particle Velocity (PPV) : 0.30 inches per second

Airblast overpressure: 129 peak dBL (linear) - 0.1 Hz high-pass system
128 peak dBL (linear) -2 Hz high-pass system
124 peak dBL (linear)- 5 or 6 Hz high-pass system

Frequency: must be greater than 40 Hz (40 Hz or less is a violation)

(c) *80% Rule.* If the user or blaster, based upon their expertise and experience, have reason to believe that a blast will exceed 80% of one or more of the intensity thresholds set forth above, then blasting activity must cease immediately. Blasting activity will be permitted to resume after the user obtains approval for a modification of the blasting permit that will ensure the blasting intensity does not exceed the intensity limitations set forth in subsection 3-8(b).

In addition to the above, if the daily shot records submitted for the blasting activity in accordance with this article indicate 80% of one or more intensity limitations set forth above have been exceeded, all blasting activity must cease. Blasting activity will be permitted to resume only after the user obtains approval for a modification of the blasting permit that will ensure the blasting intensity does not exceed the intensity limitations set forth in subsection 3-8(b).

Sec. 3-9. Limitation on blasting activity.

Blasting activity within 600 feet of a structure not under the ownership or control of the developer, user or blaster, is prohibited. The 600 feet will be measured from the boundary of the proposed blast site, in accordance with section 3-17.

A limited exception may exist where the only structures within the 600 foot area constitutes infrastructure (ie roads or utilities) under the ownership and control of a public

entity and the public entity specifically states in writing to the Director that it does not object to the proposed blasting. If this occurs, the Director has the discretion to issue the permit allowing the proposed blasting.

Sec. 3-10. Blasting permit issuance; Standard permit conditions.

(a) *Blasting permit required.* It is unlawful to conduct development blasting activity, including test blasting, within the unincorporated area of Lee County without a valid blasting permit issued in accordance with this article.

(b) *Right to permit approval.* Issuance of a blasting permit is a privilege and not a right. Issuance of a permit constitutes a discretionary act of the Director based upon review of the permit application and relevant information available to the Director from county departments and files concerning the user, blaster, developer or owner of the subject project. Denial of a blasting permit application will include a written explanation for the denial.

(c) *Permit denial.* The Department of Transportation or an entity holding a utility franchise within the area affected by the proposed blasting activity has the right to deny a blasting permit application in order to afford reasonable protection of public infrastructure or facilities. The reason for the denial must be specifically stated in writing.

(d) *Standard conditions.* The following provisions constitute the standard conditions applicable to development blasting permits.

- (1) County staff has the right to enter upon the property and complete all necessary inspections related to the blasting activity or in response to complaints resulting from the blasting activity.
- (2) Hours of blasting activity: 10am-4pm Monday through Friday
 No weekends
 No State holidays
 No Federal holidays
- (3) The permit is issued to the user identified in the application and allows the blaster identified in the application to conduct the blasting activity. If the blaster identified in the application changes subsequent to the application submittal or after the permit is issued, then the user must notify the County as to the name, address, contact information and registration requirements of the replacement blaster prior to detonation of blasts by the replacement blaster.
- (4) The responsible user and blaster, identified in the permit application, must be onsite during all phases of the physical blast preparation and detonation

activity.

- (5) No detonation of explosives (blasting) may occur without appropriate County staff on site.
- (6) Notice of the proposed blast time must be provided to Lee County Code Enforcement 24 hours prior to the blast in accordance with section 3-13. A Code Enforcement inspector must be on-site during the blast.
- (7) A blasting permit is issued to the user and is not transferable.
- (8) A record of each blast must be maintained in accordance with section 3-12.
- (9) A permit is valid for 90 days from date of issuance, unless otherwise specifically stated on the face of the permit. Permit extensions are allowed in accordance with section 3-11.
- (10) Issuance of the blasting permit does not relieve the applicant, the user, the blaster or the developer of responsibility for the results of the blasting activity, including the accuracy and adequacy of the blasting plan as implemented in the field.

Sec. 3-11. Duration of permit approval.

A permit is valid for a period of 90 days from the date of issuance, unless otherwise specifically stated on the face of the permit. However, no permit may be issued for a duration of more than 6 months.

Sec. 3-12. Permit extension.

The Director has the discretion to extend a permit approval for a period of up to 90 days, based upon the filing of the appropriate application and fee. Only one permit extension is permitted per base permit. Subsequent blasting activity within the same project or area will require the filing and approval of a new and complete permit application.

Sec. 3-13. Record keeping.

The permit applicant (user) is responsible to maintain a record of each blast. A copy of the record must be filed with Lee County Code Enforcement no later than 10 a.m. of the workday following the blast. All original blasting records must be retained by the user responsible for the blasting activity for at least three years following the conclusion of the blasting activity. The records must be available for inspection by the County upon request. The blasting records must include the following information:

- (a) Name of the user responsible for the blasting activity;
- (b) Name of the blaster conducting the blasting activity;
- (c) Date, time and location of the blast;
- (d) Type of material blasted;
- (e) Number of holes, spacing, burden;
- (f) Diameter and depth of holes;
- (g) Type of explosives used per hole;
- (h) Amount of explosives used;
- (i) Maximum amount of explosives per delay;
- (j) Maximum number of holes per delay;
- (k) Method of firing and type of circuit;
- (l) Weather conditions (including factors such as wind direction, temperature, cloud cover etc);
- (m) Height or length of stemming;
- (n) Whether mats or other types of protection were used;
- (o) Type of detonators used and delay periods used;
- (p) Location of seismograph; set up procedure used;
- (q) The PPV, airblast overpressure and frequency measurements for the blast; and
- (r) Copy of strip tape from seismograph showing readings, marked with date, time and machine location, and signed by seismograph operator.

Sec. 3-14. Notice to County staff prior to blast.

A County inspector must be onsite prior to the detonation of a blast. The blaster or user must notify Lee County Code Enforcement that a blast is planned. This notice must be provided at least 24 hours prior to the blast and include the date, time and location of

the blast. The County inspector is not required to wait more than ½ hour beyond the blast time specified in the notice from the blaster. The County inspector has the discretion to remain on the site or leave if the blast is delayed. If the inspector leaves the site, then the blaster or user will be required to notify Code Enforcement when the blast is ready. If the inspector remains on site, then additional inspection fees will be charged to the user. These additional inspection fees must be paid prior to any subsequent blast activity.

Sec. 3-15. Blast vibration monitoring.

All blasts must be monitored using seismograph equipment that meets the criteria and requirements of this section. The purpose of the seismographic readings are to confirm compliance with the provisions of this article.

(a) *Seismograph equipment.* The instrumentation used must meet the following minimum criteria.

- (1) Capable of measuring the three mutually perpendicular components of particle velocity in directions vertical, radial and perpendicular to the vibration source. The equipment must be capable of measuring a frequency response of 2 Hz to 200 Hz, with no greater than a 3dB roll off, and PPV of up to 10 inches per second (250mm/s); and have an airblast channel frequency range of .1 to 200 Hz, 2 to 200 Hz, 5 or 6 to 200 Hz.
- (2) Capable of recording the full waveform from a single blast as well as continuous monitoring.
- (3) Capable of providing a contemporaneous printed hard copy (strip chart) of the full wave form and PPV data in the field as well as recording digital data as a permanent record. Instruments limited to recording seismic activity at a remote location for later retrieval and dissemination may not be used to meet LDC requirements, they will be considered supplemental only.
- (4) Each piece of the monitoring equipment must be labeled with a serial number. This serial number must be cross referenced or otherwise identified on the field print out copy as well as the permanent digital record.
- (5) Components of the monitoring equipment must be calibrated as a unit and remain together as a unit for the duration of the permitted blasting activity. Mixing various pieces together that were not calibrated for use as a unit will not satisfy the requirements of this section.
- (6) Monitoring equipment must be calibrated at least once every 6 months. Written documentation as to the calibration, including identification of the unit parts, who performed the calibration and the standard used, must

accompany the instruments and be available for immediate inspection upon request by the County.

(b) *Set up of seismograph equipment.*

- (1) Set up of the equipment must be in accordance with accepted industry standards as identified by the International Society of Explosive Engineers or the US Department of Interior, Bureau of Mines Report RI 8508.
- (2) Seismograph equipment must be set up at the locations approved as part of the blasting plan.
- (3) Whenever possible, monitoring equipment must be placed in undisturbed soil. Placement on driveways, walkways or slabs must be avoided.
- (4) The Director or his designee may require additional monitoring devices if, after a field inspection with the monitors in place, additional monitoring appears appropriate or necessary to establish compliance with the provisions of this article.

(c) *Location of seismograph equipment.* Seismic monitoring equipment must be located along the boundary of the overall development project, and specifically between the blast site and the nearest structure not owned by the Developer, or as otherwise determined by the Director.

(d) *Inspection of seismograph equipment.* Code Enforcement is required to inspect all monitoring equipment prior to the blast. The user or developer must facilitate these inspections, including the provision of transportation over difficult terrain, if necessary.

(e) *Contemporaneous reporting requirements.* A copy of the paper read out (strip chart) from each unit recording the blast activity must be provided to the Code Enforcement inspector immediately after the blast. The strip chart must include a full waveform and specifically identify the exact monitoring location; the date, time and place of the blast activity, the PPV, frequency and airblast overpressure; and be signed by the seismograph operator.

(f) *Followup reporting requirements.* The user must submit the following written documents to Lee County Code Enforcement by 10 a.m. the workday following the blast.

- (1) Copy of the daily shot report that includes all of the blast record keeping information identified in section 3-12.
- (2) A copy of the digital data generated by each required seismograph unit, with

a copy of the corresponding printed strip chart attached.

Sec. 3-16. Pre- and post-blast condition surveys.

- (a) *Generally.*
 - (1) All condition surveys must be conducted by a professional with the appropriate credentials and experience. A copy of the *curriculum vitae* or resume detailing the reviewer's credentials must be attached to each survey report.
 - (2) Condition surveys must be made available as follows:
 - a. *Pre-blast condition survey:* A copy, including color copies of all photos, must be provided to the owner of the structure or facility surveyed and Lee County Code Enforcement prior to the detonation of any blasts allowed under the permit.
 - b. *Post-blast condition survey:* A copy, including color copies of all photos, must be provided to the owner of the structure or facility surveyed and Lee County Code Enforcement upon completion, but no later than 10 days after the physical survey date.
 - (3) *Content of condition survey report.* The survey must document the current interior and exterior condition of the structure, facility, pool, seawall, dock, driveway, foundation, well, utilities, drainage facility, water management facility, concrete slab or other improvements on the property that is the subject of the survey. The survey must include sufficient documentation to satisfy all typical insurance carrier requirements related to substantiating a claim for damage, including but not limited to, documenting the status of the structural engineering.
 - (4) *Cost.* The cost of condition surveys will be borne by the user, blaster and developer.
- (b) *Pre-blast condition survey.*
 - (1) *1,500 foot radius around blast site.*

Prior to conducting blasting activity, the user and developer must obtain a professional pre-blast condition survey for all structures and facilities within a 1,500 foot radius of the blast site. Structures and facilities touched by the 1,500 foot radius measurement, must be included in the survey requirement.

The professional conducting the survey must provide a written notice to the owner and tenants of the property. This notice must indicate the reason for the survey, the proposed date and time of the survey, and a local or toll free contact number for purposes of scheduling an alternative date or obtaining additional information. A copy of this notice must be provided to Code Enforcement.

If the owner of the structure or facility refuses to allow access to conduct the pre-blast survey, the professional attempting to survey the property must note this on the survey form. The property owner should sign the form to verify refusal. At least three attempts must be made to notify the owner of the need for the survey. The user and developer have the burden to prove the property owner refused the pre-blast survey. Sufficient proof of refusal will consist of either: (a) a written document signed by the property owner stating they understand the purpose of the blast survey and refuse to have it conducted; or (b) a sworn affidavit from the professional hired to conduct the survey setting forth the details related to the property owner's refusal, including a narrative about the attempts to obtain permission to conduct the survey, and the information provided to the property owner regarding condition surveys.

A copy of all pre-blast surveys, including documentation as to any property owner's refusal, must be submitted to Code Enforcement prior to conducting the permitted blasting activity.

- (2) *Area between 1,500 foot and 3,000 foot radius around blast site.*

Prior to conducting blasting activity, the user and developer must provide a viable opportunity for a professional pre-blast condition survey to be conducted on all structures and facilities within a 3,000 foot radius of the blast site. Structures and facilities touched by the 3,000 foot radius measurement must be included in the survey.

The professional conducting the survey must provide a written notice to the owner and tenants of the property. This notice must indicate where and when the blasting activity will occur, the reason for the survey, and a local or toll free contact number for purposes of scheduling a date and time for the survey or obtaining additional information. A copy of this notice must be provided to the County.

The notice offering a pre-blast survey must be sent at least 20 days prior to the start of blasting activity via regular and certified mail. Sufficient time must be provided to allow scheduling and completion of all pre-blast condition surveys requested. Prior to commencement of blasting activity, the user or

developer must submit a sworn affidavit to Code Enforcement indicating the notice offering a pre-blast condition survey was sent to all property owners within the designated area and all pre-blast surveys requested are complete. The affidavit must include an attachment identifying the names and addresses used in sending the notices.

(c) *Post-blast condition survey.*

Upon completion of the blasting allowed under the permit, the user and developer will obtain professional post-blast condition surveys for properties, structures or facilities that are the subject of damage complaints or claims made during the course of the blasting activity. A list of all property owners filing a complaint with the County will be compiled by Code Enforcement.

The professional conducting the survey will contact each property owner in writing, via certified mail, to schedule a mutually convenient date and time for the post-blast survey. The surveys must be completed within 15 days after cessation of the blasting activity. A copy of the condition survey report must be provided to the property owner and Code Enforcement upon completion, but no later than 10 days after the physical survey date.

The Developer must submit a sworn affidavit within 30 days after the cessation of the blasting activity that identifies location of the properties offered a post-blast condition survey; property owners' names and the mailing addresses used to extend the offer; and whether the survey was completed or refused. No further blasting permits will be issued within unincorporated Lee County for projects in which this developer is a principal, beneficiary, or subsidiary until this affidavit is filed.

(d) *Content of condition survey.* The condition survey must include a written description of the interior and exterior condition of each structure or facility examined. Existing cracks, damage or other defects must be specifically located and described with sufficient specificity to make it possible to determine the effect, if any, of the proposed blasting activity. If significant cracks or damage exist or if the defects are too complicated to describe in writing, photographs must be taken to supplement the survey. In lieu of the written survey report, a good quality videotape survey, with appropriate audio description of locations, conditions and defects may be substituted. A copy, in whatever form created, must be provided to the property owner and Code Enforcement prior to approval for subsequent blasting activity on projects within unincorporated Lee County.

The survey must be kept for a minimum of seven years and be available upon request.

Sec. 3-17. Measurement.

For purposes of this article, all distance measurements relative to the blast site will be measured from the outer boundary of the blast site as depicted on the approved development blasting permit.

Sec. 3-18. Notice of blasting activity.

(a) *Written notice.* Written notice to property owners within a 1 mile of the proposed blast site must be provided by the user 10-20 calendar days prior to commencement of the blasting activity. The notice should be sent regular mail to the address for the property indicated in the property appraiser records on the date the notice is sent. The contents of the notice must address the following:

- (1) Explanation of the blasting activity that will occur and what to expect, including the meaning of the audible warning system.
- (2) The location of the blasting activity.
- (3) Dates and times of the proposed blasting activity.
- (4) Expected duration of the blasting activity.
- (5) Contact information for complaints concerning the blasting activity.
- (6) Availability of a pre-blast condition survey.

(b) *Audible notice.* Prior to detonation of a blast, a series of audible warning signals, using sirens or horns or both, must be sounded with sufficient intensity to be heard at a minimum distance of 1,000 feet from the blast site. The warning signals must be sounded as follows:

1 minute prior to the blast a series of three short (3 seconds) signals.

Use of heavy construction equipment operating within 1,500 feet of the blast site must cease once the audible signal is sounded, until the detonation is complete.

(c) *Signs.* At least five days, but not more than 10 days, prior to the commencement of the permitted blasting activity, warning signs must be erected by the user or blaster as follows:

- (1) The sign must be at least 30 inches by 30 inches, but no greater than 48 inches square and at a height lower than eight feet from the ground.
- (2) The sign must state, in 5 inch block letters, "WARNING - Blasting". It must also include the date and times of the proposed blasting, the project name,

the names of the user, blaster and developer along with a local contact number.

- (3) No commercial advertising is permitted on the sign face.
- (4) Signs must be placed adjacent to the right-of-way at 250 foot intervals around the perimeter of the development project and be clearly visible to the traveling public.
- (5) All signs must be removed within one week of the completion of the development blasting activity or the expiration of the blasting permit, whichever occurs first.

Sec. 3-19. Complaints about blasting activity.

Lee County Code Enforcement will maintain a list of property owner complaints and damage claims for each active blasting permit. This list will include the name or the property owner, the location of the property and a synopsis of the complaint or claim for damage. Complaints received by the user, blaster or developer must be reported to Code Enforcement within 24 hours by the recipient of the complaint. All complaints or claims involving damage will be the subject of an interim post-blast condition survey, conducted within 48 hours of receiving the complaint, unless the survey is specifically refused or property owner agrees to a different time frame for conducting the survey.

The interim post-blast condition survey must meet the criteria for condition surveys set forth in section 3-15. However, the survey must be completed within the condensed time frame set forth above or blasting must cease until the interim condition survey requirement is met.

The user, blaster and developer are responsible for handling, discharging or settling of all damage or annoyance claims resulting from the blasting activity. Monitoring or review of the blasting activity conducted by the County in accordance with this article will not relieve the user, blaster and developer of this responsibility.

Sec. 3-20. Violations and penalties.

(a) *Intensity violation.* Blasting activity that exceeds the limitations set forth in section 3-8 for PPV, airblast overpressure or frequency, including the 80% rule; or failure to have seismographs on site, as required by the blasting permit and section 3-14 constitute "intensity violations" under this article. Intensity violations will precipitate the following action:

- (1) A fine of \$5,000 against the user, blaster and developer, who will be jointly liable for the full amount of this fine. The fine is due and

payable upon issuance of the County citation;

- (2) Automatic revocation of the blasting permit;
- (3) No further blasting permits will be issued for the development project, including all future phases of the project. Disputes as to the scope of the development project for purposes of this subsection will be decided by the Director; and,
- (4) No further blasting permits will be issued to the user, blaster or the company or business entity qualified or associated with the user for a period of 5 years. The fact that a new user is obtained to qualify a company does not eliminate the sanction. The user and blaster will not be eligible to qualify any other companies or entities for purposes of blasting in unincorporated Lee County for a period of 5 years.

(b) *Non-intensity violation.* Violation of the provisions of this article, other than those applicable to blast intensity, constitute a “non-intensity violation”. Non-intensity violations will precipitate the following action:

- (1) Imposition of a fine against the user, blaster and developer, individually or jointly. The fine is due and payable based upon issuance of the County citation. Fine amounts are set forth in the Lee County Administrative Code.
- (2) Automatic suspension of the current blasting permit. The permit may be reinstated at the discretion of the Director if:
 - a. The violation is abated to the Director’s satisfaction; and
 - b. The information requested by the Director is submitted and found sufficient by the County.
- (3) Potential revocation of the blasting permit based upon the nature of the violation and the history of violator’s compliance.

Sec. 3-21. Deviations and variances.

No deviations or variances from the provisions of this article may be granted or approved.

Sec. 3-22. Appeal.

Appeals from the decisions under this article are only to the Circuit Court by petition for writ of certiorari filed within 30 days from the date of the action giving rise to the appeal.

SECTION TWO: REPEALER

Lee County Ordinances 02-26, 03-17, 03-27 and 04-01 are hereby repealed and of no further force or effect.

SECTION THREE: 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 FOUR: SEVERABILITY

It is the Board'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 further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FIVE: 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 SIX: EFFECTIVE DATE

The ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

The foregoing resolution was adopted by the Board of County Commissioners by a motion by Commissioner _____, and seconded by Commissioner _____ and, when put to a vote, the result was as follows:

ROBERT P. JANES	_____
DOUGLAS R. 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 the County Attorney