

LEE COUNTY ORDINANCE NO. 07-26

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, ESTABLISHING AN ORDINANCE REQUIRING PERSONS OR ENTITIES INTENDING TO CONSTRUCT OR ERECT A STRUCTURE OR CAUSE A STRUCTURE TO BE ERECTED OR CONSTRUCTED THAT IS HIGHER THAN SIXTY (60) FEET TO SEEK A REVIEW OF THE PROPOSED STRUCTURE BY THE DIVISION OF PUBLIC SAFETY TELECOMMUNICATIONS PROGRAM; PROVIDING FOR SHORT TITLE; INTENT; VIOLATION OF ORDINANCE; PROVIDING FOR DEFINITION OF NUISANCE: PROVIDING FOR REVIEW PROCEDURE; APPEALS FROM APPLICATION DENIAL; PROVIDING FOR REMEDIES AND PENALTIES; CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida is the governing body in and for Lee County, Florida; and

WHEREAS, the Lee County Board of County Commissioners desire to ensure the uninterrupted operation of Lee County's public safety, law enforcement, and other emergency-related and county operational telecommunications networks; and

WHEREAS, the construction or erection of high-rise structures in Lee County have resulted in the need for the relocation of telecommunications facilities or the provision of additional telecommunications facilities as a result of the construction or erection of high-rise structures; and

WHEREAS, the County's telecommunications networks are essential to the public's health, safety, and welfare by providing communications for law enforcement, emergency medical services, fire suppression, and emergency management for the provision of communications during disasters.

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

SECTION ONE: **SHORT TITLE**

This Ordinance shall be known and may be cited as the Lee County Telecommunications Network Ordinance.

SECTION TWO: **INTENT**

- A. It is the intent of this Ordinance to ensure the uninterrupted operation of Lee County's public safety, law enforcement, and other emergency-related and county operational telecommunications networks by requiring that persons or entities constructing or erecting structures in Lee County, do so in a manner which does not interfere with Lee County's telecommunications networks, or provide the appropriate facilities necessary to eliminate that interference.
- B. Lee County's telecommunications networks are essential to the health, safety, and welfare of Lee County by providing communications for law enforcement activities, emergency management, fire suppression, carrying on the business of government, and for providing communications in time of hurricanes and other disasters. In the past, construction or erection of high-

rise structures in Lee County have resulted in the need for Lee County to relocate its telecommunications facilities or to provide additional facilities at a substantial cost to the public.

- C. This Ordinance shall not apply to any communication towers.

SECTION THREE: **NUISANCE**

- A. The construction or erection of a building or structure in a manner that interferes with Lee County's law enforcement, public safety, or other emergency-related and county operational telecommunications networks constitutes a nuisance. Such interference is a nuisance because it threatens the health, safety, and welfare of the residents and visitors of Lee County.
- B. In addition to any other remedies or enforcement procedures provided herein, Lee County may seek an injunction to restrain such a nuisance.

SECTION FOUR: **REVIEW PROCEDURE**

- A. To ensure compliance with this Section, any person or entity intending to construct or erect a building or structure, or cause a building or structure to be erected or constructed in Lee County that is higher than sixty (60) feet must seek review of the proposed structure by the Lee County Division of Public Safety Telecommunications Program. Review should be sought during the early stages of rezoning, development order or building permit approval.

- B. Lee County Division of Public Safety Telecommunications Program will provide the applicant with a determination as to whether a proposed building or structure will interfere with Lee County's public safety, law enforcement, other emergency-related or county operational telecommunications networks. A determination will be provided to the applicant within thirty (30) days after the "date of receipt" of a completed application.
- C. To further define and inform applicants of buildings or structures covered in the Ordinance, a Microwave Corridor Plan Overlay on a map of Lee County is attached hereto as Exhibit "A", which is subject to amendment from time to time.
- D. A determination that interference will result from the erection or construction of the proposed building or structure may not result in violation of this Ordinance if the following conditions are met:
1. Existing Telecommunications Network - The person or entity constructing or erecting the building or structure must provide for the appropriate easements and facilities, at zero (0) cost to the county, to ensure the continued satisfactory operation of the existing telecommunications system. Such facilities shall become part of Lee County's telecommunications network and shall be operated and maintained by Lee County.

2. Proposed Telecommunications Network - Proposed building or structure that will interfere with proposed Lee County facilities, as identified in the Microwave Corridor Plan Overlay, may be erected or constructed if the person or entity constructing or erecting the building or structure conveys an easement to Lee County.
 - a. In certain cases Lee County may, in its discretion, accept an agreement to convey an easement.
 - b. Lee County will release the easements upon request if they are not used within five (5) years of the issuance of the Certificate of Occupancy (C.O.).

SECTION FIVE: APPEALS FROM APPLICATION DENIAL

The decision of the Lee County Division of Public Safety Telecommunications Program regarding the obligations of the person or entity erecting or constructing the building or structure under SECTION FOUR: Subsection D., above, may be appealed to the Board of County Commissioners for a determination of whether or not the conditions imposed are appropriate with reference to the impact of the development upon the Lee County telecommunications network system. Such an appeal shall be requested in writing to the Lee County Division of Public Safety Telecommunications Program within thirty (30) days of the date that the Telecommunications Program issues its written findings.

SECTION SIX: REMEDIES AND PENALTIES

Each violation of the provisions of this Ordinance constitutes a separate offense punishable as provided by law or Ordinance, herein. In addition, Lee County may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this Ordinance through injunction, including a mandatory injunction or may utilize any other manner of effecting abatement as provided by law.

SECTION SEVEN: 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 shall apply.

SECTION EIGHT: SEVERABILITY

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

SECTION NINE: CODIFICATION AND SCRIVENER’S ERRORS

The Lee County Board of County Commissioners intends that this Ordinance will be made part of the Lee County Code; and that sections of this Ordinance can be renumbered or relettered and 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 and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for public hearing.

SECTION TEN: EFFECTIVE DATE

This Ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

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Commissioner Judah made a motion to adopt the foregoing Ordinance, seconded by Commissioner Hall. The vote was as follows:

ROBERT P. JANES	<u>AYE</u>
BRIAN BIGELOW	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
FRANK MANN	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 11th day of **September, 2007**.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BY:



Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:

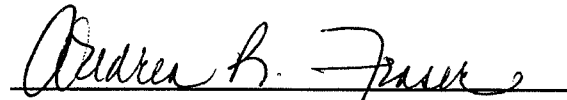


Robert P. Janes, Chair



APPROVED AS TO FORM:

BY:

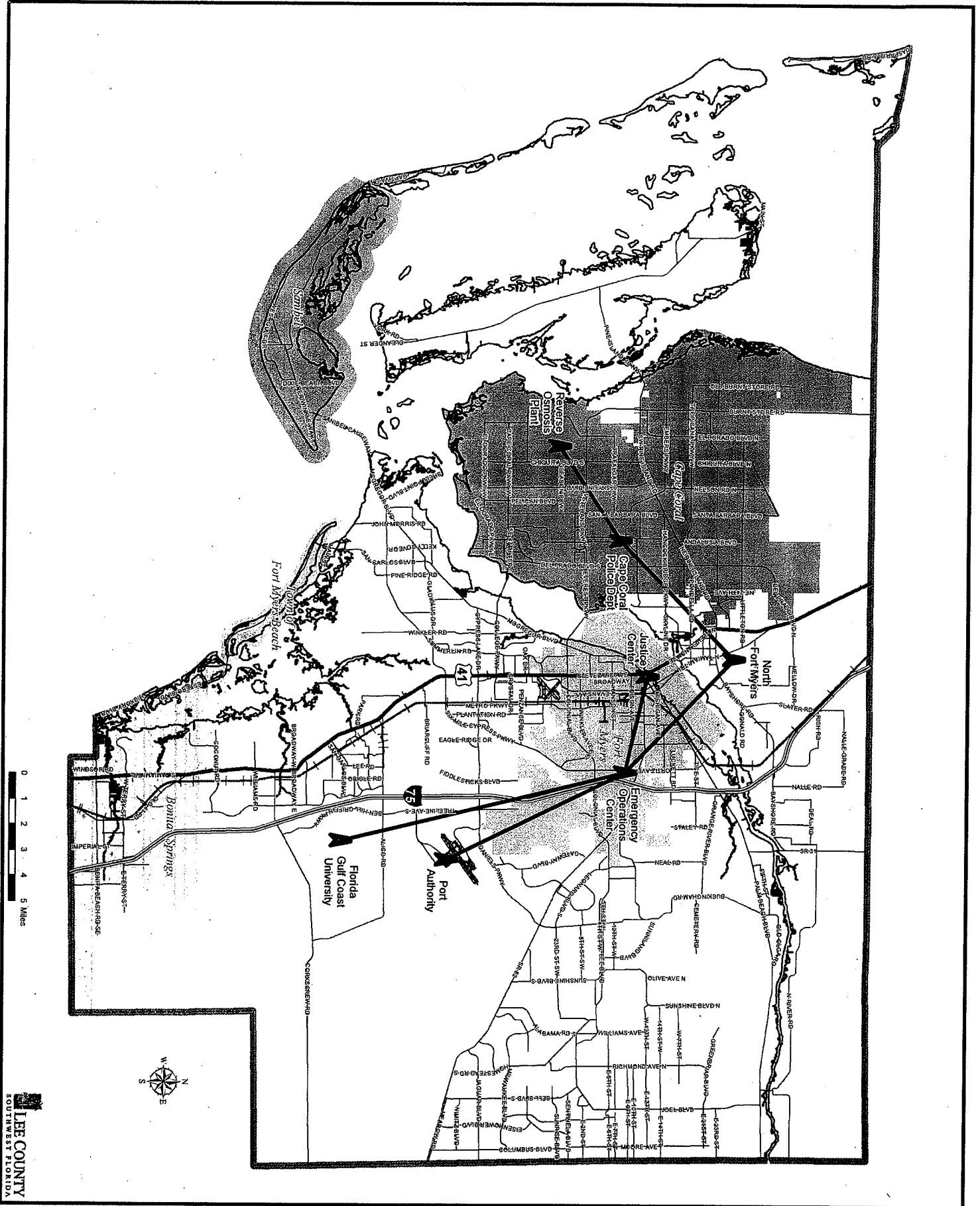


Office of the County Attorney

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EXHIBIT "A"

Microwave Corridor Plan Overlay





FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

September 17, 2007

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Patricia Weseman, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letters dated September 13, 2007 and certified copies of Lee County Ordinance Nos. 07-25 and 07-26, which were filed in this office on September 14, 2007.

Sincerely,

Liz Cloud
Program Administrator

LC/lbh

RECEIVED
MINUTES OFFICE
2007 SEP 20 AM 10:53

DIRECTOR'S OFFICE

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