

**AGENDA**  
**REGULAR MEETING OF VILLAGE COUNCIL**  
**FEBRUARY 2, 2017**  
**6:30 P.M.**

1. Mayor Smith calls the meeting to order

2. Roll Call:

Randall Atkins  
James Boerio  
Sue Johnson

Bill Madison  
Steve Riley  
George Teasdale

3. Guests:

4. Floor open to the public:

5. New Business:

Emergency Ordinance 2017-03 adopting Ohio Basic  
Code, 2017 Edition

Emergency Resolution 2017-13 approving easement plat  
for Riverside Subdivision, Phase One

Authorization of Invoices

6. Old Business:

7. Executive Session

8. Communications and reports from Village Officials and Committees

- a. Mayor
- b. Fiscal Officer
- c. Solicitor
- d. Administrator
- e. Sgt.
- f. Council Members

9. Adjournment

**ORDINANCE NO. 2017-03**

**AN ORDINANCE APPROVING, ADOPTING AND ENACTING AMERICAN LEGAL PUBLISHING'S OHIO BASIC CODE, 2017 EDITION, AS THE CODE OF ORDINANCES FOR THE MUNICIPALITY OF SOUTH LEBANON, OHIO, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the present general and permanent ordinances of the municipality are inadequately arranged and classified and are insufficient in form and substance for the complete preservation of the public peace, health, safety and general welfare of the municipality and for the proper conduct of its affairs.

**WHEREAS**, American Legal Publishing Corporation publishes a Code of Ordinances suitable for adoption by municipalities in Ohio.

**WHEREAS**, it is necessary to provide for the usual daily operation of the municipality and for the immediate preservation of the public peace, health, safety and general welfare of the municipality that this ordinance take effect at an early date.

**NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE AUTHORITY OF THE MUNICIPALITY OF SOUTH LEBANON, OHIO:**

- Section 1.** American Legal Publishing's Ohio Basic Code, 2017 Edition, as reviewed and approved by the Legislative Authority, is hereby adopted and enacted. Any prior version of the Ohio Basic Code which may have been previously adopted by the municipality is hereby repealed as obsolete and is hereby replaced in its entirety by this Ohio Basic Code, 2017 Edition.
- Section 2.** One copy of American Legal Publishing's Ohio Basic Code, 2017 Edition, certified as correct by the Mayor and Clerk of the Legislative Authority, as required by Ohio Revised Code § 731.23, shall be kept in its initial form on file in the office of the Clerk of the municipality and retained as a permanent ordinance record of the municipality. The Clerk of the municipality is authorized and directed to publish a summary of all new matters contained in the Code of Ordinances as required by Ohio Revised Code § 731.23. Such summary is attached hereto and marked as "Exhibit A".
- Section 3.** All ordinances and resolutions or parts thereof which are in conflict or inconsistent with any provision of the Ohio Basic Code, 2017 Edition, as adopted in Section 1 hereof, are hereby repealed as of the effective date of this ordinance, except as follows:
- (A) The enactment of the Ohio Basic Code, 2017 Edition, shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full force notwithstanding its repeal for the purpose of revision and codification.

(B) The repeal provided above shall not affect:

- (1) The grant or creation of a franchise, license, right, easement or privilege;
- (2) The purchase, sale, lease or transfer of property;
- (3) The appropriation or expenditure of money or promise or guarantee of payment;
- (4) The assumption of any contract or obligation;
- (5) The issuance and delivery of any bonds, obligations or other instruments of indebtedness;
- (6) The levy or imposition of taxes, assessments or charges;
- (7) The establishment, naming, vacating or grade level of any street or public way;
- (8) The dedication of property or plat approval;
- (9) The annexation or detachment of territory;
- (10) Any legislation enacted subsequent to the adoption of this ordinance.
- (11) Any legislation specifically superseding the provision of the Ohio Basic Code.

**Section 4.** Whenever reference is made in any documents, publications, or signs of the municipality, including but not limited to traffic tickets and traffic-control signs, to a section as it existed in a former edition of the Ohio Basic Code, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered.

**Section 5.** This ordinance is declared to be an emergency measure necessary for the immediate preservation of the peace, health, safety and general welfare of the people of this municipality, and shall take effect at the earliest date provided by law.

Date

Passed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk of the Legislative Authority

## Exhibit A

### OHIO BASIC CODE, 2017 EDITION — SUMMARY OF CONTENTS

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, there was enacted by the Legislative Authority of the Municipality of SOUTH LEBANON, Ohio, an ordinance entitled "An Ordinance Approving, Adopting and Enacting American Legal Publishing's Ohio Basic Code, 2017 Edition, as the Code of Ordinances for the Municipality of South Lebanon, Ohio."

A summary of the subjects, including all new matters contained in the Code of Ordinances, as adopted, are as follows. The majority of Basic Code provisions are based directly on state law.

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#### TITLE I: GENERAL PROVISIONS

##### Chapter 10: General Provisions

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10.01	Short titles
10.02	Definitions
10.03	Rules of construction
10.04	Revivor; effect of amendment or repeal
10.05	Construction of section references
10.06	Conflicting provisions
10.07	Severability
10.08	Reference to offices
10.09	Errors and omissions
10.10	Ordinances repealed
10.11	Ordinances unaffected
10.12	Ordinances saved
10.13	Application to future ordinances
10.14	Interpretation
10.15	Amendments to code; amendatory language
10.16	Statutory references
10.17	Preservation of penalties, offenses, rights and liabilities
10.18	Determination of legislative intent
10.99	General penalty

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#### TITLE III: ADMINISTRATION

##### Chapter 30: General Provisions

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30.02	Qualifications; oaths
30.03	Bonds of officers and employees; amount
30.04	Additional bond; where bonds recorded and kept
30.05	Approval of bonds
30.06	Sufficiency of form of bond
30.07	Filling vacancies in offices
30.08	Public records available
30.09	Records Commission
30.10	Meetings of public bodies to be open; exceptions; notice
30.11	Municipal officers may attend conference or convention; expenses
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##### Chapter 31: Executive Authority

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- 31.016 General duties of the Mayor
- 31.017 Communications to the Legislative Authority
- 31.018 Protest against excess of expenditures
- 31.019 Supervision of conduct of officers
- 31.020 Annual report to the Legislative Authority
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### ***Clerk***

- 31.040 Election, term, qualifications of the Clerk
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- 31.042 Books and accounts; merger of offices
- 31.043 Seal of Clerk
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- 31.061 Accounts of Treasurer
- 31.062 Powers and duties
- 31.063 Quarterly account; annual report
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## **Chapter 32: Legislative Authority**

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- 32.002 President Pro Tempore; employees
- 32.003 Vacancy when President Pro Tempore becomes Mayor
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- 32.026 Bids and proceedings
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- 32.029 Award to lowest responsive and responsible bidder

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- 32.041 Passage procedure
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- 32.044 Authentication and recording of ordinances and resolutions
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- 32.048 Publication and certification of ordinances in book form
- 32.049 Adoption of technical ordinances and codes
- 32.050 Certificate of Clerk as to publication
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- 32.053 Ordinances providing for appropriations or street improvements; emergency ordinances

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- 32.077 Itemized statement by petition circulator
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#### ***Contempt of Court***

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- 33.21 Acts in contempt of court
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- 34.05 Offenses affecting employment of law enforcement officers; probationary period; final appointment
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## TITLE V: PUBLIC WORKS

[Reserved]

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- 70.31 Signal lights
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- 72.117 Driving upon closed highway prohibited
- 72.118 Driving upon sidewalk area or paths exclusively for bicycles
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- 75.02 Operation of motorized bicycle
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This summary of contents has been verified and authorized for publication by the Legislative Authority of the Municipality of South Lebanon, Ohio.

Signed:

\_\_\_\_\_  
Mayor James D. Smith

\_\_\_\_\_  
Clerk of the Legislative Authority  
Nicole Armstrong, Fiscal Officer

## **CERTIFICATION OF CODIFIED ORDINANCES**

We, James D. Smith, Mayor, and Nicole Armstrong, Clerk of the Legislative Authority, of the Municipality of South Lebanon, Ohio, pursuant to Ohio Revised Code §§ 731.23 and 731.42, hereby certify that the general and permanent ordinances of the Municipality, as revised, rearranged, compiled, renumbered as to sections, codified and printed herewith in component codes and titles are correct as and constitute the Code of Ordinances for the Municipality of South Lebanon, Ohio.

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Mayor James D. Smith

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Clerk of the Legislative Authority  
Nicole Armstrong, Fiscal Officer



Village of South Lebanon  
99 N. High Street, South Lebanon, Ohio 45065  
513-494-2296  
fax: 513-494-1656  
[www.southlebanonohio.org](http://www.southlebanonohio.org)

## MEMORANDUM

**To:** Mayor & Village Council  
**From:** Jerry Haddix, Village Administrator  
**Date:** January 31, 2017  
**Subject:** Riverside Phase One Easement Plat

---

Attached is a resolution to approve an easement plat for the Riverside Subdivision Phase One. The Planning Commission is meeting on Wednesday, February 1<sup>st</sup> to review this Plat.

The easement plat shows all of the easements for the subdivision including offsite easements that are not shown on the record plat.

Let me know if you have any questions or need additional information.

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2017-**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND FISCAL  
OFFICER TO EXECUTE AN EASEMENT PLAT FOR RIVERSIDE SUBDIVISION  
PHASE ONE, AND DECLARING AN EMERGENCY**

**WHEREAS**, on January 19<sup>th</sup>, 2017, per Resolution No. 2017-09, this Council approved the record plat for the Riverside Phase One Sub

**WHEREAS**, an easement plat is required for said subdivision to formally record access and utility easements not included on the record plat; and,

**WHEREAS**, the Village Planning Commission met on February 1, 2017, and approved the easement plat for the Riverside Subdivision Phase One; and,

**WHEREAS**, immediate action is required to ensure that all easements are recorded simultaneously with the previously approved record plat for said subdivision, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

**Section 1.** That the Council approves and authorizes the Mayor and Fiscal Officer to execute the Riverside Subdivision Phase One Easement Plat, a copy of which is attached hereto.

**Section 2.** That the Council is acting in its administrative capacity in adopting this Resolution.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

**Section 5.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 2<sup>nd</sup> day of February, 2017.

Attest: \_\_\_\_\_

Nicole Armstrong, Fiscal Officer

James D. Smith, Mayor

Rules Suspended:    /    /2017 (if applicable)

Effective Date –    /    /2017

Vote - \_\_\_\_ Yeas

\_\_\_\_ Nays

First Reading –    /    /2017

Effective Date –    /    /2017

Second Reading –    /    /2017

Third Reading–    /    /2017

Vote - \_\_\_\_ Yeas

\_\_\_\_ Nays

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ /2017

DEED REFERENCE

SITUATED IN THE SECTIONS 1 & 2, TOWN 4, RANGE 3, UNION TOWNSHIP, VILLAGE OF SOUTH LEBANON, WARREN COUNTY, OHIO AND BEING PART OF 42.789 (DEED) ACRES AS CONVEYED TO LEBANON MASON, LLC AS RECORDED IN OFFICIAL RECORD 5868, PAGE 129 WARREN COUNTY, OHIO AND PART OF 47.872 (DEED) ACRES AS CONVEYED TO LEBANON MASON RESIDENTIAL, LLC AS RECORDED IN DOCUMENT NO. 2016-033236 WARREN COUNTY, OHIO.

DEDICATION

WE, THE UNDERSIGNED, BEING ALL THE OWNERS OF THE LANDS HEREIN PLATTED, DO HEREBY VOLUNTARILY DEDICATE TO THE PUBLIC THE STREETS, PARKS OR PUBLIC GROUNDS AS SHOWN HEREON TO THE PUBLIC USE FOREVER.

ANY "PUBLIC UTILITY EASEMENTS" AS SHOWN ON THIS PLAT ARE FOR THE PLACEMENT OF SIDEWALKS AND AND EASEMENTS SHOWN ON THIS PLAT, UNLESS DESIGNATED FOR A SPECIFIC PURPOSE, ARE FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, REPLACEMENT OR REMOVAL OF WATER, SEWER, GAS, ELECTRIC, TELEPHONE, CABLE, TELEVISION, OR OTHER UTILITY LINES OR SERVICES, STORMWATER DISPOSAL, AND FOR THE EXPRESS PRIVILEGE OF CUTTING, TRIMMING OR REMOVING ANY AND ALL TREES OR OTHER OBSTRUCTIONS WITHIN SAID EASEMENTS OR IMMEDIATELY ADJACENT THERETO, TO THE FREE USE OF SAID EASEMENTS OR ADJACENT STREETS OR HIGHWAYS, AND FOR THE FREE PASSAGE OF TRAFFIC THEREON. NO BUILDINGS OR OTHER STRUCTURES, NOR MAY THE EASEMENT AREA BE PHYSICALLY ALTERED SO AS TO (1) REDUCE CLEARANCES OF EITHER OVERHEAD OR UNDERGROUND FACILITIES; (2) IMPAIR THE LAND SUPPORT OF SAID FACILITIES; (3) IMPAIR ABILITY TO MAINTAIN THE FACILITIES OR; (4) CREATE A HAZARD.

THE ABOVE PUBLIC UTILITY EASEMENTS ARE FOR THE BENEFIT OF ALL PUBLIC UTILITY PROVIDERS INCLUDING, BUT NOT LIMITED TO DUKE ENERGY, AT&T, TIME WARNER CABLE, THE VILLAGE OF SOUTH LEBANON AND WARREN COUNTY.

ALL PERSONS INTERESTED IN THIS PLAT AS OWNERS HAVE UNITED IN ITS EXECUTION, SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF

OWNER: LEBANON MASON LLC (42.789 ACRES)

NAME: \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

STATE OF OHIO  
COUNTY OF \_\_\_\_\_

BE REMEMBERED THAT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE PERSONALLY CAME LEBANON MASON, LLC, AS REPRESENTED BY \_\_\_\_\_, I HAVE HERETO SET MY HAND AND AFFIXED MY NOTARIAL SEAL ON THE DAY AND YEAR LAST AFORESAID.

NOTARY PUBLIC: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

LIEN HOLDER: WES BANCO BANK, INC.

NAME: \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

STATE OF OHIO  
COUNTY OF \_\_\_\_\_

BE REMEMBERED THAT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE PERSONALLY CAME WES BANCO BANK, INC., AS REPRESENTED BY \_\_\_\_\_, I HAVE HERETO SET MY HAND AND AFFIXED MY NOTARIAL SEAL ON THE DAY AND YEAR LAST AFORESAID.

NOTARY PUBLIC: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

OWNER: LEBANON MASON RESIDENTIAL, LLC (47.872 ACRES)

NAME: \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

STATE OF OHIO  
COUNTY OF \_\_\_\_\_

BE REMEMBERED THAT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE PERSONALLY CAME LEBANON MASON, LLC, AS REPRESENTED BY \_\_\_\_\_, I HAVE HERETO SET MY HAND AND AFFIXED MY NOTARIAL SEAL ON THE DAY AND YEAR LAST AFORESAID.

NOTARY PUBLIC: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

OWNER: LEBANON MASON RESIDENTIAL, LLC

4020 KINROSS LAKES, SUITE 200  
RICHFIELD, OH 44286  
513-404-6401

OWNER: LEBANON MASON, LLC

4020 KINROSS LAKES, SUITE 200  
RICHFIELD, OH 44286  
513-404-6401

SURVEYOR: BAYER BECKER

6900 TYLERSVILLE ROAD  
MASON, OH, 45040  
513-336-6600

HOA REFERENCE

THE WITHIN SUBDIVISION IS SUBJECT TO THE DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR RIVERSIDE SUBDIVISION WHICH IS RECORDED IN THE DEED OF RECORDS OF WARREN COUNTY, OHIO COMMENCING WITH DOCUMENT NO. \_\_\_\_\_, AND THE ARTICLES OF INCORPORATION AND CODE OF REGULATIONS FOR THE ASSOCIATION. SAID DECLARATION MAY BE AMENDED, SAID AMENDMENT(S) RECORDED IN THE DEED RECORDS OF WARREN COUNTY, OHIO.

RIVERSIDE, PHASE ONE  
EASEMENT PLAT

SECTION 1 & 7, TOWN 4, RANGE 3  
BETWEEN THE MIAMIS, UNION TOWNSHIP  
VILLAGE OF SOUTH LEBANON  
WARREN COUNTY, OHIO

DRAINAGE STATEMENT

UNLESS OTHERWISE DESIGNATED ON THIS PLAT, A FIFTEEN (15) FOOT WIDE DRAINAGE EASEMENT SHALL EXIST ALONG ALL COMMON REAR LOT LINES AND A TEN (10) FOOT WIDE DRAINAGE EASEMENT SHALL EXIST ALONG ALL COMMON SIDE LOT LINES, WITH THE COMMON LINE BEING THE CENTERLINE OF SAID EASEMENT.

THE EASEMENT AREAS SHALL BE MAINTAINED CONTINUOUSLY BY THE LOT OWNERS), WITHIN THE EASEMENTS, NO STRUCTURE, INCLUDING FENCING, GATES, OR OTHER MAINTENANCE SHALL BE PLACED OR PERMITTED TO REMAIN WHICH MAY OBSTRUCT, RETARD, OR DIVERT THE FLOW THROUGH THE WATERCOURSE.

THE VILLAGE OF SOUTH LEBANON ASSUMES NO LEGAL OBLIGATION TO MAINTAIN OR REPAIR ANY OPEN DRAIN, DITCHES OR WATERCOURSE WITHIN THE EASEMENT AREA UNLESS NOTED OTHERWISE ON THIS PLAT. HOWEVER, WHEN THE PLATTED RIGHT-OF-WAY AREA HAS BEEN PREVIOUSLY ACCEPTED FOR PUBLIC MAINTENANCE BY RESOLUTION OF THE BOARD OF TOWNSHIP TRUSTEES, THE BOARD OF TRUSTEES OR THEIR REPRESENTATIVES MAY ENTER UPON AND INSPECT THE EASEMENT AREAS AND, IN ACCORDANCE WITH SECTION 5598.06 OF THE OHIO REVISED CODE, MAY REMOVE OR CAUSE THE REMOVAL OF AN OBSTRUCTION ADVERSELY IMPACTING AN AREA WITHIN THE PUBLIC RIGHT-OF-WAY.

UNTIL THE EXPIRATION OF THE DRIVE/OPER'S PUBLIC IMPROVEMENT MAINTENANCE BONDING PERIOD, THE DRIVE/OPER OR THEIR AGENTS) PRESERVES THE RIGHT TO ENTER UPON ALL LOTS TO ESTABLISH OR REESTABLISH DRAINAGE SWALES WITHIN ALL DRAINAGE CHANNELS FOR THE PURPOSE OF CONTROLLING AND DIRECTING STORMWATER TO COLLECTION FACILITIES OR DRAINAGE CHANNELS.

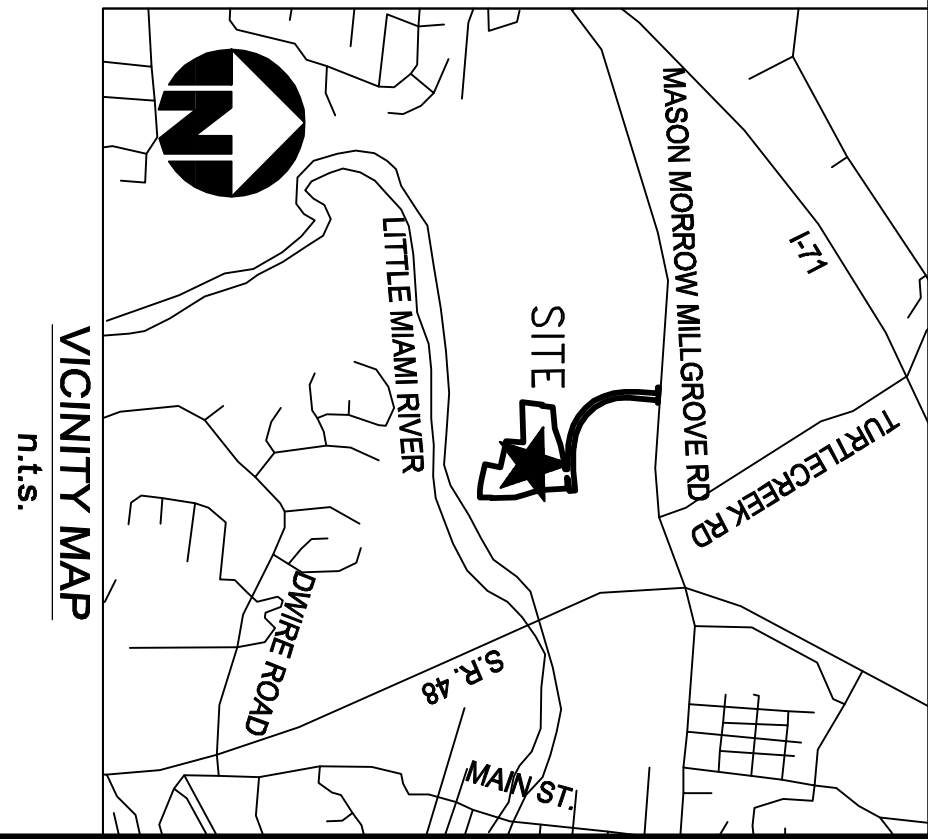
THE PUBLICLY-MAINTAINED PORTION OF THE STORM SEWER SYSTEM WILL INCLUDE STORM DRAINS, CULVERTS, AND/OR DITCHES LOCATED WITHIN EITHER THE PUBLIC RIGHT-OF-WAY OR THE PUBLIC UTILITY EASEMENT AREA ADJACENT TO THE ROAD RIGHT-OF-WAY WITH THE EXCEPTION OF SWAMP MANS AND CULVERTS FOR PRIVATE DRIVEWAYS WHERE, IN LIEU OF AN OPEN DITCH, A DEVELOPER, BUILDER OR LOT OWNER INSTALLS A STORM DRAIN ON PRIVATE PROPERTY. THE STORM DRAIN SHALL BE DESIGNED BY A PROFESSIONAL ENGINEER TO ENSURE THAT NEITHER THIS PROPERTY OR ADJACENT PROPERTIES ARE NEGATIVELY IMPACTED AND THAT THE LOT OWNER(S) MUST NOTE THAT THEY ARE RESPONSIBLE FOR MAINTAINING THE STORM DRAIN UNLESS NOTED OTHERWISE ON THE PLAT.

THE HOME OWNERS ASSOCIATION IS RESPONSIBLE FOR MAINTAINING ALL STORM WATER FACILITIES LOCATED OUTSIDE OF THE PUBLIC RIGHT-OF-WAY INCLUDING SEWER, STRUCTURES, DETENTION/RETENTION BASINS, AND SWAMP MANS.

GRANT OF UTILITY EASEMENT

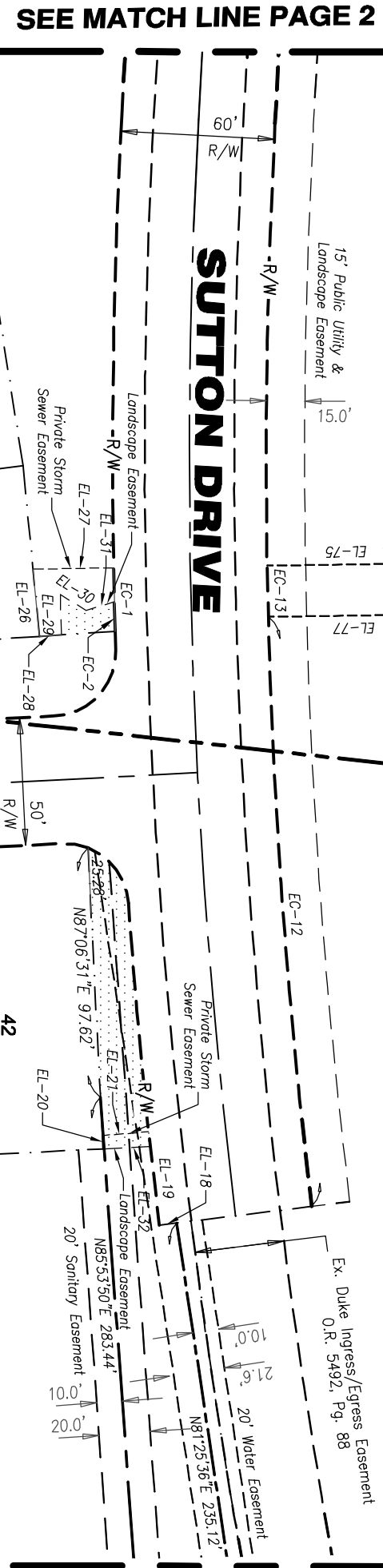
FOR VALUABLE CONSIDERATION, WE, THE UNDERSIGNED ("GRANTOR") DO HEREBY PERMANENTLY GRANT TO DUKE ENERGY CHIOCKENTUCKY, INC., AT&T, TIME WARNER CABLE, AND THEIR PARENT ENTITY (OR ENTITY CONTROLLING BOTH ENTITIES), THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATE ENTITIES, AND ANY OTHER PROVIDER OF UTILITY SERVICES, THE RIGHT TO ENTER UPON AND USE THE LANDS SHOWN HEREON FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, OR REPLACEMENT OF ANY AND ALL NECESSARY FACILITIES FOR THE OVERHEAD OR UNDERGROUND DISTRIBUTION OF GAS, ELECTRIC, TELEPHONE, TELECOMMUNICATIONS OR OTHER UTILITIES ("GRANTEE FACILITIES" OR "FACILITIES"). THE GRANTEE SHALL HAVE THE RIGHT OF INGRESS AND EGRESS AND ALSO THE RIGHT TO CUT, TRIM, OR REMOVE ANY TREES, UNDERGROWTH, OR OVERHANGING BRANCHES WITHIN THE UTILITY EASEMENTS OR IMMEDIATELY ADJACENT THERETO. NO BUILDINGS OR OTHER STRUCTURES MAY BE BUILT WITHIN THE UTILITY EASEMENTS AREA, NOR MAY THE UTILITY EASEMENTS AREA BE PHYSICALLY ALTERED TO (1) REDUCE THE CLEARANCES OF EITHER OVERHEAD OR UNDERGROUND FACILITIES; (2) IMPAIR THE LAND SUPPORT OF GRANTEE FACILITIES; (3) IMPAIR THE ABILITY TO MAINTAIN THE FACILITIES OR; (4) CREATE A HAZARD TO HAVE AND TO HOLD THE EASEMENT AREA, AND THE GRANTEE SHALL HAVE THE FULL POWER TO CONVERT THIS UTILITY EASEMENT AND WILL DEFEND THE SAME AGAINST ALL CLAIMS.

ALSO HEREBY GRANTED TO DUKE ENERGY CHIOCKENTUCKY, INC., AT&T, TIME WARNER CABLE, AND ITS SUBSIDIARIES, SUCCESSORS, AND ASSIGNS IS THE RIGHT TO LATERNALLY EXTEND, REPAIR, AND MAINTAIN NATURAL GAS SERVICES TO SERVE INDIVIDUAL LOTS AS CONSTRUCTED BY THE ORIGINAL BUILDER ALLOWING DISTURBANCE ONLY OVER EXISTING SERVICES TO SERVICE INDIVIDUAL LOTS AS CONSTRUCTED BY THE ORIGINAL BUILDER ALLOWING DISTURBANCE ONLY OVER EXISTING SERVICE LINES NECESSARY FOR THE REPAIR ONLY ON THE LOT ON WHICH THE SERVICE IS LOCATED, RECONSTRUCTION OR RELOCATION IS PERMISSIBLE ONLY WITH THE WRITTEN PERMISSION OF THE PARCEL OWNER, AND SAID UTILITY PROVIDER TO A MUTUALLY AGREEABLE LOCATION, NO PART OF THE UTILITY EASEMENTS SHALL ENCUMBER EXISTING BUILDINGS OR ADDITIONAL LOTS.



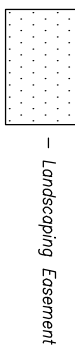
VICINITY MAP  
n.t.s.

SEE MATCH LINE PAGE 2



SEE MATCH LINE PAGE 2

LEGEND:



Lebanon Mason  
Residential LLC  
D.N. 2016-033236  
12-01-151-004  
S.R. 128-59  
S.R. 21-18

VILLAGE OF SOUTH LEBANON PLANNING COMMISSION

THIS PLAT WAS APPROVED BY THE VILLAGE OF SOUTH LEBANON PLANNING COMMISSION ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

CHAIRMAN \_\_\_\_\_

\_\_\_\_\_

VILLAGE OF SOUTH LEBANON

I HEREBY CERTIFY THAT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, THIS PLAT WAS APPROVED AND ACCEPTED BY RESOLUTION NO. \_\_\_\_\_ ADOPTED BY THE COUNCIL OF THE VILLAGE OF SOUTH LEBANON, OHIO.

JAMES D. SMITH, MAYOR

ATTEST:

SHARON LOUALLEN, FISCAL OFFICER

COUNTY AUDITOR

TRANSFERRED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, AT \_\_\_\_\_ M.

COUNTY AUDITOR \_\_\_\_\_

DEPUTY \_\_\_\_\_

COUNTY RECORDER

FILE NO. \_\_\_\_\_

RECEIVED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, AT \_\_\_\_\_ M.

RECORDED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, AT \_\_\_\_\_ M.

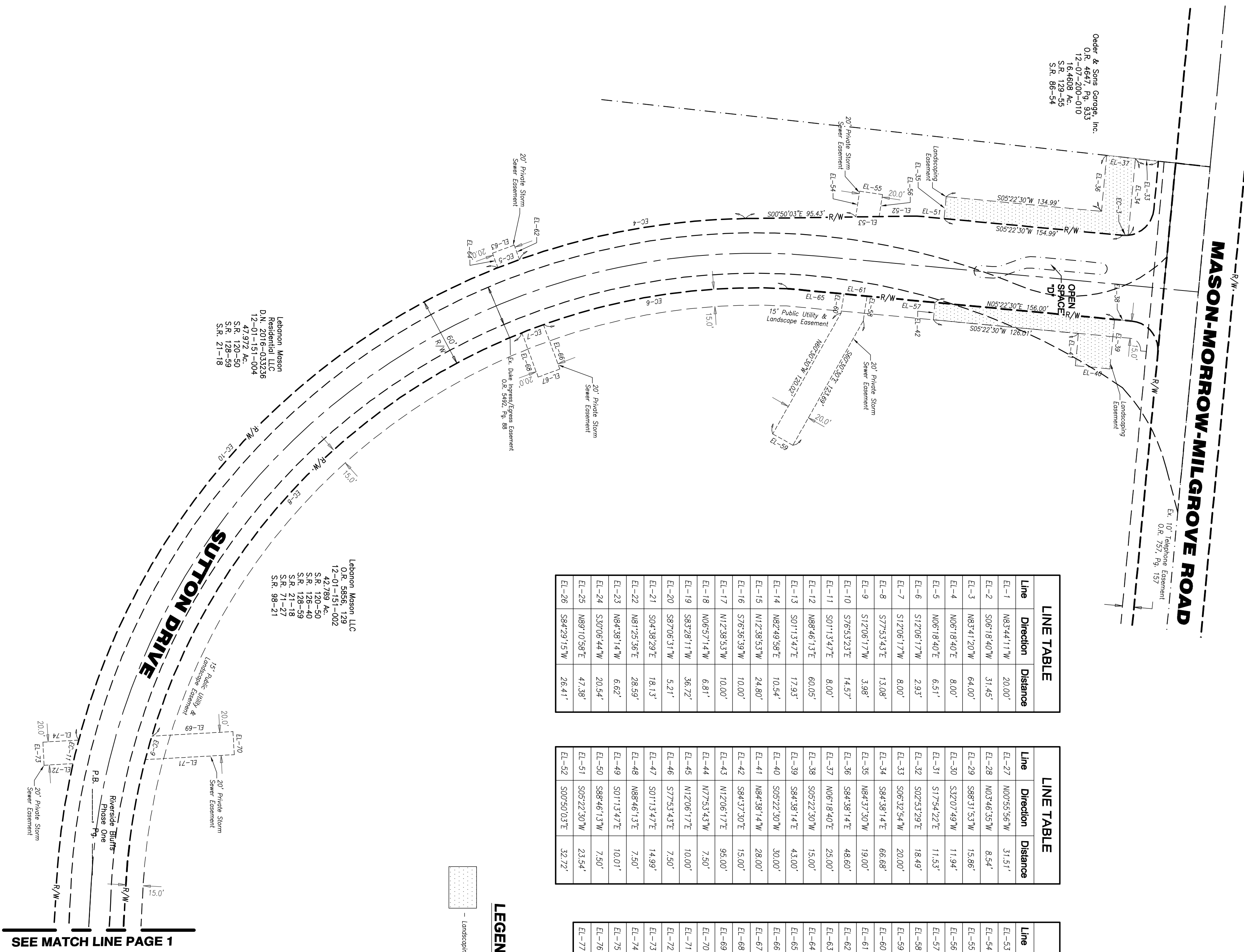
RECORDED IN PLAT BOOK NO. \_\_\_\_\_ PAGE NO. \_\_\_\_\_

FEE: \_\_\_\_\_

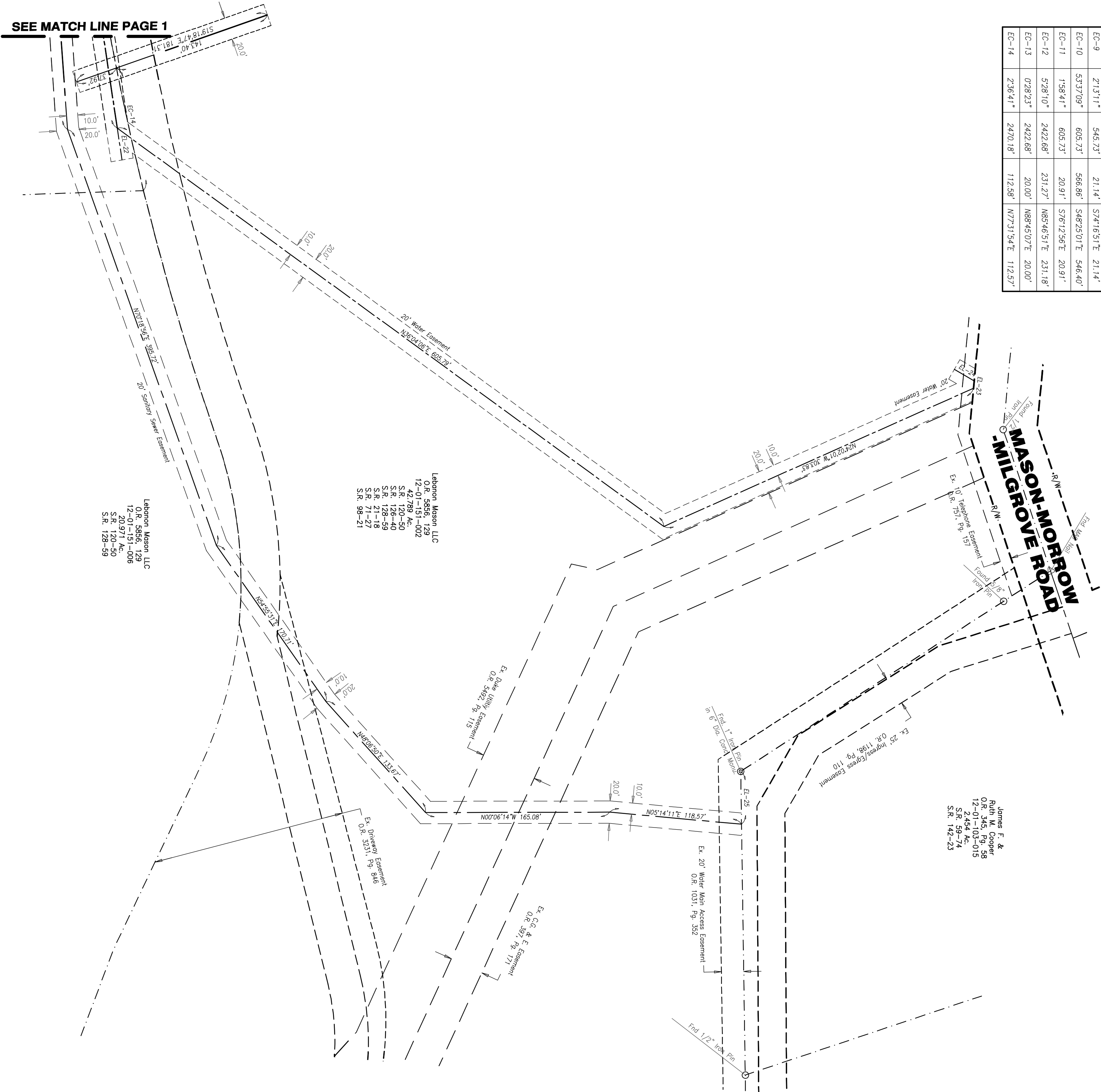
COUNTY RECORDER \_\_\_\_\_

DEPUTY \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_



EASEMENT CURVE TABLE				
Curve	Delta	Radius	Length	Chord
EC-1	0°12'26"	2462.68'	24.66'	688.52±7.24'
EC-2	0°13'10"	2462.68'	5.04'	600.24±15.50'
EC-3	1°10'51"	25.00'	199.61'	198.71±1.98'
EC-4	1°59.53±1.31"	605.73'	20.07'	52.97±9.14'
EC-5	1°53.51"	605.73'	20.07'	52.97±9.14'
EC-6	22°34'35"	545.73'	215.68'	508.22±7.71'
EC-7	20°20.07"	545.73'	20.07'	52.92±7.33'
EC-8	51°24.22"	545.73'	489.68'	547.29±7.44'
EC-9	2°31'11"	545.73'	21.14'	57.16±5.71'
EC-10	53°57.00"	605.73'	566.86'	548.25±10.12'
EC-11	1°39.41"	605.73'	20.91'	52.79±6.26'
EC-12	59°20.10"	2422.68'	211.27'	168.46±6.71'
EC-13	0°29.33"	2422.68'	20.07'	48.51±6.71'
EC-14	2°34.11"	2420.18'	112.55'	107.53±4.71'

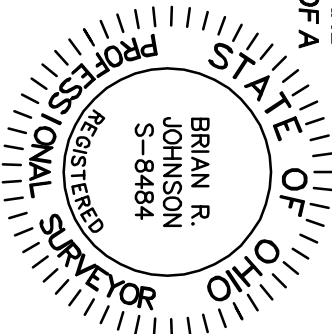


## SURVEYORS CERTIFICATION

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE ACCOMPANYING PLAN IS A CORRECT RETURN OF A SURVEY MADE UNDER MY DIRECTION.

**BRIAN R. JOHNSON, P.S.**  
**PROFESSIONAL SURVEYOR #8484**  
**IN THE STATE OF OHIO**

**DATE**





Village of South Lebanon  
99 N. High Street, South Lebanon, Ohio 45065  
513-494-2296  
fax: 513-494-1656  
[www.southlebanonohio.org](http://www.southlebanonohio.org)

## MEMORANDUM

**To:** Mayor & Village Council  
**From:** Jerry Haddix, Village Administrator  
**Date:** January 31, 2017  
**Subject:** Motion to Return Vista Pointe Section 4 Maintenance Bond

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On 9/17/15, the Village Council adopted Resolution No. 2015-26 accepting the public improvements of the Vista Pointe Section 4 subdivision. Per the Village Subdivision Regulations, the Developer deposited a 10% cash bond in the amount of \$16,194.60 for the one-year maintenance period.

The one-year period has passed and no repairs were needed as of 9/16/16. A small issue was noted in October, 2016, but we will make that repair this Spring.

I am hereby requesting a motion to return the Vista Pointe Section 4 Maintenance Bond in the amount of **\$16,194.60** to the River's Bend Land Company, Ltd.

Let me know if you have any questions or need additional information.



**Village of South Lebanon**  
**99 N. High Street, South Lebanon, Ohio 45065**  
**513-494-2296      fax: 513-494-1656**  
**[www.southlebanonohio.org](http://www.southlebanonohio.org)**

February 1, 2017

To: Village Council  
From: Paul R. Revelson, Solicitor

Re: ORC § 729.52


Dear Council,

Mr. Boerio requested I research the applicability of Ohio Revised Code § 729.52 and the Village's ability to use the sewer fund to extend the sewer line to the Books parcel. Ohio Rev. Code § 729.52 reads:

*The funds received from the collection of sewer rentals under section 729.49 of the Revised Code shall be deposited weekly with the treasurer of the municipal corporation . . . The director or board shall sign all orders drawn on the treasurer of the municipal corporation against such fund, which fund shall be used for the payment of the cost of the management, maintenance, operation, and repair of the sewerage system and sewage pumping, treatment, and disposal works. Any surplus in such fund may be used for the enlargement or replacement of the system and works, for construction and reconstruction of main and interceptor storm sewers, for the payment of the interest on any debt incurred for the construction thereof, and for the creation of a sinking fund for the payment of such debt, but shall not be used for the extension of a sewerage system to serve unsewered areas or for any other purpose; provided, where such municipal corporation does not operate or maintain a sewage pumping, treatment, and disposal works, any or all of such surplus may be transferred to the general fund of the municipal corporation in the manner provided in sections 5705.15 and 5705.16 of the Revised Code. (emphasis added)*

Mr. Boerio specifically requested whether it was legal for the Village to use sewer funds to construct a sewer line to the Books parcel. I have attached a case and Attorney General Opinion that authorize the use of the sewer fund to service the parcel. The only caveat from the case is that the sewer fees being used for the extension must have been reasonable at the time collected. I think we update the sewer rates relatively frequently with supporting reasoning, therefore I would conclude that the rates were reasonable. Therefore, the Village may legally use the sewer funds to construct a line to service the Books parcel.

WESTLAW

 Original image of 156 N.E.2d 757 (PDF)

156 N.E.2d 757

Court of Common Pleas of Ohio, Licking County.

**Shoemaker v. Village of Granville**

Court of Common Pleas of Ohio, Licking County. December 2, 1958 156 N.E.2d 757 79 Ohio Law Abs. 573 (Approx. 6 pages)

v.

**VILLAGE OF GRANVILLE, et al., Defendants.**

No. 44917.





Dec. 2, 1958.

Action was brought against village and others to compel expenditure of money in sewer fund for enlargement and extension of sewer line in village. The Common Pleas Court, Holtsberry, J., held that statute providing that any surplus in sewer fund may be used for enlargement or replacement of sewer system and works, for payment of interest on any debt incurred for construction thereof, and for creation of sinking fund for payment of such debt, but shall not be used for extension of sewerage age system to serve unsewered areas or for any other purpose, is a direct and improper limitation on power granted to a municipality by section of the Constitution providing that any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to municipality or its inhabitants, and may contract with others for any such product or service, and that village had authority to expend funds from sewer fund for enlargement and extension of sewer line in village.

Judgment in accordance with opinion.

**West Headnotes (7)**

Change View

- 1 **Municipal Corporations**  Implied Repeal  
Later legislative act of village council effected a repeal by implication of earlier irreconcilable ordinance, since last expression of legislative will should prevail.  
  
1 Case that cites this headnote
- 2 **Municipal Corporations**  Mode of Action in General  
The character of a particular act of a municipal council as an ordinance or a resolution is to be determined, not by its form or by its denomination by council, but by its substance, and nature of subject matter with which it deals.
- 3 **Municipal Corporations**  Resolution or Ordinance  
Village council's legislative act, which was entitled a "resolution," and which authorized certain sewer development, and which provided that cost of construction and necessary engineering costs should be paid out of sewer fund of village, was in effect and substance an "ordinance," rather than a "resolution," since it revealed a permanent rule of conduct and was not of ephemeral or temporary nature.  
  
1 Case that cites this headnote
- 4 **Municipal Corporations**  Constitutional and Statutory Provisions  
Statute providing that any surplus in sewer fund may be used for enlargement or replacement of sewer system and works, for payment of interest on any debt incurred for construction thereof, and for creation of sinking fund for

**SELECTED TOPICS**

Fiscal Matters

Debt of Municipal Corporations

Municipal Corporations

Public Improvements

City of Chicago Adopted Ordinances

Power and Duty to Tax

Valid Exercise of Municipal Taxing Power

**Secondary Sources****APPENDIX IV: ADMINISTRATIVE  
LETTER RULINGS: DOL, WAGE  
HOUR DIVISION**Public Employer's Guide to FLSA Emp. Class.  
Appendix IV

...(The following article appeared in the July 1995 update to the Employer's Guide to the Fair Labor Standards Act, published by Thompson Publishing Group. It is intended to provide basic information on c...

**P900 SAMPLE JOB CLASSIFICATION  
SPECIFICATIONS**Public Employer's Guide to FLSA Emp. Class.  
§900

...The job classification specifications ("class specs") provided in this tab cover a wide range of public employer positions. Classification specifications are not job descriptions; they are broader docu...

**APPENDIX 2: FEDERAL  
REGULATIONS**

Underground Storage Tank Guide App. 2

...The federal UST regulations were initially promulgated in 1988 and amended several times through the mid-1990s. The U.S. Environmental Protection Agency issued a major revision of the regulations in Ju...

See More Secondary Sources

**Briefs****Daniel BOGAN and Marilyn Roc  
Petitioners, v. Janet SCOTT-HA  
Respondent.**

1997 WL 33487262

Daniel BOGAN and Marilyn Roderick,  
Petitioners, v. Janet SCOTT-HARRIS,  
Respondent.  
Supreme Court of the United States  
Aug. 14, 1997

...Demand: \$0,000 Lead Docket: None Dkt# in other court: None Cause: 42:1983 Civil Rights Act Proceedings include all events. 1:91cv12057 Scott-Harris v. Fall River, City of, et al APPEAL 1. This is a civ...


**Brief Of Amici Curiae Connecticut  
Conference Of Municipalities And The  
State Municipal Leagues Of Alabama;  
Arkansas; California; Colorado;  
Florida; Georgia; Illinois; Indiana; Iowa;  
Kansas; Kentucky; Louisiana;  
Maryland; Massachusetts; Michigan;  
Minnesota; Missouri; New Hampshire;  
New Jersey; New Mexico; New York;  
North Carolina; Ohio; Oklahoma;  
Pennsylvania; Rhode Island; South  
Carolina; South Dakota; Texas; West  
Virginia and Wisconsin In Support of  
Respondents%**tc



2005 WL 176426

Susette Kelo, et al., Petitioners, v. CITY OF  
NEW LONDON AND NEW LONDON  
DEVELOPMENT CORPORATION.


payment of such debt, but shall not be used for extension of sewerage system to serve unsewered areas or for any other purpose, is a direct and improper limitation on power granted to a municipality by section of the Constitution providing that any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is, or is to be, supplied to municipality or its inhabitants, and may contract with others for any such product or service. R.C. § 729.52; Const. art. 18, § 4.

1 Case that cites this headnote

- 5 Municipal Corporations**  Nature and Grounds of Power in General Powers granted to a municipality under section of the Constitution providing that any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is, or is to be, supplied to municipality or its inhabitants, and may contract with others for any such product or service are not subject to legislative limitation or restriction. Const. art. 18, § 4.

- 6 Municipal Corporations**  Connections with Sewers or Drains  
**Municipal Corporations**  Power and Duty to Tax in General Where license fee or charge by municipality for special service is excessive, or produces excessive funds, which are applied to other, unrelated uses, then it is deemed a "tax," and thus subject to legislative control, but a sewer charge is not a "tax," subject to statutory limitation, except where surplus is diverted to unrelated use. Const. art. 18, § 4.

1 Case that cites this headnote

- 7 Municipal Corporations**  Special Funds Village had authority to expend funds from sewer fund for enlargement and extension of sewer line in village. Const. art. 18, § 4.

1 Case that cites this headnote

## Attorneys and Law Firms

\*758 Norpell & Norpell, Newark, on behalf of plaintiff.

E. Clark Morrow, Newark, on behalf of defendants.

Hugh Sherer, Asst. Atty. Gen., on behalf of Atty Gen. of Ohio.

## Opinion

HOLTSBERRY, Judge.

Plaintiff owns a tract of land in the area commonly known as Mt. Parnassus in Granville, Licking County, Ohio. He will require water and sewer facilities along Sinnett Avenue, for subdivision and development. Sinnett Avenue is in the corporate limits of Granville.

Plaintiff negotiated with the Village Council for the extension of the water and sewer lines and enlargement of certain existing lines. A resolution was passed October 13, 1958, by the council authorizing and directing the Village Board of Trustees of Public Affairs to proceed, and for payment therefor, from existing water and sewer fund surpluses, respectively. On November 3, 1958, said board refused by acclamation to do as directed on the grounds that the proposed use of said fund surpluses was specifically prohibited by an old, 1930, ordinance, and also by Section 729.52 Revised Code of Ohio.

As of October 13, 1958, there was a surplus balance of \$16,159.60 in said sewer fund, and of \$35,450.88 in said water fund.

Plaintiff has expended substantial sums in preliminary engineering and survey work, and is being damaged by resulting inactivity of heretofore initiated development. The several public officials of Granville who were present at the trial before this Court stated that the contemplated \*759 project would be a progressive step for Granville.

Respondents.  
 Supreme Court of the United States  
 Jan. 21, 2005

...FN\* Counsel of Record The Connecticut Conference of Municipalities ("CCM") is Connecticut's association of cities and towns. Its 142 member municipalities comprise over 91 percent of the state's popula...

## Jurisdictional Statement On Behalf of Plaintiff Appellant

1978 WL 223035  
 METROPOLITAN DEVELOPMENT AND HOUSING AGENCY, Plaintiff-Appellant, v. SOUTH CENTRAL BELL TELEPHONE COMPANY; Metropolitan Government of Nashville and Davidson County, Tennessee, acting by and through the Electric Power Board of said Government; Nashville Gas Company; Colonial Pipeline Company; and The Western Union Telegraph Company, Defendants-Appellees.  
 Supreme Court of the United States  
 Aug. 10, 1978

...Comes the appellant, the Metropolitan Development and Housing Agency (hereinafter referred to as plaintiff), and would show unto the Court as follows: In October of 1973, a suit was filed in the Chance...

See More Briefs

## Trial Court Documents

In re Tarragon Corp.

2011 WL 6012105  
 In re: TARRAGON CORPORATION, ...  
 Reorganized Debtors.  
 United States Bankruptcy Court, D. New Jersey.  
 Apr. 12, 2011

...Judge: Donald H. Steckroth Chapter 11 HEARING DATE AND TIME: April 11, 2011 at 1:00 p.m. The relief set forth on the following page, numbered two (2) through twenty-seven (27), is hereby ORDERED. DATED...

In re Landstock, LLC

2009 WL 8189470  
 In re: LANDSTOCK, LLC, Debtor.  
 United States Bankruptcy Court, S.D. Mississippi.  
 May 26, 2009

...(Chapter 11) This Cause came on for hearing on the Motion of Creditor, Madison County Mississippi, by and through Kay Pace, Tax Collector in and for said County, for relief from the automatic stay to c...

In re Foods, Inc.

2014 WL 6490646  
 In Re: FOODS, INC., an Iowa Corp., ...  
 Dahl's Food Mart, Inc., an Iowa Corporation, Dahl's Holdings I, LLC, an Iowa Limited Liability Company, Debtors.  
 United States Bankruptcy Court, S.D. Iowa.  
 Nov. 12, 2014

...THIS MATTER, along with an Objection filed by the Iowa Department of Revenue at docket number 31, have come before the Court upon the ex parte request for an Expedited Hearing filed at docket number 17...

See More Trial Court Documents

Section 4 of Ordinance 7-1 passed April 1, 1930, is couched in the same language as the pertinent portions of Section 729.52 R.C., formerly Section 3891-5 G.C.

Conversely, and irreconcilably, on October 13, 1958, resolution 7-16 was passed authorizing said Sinnett Avenue sewer development. Section 1 provides: \*\*\* 'and to pay the cost of said construction, together with the necessary engineering costs out of the sewer fund of said Village.'

1 This Court is of the opinion, and so holds, that the later legislative act of the Granville Council effects a repeal of the earlier ordinance by implication. In legislative matters the last expression of the legislative will should prevail. If a legislative act is so repugnant to, or so contradictory of, or so irreconcilably in conflict with, a prior act that they cannot be harmonized to effect the purpose of their enactment, the latter should control, without any repealing clause, as a repeal of the first to the extent of the irreconcilable inconsistency. (25 Ruling Case Law, 914; Goff v. Gates, 87 Ohio St., 142, 100 N.E. 329.)

2 The fact the later legislation is entitled a 'Resolution,' is not important herein. The character of a particular act of a municipal council as an ordinance or as a resolution is to be determined, not by its form or by its denomination as designation as one or the other by the council, but by its substance, and the nature of the subject matter with which it deals. (28 O.Jur., Section 273.)

3 Study of 'Resolution 7-16,' reveals a permanent rule of conduct is prescribed, is not of ephemeral or temporary nature, and is in effect and substance an ordinance, rather than a resolution.

Does Section 729.52 R.C., constitute an unconstitutional limitation, as claimed, upon the power of the Granville Council to operate and manage its own utility? The pertinent provision of Section 729.52 reads as follows:

\*\*\* Any surplus in such fund may be used for the enlargement or replacement of the system and works, for the payment of the interest on any debt incurred for the construction thereof, and for the creation of a sinking fund for the payment of such debt, but shall not be used for the extension of a sewerage system to serve unsewered areas or for any other purpose.'

Ohio municipalities derive their power to own and operate public utilities directly from the Ohio Constitution. Section 4 of Article XVIII, states in part:

'Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. \*\*\*'

Substantial limitation by acts of the legislature upon a municipality's power regarding public utilities since the adoption of the home-rule amendments of the Ohio Constitution has been frowned upon by the Ohio courts. See *Link v. Public Utilities Commission of Ohio*, 102 Ohio St. 336, 131 N.E. 796; *State ex rel. City of Toledo v. Weiler*, 101 Ohio St. 123, 128 N.E. 88; *City of Cleveland v. Village of Cuyahoga Heights*, 81 Ohio App. 191, 75 N.E.2d 99; *Ricketts v. City of Mansfield*, 43 Ohio App. 316, 183 N.E. 181.

*City of Cincinnati v. Roettinger*, 105 Ohio St. 145, 137 N.E. 6, has been interpreted as holding that the legislature may limit the use of surplus money in a water fund. In this case Cincinnati, by ordinance, sought to transfer surplus in the water fund, derived from water rentals, to the general fund and that said surplus should be used for general municipal purposes. Such transfer was held invalid by the Ohio Supreme Court.

\*760 True, by a long line of authority beginning with the Roettinger case, supra, it has been established that the application of funds created by water rentals to the payment of general municipal obligations or any purpose of constructing, maintaining and operating facilities for the supply of water results in levying a tax only on water users to meet the expenses of government, contrary to Section 743.05 R.C., and that the legislature is empowered to prevent a municipality from using a light fund to pay salaries of policemen, to retire bonds for a new fire truck, or to pave streets, or to make up any other deficiency in funds for the general expenses of the municipality.

4 5 But for the legislature to restrict the use of sewer funds for expansion of such municipal utility, as planned in Granville, would be a direct and improper limitation upon

the power granted by Section 4 of Article XVIII of the Ohio Constitution. Powers so granted are not subject to legislative limitation or restriction. Board of Education of City School District of Columbus v. City of Columbus, 118 Ohio St. 295, 160 N.E. 902.

6 The rule established in the Roettinger case, supra, must be restricted to the concept that where a license fee or charge for a special service is excessive, or produces excessive funds, which are applied to other, unrelated uses, then it is deemed a tax, and thus subject to legislative control. Limiting the rule to the facts which gives rise to the Roettinger case, and subsequent cases of Hartwig Realty Co. v. City of Cleveland, 128 Ohio St. 583, 192 N.E. 880; and City of Lakewood v. Rees, 132 Ohio St. 399, 8 N.E.2d 250, it seems reasonable and logical to conclude that a sewer charge, as previously stated is not a tax, subject to statutory limitation, except where surplus is diverted to an unrelated use. Section 729.52 would not operate as a limit upon the use of sewer surplus fund money by a village for extension of sewer lines to unsewered areas, providing the charge or rate for sewer service is not so excessive as to be deemed a tax. There is no claim that the Granville sewer rates are excessive. They were established 28 years ago, and the surplus fund is in the amount of \$16,159.60-hardly an unseemly accumulation of surplus funds.

We live in a period where the past is fast dissolving, in many respects, and the future has not yet jelled. Modern trends are appearing in judicial matters as well as others. State ex rel. Gordon v. Rhodes, 158 Ohio St. 129, 107 N.E.2d 206, holds that where fees charged on an off street parking are not unreasonable in amount, or designed to raise revenue other than an amount sufficient to cover costs and expenses or providing necessary parking facilities on and off the streets of the municipality, the charge and collection of such fees will not represent the levy of a tax. This case expresses the modern trend in permitting accumulation of surplus and use for a purpose similar and related to, but not the same as the purpose for which the charge is made, without said charge being viewed as a tax, subject to limitation by virtue of Section 13 of Article XVIII, Ohio Constitution.

Another case of interest is that of the Swank v. Village of Shiloh, 166 Ohio St. 415, 143 N.E.2d 586, concerning an injunction suit under what a tax payer termed 'diversion,' in the use of electricity within the Village. The case further indicates the modern trend of judicial thinking upon the subject.

7 This Court reaches the conclusion that neither Section 729.52 Ohio Revised Code, nor Granville Village Ordinance 7-1 contains any limitation upon the authority of said Village to expend funds from the water fund of said Village in the construction of a water line along Sinnett Avenue, and that there is no bar to said Village of Granville in its authority to expend funds from the sewer fund for the enlargement and extension of a sewer line along Sinnett Avenue in said Village.

#### All Citations

156 N.E.2d 757, 79 Ohio Law Abs. 573

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be credited with the unused balance of his accumulated sick leave." (Emphasis added) It is obvious that the "balance" referred to in Section 143.29, *supra*, is whatever amount the employee had theretofore lawfully accumulated regardless of the fact that such accumulated amount of sick leave may exceed 90 days.

Accordingly, it is my opinion and you are advised that under the provisions of Section 143.29, Revised Code, the board of education of a city school district may, at its discretion, approve the accumulation of more than ninety days sick leave for all of the employees of such district; and where such an employee transfers to another public agency, he should be credited with the unused balance of his accumulated sick leave.

Respectfully,  
MARK McELROY  
Attorney General

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2078

A MUNICIPAL CORPORATION HAS THE AUTHORITY TO CHANGE REASONABLE RENTALS FOR SERVICES IT PROVIDES BY ITS SEWAGE SYSTEM, AND MAY USE THE SURPLUS THEREFROM FOR THE EXTENSION OF THE SEWAGE SYSTEM TO SERVE AN UNSERVED AREA—§§4 & 5, ARTICLE XVIII, OHIO CONSTITUTION—§729.52, R.C.

SYLLABUS:

A municipal corporation has the authority pursuant to sections 4 and 6 of Article XVIII, Ohio Constitution, to charge reasonable rentals for the services it provides by its sewage system, and may use the surplus therefrom for the extension of the sewage system to serve an unsewered area in spite of any provisions of Section 729.52, Revised Code, to the contrary.

Columbus, Ohio, March 25, 1961

Hon. James A. Rhodes, Auditor of State  
State House, Columbus 16, Ohio

Dear Sir:

I have before me your request for my opinion which request relates to a municipal corporation operated under the general statutory plan of

government, city council of which has adopted legislative action directing the city auditor to pay the city's portion of the cost of extending a sewage system to serve an unsewered area from the sewer revenue fund established pursuant to Section 729.52, Revised Code. The question you raise is whether a city has the power to prescribe by ordinance that funds received from the collection of sewer rentals shall be used for the extension of a sewage system to serve an unsewered area.

On the authority of *State, ex rel. City of Fostoria v. King*, 154 Ohio St., 213 (1950), I have no doubt that a municipally operated sewage system is a public utility. The question presented, then, is to what extent the General Assembly may limit a municipal corporation's operation of such utility.

Section 729.52, Revised Code, reads as follows:

"The funds received from the collection of sewer rentals under section 729.49 of the Revised Code shall be deposited weekly with the treasurer of the municipal corporation. Money so deposited shall be kept as a separate and distinct fund and shall be known as the sewer fund. When appropriated by the legislative authority of the municipal corporation, the fund shall be subject to the order of the director of public service of a city or of the board of trustees of public affairs of a village. The director or board shall sign all orders drawn on the treasurer of the municipal corporation against such fund, which fund shall be used for the payment of the cost of the management, maintenance, operation, and repair of the sewerage system and sewage pumping, treatment, and disposal works. Any surplus in such fund may be used for the enlargement or replacement of the system and works, for the payment of the interest on any debt incurred for the construction thereof, and for the creation of a sinking fund for the payment of such debt. *but shall not be used for the extension of a sewerage system to serve unsewered areas or for any other purpose.*" (Emphasis added)

If the underlined portion of the above statute is valid, then, unquestionably your request must be answered in the negative. This statute is, however, one of many enacted by the General Assembly seeking to place limitations upon the operation of a public utility by a municipal corporation.

In a long line of cases the Supreme Court has found many such statutes to be in conflict with Article XVIII, Sections 4 and 6 of the Ohio Constitution. Article XVIII, Section 4 reads, in part, as follows:

"Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. \* \* \*"

Article XVIII, Section 6, reads as follows :

"Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality, provided that such fifty per cent limitation shall not apply to the sale of water or sewage services."

In *Swank v. Village of Shiloh*, 166 Ohio St., 415 (1957), the Supreme Court reiterated its view of the unfettered power of a municipality to operate a public utility as it sees fit. The first paragraph of the syllabus in that case reads as follows :

"The power to acquire, construct, own or lease and to operate a utility, the product of which is to be supplied to a municipality or its inhabitants, is derived from Section 4, Article XVIII of the Constitution, and the General Assembly is without authority to impose restrictions or limitations upon that power. (*Village of Euclid v. Camp Wise Assn.*, 102 Ohio St., 207, and *Board of Education of City School Dist. of Columbus v. City of Columbus*, 118 Ohio St., 295, approved and followed.)"

In *State, ex rel. McCann v. The City of Defiance*, 167 Ohio St., 313 (1958), the Supreme Court reviewed again its position on this question and held unconstitutional Section 743.13, Revised Code, which statute sought to place a limit on the operation of a utility by a municipality. The syllabus in the *McCann* case reads, as follows :

"1. The General Assembly has no power to enact any statute for the purpose of limiting or restricting by regulation or otherwise the power and authority of a municipality, that owns and operates a public utility for the purpose of supplying the product thereof to such municipality or its inhabitants, to sell and deliver to others the portion of the surplus product of such utility that it is authorized by Section 4 and 6 of Article XVIII of the Constitution to sell and deliver to such others. (*Swank v. Village of Shiloh*, 166 Ohio St., 415, *Village of Euclid v. Camp Wise Assn.*, 102 Ohio St., 207, and *Board of Education v. City of Columbus*, 118 Ohio St., 295, approved and followed. *City of*

*Akron v. Public Utilities Commission*, 149 Ohio St., 347, *City of Cincinnati v. Roettinger, a Taxpayer*, 105 Ohio St., 145, *City of Lakewood v. Recs.*, 132 Ohio St., 399, *Hartwig Realty Co. v. City of Cleveland*, 128 Ohio St., 583, and *Travelers Ins. Co. v. Village of Wadsworth*, 109 Ohio St., 440, distinguished.

"2. To the extent that Section 743.13, Revised Code, requires a municipality to furnish water to noninhabitants of such municipality or limits the price which such municipality may charge for such water, such statute is unconstitutional and void."

The spirit of these decisions has been followed consistently by the Attorney General. See Opinion No. 2190, Opinions of the Attorney General for 1958, page 347; Opinion No. 706, Opinions of the Attorney General for 1959, page 413; and Opinion No. 1280, Opinions of the Attorney General for 1960.

The uniformity of opinion on this matter eliminates any necessity for further elaboration. It should be noted, however, that the Court of Common Pleas of Licking County in *Shoemaker v. Village of Granville*, 79 Ohio Law Abs., 573, ruled on this exact question. That court held that the General Assembly had no power to restrict the use of sewer funds for the expansion of such municipal utility as the powers granted by the people pursuant to Article XVIII, Sections 4 and 6 of the Ohio Constitution were not made subject to legislative limitation or restriction. The only limitation placed by the court on this doctrine is that any surplus arising from sewage rentals must be reasonable in size and must not be diverted to a use totally unrelated to the operation of the utility. This caveat has no application to the facts you present as the expansion of the sewage system to serve an unsewered area is certainly a use related to the operation of the sewage system.

It is, therefore, my opinion and you are accordingly advised that a municipal corporation has the authority pursuant to sections 4 and 6 of Article XVIII, Ohio Constitution, to charge reasonable rentals for the services it provides by its sewage system, and may use the surplus therefrom for the extension of the sewage system to serve an unsewered area in spite of any provisions of Section 729.52, Revised Code, to the contrary.

Respectfully,

MARK McELROY

Attorney General

**AGENDA**  
**WORKSHOP MEETING OF VILLAGE COUNCIL**  
**FEBRUARY 2, 2017**  
**7:00 P.M.**

1. Mayor Smith calls the meeting to order.
2. Roll Call:

Randall Atkins	Bill Madison
James Boerio	Steve Riley
Sue Johnson	George Teasdale
3. Guests:
4. Floor open to the public:
5. New Business:
6. Old Business:
7. Communications and reports from Village Officials and Committees
  - a. Mayor
  - b. Fiscal Officer
  - c. Solicitor
  - d. Administrator
  - e. Sgt.
  - f. Council Members
8. Adjournment